



FTC Announces 2023 Increase in HSR Notification Thresholds and Effective Date for Increased Filing Fees

Update

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The Federal Trade Commission (FTC) has announced the annual revisions to the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act) thresholds, which will become effective on Monday, February 27, 2023. The revised thresholds will apply to any merger or acquisition closing on or after the effective date. The FTC is required to adjust the HSR thresholds annually based upon the change in gross national product. This year, the change in the “size of transaction” threshold again has increased approximately 10 percent, from \$101 million to \$111.4 million. Additionally, and perhaps of even greater significance, the thresholds notice includes an effective date for the new HSR filing fees resulting from the recent passage of the Merger Filing Fee Modernization Act. The new fees also will become effective on February 27, 2023.

Under the HSR Act, when a deal satisfies the “size of person” and “size of transaction” thresholds, and no exemption from reporting is available, the deal must be reported to the FTC and the U.S. Department of Justice and the parties must wait for a designated period of time before closing the transaction.

Size of Person. The revised size of person thresholds will generally be met if one party involved in the deal has assets or annual sales totaling \$222.7 million or more and one other party involved in the deal has assets or annual sales of at least \$22.3 million. Satisfaction of the size of person thresholds is not required, however, if the transaction is valued at more than \$445.5 million.

Size of Transaction. The revised size of transaction threshold will be met if the buyer will hold an aggregate amount of stock, non-corporate interests and/or assets of the seller valued at more than \$111.4 million as a result of the deal.

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The notification thresholds applicable to purchases of voting securities will increase as follows:

The thresholds applicable to many exemptions, including those governing foreign acquisitions, also will increase. However, the \$500 million threshold applicable to acquisitions of producing oil and gas reserves and associated assets will not change.

The civil penalty for failing to comply with the notification and waiting period requirements of the HSR Act has also increased to up to \$50,120 per day for each day a party is in violation.