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HSR Update: Annual Jurisdictional Thresholds Revisions Effective Late February 2024

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Increase in HSR Thresholds. The Federal Trade Commission (FTC) recently announced its annual adjustments to the jurisdictional thresholds for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). The new thresholds are expected to be published in the Federal Register in the coming days and will become effective 30 days after publication (the “**Effective Date**”) and will remain in effect until the next annual adjustment, expected in the first quarter of 2025.

- **“Size of Transaction” Threshold.** Under the new thresholds, the minimum “size of transaction” requiring an HSR filing has increased from \$111.4 million to \$119.5 million. For most purposes, a transaction will be reportable only if, as a result of such transaction, the acquiring person will hold voting securities, assets, or noncorporate interests valued above \$119.5 million.
- **“Size of Person” Threshold.** For transactions valued between \$119.5 million and \$478.0 million, the “size of person” test must also be met for a premerger notification filing to be required. With the new thresholds, a transaction will generally meet the “size of person” test if one person (either acquiring or acquired) has annual net sales or total assets equal to or exceeding \$239.0 million, and the other person has annual net sales or total assets equal to or exceeding \$23.9 million. However, if the acquired person is not engaged in manufacturing, the acquired person must have total assets over \$23.9 million to meet the lower side of the threshold (annual net sales are not relevant for the acquired person to meet the lower side of the threshold, but they are relevant with respect to whether the acquired person meets the higher side of the threshold). If the transaction is valued above \$478.0 million, the “size of person” test does not need to be met for premerger notification to be required.
- **Increase in Civil Penalties for HSR Act Violations.** Earlier this month, the FTC increased the maximum civil penalty for violations of the HSR Act to \$51,744 per day. The higher penalty amount will apply to any civil penalties adjudicated on or after January 10, 2024, including civil penalties for violations that predate that date.
- **Increase in Interlocking Directorates Thresholds.** The FTC revised the thresholds that trigger the prohibition on interlocking directorates under Section 8 of the Clayton Act (15 U.S.C. § 19(a)(5)). The new thresholds, effective as of January 22, 2024, prohibit a person from serving as a director or officer of two competing corporations where each corporation has capital, surplus, and undivided profits aggregating \$48,559,000 or more, unless either corporation has competitive sales of less than \$4,855,900.

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- **Filing Fees.** The revised filing fees and updated transaction value ranges are as follows:

Filing Fee	2024 Size of Transaction Thresholds
\$30,000	For transactions valued in excess of \$119.5 million but less than \$173.3 million
\$105,000	For transactions valued at or above \$173.3 million but less than \$536.5 million
\$260,000	For transactions valued at or above \$536.5 million but less than \$1.073 billion
\$415,000	For transactions valued at or above \$1.073 billion but less than \$2.146 billion.
\$830,000	For transactions valued at or above \$2.146 billion but less than \$5.365 billion
\$2,335,000	For transactions valued at or above \$5.365 billion.

- **Revised Thresholds.** The complete list of revised thresholds are as follows:

Original Threshold	2023 Threshold	2024 Thresholds
\$10 million	\$22.3 million	\$23.9 million
\$50 million	\$111.4 million	\$119.5 million
\$100 million	\$222.7 million	\$239.0 million
\$110 million	\$245.0 million	\$262.9 million
\$200 million	\$445.5 million	\$478.0 million
\$500 million	\$1.1137 billion	\$1.195 billion
\$1 billion	\$2.2274 billion	\$2.39 billion

- **Proposed Changes to HSR Rules.** In June of 2023, the FTC proposed an overhaul of the HSR rules. If implemented, the proposed changes would significantly broaden the scope of the disclosures required to be made in HSR filings. It is expected that the FTC will publish the final rules in the near future.

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The rules governing whether an HSR filing is required are complex, and the penalties for failing to comply are serious: as noted above, parties can face fines of up to \$51,744 per day. We would be pleased to assist with your analysis and any required filing.

If you have any questions, please contact one of the following attorneys:

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