

The Federal Trade Commission (FTC) announced revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) to take effect in late February. The revisions increase the lowest “size-of-transaction” threshold at which HSR filings may be required from the current US\$92 million to US\$101 million.

Under the HSR Act, the FTC and Department of Justice (DOJ) must be notified before mergers, acquisitions and other transactions that meet certain monetary thresholds are consummated. Once notification is filed, the parties must observe a 30-day waiting period (unless granted early termination) to allow the agencies to review the transaction for possible violation of antitrust laws.

Section 7A(a)(2) of the Clayton Act requires the FTC to revise annually the jurisdictional thresholds and other thresholds and limitations in the HSR rules according to changes in gross national product. The new thresholds were published in the [Federal Register](#) on January 24, 2022, and will take effect on February 23, 2022, (30 days after the date of publication). The thresholds will apply to transactions that will close on or after that date.

Filing fee amounts will remain the same. However, filing fee thresholds will increase as follows: a fee of US\$45,000 will be required for transactions valued at more than US\$101 million, but less than US\$202 million; a fee of US\$125,000 will be required for transactions valued at or in excess of US\$202 million, but less than US\$1.0098 billion; and a fee of US\$280,000 will be required for transactions valued at or more than US\$1.0098 billion.

In conjunction with the announcement, FTC Commissioner Rebecca Kelly Slaughter and FTC Chair Lina M. Khan released a [statement](#) asking Congress to review and update the merger filing schedule and other aspects of the HSR review process such as the 30-day waiting period. In FY2020, 234 transactions reported under the HSR Act exceeded US\$1 billion, and 31% of those transactions received a second request from the FTC and DOJ. Another 400 transactions were valued between US\$500 million and US\$1 billion, and 31% of those transactions received a second request. In addition, in FY2021, there were 87% more transactions reported than the average number of transactions over the past five years. According to the statement, the volume of large and complex transactions, combined with an overall increase in the number of reportable transactions, have burdened the FTC and require, in part, updates to the threshold calculations, fees and waiting period. The request to increase merger fees for large transactions is consistent with legislation that is currently pending in Congress.

Adjustments to Interlocking Directorate Thresholds

The FTC also announced annual adjustments to thresholds under Section 8 of the Clayton Act, which generally prohibits persons from serving as a director or officer of two competing corporations (so-called “interlocking directorates”) if each corporation is of a certain minimum size. Under the thresholds required by a 1990 amendment to the Act, interlocking directorates will be prohibited where (i) each competing corporation has capital, surplus and undivided profits of more than US\$41,034,000 (increased from US\$37,382,000), and (ii) neither corporation has competitive sales less than US\$4,103,400 (increased from US\$3,738,200). These new monetary thresholds were published in the [Federal Register](#) on January 24, 2022, and take effect immediately.

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