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WENDY K. ARENDS

MADISON:

608.258.7382

WENDY.ARENDS@

HUSCHBLACKWELL.COM

MARK B. TOBEY

AUSTIN:

512.479.9740

MARK.TOBEY@

HUSCHBLACKWELL.COM

M&A Antitrust Update: 2025 Brings New HSR Thresholds, a Challenge to the HSR Rules, and a Gun-Jumping Violation

The initial days of 2025 ushered in a trifecta of significant antitrust updates for dealmakers. First, the Federal Trade Commission (FTC) recently announced its annual adjustment to the monetary thresholds that apply to mergers, acquisitions, and joint ventures per the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act), increasing the size-of-transaction threshold from \$119.5 million to \$126.4 million. Second, business groups led by the Chamber of Commerce filed a complaint against the FTC challenging the recent revisions to the HSR filing process, effective on February 10, 2025, that significantly increase document and information disclosure requirements of filing parties. Third, the FTC announced that parties to a transaction will pay a \$5.6 million penalty for unlawful pre-merger coordination, or gun-jumping, in violation of the HSR Act.

HSR notification thresholds increase

The HSR Act governs the transactions that must be reported to the FTC and U.S. Department of Justice (DOJ) prior to their consummation. These changes will apply to transactions that will be consummated 30 days after the FTC's publication of the notice in the Federal Register.

The minimum transaction value (also known as the size-of-transaction threshold) that determines reportability under the HSR Act is increasing to \$126.4 million, and the size-of-person thresholds are increasing to \$25.3 million and \$252.9 million. Transactions in which the acquirer will hold voting securities, non-corporate interests, or assets valued above \$126.4 million but below \$505.8 million will be reportable if the size-of-person thresholds are

satisfied and no exemptions apply. If a transaction is valued at \$505.8 million or above (the “alternative size-of-transaction” value), a filing will be required without regard to whether the size-of-person thresholds are met unless an exemption applies.

The HSR Act thresholds are adjusted annually based on changes to the gross national product and determine whether companies or individuals are required to notify the agencies of a proposed merger, acquisition, joint venture, or other combination. Transactions falling below the applicable thresholds are not reportable; however, if the thresholds are met, the parties must submit their respective HSR Act premerger notification forms to the agencies, pay the applicable filing fee, and wait to close the transaction until the 30-day waiting period expires, or is otherwise terminated.

The chart below sets forth the revised HSR Act thresholds that affect jurisdictional requirements and impact whether an exemption to HSR Act reportability may apply. The 2024 HSR Act thresholds remain in effect until the revised 2025 thresholds go into effect 30 days after publication in the Federal Register.

HSR Threshold	Current 2024 Threshold	New 2025 Threshold	Revised HSR Act filing fees The HSR filing fee structure has also been revised per the HSR Act. The amount
Size-of-Transaction	\$119.5 million	\$126.4 million	
Alternative Size-of-Transaction	\$478 million	\$505.8 million	
Size-of-Person	\$23.9 million and \$239 million	\$25.3 million and \$252.9 million	
Threshold for Acquisition of Voting Securities	\$1.195 billion	\$1.264 billion	
Threshold for Acquisition of Voting Securities	\$2.390 billion	\$2.529 billion	

of the filing fee that the acquirer (unless otherwise agreed to by the parties) must pay in connection with an HSR filing is tied to the following transaction values.

2025 HSR Filing Fees	2025 Transaction Values	Challenge to new HSR Act rules filed by business groups On January 10, 2025, the Chamber of Commerce, along with the Business Roundtable, American
\$30,000	At least \$126.4 million but less than \$179.4 million	
\$105,000	At least \$179.4 million but less than \$555.5 million	
\$265,000	At least \$555.5 million but less than \$1.111 billion	
\$425,000	At least \$1.111 billion but less than \$2.222 billion	
\$850,000	At least \$2.222 billion but less than \$5.555 billion	
\$2.39 million	\$5.555 billion or more	

Investment Council, and the Longview Chamber of Commerce, filed a complaint against the FTC in the U.S. District Court for the Eastern District of Texas alleging that the recently finalized changes to the HSR Act exceed the FTC’s statutory authority, are arbitrary and capricious, and should be set aside. We previously summarized these significant changes to the HSR Act, slated to go into effect on February 10, 2025, concluding that the revisions to the HSR filing process will increase deal timelines, the parties’ time and expense, and the potential risk that a transaction will be reviewed by the FTC and DOJ.

Plaintiffs allege that the HSR filing requirements’ “dramatic expansion” exceeds constraints of the FTC’s authority under the HSR Act, such as the new demands for the transaction rationale, overlap description, and supply relationships. The business groups also allege that the new HSR filing process is arbitrary and capricious in part because the FTC did not conclude that the benefits of the new rule outweigh the costs and discounts the “important indirect costs to businesses and the American economy from extending deal timelines and increasing uncertainty,” and “irrationally triples and in many cases quadruples the HSR filing burden for transactions....”

While it is too soon to tell if the court will weigh in before the February 10 effective date of the new HSR Act rules, it is possible that the incoming administration could delay implementation of any new regulations for 60 days.

FTC fines oil companies \$5.6 million for gun-jumping violation

The FTC announced it entered into a settlement agreement with parties to an acquisition—Verdun Oil Company II LLC; its sister company, XCL Resources Holdings LLC; and the acquired company, EP Energy LLC—for engaging in illegal pre-merger coordination, or gun-jumping, in violation of the HSR Act. The \$5.6 million civil penalty settlement reached with the parties represents the largest monetary penalty imposed by the FTC for an alleged gun-jumping violation.

Verdun, which was under common management with XCL at the time of the transaction, agreed to acquire EP in a \$1.4 billion transaction that was subject to the HSR Act. EP allegedly allowed XCL and Verdun to assume operational and decision-making control over significant aspects of EP's day-to-day business operations prior to the transaction closing in violation of the HSR Act's waiting period requirements.

The FTC's complaint states that the purchase agreement provided for the immediate transfer of control over key aspects of EP's business to XCL and Verdun, including granting XCL and Verdun approval rights over EP's ongoing and planned crude oil development and production activities and many of EP's ordinary-course expenditures. Once the purchase agreement was signed, XCL and Verdun exercised operating control over significant aspects of EP's business, including by stopping EP's new well-drilling activities, coordinating with EP on its customer contracts and production volumes, and exchanging competitively sensitive information.

Contact us

If you have any questions regarding the new HSR Rules, or the revised HSR Act thresholds, including whether a transaction is reportable to the agencies under the HSR Act, please contact Wendy Arends, Victoria Sitz, Mark Tobey, Blake Heyer, or another member of our Antitrust & Competition team.