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FTC Announces Hart-Scott-Rodino Thresholds for 2021

The Federal Trade Commission (FTC) has announced the annual adjustment in Hart-Scott-Rodino filing thresholds (15 USC § 18a, Clayton Act § 7A) (86 Fed. Reg. 7870). For only the second time since annual adjustments went into effect, the 2021 thresholds have decreased based on a decrease in the U.S. gross national product for prior fiscal year. As a result, some transactions that would not have been reportable in 2020 will now be reportable in 2021. The new thresholds are effective for transactions closing on and after March 4, 2021.

- All stock, non-corporate interest, and asset acquisitions, mergers, consolidations, joint ventures and similar transactions valued at **not more than \$92.0 million** will be exempt from all HSR filing and waiting period requirements (assuming no prior or related transactions between the parties or their affiliates), a decrease from last year's \$94.0 million threshold.
- Transactions valued **between \$92.0 million and \$368.0 million** and not otherwise exempt under one of the substantive HSR exemptions will require an HSR filing and will need to observe the 30-day waiting period requirement (subject to possible early termination) if they meet the "size-of-the-person" test. The size-of-the-person test thresholds for 2021 have decreased from \$18.8 million and \$188.0 million to **\$18.4 million and \$184.0 million** annual net sales or total assets.
- All transactions valued at **\$368.0 million and over** (down from \$376.0 million in 2020) and not otherwise exempt will require a pre-acquisition filing and will need to observe the waiting period requirement.
- HSR filing fee levels are being adjusted commensurate with these levels, although the fee amounts remain the same. The new filing fee levels are:
 - A \$45,000 fee for transactions valued between \$92.0 million and \$184.0 million,
 - A \$125,000 fee for transactions valued between \$184.0 million and \$919.9 million, and
 - A \$280,000 fee for transactions valued greater than or equal to \$919.9 million.
- The statutory penalty for not properly filing when required has increased in a separate adjustment to **\$43,792 per day**.

We have longstanding experience and expertise in Hart-Scott-Rodino pre-merger filings. In addition to preparing the necessary HSR filing documents and communicating with the FTC and DOJ, we also analyze transactions to determine if they are exempt from the HSR filing requirements, provide counsel on pre-closing restrictions concerning the operations of the acquired entity, and advise on structuring transactions to avoid or minimize both potential antitrust problems and costly second requests. If you have an upcoming merger, consolidation, stock purchase or asset acquisition, please give us a call.

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