

FTC Publishes Revised Hart-Scott-Rodino Notification Thresholds for 2023

Alert

01.30.2023

On January 26, 2023, the Federal Trade Commission (FTC) announced the [revised thresholds](#) to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act).

HSR Act Threshold Update

The FTC must revise the HSR Act thresholds annually based on the change in the gross national product. The size-of-transaction filing threshold will increase from the 2022 threshold of \$101 million to the 2023 threshold of \$111.4 million. The changes will be effective for transactions closing on or after February 27, 2023.

Under the new thresholds and absent an applicable exemption, the parties to an acquisition or merger will need to file pre-merger notifications with the Department of Justice and the FTC and observe the HSR Act's waiting period if the transaction results in either of the following:

- The acquiring person will hold at least \$111.4 million worth of voting securities and assets of the acquired person and the parties meet the "size-of-person" requirements (set forth below).
- Regardless of the size of the parties, the acquiring person will hold at least \$445.5 million worth of voting securities and assets of the acquired person.

Meeting any one of the following subtests satisfies the "size-of-person" test:

- A person with \$222.7 million or more of total assets (on its most recent regularly prepared balance sheet) or annual net sales (from its most recently completed fiscal year) proposes to acquire voting securities or assets of a person with \$22.3 million or more of total assets or annual net sales.

FTC Publishes Revised Hart-Scott-Rodino Notification Thresholds for 2023

- A person with \$22.3 million or more of total assets or annual net sales proposes to acquire voting securities or assets of a person with \$222.7 million or more of total assets or annual net sales.

For the purpose of applying the thresholds, the term “person” means the ultimate parent entity of the party engaged in the transaction. Certain exemptions may apply, depending on the nature of the transaction and the location and nature of the assets and entities involved. As a result, additional analysis is often required before making a final determination regarding the need for a filing.

In December 2022, President Biden signed into law a [revamp of the filing fee schedule](#), which will dramatically increase filing fees for the largest transactions. The following filing fee schedule will take effect February 27, 2023:

Transaction Value

New HSR Filing Fee

\$111.4 mil to

\$30,000

\$161.5 mil to

\$100,000

\$500 mil to

\$250,000

\$1 bil to

\$400,000

\$2 bil to

\$800,000

> \$5 bil

\$2,250,000

RELATED CAPABILITIES

Antitrust

STINSON

STINSON LLP \ STINSON.COM

FTC Publishes Revised Hart-Scott-Rodino Notification Thresholds for 2023

Corporate Finance

STINSON

STINSON LLP \ STINSON.COM