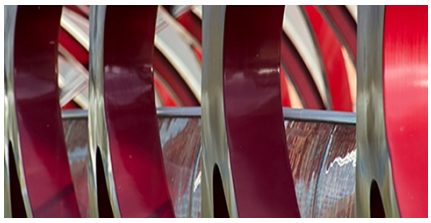
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News & Types: Client Advisories

FTC Announces Increased Hart-Scott-Rodino Act and Clayton Act Section 8 Interlocking Directorate Thresholds and Fees for 2024

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Executive Summary

The Federal Trade Commission ("FTC") announced its 2024 jurisdictional thresholds and filing fees under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"). The thresholds determine whether parties involved in proposed mergers, consolidations, or other acquisitions of voting securities, assets, or unincorporated interests must notify the FTC and the Antitrust Division of the Department of Justice ("DOJ") of a proposed transaction and comply with a mandatory waiting period before the transaction can be consummated. The FTC is required to revise HSR Act thresholds annually based on changes in the Gross National Product. Pursuant to the 2023 Merger Filing Fee Modernization Act, the structure for HSR Act filing fees was overhauled, and a six-tier structure is now in place. The new thresholds and fees become effective on March 6, 2024. The FTC also has announced an increase in the maximum civil penalty for non-compliance with the HSR Act, and increased thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act. A brief summary of the changes is as follows:

- The Size of Transaction Threshold under the HSR Act has increased to **$119.5 million** (up from $111.4 million). Reportability is based on the thresholds effective at the *time of closing.*
- Acquisitions that do not exceed **$478.0 million** in value (up from $444.5 million) must also meet the Size of Person Threshold to require notification to the FTC and DOJ under the HSR Act. This threshold requires that one of the parties to the transaction has total assets or annual net sales of **$239.0 million** (up from $222.7 million) or more and the other party has total assets or annual net sales of **$23.9 million** (up from $22.3 million) or more.
- Pursuant to the 2023 Merger Filing Fee Modernization Act, HSR Act Filing Fees and Thresholds are revised annually based on the change in the U.S. Consumer Price Index. Fees for 2024, determined by the value of the transaction at the *time of filing*, are as follows:

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Transactions Valued at:	*Filing Fee:*
Less than **$173.3 million** (but over $119.5 million)	**$30,000**
$173.3 million or more but less than **$536.5 million**	**$105,000**
$536.5 million or more but less than **$1.073 billion**	**$260,000**
$1.073 billion or more but less than **$2.146 billion**	**$415,000**
$2.146 billion or more but less than **$5.365 billion**	**$830,000**
$5.365 billion or greater	**$2,335,000**

- Additionally, the FTC announced an increase in the Maximum Civil Penalty for non-compliance with the HSR Act of **$51,774 per day** (up from $50,120 per day), effective January 10, 2024.
- The FTC also has revised the thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act, which became effective January 22, 2024. Section 8 generally prohibits companies that compete with each other from having interlocking memberships on their corporate boards.
    - Section 8(a)(1) prohibits a person from serving as a director or board-elected or board-appointed officer of two or more corporations if the combined capital, surplus, and undivided profits of each of the corporations exceeds **$48,559,000** (up from $45,257,000).
    - Section 8(a)(2)(A) of the Clayton Act exempts interlocks for which the competitive sales of either corporation are less than **$4,855,900** (up from $4,525,700).

The above is only a general summary. Any number of exceptions may apply. Please contact us if you have questions or desire additional details.

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