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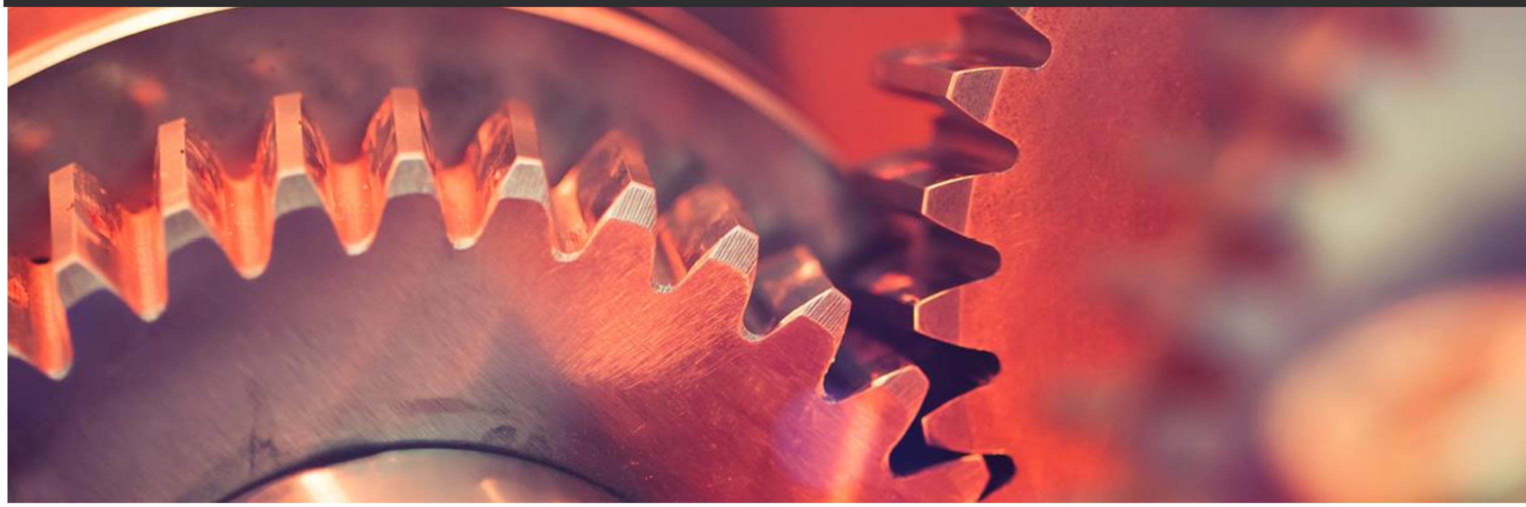

January 2025

Significant Increases to 2025 HSR Act Merger Thresholds and Filings Fees

Go-To Guide

- FTC raises merger notification thresholds, with initial reporting starting at $126.4 million, up from $119.5 million.
- The updates also adjust the six-tier filing fee system, with fees ranging from $30,000-$2,390,000 based on deal size.
- FTC also updates limits on interlocking directorates.

On Jan. 10, 2025, The Federal Trade Commission announced that it will publish revised thresholds and fees for premerger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). These changes include updated size-of-transaction thresholds for mergers and acquisitions, as well as increased filing fee tiers and fees for larger transactions, as required by the Merger Filing Fee Modernization Act of 2022 (Fee Modernization Act).

Congress first amended the HSR Act in 2000 to require annual adjustments of notification thresholds based on the change in gross national product (GNP). The Fee Modernization Act replaced the prior three-tier filing fee system with corresponding transaction size thresholds with a six-tier filing fee system based on transaction value. The tiers set forth below are also adjusted annually based on GNP change.

The fees within each tier increase annually based on the percentage change in the consumer price index, comparing the most recent fiscal year ending in September to the previous fiscal year.

The FTC also published revisions to the thresholds that trigger, under Section 8 of the Clayton Act, a prohibition preventing companies from having interlocking memberships on their corporate boards of directors. These revisions represent the annual adjustment of thresholds based on GNP changes.

Revised HSR Act Thresholds

The initial threshold for a HSR Act notification increases from $119.5 million to $126.4 million. For transactions valued between $126.4 million and $505.8 million (increased from $478 million), the size of the person test continues to apply. That test makes the transaction reportable only where one party has sales or assets of at least $252.9 million (increased from $239 million), and the other party has sales or assets of at least $25.3 million (increased from $23.9 million). All transactions valued more than $505.8 million are reportable without regard to party size.

The new thresholds apply to transactions closing 30 days or more after the official Federal Register publication date. Official publication is expected in the next few business days.

The following is a summary chart of the threshold adjustments:

PRIOR THRESHOLD	REVISED THRESHOLD
Size of the transaction test	
more than $119.5 million	more than $126.4 million
Size of the person test	
$23.9 million/$239 million	$25.3 million/$252.9 million
Transaction value above which size of the person test is inapplicable	
$478 million	$505.8 million

The amendments will adjust all notification thresholds as follows:

NOTIFICATION LEVELS	
more than $50 million	more than $126.4 million
$100 million	$252.9 million
$500 million	$1,264 million
25% of total outstanding shares worth more than $1 billion	25% of total outstanding shares worth more than $2,529 million
50% of total outstanding shares worth more than $50 million	50% of total outstanding shares worth more than $126.4 million

These notification threshold adjustments also adjust upward thresholds applicable to certain exemptions, such as those involving the acquisition of foreign assets or voting securities of foreign issuers.

Revised HSR Filing Fee Thresholds

Below is the new filing fee schedule, which applies to transactions closing 30 days or more after Federal Register publication. Official publication is expected in the next few business days.

NEW FILING FEE LEVELS	
Size-of-Transaction*	**Fee****
more than $126.4 but less than $179.4 million	$30,000
$179.4 million or greater, but less than $555.5 million	$105,000
$555.5 million or greater, but less than $1.111 billion	$265,000
$1.111 billion or greater, but less than $2.222 billion	$425,000
$2.222 billion or greater, but less than $5.555 billion	$850,000
$5.555 billion or greater	$2,390,000

** Adjusted annually based on GNP.*

*** Adjusted annually when the CPI increases by more than 1% compared to the baseline CPI from Sept. 30, 2023.*

Revised Section 8 Thresholds

The FTC also published revisions to the thresholds that trigger a prohibition preventing companies from having interlocking memberships on their corporate boards of directors under Section 8 of the Clayton Act. These revised thresholds are effective 30 days after official publication in the Federal Register. Official publication is expected in the next few business days.

Section 8 prohibits a "person," which can include a corporation and its representatives, from serving as a director or officer of two "competing" corporations, unless one of the following exemptions applies:

- either corporation has capital, surplus, and undivided profits of less than $51,380,000 (increased from $48,559,000);
- the competitive sales of either corporation are less than $5,138,000 (increased from $4,855,900);
- the competitive sales of either corporation amount to less than 2% of that corporation's total sales; or
- the competitive sales of each corporation amount to less than 4% of each corporation's total sales.

"Competitive sales" means "the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year." "Total sales" means "the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year."

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