FTC ANNOUNCES NEW HSR NOTIFICATION THRESHOLDS FOR 2025

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US Antitrust, Competition, and Trade Regulation Alert

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On 10 January 2025, the Federal Trade Commission (FTC) announced new, increased reporting thresholds and filing fees for transactions requiring premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR). Under the adjustments, the minimum "size of transaction" threshold will increase to US$126.4 million from US$119.5 million in 2024. The new thresholds will likely take effect in mid-February, 30 days after they are published in the Federal Register. The new thresholds are independent from the new HSR Rules, which are scheduled to take effect on 10 February 2025, unless delayed by a regulatory "freeze" requested by the incoming administration or ongoing legal challenges.

NEW HSR FILING THRESHOLDS

The HSR Act requires premerger notification of transactions that meet the size of transaction and *size of person* tests to the FTC and the Antitrust Division of the US Department of Justice, unless an exemption applies. HSR filings trigger a 30-calendar-day initial waiting period that the parties must observe before closing, during which the reviewing agency conducts its preliminary antitrust review of the transaction.[1]

Size of Transaction Test

Under the new thresholds, the size of transaction test is met if, as a result of a transaction, the acquiring "person" at the ultimate parent entity (UPE) level will hold voting securities, assets, or noncorporate interests of the acquired "person":[2]

- With an aggregate value of more than US$505.8 million; or
- With an aggregate value of more than US$126.4 million but less than US$505.8 million, if the size of person test is also met.

For HSR purposes, transaction value includes the value of voting securities or noncorporate interests of the acquired person that the acquiring person already holds (for instance, through one or more prior acquisitions).

Base Threshold[3]	2024	2025
US$50 million	US$119.5 million	US$126.4 million
US$200 million	US$478 million	US$505.8 million

Size of Person Test

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Under the new thresholds, the size of person test is met if one party (at the UPE level) has annual net sales or total assets of US$252.9 million or more and the other party (at the UPE level) has annual net sales or total assets of US$25.3 million or more.[4]

Base Threshold	2024	2025
US$10 million	US$23.9 million	US$25.3 million
US$100 million	US$239 million	US$252.9 million

NEW HSR FILING FEE SCHEDULE

The updated filing fee schedule for 2025 is as follows:

Filing Fees	
Transaction Value	**Fee**
More than US$126.4 million but less than US$179.4 million	US$30,000
At least US$179.4 million but less than US$555.5 million	US$105,000
At least US$555.5 million but less than US$1.111 billion	US$265,000
At least US$1.111billion but less than US$2.222 billion	US$425,000
At least US$2.222 billion but less than US$5.555 billion	US$850,000
US$5.555 billion or more	US$2,390,000

PENALTIES FOR FAILURE TO FILE

Failure to submit an HSR filing and observe the waiting period for a reportable acquisition may result in significant civil penalties. As of 10 January 2025, the penalty for failure to comply with the HSR Act remains up to US$51,744 for each day of non-compliance.

NEW HSR RULES – WHAT'S NEXT?

On 12 November 2024, the FTC published final changes to the rules implementing the HSR Act. As we explained in a prior alert, the new rules represent a significant overhaul of the US premerger notification process, which will increase the time and cost required for many HSR filings. The new rules are scheduled to become effective on 10 February 2025. However, the effective date could be pushed back if the new administration requests a “freeze” on new regulations to allow an opportunity for review and approval. A 60-day regulatory freeze was requested by the incoming Trump administration in January 2017, and similar requests have been made (and usually followed) by recent administrations. In addition, on 10 January 2025, the US Chamber of Commerce and other business

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groups filed a lawsuit in the Eastern District of Texas against the FTC and Chair Lina Khan seeking to block enforcement of the new rules.

While the fate of the new rules remains uncertain, companies should nonetheless move quickly to understand the new requirements and implement internal processes to be in a position to comply by 10 February 2025. Please contact a member of our Antitrust, Competition, and Trade Regulation team for real-time updates and guidance for navigating the new landscape.

FOOTNOTES

[1] Parties submitting HSR filings may request early termination of the waiting period. Historically, early termination was often granted for transactions that did not raise significant antitrust concerns. However, on 4 February 2021, the FTC Premerger Notification Office announced the indefinite suspension of early termination, and this suspension remains in place, until the new HSR rules take effect.

[2] Noncorporate interests include interests in partnerships or limited liability companies. Under the HSR rules, “person” means the UPE, which is the topmost entity in the chain of control that is not controlled by any other entity. For corporations, control means holding 50% or more of the outstanding voting securities of an issuer or having the contractual power to appoint 50% or more of its directors. For unincorporated entities, control means having the right to 50% or more of the profits of an entity or 50% or more of its assets upon dissolution.

[3] Base thresholds are the original thresholds specified in the HSR Act. The FTC updates the thresholds annually based on changes in gross national product and the consumer price index.

[4] Only total assets are considered where the acquired person is not a manufacturer.

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