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FTC Increases 2022 Hart-Scott-Rodino Filing Thresholds

The Federal Trade Commission (FTC) recently announced an increase as part of its annual adjustment to the monetary thresholds that apply to mergers and acquisitions per the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act). These increases will apply to transactions closing on or after February 23, 2022.

The minimum transaction value (also known as the size-of-transaction threshold) that determines reportability under the HSR Act is increasing to \$101 million, and the size-of-person thresholds are increasing to \$20.2 million and \$202 million. Transactions in which the acquirer will hold voting securities, non-corporate interests, or assets valued above \$101 million but below \$403.9 million will be reportable if the size-of-person thresholds are satisfied and no exemptions apply. If a transaction is valued at \$403.9 million or above (the “alternative size-of-transaction” value), a filing will be required without regard to whether the size-of-person thresholds are met unless an exemption applies.

Revised HSR Act thresholds

The HSR Act thresholds are adjusted annually based on changes to the gross national product and determine whether companies or individuals are required to notify the FTC and the U.S. Department of Justice Antitrust Division (DOJ) of a proposed merger, acquisition, joint venture, or other combination. Transactions falling below the applicable thresholds are not reportable. If the thresholds are met, the parties must submit their respective HSR Act premerger notification forms to the FTC and the DOJ, pay the applicable filing fee, and wait to close the transaction until the 30-day waiting period expires, or it is otherwise terminated.

The chart below sets forth the revised HSR Act thresholds that affect jurisdictional requirements, and impact whether an exemption to HSR Act reportability may apply. The 2021 HSR Act thresholds remain in effect until the revised 2022 thresholds go into effect 30 days after publication in the Federal Register on January 24, 2022.

HSR Threshold	Current 2021 Threshold	Revised 2022 Threshold
Size-of-Transaction	\$92 million	\$101 million
Alternative Size-of-Transaction	\$368 million	\$403.9 million
Size-of-Person	\$18.4 million and \$184 million	\$20.2 million and \$202 million

The 2022 filing fees remain the same, and the amount of the filing fee that the acquirer must pay (unless otherwise agreed to by the parties) is tied to the revised 2022 size-of-transaction thresholds as follows:

HSR Filing Fee	Revised 2022 Threshold
\$45,000	\$101 million or greater but less than \$202 million
\$125,000	\$202 million or greater but less than \$1.0098 billion
\$280,000	\$1.0098 billion or more

Increased penalties for noncompliance

Determining whether the HSR Act, Clayton Act, and potential exemptions apply to a transaction involves knowledge and interpretation of the laws, regulations, and the FTC's informal guidance. Noncompliance with the HSR Act may result in significant penalties. The FTC recently increased civil penalties of up to \$46,517 per day which applies to civil penalties assessed after February 23, 2022.

Contact us

If you have any questions relating to the 2022 HSR Act thresholds, including whether a transaction is

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reportable to the FTC and DOJ under the HSR Act, please contact Wendy Arends, Victoria (Tori) Sitz, Mark Tobey or Julia Banegas.