

FTC Announces Annual Adjustments to HSR Act Thresholds

January 26, 2023

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What's Changed?

On January 23, 2023, 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 GNP. Notification is required under the HSR Act if the "size of transaction" test and, when applicable, the "size of person" test are satisfied and no exemption from filing is available. The new thresholds will take effect 30 days after [publication in the Federal Register](#) and are scheduled to become effective on February 27, 2023 and apply to all transactions closing on or after that date.

The FTC also confirmed the timing for implementation of the new merger filing fees [that were adopted as part of President Biden's \\$1.7 trillion omnibus spending package signed into law on December 29, 2022](#). The new filing fees will also become effective on February 27, 2023. The appropriate HSR filing fee is determined by the value of the transaction at the time of filing (meaning that HSR reportable transactions made prior to February 27, 2023, should use the existing filing fee schedule).

Lastly, the FTC announced the annual revision of the thresholds applicable to Section 8 of the Clayton Act relating to interlocking directorates.

Major Takeaways

Revised Jurisdictional Thresholds:

- The new minimum size-of-transaction threshold will be raised from \$101 million to **\$111.4 million**. Thus, if, as a result of the transaction, the Acquiring Person will hold voting securities/noncorporate interests and/or assets of the Acquired Person valued at more than \$111.4 million, the "size of transaction" test will be satisfied.
- Transactions valued at or below \$445.5 million (adjusted from \$403.9 million) must also satisfy the "size of person" test. The adjusted "size of person" thresholds are as follows:

- One Person must have total assets (or annual net sales if that party is engaged in manufacturing) of at least \$22.3 million (an increase from \$20.2 million); and
- The other Person must have annual net sales or total assets of at least \$222.7 million (an increase from \$202 million).
- The revised thresholds were published today in the Federal Register, will be effective on [February 27, 2023](#) (30 days after publication in the Federal Register), and will apply to all transactions closing on or after that date).

Threshold	HSR Original amount	Current Threshold	Adjusted 2023 Jurisdictional Threshold
Size of Transaction	\$50m	\$101m	\$111.4m
Size of Person (if applicable)	\$10m (Party A)	\$20.2m	\$22.3m
	\$100m (Party B)	\$202m	\$222.7m
Size of Transaction above which Size of Person Test is inapplicable	\$200m	\$403.9m	\$445.5m

New Merger Filing Fees:

- The new filing fees, signed into law on December 29, 2022, will become effective on the same date as the revised jurisdictional thresholds, [February 27, 2023](#).

New Filing Fee	Size of Transaction
\$30,000	Less than \$161.5m
\$100,000	Not less than \$161.5m but less than \$500m
\$250,000	Not less than \$500m but less than \$1b
\$400,000	Not less than \$1 billion but less than \$2b
\$800,000	Not less than \$2 billion but less than \$5b
\$2.23m	\$5b 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 \$45.257m (an increase from \$41.034m), or if the competitive sales of either corporation are less than \$4,525,700 (an increase from \$4,103,400), among other exceptions.
- The new, higher thresholds became effective immediately upon publication in the Federal Register on [January 20, 2023](#).

HSR Penalties:

- On January 6, 2023, the FTC announced increases to the civil penalties for violating the HSR Act. The maximum civil penalty was increased from \$46,517 to \$50,120 for each day of noncompliance. These new penalties became effective [January 11, 2023](#).

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 February 27, regardless of whether an HSR filing has already been made. For parties submitting HSR filings prior to February 27, they should use the current fee schedule.

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