

Client Alert

Antitrust

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FTC Announces 2024 Jurisdictional Threshold Updates for Interlocking Directorates and HSR Filing Thresholds

On January 22, 2024, the Federal Trade Commission (FTC) announced revised jurisdictional thresholds for determining whether a proposed transaction must be reported to federal authorities under the Hart-Scott-Rodino (HSR) pre-merger notification statute. In addition to approving new HSR filing thresholds, the FTC also announced new merger filing fee thresholds and amounts, as required pursuant to the 2023 Consolidated Appropriations Act. The new thresholds are set to be published in the Federal Register and will apply to all transactions closing on or after 30 days after the date of publication.

As a result of the revision:

- The \$111.4 million minimum transaction value filing threshold has increased to \$119.5 million.
- The \$445.5 million transaction value, above which size-of-person tests are inapplicable, has increased to \$478 million.
- The \$22.3 million and \$222.7 million size-of-person tests become \$23.9 million and \$239 million tests, respectively.

The new merger filing fees based on the size of the proposed transaction were updated as follows:

FILING FEE	SIZE OF TRANSACTION
\$30,000	Less than \$173.3 million
\$105,000	\$173.3 million or more but less than \$536.5 million
\$260,000	\$536.5 million or more but less than \$1.073 billion
\$415,000	\$1.073 billion or more but less than \$2.146 billion
\$830,000	\$2.146 billion or more but less than \$5.365 billion
\$2,335,000	\$5.365 billion or more



It is important for any company contemplating a transaction to seek legal advice to determine if the transaction triggers an HSR filing obligation pursuant to the revised HSR thresholds. If required, the failure to file an HSR prior to closing is a violation of federal law and can subject the parties to significant penalties.

In addition, on January 12, 2024, the FTC updated the thresholds for the ban on interlocking directorates under Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Section 8(a)(1) covers corporations with aggregated capital, surplus, and undivided profits of more than the threshold amount. The FTC has raised the 8(a)(1) threshold, effective immediately, from \$45,257,000 to \$48,559,000. Section 8(a)(2)(A) exempts corporations from coverage if either corporation does less than the threshold amount in competitive sales. The FTC has likewise raised the 8(a)(2)(A) threshold, effective immediately, from \$4,525,700 to \$4,855,900.

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