

Publications

January 16, 2025 • Updates

Annual Adjustment of HSR Thresholds Comes at a Time of Uncertainty

There is a lot of uncertainty in the Hart-Scott-Rodino Act (HSR) world. The new rules on what must be included in an HSR filing have been issued and are due to take effect on February 10, 2025, but that could be derailed or delayed. Either the new administration could issue a freeze on federal regulations that have not yet gone into effect, or implementation could be delayed by a recently filed lawsuit alleging that the new rules exceed the statutory authority of the Federal Trade Commission (FTC).

But one bit of certainty in this uncertain landscape is the new HSR thresholds that are released every year around this time.

The HSR requires that transactions over a certain value be reported at least 30 days prior to closing to the FTC and U.S. Department of Justice Antitrust Division (DOJ) (collectively, the “Agencies”). The FTC adjusts the HSR reporting thresholds annually based on the change in gross national product. In 2025, the new threshold to keep in mind for transactions is \$126.4 million (which is up from \$119.5 million in 2024). There are additional considerations when acquiring or selling voting securities, non-corporate interests in a business (such as interests in an LLC or partnership) or assets valued over \$126.4 million.

When determining whether an HSR filing is necessary, the following questions must be considered:

What is the Value of the Transaction and the Size of the Parties?

The HSR rules are complex, and whether the size-of-the-transaction threshold is met depends on a number of details such as the transaction’s structure and whether any HSR exemptions apply. Additionally, one important preliminary question is, if the transaction exceeds the \$126.4 million threshold, are the parties large enough to warrant further assessment of HSR filing? If the transaction is valued at or above \$124.6 million but less than \$505.8 million, then the size of the parties must be considered. If one party to the deal (and all of that party’s parents, affiliates and subsidiaries) has sales or assets over \$252.9 million, and if the other party has sales or assets over \$25.3 million, then the transaction might be reportable, and the HSR filing analysis should continue. All non-

Related People

- Matthew C. Hans
- Arindam Kar

Related Capabilities

- Corporate & Transactional
- Health Care
- Investment Management & Funds
- Public Company M&A, Going Private & Other Transactions
- Venture Capital & Emerging Growth Companies
- Securities & Corporate Finance

exempt transactions valued over \$505.8 million are reportable, regardless of the size of the parties.

Do Any Exemptions Apply?

The HSR rules contain several exemptions that can reduce the transaction value or eliminate the obligation to make a filing altogether. For example, the HSR rules do not apply to certain acquisitions of non-U.S. entities or assets, acquisitions made solely for the purpose of investment or certain real estate acquisitions.

How Much Will it Cost for an HSR Filing?

The HSR filing fees remain relatively unchanged from last year, except for some minor increases for larger transactions:

Size of Transaction	Filing Fee
Less than \$179.4 million	\$30,000
\$179.4 million -- \$555.5 million	\$105,000
\$555.5 million -- \$1.111 billion	\$265,000
\$1.111 billion -- \$2.222 billion	\$425,000
\$2.222 billion -- \$5.555 billion	\$850,000
\$5.555 billion and higher	\$2.39 million

What Will the FTC or DOJ Do After the Filing is Made?

During the 30-day waiting period, the parties cannot close the transaction, which allows the Agencies to review whether the transaction could adversely impact competition in the market for any particular product or service. One potential change under the new administration is the return of early termination of the waiting period for deals that have no significant antitrust issues. For deals with competitive overlaps, and in light of the **Merger Guidelines** issued in 2023, if the parties compete in the same market or industry and/or the deal will add to a portfolio of assets in the same market or industry, it is critical that antitrust counsel be engaged early in the process to determine how the transaction might affect competition and the likelihood that the Agencies may oppose or challenge the transaction.

Finally, ignoring the HSR threshold can lead to reputational and financial harm. Failure to submit a required HSR filing can draw penalties of \$51,744 for each day of noncompliance. For questions on how the HSR threshold adjustment may affect your business, contact Polsinelli's Antitrust team.

