

FTC Announces 2024 HSR Thresholds

Client Alerts

January 23, 2024

The annual revisions to the Hart-Scott-Rodino (HSR) Act reporting thresholds have arrived. The new thresholds for notification will apply to all transactions that close on or after the effective date of the notice, which is 30 days after its publication in the *Federal Register*.

In general, filing an HSR premerger notification is required when the value of the transaction reaches a certain threshold (the “Size-of-Transaction” test) and the parties are of sufficient size (the “Size-of-Person” test), and no statutory exemption is applicable. Under the HSR Act, the FTC is required to update the jurisdictional thresholds annually, based on the change in gross national product.

Revised Thresholds

- Transactions valued up to and including \$119.5 million are not reportable.
- Transactions valued at more than \$119.5 million, but less than \$478 million are reportable if they meet the “Size-of-Person” test.
 - Generally, the Size-of-Person test is met when:
 - The larger party to the transaction has total assets or annual net sales of \$239 million or more; and
 - The smaller party has total assets or annual net sales of \$23.9 million or more.
 - There are nuances to the Size-of-Person test that must be considered for each transaction. For example, if the smaller party is the acquired person and does not engage in manufacturing, the test is met only if that person has total assets of \$23.9 million or more, or annual net sales of \$239 million or more.
- Transactions valued at \$478 million or more are reportable, regardless of the size of the parties (unless an exemption applies).

Test	2023 Threshold (\$USD)	Revised 2024 Threshold
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		(\$USD)
<p>Size-of-Transaction Test</p> <p><i>Minimum transaction value that triggers reporting obligation, when Size-of-Person Test is also met (and no exemption applies)</i></p>	> \$111.4 million	> \$119.5 million
<p>Size-of-Person Test</p> <p><i>To satisfy the Size-of-Person test, one party to the transaction must meet the “larger” test and the other must meet the “smaller” test.</i></p>	<p>One party has at least \$222.7 million in assets or annual net sales (the larger test)</p> <p>AND</p> <p>The other party has at least \$22.3 million in assets or annual net sales; or, if the acquired party engaged in manufacturing, has at least \$22.3 million in assets <i>or</i> \$222.7 million in annual net sales (the smaller test)</p>	<p>One party has at least \$239 million in assets or annual net sales (the larger test)</p> <p>AND</p> <p>The other party has at least \$23.9 million in assets or annual net sales; or, if the acquired party engaged in manufacturing has at least \$23.9 million in assets <i>or</i> \$239 million in annual net sales (the smaller test)</p>
Size-of-Transaction Threshold at Which Size-of-Person Test Does Not Apply	> \$445.5 million	> \$478 million

Filing Fees

Last year, the HSR filing fee amounts changed for the first time in over a decade. In accordance with the 2023 Consolidated Appropriations Act, the FTC has revised the HSR filing fees by an amount equal to the percentage increase in the Consumer Price Index, as determined by the Department of Labor. The newly published filing fees are noted below.

New Size of Transaction under the Act (As adjusted by the Act) (\$USD)	New Size of Transaction under the Act (As adjusted by the Act) (\$USD)
Less than \$173.3 million	\$30,000 (No change)

Not less than \$173.3 million but less than \$536.5 million	\$105,000
Not less than \$536.5 million but less than \$1.073 billion	\$260,000
Not less than \$1.073 billion but less than \$2.146 billion	\$415,000
Not less than \$2.146 billion but less than \$5.365 billion	\$830,000
Not less than \$5.365 billion or more	\$2,335,000

2024 Interlocking Directorate Enforcement Thresholds

On January 12, 2024, the FTC announced its annual updates to the Clayton Act Section 8 enforcement thresholds. Section 8 of the Clayton Act prohibits simultaneous service of officers or directors of two competing corporations (known as an “interlocking directorate”) if certain thresholds are met.

An interlocking directorate is forbidden where:

- Each competitor corporation has capital, surplus, and undivided profits aggregating more than \$48,559,000 (\$45,257,000 in 2023); AND
- Both competitor corporations have competitive sales of more than \$4,855,900 (\$4,525,700 in 2023).

Revised Civil Penalty

Effective January 10, 2024, the maximum civil penalty amount for violations of certain laws enforced by the FTC, including the HSR Act, increased from \$50,120 to \$51,744 (\$USD) per day.

Main Takeaway

The HSR Act requires parties to report transactions for the purchase or sale of voting securities, non-corporate interests, or assets to submit premerger notification filings to the FTC and the Antitrust Division of the US Department of Justice. HSR notification filings involve complex rules regarding valuation and exemptions that change regularly, and noncompliance with the Act carries serious penalties. Parties should seek counsel specialized in HSR filings as early in the process as possible, to determine whether a transaction is reportable and to assess regulatory risk.

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