

FTC Announces New HSR Notification Thresholds and Filing Fee Structure

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On January 23, 2023, the Federal Trade Commission (FTC) announced revised notification thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). If a proposed merger, acquisition of stock, assets or unincorporated interests, or other business combination meets certain thresholds, the parties must notify the FTC and the Antitrust Division of the Department of Justice (DOJ) and observe a waiting period before consummating the transaction. Section 7A(a)(2) of the Clayton Act requires the FTC to revise all of the HSR Act thresholds annually, based on changes in the gross national product.

Revised Thresholds

The new minimum filing threshold will be \$111.4 million, up from \$101 million. The new thresholds were published in the Federal Register on January 26, 2023, and will become effective on February 27, 2023.

Original Threshold	Current Threshold	Revised Threshold
\$10 million	\$20.2 million	\$22.3 million
\$50 million	\$101 million	\$111.4 million
\$100 million	\$202 million	\$222.7 million
\$110 million	\$222.2 million	\$245.0 million
\$110 million	\$222.2 million	\$245.0 million
\$500 million	\$1.0098 billion	\$1.1137 billion
\$1 billion	\$2.0196 billion	\$2.2274 billion

These new thresholds will affect the jurisdictional requirements and certain exemptions under the HSR Act, as well as the HSR Act's filing fee schedule. For example, if the value of a transaction does not exceed the revised minimum notification threshold of \$111.4 million, the transaction will not need to be reported, and if a transaction value is at least \$445.5 million, the HSR size-of-person test (which exempts deals from the notification requirement if the parties' annual revenues and total assets are below specified levels) will not apply to the transaction.

In addition, the FTC announced the revised jurisdictional dollar thresholds applicable to Clayton Act Section 8, which prohibits competing companies from having interlocking officers or directors. The revised thresholds are \$45,257,000 for Section 8(a)(1) and \$4,525,700 for Section 8(a)(2)(A). These new thresholds took effect immediately upon publication in the Federal Register on January 20, 2022.

Revised Filing Fee Structure

The FTC also announced that it had approved publication of a Federal Register notice with revised merger filing fees. The 2023 Consolidated Appropriations Act (2023 CAA), signed into law by President Biden on December 29, 2022, established a new schedule of filing fees for transactions subject to the HSR Act:

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Size of Transaction	Filing Fee
>\$111.4 million and <\$161.5 million	\$30,000
≥\$161.5 million and <\$500 million	\$100,000
≥\$500 million and <\$1 billion	\$250,000
≥\$500 million and <\$1 billion	\$250,000
≥\$2 billion and <\$5 billion	\$800,000
≥\$5 billion	\$2.25 million

The 2023 CAA filing fee amendments create a wider range of fees and substantially increase the filing fee amounts for larger transactions, with the fee for transactions valued above \$5 billion increasing from \$280,000 to \$2.25 million.

In addition, the amendments require for the first time that the filing fees themselves (not merely the thresholds) to be adjusted every year, based on changes in the consumer price index. This new filing fee structure was published in the Federal Register on January 26, 2023 and will take effect 30 days later on February 27, 2023.

Subsidies from “Entities of Concern”

Finally, the 2023 CAA also included a provision requiring filing parties to provide information regarding any subsidies they receive from “entities of concern,” as defined in Section 40207 of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)). This provision requires the FTC, with the concurrence of the DOJ, and “in consultation with the Chairperson of the Committee on Foreign Investment in the United States, the Secretary of Commerce, the Chair of the United States International Trade Commission, the United States Trade Representative, and the heads of other appropriate agencies,” to draft and implement a rule identifying the specific information that will be required and any corresponding changes to the HSR Form.