

### Revised filing thresholds for Hart-Scott-Rodino Act

February 2026

#### In brief

A key consideration in any merger, acquisition or joint venture is almost inevitably antitrust laws. Indeed, parties in most transactions consider, even from the planning stages, whether the contemplated transaction raises substantive antitrust issues. One of the reasons is that a violation of antitrust laws can unravel even an otherwise flawlessly executed transaction. Even if the deal is allowed to proceed, there may be, *inter alia*, expensive and time-consuming investigations and even requirements—as a precondition to antitrust clearance—that an entity divest from certain assets. Moreover, there could be penalties and delays resulting from improper filings. It is in this context that this Article discusses the 2026-revised filing thresholds<sup>1</sup> required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976<sup>2</sup> (hereinafter, the ‘HSR Act’).

However, before discussing the revised filings thresholds, it is necessary to have at least a broad understanding of American antitrust laws. As such, Part 1 of this Article begins by providing a broad overview of the main statutes underpinning federal<sup>3</sup> antitrust law. The Article, then, proceeds to discuss background information about the HSR Act, its requirements and the antitrust-clearance proceedings taken pursuant to it. Subsequently, Part 2 describes the reporting thresholds under the HSR Act and the revisions to the same by the Federal Trade Commission (hereinafter, the ‘FTC’). Finally, the Takeaway discusses the importance of having accurate information regarding the filing fees.

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<sup>1</sup> Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 Fed. Reg. 2133 (16 January 2026) [hereinafter, Revised Thresholds 2026].

<sup>2</sup> Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1383 (1976) (codified in scattered sections of 15 & 28 U.S.C.).

<sup>3</sup> ‘Federal’, as used in this Article, refers to the Federal Government of the United States of America.

## In detail

### 1. American antitrust background in brief

There are numerous statutes underpinning federal antitrust law. The most important ones are the Sherman Antitrust Act,<sup>4</sup> the Clayton Antitrust Act (hereinafter, the ‘Clayton Act’),<sup>5</sup> the Robinson-Patman Act,<sup>6</sup> the Federal Trade Commission Act of 1914<sup>7</sup> and the HSR Act.<sup>8</sup> Of most relevance to this Article are the Clayton Act and the HSR Act.

Passed in 1914, the Clayton Act has several main functions, including prohibiting price discrimination,<sup>9</sup> certain types of exclusive-dealing arrangements,<sup>10</sup> mergers and acquisitions that materially and adversely affect competition<sup>11</sup> and interlocking directors in certain circumstances.<sup>12</sup> In the context of the HSR Act, the most relevant part of the Clayton Act is Section 7.<sup>13</sup> Any merger, acquisition or joint venture that affects commerce<sup>14</sup> in the United States of America (hereinafter, ‘America’) must comply with Section 7, which is one of the main pieces of federal legislation governing mergers and acquisitions.<sup>15</sup> Section 7 prohibits mergers and acquisitions that ‘may . . . substantially lessen competition, or . . . create a monopoly’.<sup>16</sup> Although

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<sup>4</sup> Sherman Antitrust Act, Pub. L. No. 51-647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1–7 (2024)) (prohibiting agreements that ‘unreasonably restrain[] . . . trade or commerce among the several States, or with foreign nations . . .’).

<sup>5</sup> Clayton Antitrust Act, Pub. L. No. 63-212, 38 Stat. 730 (1914) (codified as amended at 15 U.S.C. §§ 12–27, 29 U.S.C. §§ 52–53 (2024)).

<sup>6</sup> Robinson-Patman Act, Pub. L. No. 74-692, 49 Stat. 1526 (1936) (codified as amended at 15 U.S.C. §§ 13–13b, 21a (2024)) (amending the Clayton Act to prohibit discrimination that may injure competition at the buyer level).

<sup>7</sup> Federal Trade Commission Act of 1914, Pub. L. No. 63-203, 38 Stat. 717 (codified as amended at 15 U.S.C. §§ 41–58 (2024)) (creating the FTC and empowering it to take actions enforcing the Federal Trade Commission Act of 1914 in order to prohibit unfair or deceptive methods of competition).

<sup>8</sup> 90 Stat. 1383.

<sup>9</sup> 15 U.S.C. § 13.

<sup>10</sup> Ibid.

<sup>11</sup> Id. § 18.

<sup>12</sup> Id. § 19.

<sup>13</sup> Id. § 18.

<sup>14</sup> Pursuant to Sec. 1 of the Clayton Antitrust Act (hereinafter, the ‘Clayton Act’), ‘commerce’ means ‘trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States . . .’ Id. § 12. In addition, federal regulations provide that ‘Section 7A(a)(1) is satisfied if any entity included within the acquiring person, or any entity included within the acquired person, is engaged in commerce or in any activity affecting commerce’, such as if a ‘foreign subsidiary of a U.S. corporation seeks to acquire a foreign business’. Activities in or Affecting Commerce, 16 C.F.R. § 801.3 (2025).

<sup>15</sup> 15 U.S.C. § 18.

<sup>16</sup> Ibid. (‘No person engaged in commerce or in any activity effecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce in

a complete analysis of a claim or violation under Section 7 of the Clayton Act is beyond the scope of this Article, in short, a plaintiff must show both that an acquisition of stock or other assets may ‘substantially . . . lessen competition’ or ‘tend to create a monopoly’ and that the harm to competition will be in a ‘line of commerce or activity affecting commerce in any’ part of America.<sup>17</sup> As such, even a seemingly non-American merger may require analysing the transaction’s compliance with American antitrust laws.

Nevertheless, merely analysing whether a transaction would comply with Section 7 of the Clayton Act is insufficient. Passed in 1976, the HSR Act amends the Clayton Act to require that certain mergers, acquisitions and joint ventures receive clearance from the FTC and the Antitrust Division of the Department of Justice (collectively, hereinafter, ‘Antitrust Entities’ or ‘Antitrust Entity’, as applicable).<sup>18</sup> If a transaction meets certain thresholds, which the FTC updates annually,<sup>19</sup> and no exemptions apply,<sup>20</sup> then the parties to a transaction must notify the Antitrust Entities of the contemplated merger or acquisition about the details of the same in what is termed an ‘HSR filing’.<sup>21</sup> Subsequently, the parties must observe an initial waiting period of generally 30 days before the parties may consummate the transaction.<sup>22</sup>

There are two variations to this 30-day period.<sup>23</sup> In the first situation, depending upon the Antitrust Entities’ satisfaction with the filings, the parties may apply for early termination, which, if granted, allows the parties to proceed to consummate the transaction without waiting the full 30-day period.<sup>24</sup> In the case of the Antitrust Entities’ granting a party’s request for early termination, the FTC will publish the parties’ names and such approval on the FTC’s website and in the Federal Register.<sup>25</sup> The other situation, an extension termed a ‘Second Request’ by antitrust law practitioners, occurs when one or both of the Antitrust Entities have lingering

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any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.’).

<sup>17</sup> Ibid.

<sup>18</sup> Id. § 18a(a).

<sup>19</sup> Id. § 19(a)(5) (‘For each fiscal year commencing after September 30, 1990, the \$10,000,000 and \$1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.’).

<sup>20</sup> There are several types of transactions, such as ‘acquisitions of goods or realty transferred in the ordinary course of business’, that are exempt from the HSR Act of 1976 (hereinafter, ‘H.S.R. Act’s’) notification requirements. Id. § 18a(c). However, these exemptions are beyond the scope of this Article.

<sup>21</sup> Id. § 18a(a)–(b); see Fed. Trade Comm’n, HSR Notification Forms, Instructions and Guidance, <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-notification-forms-instructions-guidance> (last visited 5 January 2026) (containing a list of forms for an HSR filing and instructions regarding the same); see infra Part III (discussing the thresholds).

<sup>22</sup> 15 U.S.C. § 18a(b).

<sup>23</sup> Nota bene: In situations involving a cash tender offer, the initial waiting period is generally 15 days, id. § 18a(b)(1)(B); however, for purposes of simplicity, this Article generalises to a 30-day period.

<sup>24</sup> Id. § 18a(b), (e).

<sup>25</sup> Premerger Notification Office Staff, Getting in Sync with HSR Timing Considerations, **Fed. Trade Comm’n**, (31 August 2017), <https://www.ftc.gov/enforcement/competition-matters/2017/08/getting-sync-hsr-timing-considerations> (last visited 11 February 2026).

concerns about the contemplated transaction.<sup>26</sup> By issuing a Second Request, the Antitrust Entities require the parties to a transaction to submit additional information or documents relevant to the transaction. In so doing, the requesting Antitrust Entity seeks to obtain information to analyse the contemplated transaction's potential to harm competition.<sup>27</sup> Once the parties have fully complied with the request for additional information and have submitted the same to the relevant Antitrust Entity, an additional 30-day period begins.<sup>28</sup> If the relevant Antitrust Entity no longer has concerns during its second review, the parties may proceed to consummate the transaction.<sup>29</sup> Notwithstanding the foregoing, the FTC's official, online guidelines state that the Antitrust Entities will not provide any official notice to the parties if they clear the 30-day waiting period.<sup>30</sup>

## 2. Filing thresholds and revisions of the same

### (1) Original thresholds under the HSR Act

Notwithstanding the foregoing, the burdensome HSR filings are only necessary if certain thresholds are met.<sup>31</sup> A filing is needed in one of two situations.<sup>32</sup> In the first situation, a filing is needed if a size-of-transaction threshold is met.<sup>33</sup> In the other situation, a filing is required only if both a size-of-transaction threshold and a size-of-person threshold are met.<sup>34</sup> Under the original 1976 language of the HSR Act, a filing would be necessary in the first situation if the transaction size<sup>35</sup> was in excess of US\$200m.<sup>36</sup> In the other situation, if the transaction size was greater than US\$50million but not in excess US\$200m, then a size-of-person threshold would also need to be met in order for the provisions of the HSR Act to apply.<sup>37</sup> According to both the original language and the present language, the size-of-person threshold differs depending on whether

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<sup>26</sup> 15 U.S.C. § 18a(e)(1)(A).

<sup>27</sup> Ibid.

<sup>28</sup> Id. § 18a(e)(2).

<sup>29</sup> Ibid.

<sup>30</sup> Premerger Notification Office Staff, Getting in Sync with HSR Timing Considerations, **Fed. Trade Comm'n**, (31 August 2017), <https://www.ftc.gov/enforcement/competition-matters/2017/08/getting-sync-hsr-timing-considerations> (last visited 11 February 2026).

<sup>31</sup> 15 U.S.C. § 18a(a).

<sup>32</sup> Ibid.; Revised Thresholds 2026, supra note 1.

<sup>33</sup> Ibid.; 15 U.S.C. § 18a(a).

<sup>34</sup> Ibid.; Revised Thresholds 2026, supra note 1.

<sup>35</sup> In this context, 'transaction size' is roughly defined as the value of the voting securities or assets of the acquired person that the acquiring person would hold. 15 U.S.C. § 18a(a). Moreover, 'person', as used in the context of the Clayton Act and HSR Act, is defined as 'an ultimate parent entity and all entities which it controls directly or indirectly'. Definitions, 16 C.F.R. § 801.1(a)(1) (2025).

<sup>36</sup> 15 U.S.C. § 18a(a).

<sup>37</sup> Ibid.

manufacturing entities are involved.<sup>38</sup> In the HSR Act’s original form, if the person being acquired was engaged in manufacturing, then the size-of-person threshold would be met if one party had at least US\$10m in either annual net sales or total assets and the other party had at least US\$100 million in either annual net sales or total assets.<sup>39</sup> On the other hand, if the person being acquired was not engaged in manufacturing, then the size-of-person threshold would only have been met if the person being acquired had total assets of US\$10 m or more and the acquiring person had either total assets or annual net sales of US\$100 m or more.<sup>40</sup> Although subtle, this distinction is key because where the acquired person is not engaged in manufacturing, only the total assets—rather than either the total assets or the annual net sales—are considered.<sup>41</sup> For example, if the acquired person were not engaged in manufacturing and had annual net sales of US\$200 m but total assets of only US\$5m, the size-of-person threshold would not be met—even if the acquiring person had total assets or annual net sales of US\$200m. In contrast, if the acquired person were engaged in manufacturing and had the same numbers as in the previous example, the size-of-person threshold would be met. This example can be readily understood by looking at the following chart, which assumes that the acquiring entity passes the size-of-person threshold:

Acquired person status	Annual net sales of acquired person	Total assets of acquired person	Financial measure considered for acquired person	Acquiring person meets size-of-person threshold?	Size-of-person threshold met overall?	Why
<b>Not engaged in manufacturing</b>	US\$200m	US\$5m	<b>Total assets only</b>	Yes (e.g. ≥ US\$100m in total assets or annual net sales)	<b>No</b>	Annual net sales of the acquired person are disregarded, and its total assets alone do not meet the threshold.
<b>Engaged in manufacturing</b>	US\$200m	US\$5m	<b>Total assets <i>or</i> annual net sales</b>	Yes (e.g. ≥ US\$100m in total assets or annual net sales)	<b>Yes</b>	Annual net sales of the acquired person may be considered and exceed the threshold.

Given that failure to file can lead to significant penalties,<sup>42</sup> properly understanding the distinct requirements that vary depending upon whether the acquired person is engaged in manufacturing is key. The original filing thresholds are summarised in the chart on the following page:

<sup>38</sup> Id. § 18a(a)(2)(B)(ii).

<sup>39</sup> Id. §§ 18a(a)(2)(B)(ii)(I), (III).

<sup>40</sup> Id. § 18a(a)(2)(B)(ii)(II).

<sup>41</sup> Id. § 18a(a)(2)(B)(ii).

<sup>42</sup> See, e.g. Adjustment of Civil Monetary Penalty Amounts, 16 C.F.R. § 1.98 (2025) (setting the current maximum civil penalty for a violation of the HSR Act’s filing requirements at US\$53,088 per diem).

## HSR filing thresholds summary chart (original 1976 dollar amounts)

Summary description	Size-of-transaction test	Size-of-person test	Manufacturing status of acquired person	Is HSR filing required?
Large transaction: size-of-transaction threshold alone	> US\$200,000,000	<b>Not applicable</b> (no size-of-person test required)	Any (manufacturing or not)	<b>Yes</b>
Mid-range transaction: manufacturing acquired person; both tests met	> US\$50,000,000 but not > US\$200,000,000	One party has ≥ US\$10,000,000 in <b>annual net sales OR total assets</b> , and the other party has ≥ US\$100,000,000 in <b>annual net sales OR total assets</b>	<b>Acquired person is engaged in manufacturing</b>	<b>Yes</b>
Mid-range transaction: manufacturing acquired person; size-of-person test not met	> US\$50,000,000 but not > US\$200,000,000	One party has < US\$10,000,000 or neither party has ≥ US\$100,000,000 in either annual net sales or total assets	<b>Acquired person is engaged in manufacturing</b>	<b>No</b>
Mid-range transaction: non-manufacturing acquired person; both tests met	> US\$50,000,000 but not > US\$200,000,000	<b>Acquired person:</b> total assets ≥ US\$10,000,000 (net sales ignored); <b>Acquiring person:</b> annual net sales OR total assets ≥ US\$100,000,000	<b>Acquired person is not engaged in manufacturing</b>	<b>Yes</b>
Mid-range transaction: non-manufacturing acquired person; size-of-person test not met	> US\$50,000,000 but not > US\$200,000,000	Either (a) the acquired person has <b>total assets</b> < US\$10,000,000, or (b) the acquiring person has < US\$100,000,000 in both annual net sales and total assets	<b>Acquired person is not engaged in manufacturing</b>	<b>No</b>
Small transaction: size-of-transaction threshold not met	≤ US\$50,000,000	<b>Not applicable</b> (size-of-transaction test not met)	Any (manufacturing or not)	<b>No</b>

### (2) New thresholds and filing fees

As required by law,<sup>43</sup> on 16 January 2026, the FTC published the latest numbers for the filing threshold for 2026.<sup>44</sup> These new numbers, effective as of 17 February 2026 and for deals closing on that date, raise the thresholds of transactions to US\$535.5 m as the minimum amount for a size-of-transaction-threshold-only filing and to US\$133.9m as the minimum amount for a filing if the size-of-person threshold is also met.<sup>45</sup> Moreover, the aforementioned US\$100m and US\$10m size-of-person thresholds were raised, respectively, to US\$267.8m and US\$26.8m.<sup>46</sup> These numbers are summarised in the chart on the following page:

<sup>43</sup> See *supra* note 19.

<sup>44</sup> Revised Thresholds 2026, *supra* note 1.

<sup>45</sup> *Ibid.*; Fed. Trade Comm'n, [New HSR Thresholds and Filing Fees for 2026](https://www.ftc.gov/enforcement/competition-matters/2026/01/new-hsr-thresholds-filing-fees-2026) (20 January 2026), <https://www.ftc.gov/enforcement/competition-matters/2026/01/new-hsr-thresholds-filing-fees-2026> (last accessed 11 February 2026) ('To determine reportability for a deal that will close around the time that the new threshold is effective, look to what the . . . threshold will be at the time of closing. For example, a deal valued at \$130 million which will close on or after February 17, 2026, is not reportable because it is below the new minimum size of transaction threshold, even though it exceeds the current threshold of \$126.4 million.').

<sup>46</sup> Revised Thresholds 2026, *supra* note 1.

## HSR filing thresholds summary chart (2026 dollar amounts)

Summary description	Size-of-transaction test	Size-of-person test	Manufacturing status of acquired person	Is HSR filing required?
Large transaction: size-of-transaction threshold alone	> US\$535,500,000	<b>Not applicable</b> (no size-of-person test required)	Any (manufacturing or not)	<b>Yes</b>
Mid-range transaction: manufacturing acquired person; both tests met	> US\$133,900,000 but not > US\$535,500,000	One party has ≥ <b>US\$26,800,000</b> in <b>annual net sales OR total assets</b> , and the other party has ≥ <b>US\$267,800,000</b> in <b>annual net sales OR total assets</b>	<b>Acquired person is engaged in manufacturing</b>	<b>Yes</b>
Mid-range transaction: manufacturing acquired person; size-of-person test not met	> US\$133,900,000 but not > US\$535,500,000	One party has < US\$26,800,000 or neither party has ≥ US\$267,800,000 in either annual net sales or total assets	<b>Acquired person is engaged in manufacturing</b>	<b>No</b>
Mid-range transaction: non-manufacturing acquired person; both tests met	> US\$133,900,000 but not > US\$535,500,000	<b>Acquired person:</b> total assets ≥ <b>US\$26,800,000</b> (net sales ignored); <b>Acquiring person:</b> annual net sales OR total assets ≥ <b>US\$267,800,000</b>	<b>Acquired person is not engaged in manufacturing</b>	<b>Yes</b>
Mid-range transaction: non-manufacturing acquired person; size-of-person test not met	> US\$133,900,000 but not > US\$200,000,000	Either (a) the acquired person has <b>total assets</b> < <b>US\$26,800,000</b> , or (b) the acquiring person has < <b>US\$267,800,000</b> in both annual net sales and total assets	<b>Acquired person is not engaged in manufacturing</b>	<b>No</b>
Small transaction: size-of-transaction threshold not met	≤ US\$133,900,000	<b>Not applicable</b> (size-of-transaction test not met)	Any (manufacturing or not)	<b>No</b>

Finally, the FTC also updated the filing fees corresponding to the various transaction sizes, as depicted in the following chart published in the Federal Register:<sup>47</sup>

Original filing fee	Original applicable size of transaction *	2026 Adjusted filing fee	2026 Adjusted applicable size of transaction *
\$30,000 .....	less than \$161.5 million .....	\$35,000	less than \$189.6 million.
100,000 .....	not less than \$161.5 million but less than \$500 million.	110,000	not less than \$189.6 million but less than \$586.9 million.
250,000 .....	not less than \$500 million but less than \$1 billion.	275,000	not less than \$586.9 million but less than \$1.174 billion.
400,000 .....	not less than \$1 billion but less than \$2 billion	440,000	not less than \$1.174 billion but less than \$2.347 billion.
800,000 .....	not less than \$2 billion but less than \$5 billion	875,000	not less than \$2.347 billion but less than \$5.869 billion.
2,250,000 .....	\$5 billion or more .....	2,460,000	\$5.869 billion or more.

\* as determined under Section 7A(a)(2) of the Act.

### The takeaway

The HSR Act's revisions to the Clayton Act require that certain mergers, acquisitions and joint ventures receive clearance from the FTC and the Antitrust Division of the Department of Justice. Although a seemingly small part of a deal, failure to make an HSR filing can lead to significant penalties and even

<sup>47</sup> Ibid.

possible injunctions to the contemplated transaction.<sup>48</sup> It is, therefore, imperative that companies consult with legal counsel as soon as possible in a transaction. Doing so is key not only to preventing possible violations of the HSR Act but also to identifying other potential antitrust issues, which have the potential to disrupt a transaction.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

### PwC Legal Japan

Dai-ichi Tokyo Bar Association

Otemachi Park Building, 1-1-1 Otemachi, Chiyoda-ku, Tokyo 100-0004

TEL: 03-6212-8001

Email: [jp\\_tax\\_legal-mbx@pwc.com](mailto:jp_tax_legal-mbx@pwc.com)

[www.pwc.com/jp/e/legal](http://www.pwc.com/jp/e/legal)

Satoshi Mogi

Rumi Ide

Scott Alper

Partner

[Satoshi.Mogi@pwc.com](mailto:Satoshi.Mogi@pwc.com)

[Rumi.Ide@pwc.com](mailto:Rumi.Ide@pwc.com)

[Scott.Alper@pwc.com](mailto:Scott.Alper@pwc.com)

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<sup>48</sup> 15 U.S.C. §§ 18a(f), (g); see Adjustment of Civil Monetary Penalty Amounts, 16 C.F.R. § 1.98 (2025) (setting the current maximum civil penalty for a violation of the HSR Act's filing requirements at US\$53,088 per diem).