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FTC Announces 2025 Thresholds Under HSR Act and Clayton Act

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Primary HSR Filing Threshold will be Increased to $126.4 Million

The Federal Trade Commission has announced revisions to HSR Act and Clayton Act Section 8 thresholds, which are indexed annually in alignment with prior year economic activity. As is our yearly practice, this alert identifies the adjustments that are expected to be the most relevant to our clients and reiterates several important practice tips.

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, commonly known as the HSR Act, requires parties to certain transactions to notify the Federal Trade Commission and Department of Justice, and to observe a waiting period prior to completing the transaction. The HSR Act enables antitrust regulators to review transactions, investigate and address potential competitive concerns prior to completion and carries monetary penalties for failure to comply, **$51,744** per day as of January 10, 2025.

Section 8 of the Clayton Act prohibits certain overlaps in officers or directors between competing companies, to guard against anti-competitive coordination and information exchanges that can arise from simultaneous board membership. Thus, as a general rule, a person cannot serve on the boards of two competing companies. This has been an area of stepped-up enforcement for the FTC in recent years.

Effective 30 days after publication in the Federal Register, *the basic* ***HSR notification threshold will be increased to $126.4 million****.*

Unless exempt, a person or entity that directly or indirectly acquires assets or voting securities (or LP or LLC interests) in excess of the HSR reporting threshold may be required to file notification under the Act and to observe the applicable waiting period before completing the transaction. Subsequent transactions involving the acquisition of additional interests in the same company typically are exempt from further notification, unless a *Subsequent Notification Threshold* is exceeded (see chart below).

Under the revised thresholds, transactions valued at $505.8 million or less will be subject to the HSR Act only if the parties also meet the size-of-person threshold. The size-of-person threshold is generally met where a person with annual sales or total assets of $252.9 million makes an acquisition where the target or the target's parent has annual sales or total assets of $25.3 million. The size-of-person threshold is also met where the smaller entity acquires the larger, though less common. Transactions valued at more than $505.8 million are subject to the HSR Act without regard to the size-of-person, unless exempt.

Summary of the HSR Act's threshold adjustments:

Size-of-Transaction		Current Thresholds	New Thresholds
Jurisdictional Threshold	Basic Notification Threshold	$119.5 million	$126.4 million
	Subsequent Notification Thresholds	$239 million	$252.9 million
		$1.195 billion	$1.264 billion
		25% (if value exceeds $2.39 billion)	25% (if value exceeds $2.529 billion)
		50% (where value exceeds $119.5 million)	50% (if value exceeds $126.4 million)
Size-of-Person		**Current Thresholds**	**New Thresholds**
Jurisdictional Threshold	Size-of-Person Thresholds	$23.9 million	$25.3 million
		$239 million	$252.9 million
	Size-of-Person Inapplicable Where Transaction Exceeds	$478 million	$505.8 million

Filing Fees

The FTC also announced new filing fee amounts:

Transaction Size	Filing Fee
More than $126.4 million but less than $179.4 million	$30,000
At least $179.4 million but less than $555.5 million	$105,000
At least $555.5 million but less than $1.111 billion	$265,000
At least $1.111 billion but less than $2.222 billion	$425,000
At least $2.222 billion but less than $5.555 billion	$850,000
At least $5.555 billion	$2,390,000

Imminent Changes to HSR Filings

The FTC has announced a final rulemaking on a unanimous vote that will expand the reporting requirements for mergers and acquisitions under the HSR Act. With the new rules set to effect on February 10, the last day for companies to file under the outgoing rules is February 7, 2025.

The new requirements make no changes to the scope of transactions that are subject to HSR reporting. However, they will change the reporting landscape and add significant additional disclosures to the HSR process. While the final rule is not as expansive as the rules initially proposed in June 2023, numerous additional disclosure requirements survive in the final rule. These include reporting on officers and directors, identifying deal "team leads," submission of additional transaction related documents (including certain draft transaction agreements), submission of certain regular course business plans, and requiring descriptions of business lines, overlap products and supply relationships, including with respect to products and services still under development and that are not yet generating revenues (along with projected revenues and volumes for pipeline products). In line with the FTC's recent focus on private equity, the revised HSR reporting will require disclosure of certain limited partners that have veto or approval rights.

Please see our blog post for more detailed information regarding the upcoming changes to the HSR filing process.

Revised Threshold for Interlocking Directorates

Section 8 enforcement has become an area of focus for both the FTC and the Department of Justice. This is a good time to examine whether violations exist and to cure them, ideally within the one-year grace period.

Clayton Act Section 8 is particularly relevant for investment funds taking minority positions in competing companies and seeking board representation. Under the statute, no person or representative of the same person or entity is permitted to serve simultaneously as a director or officer of competing companies, but there are carve-outs and exceptions.

The prohibitions of Section 8 are limited to cases in which each of the companies has, under the revised thresholds, capital, surplus and undivided profits of more than $51,380,000. However, even where the threshold is met, the restrictions do not apply where the competitive sales of *either* company represent less than 2% of its total sales or are less than $5,138,000, or where the competitive sales of *each* company represent less than 4% of its total sales. The statute also permits directors and officers whose appointments were not prohibited at the time of appointment to continue to serve for up to a year after the Section 8 thresholds are exceeded. Thus, the revised Clayton Act Section 8 thresholds can potentially eliminate an existing violation, which is not the case with the HSR threshold revisions.

Correct application of the HSR Act and Clayton Act Section 8 can be complex and requires careful analysis. Proskauer's Antitrust Practice Group has extensive experience with the issues presented under these statutes and the entire range of antitrust compliance and enforcement.

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