

CLIENT ALERT

FTC Revises HSR Thresholds, Filing Fees, Section 8 Thresholds and Update on Final HSR Rules

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The Federal Trade Commission (the “FTC”) has announced revised jurisdictional thresholds for merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). As required by statute, the various thresholds incorporated into the HSR Act, including its rules and regulations, are revised annually based on the change in the U.S. gross national product. The FTC also announced revised HSR filing fees, as statutorily required by the 2023 Merger Filing Fee Modernization Act, with revised filing fees ranging from \$30,000 to \$2,390,000. The FTC notice concerning these revisions can be accessed [here](#). Additionally, the FTC has revised the thresholds relating to the application of Section 8 of the Clayton Act, which prohibits certain interlocking directorates and officerships. The FTC notice concerning the Section 8 revision can be accessed [here](#).

HSR Act Thresholds

The new HSR Act notification thresholds will become effective 30 days after publication in the Federal Register, which we expect to occur in the next week or so. Assuming publication occurs within that time frame, the new thresholds will apply to transactions that will be filed or will close after that anticipated mid-to-late February effective

date. The minimum notification threshold under the HSR Act will increase from \$119.5 million to \$126.4 million. Thus, an acquisition may trigger an HSR reporting obligation only if, as a result of an acquisition, an acquirer would hold voting securities, noncorporate interests (but only where “control” of a noncorporate entity would pass to the acquiring person as a result of the acquisition), and/or assets of an acquired person, that are valued in excess of \$126.4 million. The following table sets forth the principal threshold adjustments applicable to the HSR Act.

Threshold	Original Threshold	2023 Adjusted Threshold	2024 Adjusted Threshold
Minimum Size of Transaction	\$50 million	\$119.5 million	\$126.4 million
Minimum Size of Transaction (above which the Size of Person Test does not apply)	\$200 million	\$478 million	\$505.8 million
Size of Person Test ¹ (applicable to transactions valued at not more than \$505.8 million)	Person 1: \$10 million	\$23.9 million	\$25.3 million
	Person 2: \$100 million	\$239 million	\$252.9 million
Notification Thresholds	\$50 million	\$119.5 million	\$126.4 million
	\$100 million	\$239 million	\$252.9 million
	\$500 million	\$1.195 billion	\$1.264 billion
	25% or more of an issuer’s voting securities if valued in excess of \$1 billion	25% or more of an issuer’s voting securities if valued in excess of \$2.39 billion	25% or more of an issuer’s voting securities if valued in excess of \$2.529 billion

Any monetary or limitation value included in a rule or regulation promulgated under the HSR Act that includes the term “(as adjusted)” (for example, the exemption that may be available for certain acquisitions of foreign assets or stock of foreign issuers where the exemption is dependent upon the nexus to U.S. commerce) has also been adjusted and will become effective on the same date.

Filing Fee Thresholds

The following table sets forth the new filing fees and the applicable thresholds to which they apply, which fees will also become effective for transactions that will file 30 days after publication in the Federal Register. Filing fees are revised annually based on the change in the U.S. Consumer Price Index.

¹ Generally speaking, the “size of person test” is based on annual net sales and total assets of the relevant “acquiring” and “acquired” persons (i.e., the “ultimate parent entity” of buyer, and “ultimate parent entity” of target), as stated on ordinary course financial statements.

Original Filing Fee	2024 Applicable Size of Transaction	2025 Adjusted Filing Fee	2025 Adjusted Applicable Size of Transaction
\$30,000	Greater than \$119.5 million but less than \$173.3 million	\$30,000	Greater than \$126.4 million but less than \$179.4 million
\$100,000	At least \$173.3 million but less than \$536.5 million	\$105,000	At least \$179.4 million but less than \$555.5 million
\$250,000	At least \$536.5 million but less than \$1.073 billion	\$265,000	At least \$555.5 million but less than \$1.111 billion
\$400,000	At least \$1 billion but less than \$2 billion	\$425,000	At least \$1.111 billion but less than \$2.222 billion
\$800,000	At least \$2.146 billion but less than \$5.365 billion	\$850,000	At least \$2.222 billion but less than \$5.555 billion
\$2.25 million	\$5.365 billion or more	\$2,390,000	\$5.555 billion or more

Section 8 Thresholds

Section 8 of the Clayton Act prohibits a person from serving as a director or officer of competing corporations if certain thresholds are met and an exemption does not apply. The revised Section 8 Thresholds will become effective immediately upon their publication in the Federal Register, which we expect to occur in the next week or so. Pursuant to the new thresholds, competing corporations are covered by Section 8 if each corporation’s capital, surplus, and undivided profits exceed in the aggregate \$51,380,000, unless one or more of the following exemptions apply: (i) one of the corporations has competitive sales of less than \$5,138,000; (ii) the competitive sales of either corporation are less than 2% of that corporation’s total sales; or (iii) the competitive sales of each corporation are less than 4% of that corporation’s total sales.

Update on Final HSR Rule

In a Client Alert dated October 14, 2024 (available [here](#)) we discussed the FTC’s final revisions to the HSR notification form and related instructions (the “Final Rule”) and originally anticipated an effective date of mid-February 2025. However, the Final Rule effective date may be further delayed due to (i) a possible customary freeze on pending federal regulation when the new Presidential administration takes office on January 20 and (ii) a recent lawsuit challenging the Final Rule.

Historically, at the turn of a new presidential administration, the incoming President has published a memorandum enacting a regulatory freeze to give the President and/or his designees the opportunity to review any new or pending regulation.² For rules that have been published in the Federal Register—such as the Final Rule—the effective date may be postponed for 60 days following the publication of the regulatory freeze memorandum. If the Trump

² The past three presidential administrations have each mandated a regulatory freeze at the beginning of their respective terms. The regulatory freeze memos published by Presidents Obama, Trump, and Biden can be found [here](#), [here](#), and [here](#), respectively.

administration issues a similar regulatory freeze encompassing the Final Rule, the effective date may be postponed to March 21, 2025, at the earliest.

The effective date of the Final Rule may also be further delayed following a lawsuit brought by the U.S. Chamber of Commerce (the “Chamber of Commerce”) against the FTC challenging—and seeking to block—the Final Rule. The Chamber of Commerce’s complaint, filed on January 10, 2025 in the U.S. District Court for the Eastern District of Texas argues, among other things, that the Final Rule exceeds the FTC’s statutory authority under the HSR Act and constitute an arbitrary and capricious rule-making in violation of the Administrative Procedures Act.³

We recommend that parties to a potential transaction or those contemplating a transaction should still prepare for a possible February 10, 2025 implementation of the Final Rule. Willkie antitrust attorneys will continue to monitor and report on the developments of the Final Rule. If you have any questions about the Final Rule and how it may affect potential transactions, please contact a Willkie attorney.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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³ See Complaint, *Chamber of Commerce of the United States of America, et al. v. Fed. Trade Comm'n*, No. 6:25-cv-00009, at 51-66 (E.D. Tex. Jan. 10, 2025), available [here](#).