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FTC Announces Increased Hart-Scott-Rodino Act and Clayton Act Section 8 Interlocking Directorate Thresholds and Fees for 2025

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Executive Summary

The Federal Trade Commission (“FTC”) announced its 2025 jurisdictional thresholds and filing fees under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). The thresholds determine whether parties involved in proposed mergers, consolidations or other acquisitions of voting securities, assets or unincorporated interests must notify the FTC and the Antitrust Division of the Department of Justice (“DOJ”) of a proposed transaction and comply with a mandatory waiting period before the transaction can be consummated. The FTC is required to revise HSR Act thresholds annually based on changes in the Gross National Product. The new thresholds are expected to go into effect in mid-February 2025 (thirty days after their publication in the *Federal Register*). The FTC also has announced an increase in the maximum civil penalty for non-compliance with the HSR Act, as well as increased thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act. A brief summary of the changes is as follows:

- The Size of Transaction Threshold under the HSR Act has increased to **\$126.4 million** (up from \$119.5 million). Reportability is based on the thresholds effective at the *time of closing*.
- Acquisitions that do not exceed **\$505.8 million** in value (up from \$478.0 million) must also meet the Size of Person Threshold to require notification to the FTC and DOJ under the HSR Act. This threshold requires that one of the parties to the transaction has total assets or annual net sales of **\$252.9 million** (up from \$239.0 million) or more and the other party has total assets or annual net sales of **\$25.3 million** (up from \$23.9 million) or more.
- Pursuant to the Merger Filing Fee Modernization Act of 2022, HSR Act Filing Fees and Thresholds are revised annually based on the change in the U.S. Consumer Price Index. Fees for 2025, determined by the value of the transaction at the *time of filing*, are as follows:

<i>Transactions Valued at:</i>	<i>Filing Fee:</i>
Less than \$179.4 million (but over \$126.4 million)	\$30,000
\$179.4 million or more but less than \$555.5 million	\$105,000
\$555.5 million or more but less than \$1.111 billion	\$265,000
\$1.111 billion or more but less than \$2.222 billion	\$425,000
\$2.222 billion or more but less than \$5.555 billion	\$850,000
\$5.555 billion or greater	\$2,390,000

- The Maximum Civil Penalty for noncompliance with the HSR Act is expected to increase to **\$53,088** (up from \$51,774) **per day**.
- The FTC also has revised the thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act. Section 8 generally prohibits companies that compete with each other from having interlocking memberships on their corporate boards.
- Section 8(a)(1) prohibits a person from serving as a director or board-elected or board-appointed officer of two or more corporations if the combined capital, surplus, and undivided profits of each of the corporations exceeds **\$51,380,000** (up from \$48,559,000).
- Section 8(a)(2)(A) of the Clayton Act exempts interlocks for which the competitive sales of either corporation are less than **\$5,138,000** (up from \$4,855,900).

The above is only a general summary. Any number of exceptions or other parameters may apply. Please contact us if you have questions or desire additional details.

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