

Axinn Antitrust Insight: FTC Announces Revised HSR Thresholds for 2024

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PRACTICE AREAS

Antitrust

What You Need to Know

Transactions valued at over **\$119.5 million** will require HSR premerger notification in 2024. The updated thresholds are expected to take effect for transactions closing in late February or early March 2024.

Each January, the Federal Trade Commission announces the new thresholds for premerger notifications under the HSR Act, which are updated each year based on changes in the gross national product. This year's updated thresholds will come into effect 30 days after the FTC publishes the new thresholds in the Federal Register. The FTC has also announced modest inflation-based adjustments to the applicable HSR filing fees.

Most importantly, the transaction value threshold that must be exceeded for HSR notifications has changed from \$111.4 million to **\$119.5 million**, while the threshold over which the size-of-transaction requirements do not apply will increase from \$445.5 million to **\$478 million**. That means:

- Transactions valued at \$119.5 million or less will not require HSR notification;
- Transactions valued at more than \$478 million will require notification (unless otherwise exempt); and
- Transactions valued over \$119.5 million and \$478 million or less may require notification depending on the parties' assets and revenues (again, unless an exemption applies). Under the revised size-of-person thresholds, these transactions will generally be reportable if one party has total assets or annual net sales of \$239 million or more and the other has total assets or annual net sales of \$23.9 million or more.

In addition, the amount of HSR filing fees has been adjusted in line with changes in the consumer price index as required under the Merger Filing Fee Modernization Act of 2022.

The following table summarizes the new fees and transaction value thresholds for 2024, which will go into effect 30 days after publication on the Federal Register: **Revised Transaction Value Thresholds for 2024**

Revised Filing Fee for 2024 More than \$119.5 million, but less than \$173.3 million \$30,000 (no change) At least \$173.3 million, but less than \$536.5 million \$105,000 (increase from \$100,000) At least \$536.5 million, but less than \$1.073 billion \$260,000 (increase from \$250,000) At least \$1.073 billion, but less than \$2.146 billion \$415,000 (increase from \$400,000) At least \$2.146 billion, but less than \$5.365 billion \$830,000 (increase from \$800,000) \$5.365 billion or more \$2,335,000 (increase from \$2,250,000)

Determining whether an HSR filing is required and what exemptions may apply can be a complicated analysis, with substantial penalties for getting it wrong: the FTC recently increased the maximum civil penalty for violations to **\$51,744** per day of non-compliance.

These changes come as the FTC continues to consider massive revisions to the required components of an HSR filing. The public comment period for the HSR rule changes closed on September 27, 2023, and, while the exact timing is unclear, the final rules are expected at some point this year. It remains to be seen whether, and how, the FTC will revise the rules in response to widespread feedback from the business community about the significant additional burden the proposed rules would impose on merging parties. The FTC and DOJ have also recently finalized their new Merger Guidelines, which articulate the Agencies' aggressive approach to merger enforcement under the Biden Administration.

If you have any questions regarding HSR filing requirements or the recent changes, please contact any of the Axinn antitrust partners.

