

FTC Announces Annual Adjustments to HSR Act Fees and Thresholds

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Contact

Fiona Schaeffer, Partner
+1 212.530.5651
fschaeffer@milbank.com

Adam Di Vincenzo, Partner
+1 202.835.7510
adivincenzo@milbank.com

Richard Parker, Partner
+1 202.835.7530
rparker@milbank.com

Grant Bermann, Partner
+1 202.835.7515
gbermann@milbank.com

Andrew Wellin, Special Counsel
+1 212.530.5432
awellin@milbank.com

Daniel Rosenthal, Special Counsel
+1 202.835.7519
drosenthal@milbank.com

What's Changed?

On January 22, 2024, the Federal Trade Commission (FTC) announced the annual adjustments to the monetary jurisdictional thresholds under the Hart-Scott-Rodino Act (HSR Act), based upon the previous year's GDP. Notification is required under the HSR Act if the "size of transaction" test and, when applicable, the "size of person" test is satisfied and no exemption from filing is available. The FTC also announced the annual changes to the HSR filing fee schedule that are based on changes in the gross national product and in the consumer price index under Division GG of the 2023 Consolidated Appropriations Act.

The new thresholds and filing fee schedule are scheduled to take effect on **March 6, 2024**, 30 days after publication in the *Federal Register* (which is expected to take place on February 5, 2024). The new thresholds apply to all transactions closing on or after that date. The HSR filing fee is determined by the value of the transaction at the time of filing (meaning that HSR reportable transactions made prior to March 6, 2024, should use the existing filing fee schedule).

Major Takeaways

Review Jurisdictional Thresholds

- The new minimum size-of-transaction threshold will be raised from \$111.4 million to **\$119.5 million**. Thus, if, as a result of the transaction, the Acquiring Person will hold voting securities/interests and/or assets of the Acquired Person valued at more than \$119.5 million, the "size of transaction" test will be satisfied.
- Transactions valued at or below \$478 million (adjusted from \$445.5 million) must also satisfy the "size of person" test. The adjusted "size of person" thresholds are as follows:
 - a. One Person must have total assets (or annual net sales if that party is engaged in manufacturing) of at least \$23.9 million (an increase from \$22.3 million); and
 - b. The other Person must have annual net sales or total assets of at least \$239 million (an increase from \$222.7 million).

Threshold	HSR Original amount	Adjusted 2024 Jurisdictional Threshold
Size of Transaction	\$50 million	\$119.5 million
Size of Person (if applicable)	\$10 million (Party A)	\$23.9 million
	\$100 million (Party B)	\$239 million
Size of Transaction above which Size of Person Test is inapplicable	\$200 million	\$478 million

New Merger Filing Fee Schedule

New Filing Fee	Size of Transaction
\$30,000	Less than \$173.3m
\$105,000	Not less than \$173.3 million but less than \$536.5 million
\$260,000	Not less than \$536.5 million but less than \$1.073 billion
\$415,000	Not less than \$1.073 billion but less than \$2.146 billion
\$830,000	Not less than \$2.146 billion but less than \$5.365 billion
\$2.335 million	\$ 5.365 billion or more

Revised Clayton Act Section 8 Trigger Thresholds

- The FTC is required to revise the Section 8 thresholds on an annual basis.
- The *de minimis* exception threshold was increased (and Section 8 does not apply) if either competitor corporation has capital, surplus, and undivided profits totaling below \$48.559 million (an increase from \$45.257 million), or if the competitive sales of either corporation are less than \$4,855,900 (an increase from \$4,525,700), among other exceptions.
- The new, higher thresholds became effective on [January 22, 2024](#).

HSR Penalties

- On January 11, 2024, the FTC announced increases to the civil penalties for violating the HSR Act. The maximum civil penalty was increased from \$50,120 to \$51,744 for each day of noncompliance. These new penalties became effective January 10, 2024.

Actions to Consider

General counsel and business owners should be mindful of next month's effective date for the revised HSR thresholds, noting that these changes apply to transactions *closing* on or after March 6, 2024, regardless of whether an HSR filing has already been made. For parties submitting HSR filings prior to this, they should use the current fee schedule.

Practice/Group Contacts

New York | 55 Hudson Yards, New York, NY 10001

Fiona Schaeffer fschaeffer@milbank.com +1 212.530.5651

Andrew S. Wellin awellin@milbank.com +1 212.530.5432

Washington, DC | 1850 K Street NW, Washington, DC 20006

Adam Di Vincenzo adivincenzo@milbank.com +1 202.835.7510

Richard Parker rparker@milbank.com +1 202.835.7530

Grant Bermann gbermann@milbank.com +1 202.835.7515

Daniel Rosenthal dorsenthal@milbank.com +1 202.835.7519

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