ALERTS

Decreased HSR Act Thresholds Announced for 2021

February 2, 2021

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), requires parties to acquisitions of voting securities, assets or non-corporate interests meeting certain thresholds to make a premerger notification to the Federal Trade Commission ("FTC") and the Antitrust Division of the Department of Justice and to observe a waiting period prior to consummating such acquisitions. Today, the Federal Register published the annual adjustments to the current HSR Act thresholds. Any transaction that will be consummated on or after the March 4, 2021 effective date of such adjustments may be reportable under the HSR Act if, as a result of such transaction, the acquiring person will hold voting securities, assets and/or non-corporate interests of the acquired person valued above $92 million (the current adjusted minimum threshold is $94 million). The new adjusted thresholds reflect changes in the gross national product for the preceding fiscal year, which decreased as a result of the effects of COVID on the U.S. economy. The size-of-person threshold looks at the total sales or assets of each party to a transaction, including its ultimate parent and certain affiliates, and is also being increased.

The updated size-of-transaction and size-of-person thresholds under the HSR Act are set forth below:

Threshold	HSR Act Original	2021 Adjusted
Size-of-transaction when size-of-person test applies	$50 million	$92 million
Size-of-person (if	$10 million and $100	$18.4 million and $184

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applicable)	million	million
Size-of-transaction above which size-of-person test does not apply	$200 million	$368.0 million

The filing fees applicable to premerger notifications filed under the HSR Act have not changed in over a decade and will continue as follows:

Size-of-Transaction (as adjusted)	**Filing Fee**
Valued at greater than $92 million, but less than $184 million	$45,000
Valued at $184 million or greater, but less than $919.9 million	$125,000
Valued at $919.9 million or greater	$280,000

When a premerger notification has been filed under the HSR Act, and the applicable waiting period has expired or been terminated, any additional acquisitions by the same acquiring person of the same issuer's voting securities will be exempt from notification, so long as:

- The acquiring person's holdings crossed the notification threshold with respect to which the premerger notification was made, within one year of the expiration or early termination of the HSR Act waiting period; *and*
- The subsequent acquisition is consummated within five years following the expiration or early termination of the HSR Act waiting period;

Unless a higher notification level is met or exceeded. The various notification levels are set forth below:

HSR Act Original	**2021 Adjusted**
$50 million	$92 million
$100 million	$184 million
$500 million	$919.9 million
25 percent if value of voting securities to be held is greater than $1 billion	25 percent if value of voting securities to be held is greater than $1,839.8 million
50 percent if value of voting securities to be held	50 percent if value of voting securities to be held is greater than

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is greater than $50 million	$92 million

Any subsequent acquisition would be subject to the adjusted thresholds in effect when such subsequent acquisition is consummated.

On Jan. 11, 2021, the FTC announced that the maximum civil penalty for violation of the HSR Act reporting requirements has been increased from $43,280 to $43,792 per day.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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