

Higher Jurisdictional and Filing Fees Thresholds for HSR Act Premerger Notifications and Interlocking Directorates Announced

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1. Higher Jurisdictional Thresholds For HSR Filings

On January 23, 2023, the Federal Trade Commission announced revised, **higher** thresholds for premerger filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The jurisdictional thresholds are revised annually based on the change in Gross National Product (GNP).

The new thresholds will become effective on **February 22, 2023**. Acquisitions that have not closed by the effective date will be subject to the new thresholds.

The HSR Act notification requirements apply to transactions that satisfy the specified “size of transaction” and “size of person” thresholds. The key adjusted thresholds are summarized here:

Size of Transaction Test

Notification is required if

- the acquiring person will hold assets, voting securities, and/or interests in non-corporate entities valued at **\$111.4 million or more AND the parties meet the Size of Person test**; OR
- the acquiring person will hold assets, voting securities, and/or interests in non-corporate entities valued at **\$445.5 million or more— such transactions are not subject to the Size of Person test.**

Size of Person Test

Generally, one “person” to the transaction must have at least **\$222.7 million** in total assets or

annual net sales, and the other must have at least **\$22.3 million** in total assets or annual net sales.

The above rules are general guidelines only and their application may vary depending on the particular transaction.

2. New Filing Fees For HSR Filings

As previewed in our blog post dated January 5, 2023, the new filing fee thresholds below also will become effective on **February 22, 2023**. Going forward, the FTC will revise the filing fees annually based on the change in the U.S. consumer price index and publish the adjusted amounts no later than January 31 of each year.

New filing fee

\$30,000

\$100,000

\$250,000

\$400,000

\$800,000

\$2,250,000

Size of Transaction

Deals valued from \$111.4M but less than \$161.5M

Deals valued from \$161.5M but less than \$500M

Deals valued from \$500M but less than \$1B

Deals valued from \$1B but less than \$2B

Deals valued from \$2B but less than \$5B

Deals valued at \$5B or more

3. Higher Thresholds For the Prohibition Against Interlocking Directorates

Higher thresholds for the prohibition in Section 8 of the Clayton Act against interlocking directorates became effective on January 23, 2023. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Applying the new thresholds, competitor corporations are covered by Section 8 if each one has aggregated capital, surplus and undivided profits of more than \$45,257,000, unless the competitive sales of either corporation are less than \$4,525,700.

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