

The US Federal Trade Commission Announces Revised HSR Filing Fees and Jurisdictional Thresholds to Take Effect in February

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On Monday, January 23, 2023, the Federal Trade Commission (FTC) announced revised filing fees and jurisdictional thresholds for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR). The revisions increase the lowest “size-of-transaction” threshold at which HSR filings may be required from the current US\$101 million to US\$111.4 million.

Under the HSR Act, the FTC and Department of Justice (DOJ) must be notified before mergers, acquisitions and other transactions that meet certain monetary thresholds are consummated. Once notification is filed, the parties must observe a 30-day waiting period (unless granted early termination) to allow the agencies to review the transaction for possible violation of antitrust laws.

Revised Jurisdictional Thresholds

Section 7A(a)(2) of the Clayton Act requires the FTC to revise annually the jurisdictional thresholds and other thresholds and limitations in the HSR rules according to changes in gross national product. The new thresholds were published in the [Federal Register](#) on January 23, 2023, and will take effect on February 22, 2023 (30 days after the date of publication). The thresholds will apply to transactions that will close on or after that date.

The updated jurisdictional thresholds are as follows:

Original Threshold	Current Adjusted Threshold	New Adjusted Threshold
\$10 million	\$20.2 million	\$22.3 million
\$50 million	\$101 million	\$111.4 million
\$100 million	\$202 million	\$222.7 million
\$110 million	\$222.2 million	\$245 million
\$200 million	\$403.9 million	\$445.5 million
\$500 million	\$1.0098 billion	\$1.1137 billion
\$1 billion	\$2.0196 billion	\$2.2274 billion

Revised Filing Fees and Filing Fee Thresholds

In addition, the filing fees and filing fee thresholds have been revised per the Merger Filing Fee Modernization Act of 2022, signed into law as part of H.R. 2617 – Consolidated Appropriations Act, 2023.¹ The act requires the FTC to adjust the filing fees each fiscal year, beginning September 30, 2023, to reflect the percentage change in Consumer Price Index as determined by the Department of Labor. The law also requires the FTC to publish annual adjusted thresholds no later than January 31 of each year.

The new filing fees and filing fee thresholds will take effect on February 22, 2023 (30 days after the date of publication) and are as follows:

Transaction Value	Filing Fee
At or more than \$111.4 million but less than \$161.5 million	\$30,000
At or more than \$161.5 million but less than \$500 million	\$100,000
At or more than \$500 million but less than \$1 billion	\$250,000
At or more than \$1 billion but less than \$2 billion	\$400,000
At or more than \$2 billion but less than \$5 billion	\$800,000
Greater than \$5 billion	\$2.25 million

¹ See the FTC’s final rule regarding the new fee structure here: https://www.ftc.gov/system/files/ftc_gov/pdf/p859910-hsr-premerger-notification-reporting-and-waiting-period-2023.pdf.

Adjustments to Interlocking Directorate Thresholds

The FTC also announced annual adjustments to thresholds under Section 8 of the Clayton Act, which generally prohibits persons from serving as a director or officer of two competing corporations (so-called “interlocking directorates”) if each corporation is of a certain minimum size. Under the thresholds required by a 1990 amendment to the act, interlocking directorates will be prohibited where (i) each competing corporation has capital, surplus and undivided profits of more than US\$45,257,000 (increased from US\$41,034,000), and (ii) neither corporation has competitive sales less than US\$4,525,700 (increased from US\$4,103,400). These new monetary thresholds were published in the [Federal Register](#) on January 23, 2022, and take effect immediately.

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