

CLIENT ALERT

FTC Revises HSR Thresholds, Filing Fees, and Section 8 Thresholds

January 25, 2024

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The Federal Trade Commission (the “FTC”) has announced revised thresholds for merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). As statutorily mandated, the various thresholds incorporated into the HSR Act and its rules and regulations are revised annually based on the change in the U.S. gross national product. The FTC has also announced revised HSR filing fees, as statutorily required by the 2023 Merger Filing Fee Modernization Act, with revised filing fees ranging from \$30,000 to \$2,335,000. The FTC notice concerning these revisions can be accessed [here](#). In addition, the FTC has revised the thresholds relating to the application of Section 8 of the Clayton Act, which prohibits certain interlocking directorates and officerships. The FTC notice concerning the Section 8 revision can be accessed [here](#).

HSR Act Thresholds

The new HSR Act notification thresholds will become effective 30 days after publication in the Federal Register, which we expect to occur in the next week or so. Assuming publication occurs within that time frame, the new thresholds will apply to transactions that will be filed or will close after that anticipated late February or early March effective date. The minimum notification threshold under the HSR Act will increase from \$111.4 million to \$119.5 million. Thus, an acquisition may trigger an HSR reporting obligation only if, as a result of an acquisition, an acquirer would hold voting securities, noncorporate interests (but only where “control” of a noncorporate entity would pass to the acquiring person as a result of the acquisition), and/or assets of an acquired person, that are valued in excess of \$119.5 million. The following table sets forth the principal threshold adjustments applicable to the HSR Act.

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Threshold	Original Threshold	2023 Adjusted Threshold	2024 Adjusted Threshold
Minimum Size of Transaction	\$50 million	\$111.4 million	\$119.5 million
Minimum Size of Transaction (above which the Size of Person Test does not apply)	\$200 million	\$445.5 million	\$478 million
Size of Person Test ¹ (applicable to transactions valued at not more than \$478 million)	Person 1: \$10 million Person 2: \$100 million	\$22.3 million \$222.7 million	\$23.9 million \$239 million
Notification Thresholds	\$50 million \$100 million \$500 million 25% or more of an issuer's voting securities if valued in excess of \$1 billion	\$111.4 million \$222.7 million \$1.1137 billion 25% or more of an issuer's voting securities if valued in excess of \$2.2274 billion	\$119.5 million \$239 million \$1.195 billion 25% or more of an issuer's voting securities if valued in excess of \$2.39 billion

Any monetary or limitation value included in a rule or regulation promulgated under the HSR Act that includes the term “(as adjusted)” (for example, the exemption that may be available for certain acquisitions of foreign assets or stock of foreign issuers where the exemption is dependent upon the nexus to U.S. commerce) has also been adjusted and will become effective on the same date.

Filing Fee Thresholds

The following table sets forth the new filing fees and the applicable thresholds to which they apply, which fees will also become effective for transactions that will file or close 30 days after publication in the Federal Register. Filing fees are revised annually based on the change in the U.S. Consumer Price Index.

¹ Generally speaking, the “size of person test” is based on annual net sales and total assets of the relevant “acquiring” and “acquired” persons (ie, the “ultimate parent entity” of buyer, and “ultimate parent entity” of target), as stated on ordinary course financial statements.

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Original Filing Fee	2023 Applicable Size of Transaction	2024 Adjusted Filing Fee	2024 Adjusted Applicable Size of Transaction
\$30,000	Greater than \$111.4 million but less than \$161.5 million	\$30,000	Greater than \$119.5 million but less than \$173.3 million
\$100,000	At least \$161.5 million but less than \$500 million	\$105,000	At least \$173.3 million but less than \$536.5 million
\$250,000	At least \$500 million but less than \$1 billion	\$260,000	At least \$536.5 million but less than \$1.073 billion
\$400,000	At least \$1 billion but less than \$2 billion	\$415,000	At least \$1.073 billion but less than \$2.146 billion
\$800,000	At least \$2 billion but less than \$5 billion	\$830,000	At least \$2.146 billion but less than \$5.365 billion
\$2.25 million	\$5 billion or more	\$2,335,000	\$5.365 billion or more

Section 8 Thresholds

Section 8 of the Clayton Act prohibits a person from serving as a director or officer of competing corporations if certain thresholds are met and an exemption does not apply. Pursuant to the new thresholds, which became effective immediately upon their publication in the Federal Register on January 22, 2024, competing corporations are covered by Section 8 if each corporation's capital, surplus, and undivided profits exceed in the aggregate \$48,559,000, unless one or more of the following exemptions apply: (i) one of the corporations has competitive sales of less than \$4,855,900; (ii) the competitive sales of either corporation are less than 2% of that corporation's total sales; or (iii) the competitive sales of each corporation are less than 4% of that corporation's total sales.

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