

# Congress is Dramatically Increasing Merger Filing Fees for Largest Deals in 2023

Alert

01.03.2023

On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023, into law, which includes the Merger Filing Fee Modernization Act of 2022 (MFFMA) and other antitrust-related priorities. This legislation will have an immediate and noticeable impact, particularly on larger transactions.

The MFFMA revamps the structure of premerger filing fees required under the Hart-Scott-Rodino (HSR) Act, and will increase HSR filing fees for many transactions. This is the first substantial change to HSR filing fees since 2001, and for the largest transactions, these fees will increase significantly.

## HOW WILL FILING FEES CHANGE?

HSR filing fees trigger once a transaction reaches a size of at least \$101 million. The applicable filing fee increases as the deal value increases. The transaction size thresholds for triggering certain fee amounts have adjusted regularly over the last 20 years; however, the fees themselves have not.

Under the current fee schedule, HSR filing fees range from as low as \$45,000 for transactions between \$101 million and \$161.5 million and as high as \$280,000 for transactions over \$1.0098 billion. Under the new fee schedule, some deal values on the lower end of the spectrum will see their filing fees decreased slightly, but deals greater than \$500 million will see their filing fees increased between double and almost tenfold the current rates. A deal between \$500 million and \$1 billion will see a relatively modest increase from \$125,000 to \$250,000, while a deal greater than \$5 billion will see a dramatic increase from \$280,000 to \$2.25 million. These heftier rates for larger transactions will provide the FTC and the DOJ with greater resources for antitrust law enforcement.

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The following table compares the current filing fee schedule to the new filing fee schedule:

Transaction Value	Current HSR Filing Fee	New HSR Filing Fee
\$101 mil to < \$161.5 mil	\$45,000	\$30,000
\$161.5 mil to < \$500 mil	\$125,000	\$100,000

\$500 mil to < \$1 bil	\$125,000	\$250,000
\$1 bil to < \$2 bil	\$280,000	\$400,000
\$2 bil to < \$5 bil	\$280,000	\$800,000
> \$5 bil	\$280,000	\$2,250,000

In addition to a revamped filing fee schedule, Congress included in the spending bill two additional antitrust measures. One, the State Antitrust Enforcement Venue Act, is intended to give states greater influence over the venue of antitrust cases by exempting them from transfer to federal district court. The other, the Foreign Merger Subsidy Disclosure Act, requires disclosure of any economic support received from a "foreign entity of concern," such as entities controlled by the governments of China, Russia, Iran or North Korea.

## HOW SHOULD MERGING COMPANIES PREPARE FOR THESE CHANGES?

While it is unclear when exactly these fee changes will take effect, Senator Amy Klobuchar's office has said they will go into effect sometime in 2023. Any party to a merger which may be subject to a dramatically increased fee should pay close attention to how the fee is allocated in the merger agreement. Additionally, parties should work closely with HSR-counsel early on in the deal process to first examine whether the deal is reportable, and if it is, to properly assess the value of the deal to make sure the parties are paying the correct fee.

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