

Memorandum

Revised HSR Act Thresholds and Increased Filing Fees

January 26, 2023

The Federal Trade Commission (“FTC”) has announced revised monetary thresholds for the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (“HSR Act”), as well as significantly increased HSR filing fees for certain large transactions. The revised thresholds were published in the Federal Register on January 26, 2023 and will be effective on February 27, 2023, applying to all transactions that close on or after that date. The new HSR filing fees will also go into effect on the same date. This is the first change in the HSR filing fee structure since 2002 and significantly increases the filing fees for certain large transactions.

HSR Notification Thresholds

The primary revisions to the thresholds are increases to the “size-of-transaction” and “size-of-person” tests for filing under the HSR Act. Most notably, transactions valued at \$111.4 million or less will not be reportable under the HSR Act. The thresholds are tied to GNP, and this is a significant increase from last year’s threshold (\$101.0 million). With respect to the size-of-person thresholds, acquisitions valued above \$111.4 million but less than \$445.5 million will be reportable only if one party has annual net sales or total assets of at least \$222.7 million and the other has annual net sales or total assets of at least \$22.3 million. Acquisitions valued at or above \$445.5 million will be reportable without regard to the sales or assets of the parties (subject to the applicability of any exemptions).

The revisions will also increase the notification thresholds for acquisitions of additional voting securities from the same party (*i.e.*, when an investor increases its shareholding in a company). Notifications will be required at each of the following thresholds: \$111.4 million; \$222.7 million; \$1.1137 billion; 25% of the shares if the value of shares to be held is above \$2.2274 billion; and 50% of the shares if their value is above \$111.4 million.

Finally, the dollar amounts used for determining the applicability of certain exemptions to filing have also been adjusted to reflect the new thresholds, where indicated by the term “as adjusted” in the HSR Rules.

HSR Filing Fees

The Merger Filing Fee Modernization Act of 2022, which was passed as part of the larger spending bill at the end of last year, in most cases significantly increased the filing fees for reportable transactions. This marks the first increase to the HSR filing fees in 20 years. The fees will now continue to adjust annually to reflect changes in the consumer price index.

Transaction Value Greater Than or Equal to	Current Filing Fee	New Fee
> \$111,400,000	\$45,000	\$30,000
\$161,500,000	\$45,000 or \$125,000	\$100,000
\$500,000,000	\$125,000	\$250,000
\$1,000,000,000	\$125,000 or \$280,000	\$400,000
\$2,000,000,000	\$280,000	\$800,000
\$5,000,000,000	\$280,000	\$2,250,000

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