

FTC Updates HSR and Clayton Act Thresholds; Increases Civil Penalties for Violations

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The Federal Trade Commission (FTC) announced the annual changes to the Hart-Scott-Rodino (HSR) Act notification thresholds. The HSR Act requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds, to file notification with the FTC and the U.S. Department of Justice (DOJ) and to wait a designated period of time before consummating such transactions. These thresholds are adjusted annually based on changes in the U.S. gross national product (GNP). The changes are expected to become effective 30 days after notice is published in the Federal Register.

Generally, the HSR Act requires notification for mergers, acquisitions, joint venture formations, and certain exclusive pharmaceutical license agreements over a certain size among parties over a certain size. The size-of-transaction threshold will increase to \$119.5 million from \$111.4 million. Transactions that will result in the purchaser holding voting securities, assets, or noncorporate interests valued above that threshold will be reportable if the size-of-parties test is also satisfied and no exemptions are available.

The size-of-parties threshold will also increase. Generally, one party must have sales or assets of at least \$23.9 million, and the other party must have sales or assets of at least \$239 million. Unless an exemption applies, transactions valued in excess of \$478 million will require premerger notification regardless of the annual sales or assets of the parties.

FTC Announces Changes in Filing Fees

In addition to announcing the new HSR thresholds, on January 22, the FTC also approved publication of the new merger filing fee thresholds. There are six filing fee thresholds based on the size of the transaction:

- (1) \$30,000 for transactions valued above \$119.5 million but less than \$173.3 million;
- (2) \$100,000 for transactions valued at or above \$173.3 million but less than \$536.5 million;
- (3) \$250,000 for transactions valued at or above \$536.5 million but less than \$1.073 billion;
- (4) \$400,000 for transactions valued at or above \$1.073 billion but less than \$2.146 billion;
- (5) \$800,000 for transactions valued at or above \$2.146 billion but less than \$5.365 billion; and
- (6) \$2.25 million for transactions valued at or above \$5.365 billion.

To determine reportability, parties must apply the thresholds that are or will be in effect at the time of closing. However, the applicable filing fee is based on the filing fee threshold that is in effect at the time the parties submit their HSR filings.

Summary of new HSR thresholds are as follows:

Size-of-transaction threshold:

\$111.4 million will become \$119.5 million

Size-of-parties thresholds:

\$22.3 million will become \$23.9 million

\$222.7 million will become \$239 million

Size-of-transaction where size-of-parties are no longer relevant:

\$445.5 million will become \$478 million

Transaction Value	Filing Fee
Greater than \$119.5 million to less than \$173.3 million	\$30,000
\$173.3 million to less than \$536.5 million	\$100,000
\$536.5 million to less than \$1.073 billion	\$250,000
\$1.073 billion to less than \$2.146 billion	\$400,000
\$2.146 billion to less than \$5.365 billion	\$800,000
\$5.365 billion or more	\$2.25 million

FTC Announces Increased Civil Penalty for HSR Act Violations:

On January 11, the FTC separately announced that the maximum civil penalty amount for violations of the HSR Act would increase from \$50,120 to \$51,744 per day. The new penalty levels apply to civil penalties assessed after the effective date of the adjustment, including civil penalties whose associated violation predated January 10, 2024.

Noncompliance with the HSR Act continues to carry serious penalties, as fines continue to mount for each day that a party is in violation of the act; parties should consult with their counsel before acting.

FTC Announces Increased Thresholds for Interlocking Directorates Under Clayton Act Section 8

The FTC and the DOJ, Antitrust Division, have increased enforcement under and prioritized compliance with Section 8. Under Section 8 of the Clayton Act, a person is generally prohibited from serving simultaneously as an officer or director of two “competitor” corporations if each corporation has aggregated capital, surplus, and undivided profits exceeding an annually adjusted threshold amount.

Effective January 12, the threshold that triggers this prohibition will be \$48,559,000. The exemption thresholds will also increase. The principal exceptions to Section 8’s prohibition apply if the competitive sales of either corporation are less than \$4,855,900; less than 2% of either corporation’s total annual sales; or the competitive sales of each corporation are less than 4% of that corporation’s total annual sales.

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