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2025 increases to HSR notification thresholds, filing fees, interlocking directorate thresholds, and HSR penalties

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The Federal Trade Commission (FTC) has announced increases to the notification thresholds and premerger filing fees under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act, which requires premerger notification of certain transactions to the FTC and the Antitrust Division of the U.S. Department of Justice.

The annually revised notification thresholds and updated premerger filing fees will come into effect on February 21, 2025, 30 days after notice of the adjusted thresholds is published in the Federal Register (Effective Date).

The revised notification thresholds apply to transactions that close on or after the Effective Date while the revised HSR filing fees apply to transactions that file HSR premerger notification on or after the Effective Date.

The FTC also announced increases to the interlocking directorate thresholds and the daily maximum civil penalty for HSR Act violations.

Revised HSR act reportability thresholds

Generally, HSR notifications are required for an acquisition of voting securities, non-corporate interests or assets when the transaction reaches a certain threshold (the “size of transaction” test), and the parties are of sufficient size (the “size of parties” test). The size of transaction test is adjusted annually based on changes in the gross national product for the preceding year. The new size of the transaction threshold will be USD126.4 million, an increase from the current threshold of USD119.5m.

Under the new thresholds:

- Transactions valued up to and including USD126.4m are not reportable;
- Transactions valued at more than USD126.4m but not more than USD505.8m are reportable only if one filer has assets or annual net sales of at least USD25.3m and the other filer has assets or annual net sales of at least USD252.9m (unless an exemption applies); and
- Transactions valued at more than USD505.8m are reportable, regardless of the parties’ size (unless an exemption applies).

To determine HSR reportability for transactions, parties must use the size of transaction threshold that will be in effect on the closing date.

The new thresholds will also be used to determine the applicability of certain exemptions under the HSR Act and rules.

Revised HSR filing fees

2024 FILING FEE	2024 SIZE-OF-TRANSACTION THRESHOLDS	2025 FILING FEE
USD30,000	valued in excess of USD119.5m but less than USD173.3m	USD30,000
USD105,000	valued at USD173.3m or more but less than USD536.5m	USD105,000
USD260,000	valued at USD536.5m or more but less than USD1.073 billion	USD265,000
USD415,000	valued at USD1.073bn or more but less than USD2.146bn	USD425,000
USD830,000	valued at USD2.146bn or more but less than USD5.365bn	USD850,000
USD2,335,000	valued at USD5.365bn or greater	USD2,390,000

Additionally, as previewed in our client alert from November 12, 2024¹, the antitrust agencies have finalized substantial changes to the HSR Form. While none of the proposed rule changes will impact the notification thresholds or filing fee amounts, they will certainly impact every filing and are expected to significantly increase the HSR burden for transacting parties.

Revised thresholds for interlocking directorates

The FTC also increased the dollar amount thresholds for evaluating interlocking directorates under Section 8 of the Clayton Act. Under certain circumstances, Section 8 prohibits one person from serving as a director or officer of two competing corporations if each corporation has capital, surplus and undivided profits aggregating more than USD51,380,000 with an exception if the competitive sales of either corporation are less than a de minimis threshold of USD5,138,000, the competitive sales of either corporation are less than 2% of that corporation's total sales or the competitive sales of each corporation are less than 4% of that corporation's total sales. The aggregate capital, surplus and undivided profits of each corporation at the end of its last full fiscal year controls for Section 8 purposes. These new Section 8 thresholds became effective as of January 22, 2025.

Revised maximum daily civil penalty

The FTC has also revised the maximum civil penalty for HSR Act violations, effective as of January 17, 2025, from USD51,744 per day to USD53,088 per day. These new penalty levels apply to civil penalties assessed after January 17, 2025, including civil penalties whose associated violation predated the effective date. These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

Footnotes

1. See client alert FTC and DOJ finalize new HSR rules dated November 12, 2024 available at: <https://www.aoshearman.com/en/insights/ftc-and-doj-finalize-new-hsr-rules>

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