

FTC Announces Increases to HSR Act Thresholds and Filing Fees and Clayton Act Section 8 Thresholds

January 24, 2024

The Federal Trade Commission (the “FTC”) has announced its annual revisions to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) premerger notification thresholds, the Clayton Act Section 8 thresholds for interlocking directorates and the maximum civil penalty for violations of the HSR Act. These figures are revised annually based on changes in the gross national product.

The FTC has also announced the first annual revisions to the new HSR filing fee schedule enacted in 2023. The filing fees are adjusted annually based on the percentage increase, if any, in the Consumer Price Index.

Updated HSR Act Premerger Notification Thresholds. On January 22, 2024, the FTC announced the revised HSR premerger notification thresholds, which govern whether a proposed merger or acquisition must be reported to the antitrust agencies prior to its consummation. These thresholds are expected to come into effect in late February 2024 (30 days after publication in the Federal Register) and apply to transactions closing on or after that date.

The base size-of-transaction threshold will increase from US\$111.4 million to **US\$119.5 million**. Acquisitions resulting in total holdings below this threshold will not be reportable. Transactions resulting in the acquirer holding voting securities, controlling interests in noncorporate entities or assets valued above the US\$119.5 million threshold may be reportable in either of the two following circumstances:

- The transaction will result in total holdings between US\$119.5 million and **US\$478.0 million** (formerly US\$445.5 million) and the size-of-persons test is met, which occurs when either the acquiring or acquired person has **at least US\$239.0 million** (formerly US\$222.7 million) in gross assets or annual net sales, and the other person has **at least US\$23.9 million** (formerly US\$22.3 million) in gross assets or annual net sales; or
- The transaction will result in total holdings above **US\$478.0 million** (formerly US\$445.5 million), as in this case the size-of-persons test does not apply.

Under the HSR Act, an acquiring person that makes incremental acquisitions of voting securities of a particular issuer may be required to file a notification each time its holdings cross one of these thresholds. The HSR Act creates five notification thresholds, which have also been increased: **US\$119.5 million** (formerly US\$111.4 million); **US\$239.0 million** (formerly US\$222.7 million); **US\$1,195.0 million** (formerly US\$1,113.7 million); 25% of voting securities if greater than **US\$2,390.0 million** (formerly US\$2,227.4 million); and 50% of voting securities.

To summarize:

Threshold	2023 Threshold (in USD)	2024 Threshold (in USD)
Size-of-Transaction	\$111.4 million	\$119.5 million
Size-of-Persons	\$22.3 million and \$222.7 million	\$23.9 million and \$239.0 million
Value at Which Size-of-Persons Does Not Apply	\$ 445.5 million	\$478.0 million
Incremental Voting Securities Acquisition Notification Thresholds	\$111.4 million \$222.7 million \$1,113.7 million 25% if > \$2,227.4 million 50%	\$119.5 million \$239.0 million \$1,195.0 million 25% if > \$2,390.0 million 50%

Even if a transaction appears reportable based on the thresholds above, it may qualify for an HSR Act exemption. Assessment of HSR reportability is complex and requires a thorough understanding of the statute and implementing regulations. We recommend consulting with a lawyer experienced in HSR matters to determine whether your transaction is reportable.

Updated HSR Act Premerger Filing Fees. Parties that are required to file a premerger notification form under the HSR Act must pay a filing fee based on the size of transaction; the new fee schedule is outlined below. The new fees are expected to come into effect in late February 2024.

NEW HSR ACT FILING FEES

Transaction Valued at:	New Filing Fee
>\$119.5 million but <\$173.3 million	\$30,000
\$173.3 million or more but <\$536.5 million	\$105,000
\$536.5 million or more but <\$1.073 billion	\$260,000
\$1.073 billion or more but <\$2.146 billion	\$415,000
\$2.146 billion or more but <\$5.365 billion	\$830,000
\$5.365 billion or more	\$2,335,000

Updated Clayton Act Section 8 Thresholds for Interlocking Directorates. On January 22, 2024, the FTC published revisions to the Clayton Act Section 8 thresholds, which became effective on that date. Section 8 prohibits, with certain exceptions, a person from serving as a director or officer of two competing corporations. Section 8 may apply if each competitor corporation has capital, surplus and undivided profits of more than **US\$48,559,000** (formerly US\$45,257,000). One exemption from this prohibition applies if the “competitive sales” of either corporation are less than **US\$4,855,900** (formerly US\$4,525,700), while other exemptions are based on percentages of a corporation’s total sales. Because the application of the “competitive sales” concept and other aspects of Section 8 can be complex, we recommend consulting with a lawyer experienced in Section 8 matters to determine if the prohibition applies.

Updated Maximum Civil Penalty Amount for HSR Violations. On January 10, 2024, the FTC announced that the maximum civil penalty for violations of the HSR Act has increased from US\$50,120 to **US\$51,744** per day. This increase applies to civil penalties assessed after January 10, 2024, even if the underlying violation preceded the effective date.

How Debevoise Can Help. Debevoise lawyers are well versed in the HSR Act and its reporting requirements. We are available to advise parties regarding the applicability of their transactions, as well as guide clients through the reporting process and any government investigation and/or litigation that may follow the HSR filing. We are also available to assist in evaluating the application of Clayton Act Section 8.

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Please do not hesitate to contact us with any questions.



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