

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

Client Alert | January 24, 2023

On January 23, 2023, the Federal Trade Commission announced its annual update of thresholds for pre-merger notifications of certain M&A transactions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). Pursuant to the statute, the HSR Act’s jurisdictional thresholds are updated annually to account for changes in the gross national product. The new thresholds will take effect 30 days after publication in the Federal Register and apply to transactions that close on or after that date.

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The size of transaction threshold for reporting proposed mergers and acquisitions under Section 7A of the Clayton Act will increase by \$10 million, from \$101 million in 2022 to \$111.4 million for 2023.

Original Threshold	2022 Threshold	2023 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

The HSR filing fees have been revised pursuant to the 2023 Consolidated Appropriations Act. There are three new tiers for 2023, with the filing fee decreasing for certain transactions and the maximum increasing dramatically for transactions valued at or above \$5 billion. The new filing fees, which will also take effect 30 days after publication in the Federal Register, will be:

Fee	Size of Transaction
\$30,000	Valued at less than \$161.5 million
\$100,000	Valued at \$161.5 million or more but less than \$500 million
\$250,000	Valued at \$500 million or more but less than \$1 billion

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\$400,000	Valued at \$1 billion or more but less than \$2 billion
\$800,000	Valued at \$2 billion or more but less than \$5 billion
\$2,250,000	\$5 billion or more

The 2023 thresholds triggering prohibitions on certain interlocking directorates on corporate boards of directors are \$45,257,000 for Section 8(a)(l) (size of corporation) and \$4,525,700 for Section 8(a)(2)(A) (competitive sales). The Section 8 thresholds took effect on January 23, 2023.^[1]

^[1] The Department of Justice's Antitrust Division has promised to increase enforcement of suspected director interlocks, as discussed here: <https://www.gibsondunn.com/doj-antitrust-division-head-promises-litigation-to-break-up-director-interlocks/>.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the new HSR size of transaction thresholds, or HSR and antitrust/competition regulations and rulemaking more generally. Please feel free to contact the Gibson Dunn attorney with whom you usually work in the firm's Antitrust and Competition Practice Group, or any of the partners or counsel listed below:

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