

## 2023 Increases to HSR Act Filing Thresholds

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On January 26, 2023, the Federal Trade Commission (“FTC”) published a notice in the [Federal Register](#) announcing the annual changes to the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the “HSR Act”) pre-merger notification thresholds. The thresholds for 2023 increased by 10.3% from the 2022 amounts, based on the change in gross national product during 2022. The revised thresholds will apply to any transaction that closes on or after February 27, 2023. Once these new thresholds come into effect, the HSR “size of transaction” threshold will increase from \$101 million to \$111.4 million.

### General Summary

As a general summary of the HSR Act, the FTC and Department of Justice must be notified before the consummation of mergers, acquisitions, and other transactions that meet certain monetary thresholds. Once the parties have filed their HSR Act Notification and Report Forms, the enforcement agencies have up to 30 days after the date all HSR filings have been made and the applicable filing fee is paid, to decide whether to seek additional information—a process commonly known as a “second request.” The parties also have the option to request “Early Termination” which, if granted, will shorten the 30-day waiting period to approximately two weeks, however, Early Termination grants are currently suspended. If the 30-day waiting period expires without the issuance of a second request, or if Early Termination is granted, the parties are free to close the transaction immediately. If a second request is issued, the government has 30 days from the date the parties comply with the request to decide whether to let the transaction proceed or attempt to block it in court.

### New Thresholds

The new thresholds will increase the minimum value of a transaction that could trigger an HSR Act filing. The updated thresholds are as follows:

- For transactions with a value of \$111.4 million or less, an HSR Act filing is not required.
- For transactions with a value of more than \$111.4 million, but less than \$445.5 million, whether or not an HSR Act filing is required depends upon the whether the “size of person” test is met. The “size of person” test requires HSR Act filings for the

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following transactions:

- If the total assets or annual net sales of the manufacturing party being acquired is \$22.3 million or more, and the total assets or annual net sales of the acquiring party is \$222.7 million or more;
  - If the total assets of the non-manufacturing party being acquired is \$22.3 million or more, and the acquiring party has total assets or annual net sales of \$222.7 million or more; or
  - If the total assets or annual net sales of the party being acquired is \$222.7 million or more, and the acquiring party has total assets or annual net sales of \$22.3 million or more.
- For transactions with a value of \$445.5 million or more, an HSR Act filing is required.

### **Notification Threshold for Voting Securities**

The HSR Act has an additional set of notification thresholds for parties acquiring voting securities. An acquiring party must file an HSR Act notification if the transaction pushes that acquiring party over one of the following thresholds:

- An aggregate total value of voting securities between \$111.4 million and \$222.7 million.
- An aggregate total value of voting securities between \$222.7 million and \$1.1137 billion.
- An aggregate total value of voting securities worth \$1.1137 billion or greater.
- 25% of an issuer's outstanding voting securities, if worth \$2.2274 billion or more.
- 50% of an issuer's outstanding voting securities, if worth \$111.4 million or more.

## Filing Fee

On December 29, 2022 the President signed the Merger Filing Fee Modernization Act of 2022. The [FTC announced](#) the new filing fee tiers on January 26, 2023. These new filing fees will take effect on February 27, 2023 and will apply to transactions filing an HSR Act Notification and Report Form on or after that date.

New Transaction Value Thresholds	New Filing Fee
<ul style="list-style-type: none"><li>Between \$111.4 million and \$161.5 million</li></ul>	\$30,000
<ul style="list-style-type: none"><li>Between \$161.5 million and \$500 million</li></ul>	\$100,000
<ul style="list-style-type: none"><li>Between \$500 million and \$1 billion</li></ul>	\$250,000
<ul style="list-style-type: none"><li>Between \$1 billion and \$2 billion</li></ul>	\$400,000
<ul style="list-style-type: none"><li>Between \$2 billion and \$5 billion</li></ul>	\$800,000
<ul style="list-style-type: none"><li>Greater than \$5 billion</li></ul>	\$2,250,000

## Civil Penalty

Last year, the [FTC announced](#) an increase in the maximum daily civil penalty for violations of the HSR Act from \$43,792 per day to \$46,517 per day. This change became effective on January 10, 2022. This change will apply to penalties that are assessed after January 10, 2022, even if the actions causing the violation occurred before that effective date.