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FTC Announces Increased HSR Thresholds and Filing Fees for 2024

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Effective on March 6, 2024, the mandatory notification thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), will be increasing. The Size of Transaction threshold will jump from \$111.4 million currently to **\$119.5 million**. Several other associated thresholds will increase as well, as detailed below. This is also the first time that the HSR filing fees have been increased as part of the annual inflation adjustment, following legislation in 2023. The revised thresholds will be published on February 5, 2024 in the Federal Register, and become effective in 30 days. They apply to all transactions that close on or after March 6, 2024.

The increase to the thresholds and filing fees does not otherwise impact the current HSR pre-merger notification process. The FTC proposed significant changes to the pre-merger notification program under the HSR Act last summer. See our client alert here discussing those changes: [FTC Plans Massive Revamp of HSR Act Reporting Requirements | Paul Hastings LLP](#). While the proposed changes to the HSR process are still pending, the FTC has indicated a desire to publish a final version sometime in 2024.

Background: The Hart-Scott-Rodino Antitrust Improvements Act of 1976

The HSR Act provides that, where certain jurisdictional thresholds are met, parties intending to merge or make acquisitions must (absent any applicable exemptions) furnish the Premerger Notification Office of the FTC and the Antitrust Division of the Department of Justice with prescribed information regarding their respective businesses and the proposed transaction, and wait a specified period of time before consummating the transaction. The statutory "waiting period" stays consummation of the transaction for a minimum of 30 calendar days (15 days in the case of bankruptcy or cash tender offers), absent a grant of early termination.¹

Revised Notification Thresholds

The 2000 amendments to Section 7A of the Clayton Act mandate annual adjustments of the HSR Act thresholds each year, based on changes in the gross national product. Due to U.S. GNP growth in 2023, the revised jurisdictional and filing fee thresholds for this year increase the dollar amount limits for the Size of Transaction and the Size of Person at which parties to a transaction are required to make an HSR filing. Many of the other filing requirements related to dollar amounts in the HSR Act have similarly been increased to remain consistent with the revised jurisdictional and filing fee thresholds. Any transactions that were expected to trigger HSR notification requirements based on the 2023 thresholds should be reevaluated if closing may occur on or after March 6, 2024.

Increases to HSR Filing Fees

Under the Merger Filing Fee Modernization Act, which was signed by President Biden on December 29, 2022, under the 2023 Consolidated Appropriations Act, the FTC is required to revise the HSR filing fee thresholds on an annual basis if the percentage increase in the consumer price index ("CPI") for the prior year as compared to the CPI for the fiscal year ended September 30, 2022 is greater than one percent, as determined by the Department of Labor. The Act requires the FTC to publish annual adjustments by January 31st of each year. The stated purpose of the filing increase is to provide the agencies with additional funding in order to support the DOJ and FTC's antitrust enforcement efforts, which we expect to increase merger enforcement over time.

An overview of the updated thresholds and filings fees for the most common HSR filing issues is included below.

New Jurisdictional Thresholds

	Revised 2024 Thresholds
Size of Transaction Test	The Acquiring Person will hold, as a result of the transaction, an aggregate total amount of voting securities, assets and/or interests in non-corporate entities of the Acquired Person valued at in excess of \$119.5 million .
Size of Person Test	Transactions valued at more than \$478 million are reportable, regardless of the size of person test above. One party has annual net sales or total assets of \$239 million or more, and the other party has annual net sales or total assets of \$23.9 million or more.*
Subsequent Acquisitions of Voting Securities	Voting securities valued at \$239 million or more; Voting securities valued at \$1.195 billion or more; Voting securities constituting 25% of the issuer's securities if valued at more than \$2.39 billion ; and

*Where the target is not engaged in manufacturing, it must have total assets of \$23.9 million or annual net sales of \$239 million to satisfy the lower Size of Person threshold.

New HSR Filing Fee Ranges

2024 Adjusted Filing Fee	2024 Adjusted Size of Transaction
\$30,000	Transaction valued at more than \$119.5 million but less than \$173.3 million
\$105,000	Transaction valued at more than \$173.3 million but less than \$536.5 million
\$260,000	Transaction valued at more than \$536.5 million but less than \$1.073 billion
\$415,000	Transaction valued at more than \$1.073 billion but less than \$2.146 billion
\$830,000	Transaction valued at more than \$2.146 billion but less than \$5.365 billion
\$2.335 million	Transaction valued at \$5.365 billion or more

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¹ The agencies have not been granting early terminations in the ordinary course since February 2021, when the FTC announced the procedure was suspended indefinitely in light of an “unprecedented volume” of HSR filings. Although filings have since fallen to be in line with historical norms, even transactions raising no competitive concerns continue to be required to observe the full 30-day waiting period.

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