

FTC Announces Revised Hart-Scott-Rodino Notification Thresholds Will Go into Effect March 6, 2024

By: Gary P. Biehn, David J. Creagan and Gayle A. Lamptey
Corporate and Securities Client Alert
3.5.24

On January 22, 2024, the Federal Trade Commission (the "FTC") announced revised thresholds for pre-merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The revised thresholds and filing fees go into effect later this week.

The HSR Act requires that some parties to certain proposed mergers, acquisitions of assets or equity, and joint ventures that exceed a minimum value, notify the FTC and the Antitrust Division of the Department of Justice (the "DOJ") of the transaction and complete a waiting period before finalizing the transaction.

Updated 'Size-of-Transaction' Thresholds

Transactions valued at \$119.5 million or more may have to complete a HSR filing if the size-of-persons test is satisfied, and no exemptions apply. For transactions valued at more than \$478 million, all parties will have to complete an HSR filing even if the size-of-persons test is not satisfied.

The chart below details adjusted threshold amounts for all jurisdictional thresholds and limitation values in the HSR rules (16 CFR parts 801 through 803) and the Antitrust Improvements Act Notification and Report Form ("the HSR Form") and its Instructions.

Original Threshold

2023 Threshold

2024 Threshold

\$10 million

\$111.4 million

\$119.5 million

\$50 million

\$222.7 million

\$239 million

\$100 million

\$245 million

\$262.9 million

\$200 million

\$445.5 million

\$478 million

\$500 million

\$1.1137 billion

\$1.195 billion

\$1 billion

\$2.2274 billion

\$2.39 billion

Updated 'Size-of-Persons' Thresholds

As noted above, if a proposed transaction's total aggregate value is greater than \$119.5 million but less than \$478 million the parties have to notify the FTC and DOJ if the size-of-person test is met. If one party to the transaction has annual net sales or total assets of at least \$239 million and the other party has annual net sales or total assets of at least \$23.9 million, the size-of-person test is met.

Prior to these changes, the parties to transactions with a total aggregate value greater than \$111.4 million but less than \$445.5 million had to notify the FTC and DOJ when one party had annual net sales or total assets \$22.7 million, and the other party has annual net sales or total assets of at least \$22.3 million.

Updated Filing Fees

Additionally, the FTC also announced new filing fees that go into effect March 6, 2024.

Size of Transaction

Filing Fees

Greater than \$119.5 million to \$173.3 million

\$30,000

\$173.3 million to \$536.5 million

\$105,000

\$536.5 million to \$1.073 billion

\$260,000

\$1.073 billion to \$2.146 billion

\$415,000

\$2.146 billion to \$5.365 billion

\$830,000

\$5.365 billion or more

\$2.335 million

Updated Civil Penalties

Finally, the FTC increased civil penalties for HSR violations effective January 10, 2024, with maximum daily penalties for violations increasing from \$50,120 to \$51,744 per day.

White and Williams LLP can assist businesses and advisors contemplating a business transaction to determine whether a premerger notification is required under the HSR Act and can help guide them through the filing process and subsequent interactions with the FTC and DOJ, as necessary.

For more information, please contact David J. Creagan, Partner, at (creagand@whiteandwilliams.com, 215.864.7032), Gary P. Biehn, Senior Counsel (biehng@whiteandwilliams.com, 215.864.7007), or Gayle A. Lamptey, Associate (lampteyg@whiteandwilliams.com, 215.864.6805), or another member of our Corporate and Securities Practice Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.