

**ALERTS**

## FTC Increases 2025 Thresholds for HSR Filings and Interlocking Directorates

**January 13, 2025**

On Jan. 10, 2025, the Federal Trade Commission (“FTC”) announced increased reporting thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”) and an amended HSR filing fee schedule. The revised HSR thresholds and filing fee schedule will apply to all transactions that close on or after 30 days following the publication of the notice in the Federal Register. The minimum size-of-transaction threshold was increased from \$119.5 million to \$126.4 million. Acquisitions below this threshold will not be reportable.

The FTC also raised the thresholds for interlocking directorates under Section 8 of the Clayton Act, which will become effective upon their publication in the Federal Register. The FTC has not yet adjusted the maximum civil penalty for HSR violations (currently \$51,744 per day of noncompliance).

### **Revised HSR Act Thresholds**

Generally, the HSR Act requires parties to acquisitions of voting securities, assets or non-corporate interests meeting certain thresholds to make a premerger notification to the FTC and the Antitrust Division of the Department of Justice (“DOJ”) unless an exemption applies. The parties to a reportable transaction must observe a waiting period (generally 30 days) before closing. The HSR Act thresholds are adjusted annually in accordance with changes in US gross national product (“GNP”).

Under the revised thresholds, transactions valued up to and including *\$126.4 million* are not reportable under the HSR Act. Transactions valued at more than \$126.4 million may be reportable if they meet the following criteria and no exemption applies:

<b>Size-of-transaction test</b>	The acquiring person will hold voting securities, non-corporate interests or assets of the acquired person valued at more than \$505.8 million; <i>or</i> The acquiring person will hold voting securities, non-corporate interests or assets of the acquired person valued at more than \$126.4 million but less than \$505.8 million, and the size-of-person test is met.
<b>Size-of-person test*</b>	One party has at least \$252.9 million in total assets or annual sales, and the other has at least \$25.3 million in total assets or annual sales. If the acquired party is "not engaged in manufacturing," then the test applied to the acquired person specifies annual sales of \$252.9 million or total assets of \$25.3 million.

\*For the size-of-person test, a "party" includes its ultimate parent entity ("UPE") and the UPE's controlled subsidiaries.

*HSR notification thresholds for acquisitions of voting securities.* After an HSR filing has been made, and the applicable waiting period has expired or been terminated, any additional acquisitions by the same acquiring person of the same issuer's voting securities will be exempt from HSR notification, so long as:

- The acquiring person's holdings crossed the notification threshold with respect to which the premerger notification was made within one year of the expiration or early termination of the HSR Act waiting period; *and*
- The subsequent acquisition is consummated within five years following the expiration or early termination of the HSR Act waiting period; *and*
- The subsequent acquisition will not meet or exceed a higher notification threshold (based on the adjusted thresholds in effect at the time of consummation).

The following adjusted notification thresholds take effect 30 days after publication in the Federal Register:

HSR Act Original Threshold	2024 Adjusted Threshold
\$50 million	\$126.4 million
\$100 million	\$252.9 million
\$500 million	\$1.264 billion
25 percent if value of voting securities to be held is greater than \$1 billion	25 percent if value of voting securities to be held is greater than \$2.529 billion
50 percent if value of voting securities to be held is greater than \$50 million	50 percent if value of voting securities to be held is greater than \$126.4 million

*HSR filing fees.* The current filing fee schedule, which becomes effective 30 days after publication in the Federal Register, is as follows:

Filing Fee	Size-of-Transaction Tiers
\$30,000	Greater than \$126.4 million but less than \$179.4 million
\$105,000	\$179.4 million or more but less than \$555.5 million
\$265,000	\$555.5 million or more but less than \$1.111 billion
\$425,000	\$1.111 billion or more but less than \$2.222 billion
\$850,000	\$2.222 billion or more but less than \$5.555 billion
\$2,390,000	\$5.555 billion or more

The filing fees are increased annually (and rounded to the nearest \$5,000) if the percentage increase in the Consumer Price Index (“CPI”) since the last fiscal year is greater than one percent. The size-of-transaction tiers are adjusted annually based on the percentage change in GNP compared to the prior fiscal year.

*HSR penalties.* Any person (including the company and any of its officers, directors or partners) failing to comply with the HSR Act may be subject to a civil penalty for each day during which such person is in violation of the Act. The maximum civil penalty (currently \$51,744 per day of noncompliance) is adjusted annually based on the percentage change in the CPI. The FTC has not yet announced the maximum civil penalty for 2025. Once adjusted, the new maximum civil penalty will become effective upon publication in the Federal Register.

### **Revised Thresholds for Interlocking Directorates**

The FTC also revised the thresholds for evaluating interlocking directorates, effective as of their date of publication in the Federal Register. Under certain circumstances, Section 8 of the Clayton Act prohibits one person from simultaneously serving as a director or officer of two competing corporations if each corporation has capital, surplus and undivided profits aggregating more than \$51,380,000 (up from \$48,559,000).

The Clayton Act does not prohibit the interlock if: (1) the competitive sales of either corporation are less than \$5,138,000 (up from \$4,855,900); (2) the competitive sales of either corporation are less than two percent of that corporation's total sales; or (3) the competitive sales of each corporation are less than four percent of that corporation's total sales.

Although Section 8 technically applies only to corporations, both the DOJ and the FTC have taken the position that their broader antitrust authority allows them to enforce the same concept against non-corporate entities.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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