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Congress Enacts Major Overhaul to HSR Filing Fees for M&A Deals

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On December 29, 2022, President Biden signed into law The Consolidated Appropriations Act of 2023 (also known as The Omnibus Appropriations Bill), which includes the Merger Filing Fee Modernization Act. The Merger Filing Fee Modernization Act, which marks the most significant change to HSR filing fees in over twenty years, increases the HSR filing fees for many larger transactions, with the highest filing fee reaching \$2.25 million for any transaction valued at \$5 billion or more. The increase in fees is expected to significantly bolster the resources of the Federal Trade Commission and the U.S. Department of Justice to investigate and pursue alleged violations of the federal antitrust laws.

Though the changes under the Merger Filing Fee Modernization Act will result in a decrease in filing fees for smaller deals, the increase in fees is significant for deals valued at \$500 million and above. Currently, the HSR filing fees are as follows:

Value of Transaction	Current HSR Filing Fee
At or above \$101 million but less than \$202 million	\$45,000
At or above \$202 million but less than \$1,009.8 million	\$125,000
At or above \$1,009.8 million	\$280,000

The new HSR filing fees under the Merger Filing Fee Modernization Act will be:

Value of Transaction	New HSR Filing Fee
At or above \$101 million but less than \$161.5 million	\$30,000
At or above \$161.5 million but less than \$500 million	\$100,000
At or above \$500 million but less than \$1 billion	\$250,000

At or above \$1 billion but less than \$2 billion	\$400,000
At or above \$2 billion but less than \$5 billion	\$800,000
\$5 billion or more	\$2.25 million

These changes are expected to take effect in 2023 (an exact date has not yet been announced). Both the fees and the transaction value thresholds will be adjusted annually based on changes in the Consumer Price Index.

Under the HSR Rules, the acquiring party is required to pay the entire filing fee unless the parties agree otherwise. Given the imminent changes to the HSR filing fees, transaction parties, particularly in larger deals, should carefully consider HSR filing fee provisions in deal negotiations moving forward. Additionally, parties and their antitrust counsel should thoroughly analyze whether any portion of a transaction is exempt from HSR reportability, as this determination could significantly affect the size of the filing fee.

Also of note, the spending package incorporates two other significant antitrust-related changes: (i) barring defendants from transferring lawsuits brought by state antitrust authorities to more favorable venues, and (ii) making foreign interests in transactions more transparent by requiring companies seeking merger clearance under the HSR Act to disclose all subsidies from any "foreign entity of concern," including entities controlled by China, Iran, North Korea and Russia.