

U.S. FEDERAL TRADE COMMISSION ANNOUNCES ANNUAL ADJUSTMENTS TO MERGER FILING THRESHOLDS AND INTERLOCKING DIRECTORATE THRESHOLDS

On January 22, 2025, the U.S. Federal Trade Commission ("FTC") published annual adjustments to the jurisdictional thresholds of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"). The FTC also published annual adjustments to the HSR Act's filing fees and filing fee thresholds. In the absence of an applicable exemption, parties to a transaction meeting these thresholds must make preclosing notifications ("**HSR filings**") to the U.S. antitrust authorities, submit the applicable filing fee, and abide by a mandatory waiting period.

The new jurisdictional thresholds and filing fee schedules, which were announced on January 10, 2025, will take effect 30 days after they were published in the Federal Register on January 22, 2025.¹ As a result:

- The new filing fee thresholds will apply to filings made on or after February 21, 2025; and
- The new jurisdictional thresholds will apply to transactions closing on or after February 21, 2025.

Separate from these jurisdictional thresholds and filing fee schedules, in October 2024, the FTC announced changes to the substantive requirements for HSR filings, which will require filing parties to submit substantially more information and documents. These changes are currently scheduled to go into effect on February 10, 2025.²

¹ See Federal Trade Commission, "Revised Jurisdictional Thresholds for Section 7A of the Clayton Act" (Jan. 22, 2025), <https://www.federalregister.gov/documents/2025/01/22/2025-01518/revised-jurisdictional-thresholds-for-section-7a-of-the-clayton-act>.

² See "U.S. FTC Publishes Finalized Changes to the HSR Pre-Merger Notification and Report Form, Increasing Disclosure Requirements" (Oct. 11, 2024), <https://www.cliffordchance.com/briefings/2024/10/u-s--ftc-publishes-finalized-changes-to-the-hsr-pre-merger-notif.html>; "An overview of the New HSR Form" (Oct. 24, 2024), <https://www.cliffordchance.com/insights/resources/podcast-library/all-podcasts/overview-of-the-ftc-hsr-form-requirements.html>.

HSR FILING THRESHOLDS

The HSR Act mandates that parties to certain transactions each make an HSR filing and adhere to a mandatory waiting period (typically 30 days, although some transactions may qualify for a 15-day waiting period) before closing the transaction if: (a) the transaction is valued at or above a certain threshold (the "size-of-transaction test")³; or (b) the transaction is valued at or above a lower threshold and the parties' sales or assets are above a particular threshold (the "size-of-person test").⁴ Some transactions for which notification would otherwise be required under these tests may, nevertheless, qualify for one or more statutory exemptions allowing the parties to forgo making HSR filings and abiding by the waiting period.

The HSR Act directs the FTC to adjust the size-of-transaction test and size-of-person test thresholds each year based on the gross national product for the prior year. The newly announced thresholds, as compared to last year's, are as follows:

	2024 Thresholds	Revised Thresholds for 2025
Size-of-Transaction Test	\$119.5 million	\$126.4 million
Size-of-Person Test	Party 1 – annual net sales or total assets at or above \$23.9 million; and Party 2 – annual net sales or total assets at or above \$239.0 million	Party 1 – annual net sales or total assets at or above \$25.3 million; and Party 2 – annual net sales or total assets at or above \$252.9 million
Size-of-Transaction Threshold at which the Size-of-Person Test is inapplicable	\$478.0 million	\$505.8 million

³ The HSR Act looks to the total value of voting securities, non-corporate interests, or assets that the acquiring person will hold post-transaction, rather than simply examining the value being acquired at a single point in time. This distinction means that, in some instances, the parties must aggregate the voting securities, non-corporate interests, or assets of the acquired person already held from previous transactions with the value of voting securities, non-corporate interests, or assets in the current transaction.

⁴ Generally, under the new thresholds, the size-of-person test is satisfied if the Ultimate Parent Entity ("**UPE**") of one party (either the acquiring or acquired person) has at least \$25.3 million in annual net sales or total assets and the UPE of the other party has at least \$252.9 million in annual net sales or total assets. If the UPE of the acquiring person satisfies the higher \$252.9 million prong of the "size-of-person test," and if the UPE of the acquired person is not engaged in manufacturing, the size-of-person threshold test would be satisfied only if the UPE of the acquired person has at least \$25.3 million in total assets or at least \$252.9 million in annual net sales.

HSR FILING FEE THRESHOLDS AND FEES

In addition to the size-of-transaction test and size-of-person test thresholds, the FTC announced annual adjustments for 2025 to the HSR filing fees and the filing fee thresholds, which are adjusted by a percentage equal to the change in the consumer price index from the prior year, as mandated by the 2023 Consolidated Appropriations Act. The new filing fees and filing fee thresholds are as follows:

2025 Filing Fees	2025 Size of Transaction
\$30,000	Less than \$179.4 million
\$105,000	Not less than \$179.4 million but less than \$555.5 million
\$265,000	Not less than \$555.5 million but less than \$1.111 billion
\$425,000	Not less than \$1.111 billion but less than \$2.222 billion
\$850,000	Not less than \$2.222 billion but less than \$5.555 billion
\$2,390,000	\$5.555 billion or more

HSR CIVIL PENALTIES

The FTC has also announced that the maximum civil penalties for violations of the HSR Act, which are assessed per day for each violation, has increased to \$53,088 from \$51,744. This change became effective upon publication in the Federal Register on January 17, 2025. This revision is particularly relevant, as the FTC and the U.S. Department of Justice have recently brought several enforcement actions alleging violations of the HSR Act.⁵

CLAYTON ACT SECTION 8 THRESHOLDS

In addition to the revised HSR thresholds and filing fee schedule, the FTC also announced that it had approved updates to the thresholds applicable to Section 8 of the Clayton Act ("**Section 8**"). Section 8 generally prohibits any person from acting as an officer or director of two competing corporations if each corporation has capital, surplus, or profits in excess of \$51,380,000 (previously \$48,559,000). Corporations are exempt from this prohibition if either corporation has "competitive sales" below \$5,138,000 (previously \$4,855,900). "Competitive sales," as used in Section 8, means "gross revenue for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year." Section 8 also has de minimis exemptions where the competitive sales of either corporation are less than 2% of one corporation's total sales, or the competitive sales of each corporation are less than 4% of each corporation's total sales.

The revisions to Section 8, which took effect upon publication in the Federal Register on January 22, 2025, are also particularly relevant, as the antitrust agencies continue to pursue violations of Section 8.

⁵ See "Federal Trade Commission Announces Record US\$5.68 Million Fine for Gun-Jumping Violations in Acquisition of Oil Company" (Jan. 8, 2025), <https://www.cliffordchance.com/briefings/2025/01/federal-trade-commission-announces-record--5-68-million-fine-for.html>.

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