

NOTIFICATION THRESHOLDS – 2021*

“Size of Transaction” test

- Transaction value < \$92 million not reportable.
- Transaction valued > \$368 million filing required, UNLESS exempt.
- Transaction valued > \$92 million but < \$368 million filing required if size-of-person test is satisfied, UNLESS exempt.

“Size-of-Person” test†

- One party with \$184 million and the other party with \$18.4 million in annual net sales or total assets. (Evaluate only assets for a target (acquired party) not engaged in manufacturing.)

IS THE PROPOSED TRANSACTION EXEMPT?§

- **Intraperson:** Acquisitions of interest in entities that the acquiring person already “controls.”
- **Acquisitions of Voting Securities of Foreign Issuers:**
 - Foreign-to-foreign acquisitions that do not confer control;
 - Acquisitions of foreign assets that generated less than \$92 million from sales made in or into the U.S. during the most recently completed fiscal year;
 - Foreign issuers that neither hold assets located in the U.S. valued at more than \$92 million nor derived more than \$92 million from sales made in or into the U.S. during the most recently completed fiscal year.
- **Investment Only:** Acquisitions of voting securities made solely for passive investment purposes, if the acquisition results in holding an interest of 10% or less.

COMMON QUESTIONS:

What is being “valued”?

Voting securities

- Securities with a current right to vote for members of the Board.‡
- Can exclude: Third-party debt paid at closing; Seller transaction expenses; and Retention bonuses.

Assets

- Hard and intangible assets; include assumed liabilities; exclude cash.

Non-Corporate Interests

- “Controlling” interest in a non-corporate entity.

What constitutes “control”?

Corporations

- Holding 50% or more of the outstanding voting securities of the issuer; or
- Having the present contractual right to appoint half or more of its Board.

Non-corporate entities (e.g., LLCs, partnerships, and cooperatives)

- Right to 50% or more of profits; or
- Right to 50% or more of assets upon dissolution.

REMEMBER TO CHECK FOR POTENTIAL FILINGS OUTSIDE THE U.S.

Led by Lee Van Voorhis, our team has handled numerous transactions requiring coordination of multiple filings around the world. Leveraging Jenner & Block’s membership of the Lex Mundi global network, we partner with leading firms worldwide to handle such matters effectively and efficiently.

Taking a step-by-step approach to merger review, Lee and the team first analyze whether filings are required in the relevant jurisdictions. Confirmation and questions are handled with the assistance of the local firms in the Lex Mundi network. Lee’s 25 years of experience in merger control, including time spent with international firms, have given him an understanding of, and experience with, merger control regimes in many jurisdictions. This allows him to both coordinate and advocate in multiple global filings, keeping themes consistent, while making nuanced arguments as appropriate.

Where mergers become contentious, Lee has led merger litigation in federal district court, federal circuit court and the FTC’s administrative proceeding. With that experience, we know how to avoid the pitfalls and take the right steps to maximize the likelihood of deal approval.

* All dollar amounts adjusted annually [effective March 4, 2021]

† Examine the “ultimate parent entity” (“UPE”) of the parties to the transaction. The “UPE” is a person or entity not “controlled” by any other

‡ Total holdings, not just the current acquisition, if equity acquired shares previously (unless previous acquisition(s) covered by prior HSR clearance grant).

§ There are many possible exemptions. These are a few of the most commonly used.