

FTC Announces Revised Hart-Scott-Rodino Thresholds for 2024

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The Federal Trade Commission (the FTC) announced increased thresholds and a new filing fee schedule under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the Act) which will be effective March 6, 2024. The parties to certain mergers or acquisitions are required under the Act to notify the FTC and the Department of Justice (the DOJ) and observe a waiting period prior to closing their proposed transaction. This notification program allows the FTC and DOJ to evaluate any potential anticompetitive effects of the proposed transaction. Whether your proposed transaction is subject to the notification program generally depends on the size of the transaction and the size of the parties. Because of this adjustment, transactions valued at more than \$119.5 million may trigger a filing requirement.

The Act requires parties to file the notification and observe the waiting period if either of the following would be true as a result of the proposed transaction:

1. the acquiring person will hold an aggregate amount of voting securities, non-corporate interests or assets of the acquired person valued in excess of \$200 million (as adjusted); or
2. the acquiring person will hold an aggregate amount of voting securities, non-corporate interests or assets of the acquired person valued in excess of \$50 million (as adjusted) but not more than \$200 million (as adjusted), and one person has sales or assets of at least \$100 million (as adjusted), and the other person has sales or assets of at least \$10 million (as adjusted).

The various dollar thresholds above are noted to be “as adjusted” because they are required to be revised annually by the FTC based on changes in the gross national product. A complete list of the original thresholds, most recent prior thresholds (which went into effect February 27, 2023), and current threshold revisions (effective on March 6, 2024) are shown in this chart.

Original Threshold	Prior Threshold	Current Threshold
\$10 million	\$22.3 million	\$23.9 million
\$50 million	\$111.4 million	\$119.5 million
\$100 million	\$222.7 million	\$239.0 million
\$110 million	\$245.0 million	\$262.9 million
\$200 million	\$445.5 million	\$478.0 million

\$500 million	\$1.1137 billion	\$1.195 billion
\$1 billion	\$2.2274 billion	\$2.39 billion

1. **Size of Transaction Alone.** The \$200 million size of transaction threshold is the original threshold under the Act. As the chart above shows, the current size of transaction threshold for this purpose is \$478.0 million. Using the applicable current threshold, transactions are reportable under the Act if the acquiring person will hold an aggregate amount of voting securities, non-corporate interests or assets of the acquired person valued in excess of \$478.0 million.
2. **Size of Transaction and Size of Person.** The \$50 million and \$200 million size of transaction thresholds and the \$100 million and \$10 million size of person thresholds are the original thresholds under the Act. Using the applicable current thresholds, transactions are reportable under the Act if (a) the acquiring person will hold an aggregate amount of voting securities, non-corporate interests or assets of the acquired person valued in excess of \$119.5 million but not more than \$478.0 million, (b) one person has sales or assets of at least \$239.0 million, and (c) the other person has sales or assets of at least \$23.9 million.

A filing fee is required with each notification under the Act. The filing fee is dependent on the size of the transaction. **The current filing fees become effective on March 6, 2024 and are:**

Size of Transaction	Filing Fee
in excess of \$119.5 but less than \$173.3 million	\$30,000
not less than \$173.3 million but less than \$536.5 million	\$105,000
not less than \$536.5 million but less than \$1.073 billion	\$260,000
not less than \$1.073 billion but less than \$2.146 billion	\$415,000
not less than \$2.146 billion but less than \$5.365 billion	\$830,000
\$5.365 billion or more	\$2.335 million

Civil penalties may be imposed for violations of the Act, and noncompliance with the amended requirements may subject parties to fines of up to \$51,744 per day for each recorded violation. Effective January 10, 2024, the maximum civil penalty amount increased from \$50,120 to \$51,744 per day.

Merging entities should take note of the new rules and allow sufficient time to prepare for the potential of a filing under the Act. Before entering into a new agreement, it is advisable to engage counsel early in the process to ensure that no unexpected costs or delays occur at closing.

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