

FTC Publishes New HSR Thresholds and Filing Fees Effective February 27, 2023

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On January 26, 2023, the Federal Trade Commission (“FTC”) [published](#) in the Federal Register revised thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”). The revised HSR Act thresholds apply to any covered acquisitions closing on or after February 27, 2023.

The HSR Act requires that mergers and acquisitions valued over a threshold amount, between parties of a certain size, be notified to the FTC and the Antitrust Division of the Department of Justice before consummation. Each year, the FTC adjusts the thresholds according to the prior year’s change to the gross national product.

For 2023, the size-of-transaction threshold for reporting mergers and acquisitions under the HSR Act will increase from \$101 million to \$111.4 million, the largest adjustment to date. The size-of-person thresholds, which specify the minimum net sales or assets that each side of the transaction must have (for transactions valued under \$445.5 million), will likewise increase to \$22.3 million and \$22.7 million.

The filing fee structure for covered transactions was significantly altered pursuant to the 2023 Consolidated Appropriations Act. The new fees will apply to any pre-merger notifications filed on or after February 27, 2023, regardless of the transaction’s consummation date. The new fees are:

FILING FEE	SIZE OF TRANSACTION
\$30,000	less than \$161.5 million
\$100,000	equal to or greater than \$161.5 million but less than \$500 million
\$250,000	equal to or greater than \$500 million but less than \$1 billion
\$400,000	equal to or greater than \$1 billion but less than \$2 billion
\$800,000	equal to or greater than \$2 billion but less than \$5 billion
\$2.25 million	\$5 billion or more

Although fees applicable to the lower size-of-transaction thresholds have been reduced moderately, fees for larger acquisitions have risen significantly, as the highest fee prior to this change is \$280,000. In addition, we believe that the new fees will rise over time. The transaction size thresholds to which each fee tier will apply will continue to increase or decrease depending on changes to GNP, just as they do now. Beginning in FY 2024, however, the amount of the filing fee for each tier will increase by the same percentage as any increase of more than one percent in the prior fiscal year’s consumer price index. There is no present mechanism for the fees to decrease.

Given these changes in HSR filing fees, parties to transactions that require reporting under the HSR Act may give increased attention to how filing fees are allocated among the parties, in particular for very large transactions. For more information about the revised HSR thresholds or the new filing fees, contact **Brian K. McCalmon** at bmccalmon@vedderprice.com, **Gregory G. Wrobel** at gwrobel@vedderprice.com or the Vedder Price attorney with whom you regularly work.

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