

Insights: Alerts

FTC Updates Merger Notification and Interlocking Directorate Thresholds

January 26, 2023

Written by **Christina E. Fahmy**

On January 23, 2023, the Federal Trade Commission (FTC) announced its annual update to the dollar thresholds for merger filings required by the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act), along with new filing fees for merger notification filings.

Generally, whether a transaction is subject to HSR reporting requirements depends on three tests: (1) the in-commerce test; (2) the size-of-transaction test; and (3) the size-of-persons test, with a few exceptions and exemptions. Parties to a transaction that meet the threshold criteria under these tests must report the transaction to the federal antitrust enforcement agencies and then observe a waiting period to enable the government to analyze the deal's competitive effects.

Reporting Thresholds

Changes to the Size-of-Transaction Thresholds: A transaction satisfies the reporting threshold under the size-of-transaction test if, through the transaction, the acquiring party would obtain voting securities or assets of another party having a value that exceeds the threshold amount.

- The recent adjustment to the reporting threshold increases the minimum amount of the deal value from \$101 million to \$111.4 million. Where the deal value exceeds \$111.4 million and the size-of-persons and in-commerce tests are met, the parties would need to notify the transaction.
- The agency also has a separate threshold for larger deals. Deals worth \$445.5 million or more require notification regardless of whether the size-of-person thresholds are met, unless an exemption applies. Information about exemptions is available [here](#). This threshold means that the agency will be notified of large deals involving smaller targets.

Changes to the Size-of-Persons Thresholds: The new adjustments have also increased the thresholds under this test. A transaction will satisfy the size-of-persons test if one party to the transaction has annual net sales or total assets equal to or exceeding \$22.3 million, and the other party to the transaction has annual net sales or total assets equal to or exceeding \$222.7 million. In calculating whether a transaction must be reported under this test, the annual net sales and total sales will be based on a party's most recent regularly prepared balance sheet.

These updated thresholds will become effective 30 days after publication in the Federal Register.

HSR Filing Fees

On December 29, 2022, President Biden signed a \$1.7 billion federal spending bill into law. Among other things, the bill included the Merger Filing Fee Modernization Act (“MFFMA”), which reworked how merger notification filing fees works. The prior system had three tiers of fees, but the MFFMA moved to a five-tier system, and also provides for an annual adjustment of fee amounts based on the percentage increase in the consumer price index, adjusted to the nearest \$5,000.

The new transaction values and filing fees are as follows:

- At or above \$111.4 million and less than \$161.5 million – \$30,000
- At or above \$161.5 million and less than \$500 million – \$100,000
- At or above \$500 million and less than \$1 billion – \$250,000
- At or above \$1 billion and less than \$2 billion – \$400,000
- At or above \$2 billion and less than \$5 billion – \$800,000
- At or above \$5 billion – \$2.25 million

These fees will go into effect 30 days after publication in the Federal Register.

Revised Interlocking Directorates Thresholds

The FTC also announced revised dollar thresholds for evaluating interlocking directorates under Section 8 of the Clayton Act. Section 8 generally prohibits a person from serving as an officer or director for competing corporations other than banks, banking associations, and trust companies if certain thresholds are met. Under Section 8, these thresholds will generally apply if both corporations have capital, surplus, and undivided profits aggregating more than \$45,257,000, **unless** the two companies have competitive sales of **less than** \$4,525,700 with certain exceptions. These new thresholds took effect on January 20, 2023, when they were published in the Federal Register.

Related People



Christina E. Fahmy

t 202.508.5834

cfahmy@ktslaw.com