

New, higher HSR thresholds and filing fees for 2024

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What happened: The Federal Trade Commission announced revised Hart-Scott-Rodino (“HSR”) thresholds and updated filing fees to be published in the Federal Register. Earlier this month, the FTC published increased civil penalties for HSR noncompliance and revised thresholds for interlocking directorates.

The bottom line: The new HSR thresholds are higher than current thresholds, and the new filing fees and filing fee tiers have been increased for the first time since moving to a new format last year. The HSR thresholds and filing fees will apply to all transactions closed on or after 30 days following publication in the Federal Register, anticipated to be in late February 2024.

The increased civil penalties for HSR noncompliance became effective January 10, 2024, and interlocking directorates thresholds became effective January 22, 2024. Clients contemplating mergers or acquisitions, or appointing board members need to be aware of the new thresholds and filing fees.

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Companies may need to file with the Federal Trade Commission (“FTC”) and Department of Justice (“DOJ”) if the value of the deal exceeds \$119.5 million or reconsider potential board appointees subject to removal.

The full story:

HSR thresholds and filing fees

The FTC revises the HSR thresholds each year based on gross national product, and now also revises filing fees and fee tiers based on gross national product and CPI. Generally, under the revised thresholds, if the “size of transaction” — value of non-corporate interests, assets, voting securities or a combination thereof held as a result of the transaction — exceeds \$478 million and no exemption applies, the parties must file.

If the size of transaction exceeds \$119.5 million but is less than \$478 million, then antitrust counsel will need to do a “size of person” analysis. Generally, an HSR filing will not be required unless one party to the transaction has total assets or annual net sales of \$23.9 million or more and the other party has total assets or annual net sales of \$239 million or more.

The new Size of Transaction thresholds are as follows:

The new Size of Person thresholds are as follows:

The notification thresholds for less than 50% acquisitions of voting securities, which are designed to act as exemptions, also increased as follows:

Pursuant to the Merger Filing Fee Modernization Act signed into law at the end of 2022, the HSR filing fees now have a six-tier structure, and the thresholds and the amount of the fee for each tier have been adjusted based on changes to gross national product and the consumer price index.

The civil penalty for violating the HSR Act was increased from \$50,120 to \$51,744 per day for each day of noncompliance, effective January 10, 2024.

Original Threshold	2023 Threshold	2024 Threshold
\$50 million	\$111.4 million	\$119.5 million
\$200 million	\$445.5 million	\$478 million

Original Threshold	2023 Threshold	2024 Threshold
\$10 million	\$22.3 million	\$23.9 million
\$100 million	\$222.7 million	\$239 million

Original Threshold	2023 Threshold	2024 Threshold
\$50 million	\$111.4 million	\$119.5 million
\$100 million	\$222.7 million	\$239 million
\$500 million	\$1.1137 billion	\$1.195 billion
\$1 billion	\$2.2274 billion	\$2.39 billion

Interlocking directorates

The FTC also published revised thresholds relating to interlocking directorates based on gross national product, effective January 22, 2024. Section 8 of the Clayton Act prohibits a person from serving simultaneously as an officer or director of two or more competing corporations, subject to certain exceptions.

Under the revised thresholds, Section 8 may apply when each of the competing corporations has capital, surplus and undivided profits aggregating more than \$48,559,000 and each corporation's competitive sales are at least \$4,855,900.

Conclusion

HSR and interlocking directorates analysis is fact-specific and requires a comprehensive and thorough understanding of both the statute and relevant regulations. Clients are advised to consult with antitrust counsel as early as possible to determine if an HSR filing is needed before closing the deal or when appointing board members.

Assessing HSR reportability early on will be increasingly important with major revisions to the HSR form on the horizon in 2024, which will significantly increase the amount of time needed to prepare the submission, as detailed in our prior alert.¹

Notes

¹ <https://bit.ly/42pwgBF>

2023 Filing Fees		2024 Filing Fees	
Fee	Value of Transaction	Fee	Value of Transaction
\$30,000	\$111.4 million or greater but < \$161.5 million	\$30,000	\$119.5 million or greater but < \$173.3 million
\$100,000	\$161.5 million or greater but < \$499.999 million	\$105,000	\$173.3 million or greater but < \$536.5 million
\$250,000	\$499.999 million or greater but < \$999.999 million	\$260,000	\$536.5 million or greater but < \$1.073 billion
\$400,000	\$1 billion or greater but < \$2 billion	\$415,000	\$1.073 billion or greater but < \$2.146 billion
\$800,000	\$2 billion or greater but < \$5 billion	\$830,000	\$2.146 billion or greater but < \$5.365 billion
\$2.25 million	\$5 billion or greater	\$2.335 million	\$5.365 billion or greater

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