

Insights

CONTINUING TREND: HSR NOTIFICATIONS SIGNIFICANTLY DOWN IN OCTOBER 2022

Nov 16, 2022

The Federal Trade Commission (FTC) recently reported that parties filed U.S. premerger notifications for only 181 transactions in October 2022, an almost 60% drop year over year from October 2021's 443 number, and a marked acceleration of the rate of decline over 2021 filings overall. For July, August and September 2022, the number of notified transactions was down over 40% from 2021 levels.* In general, deals involving U.S. voting securities, membership interests or assets valued in excess of \$101 million may be subject to premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR"), if the parties meet certain size requirements and no exemptions apply. Thus, a downturn in HSR filings broadly signifies less U.S. deal activity at the \$101 million level and up.

Although 2021 was a year of historically high HSR-notified transactions, influenced by very favorable economic conditions and the wide availability of cheap financing, the accelerating drop is noteworthy because HSR-notified transactions typically pick up in October and November as companies seek to gain HSR clearance to allow their deals to close before year end. The reduction in HSR-notified transaction activity broadly reflects financial conditions such as higher interest rates and uncertainty in capital markets, both in the U.S. and worldwide, and it seems likely that the reduction may continue so long as those conditions impact companies considering a merger or acquisition. Whether the reduced number of HSR-notified transactions will lead the federal agencies to reinstate so-called "early termination" of the 30-day HSR waiting period remains to be seen, however. The practice of granting early termination was suspended in February 2021 due to the historically high volume of HSR-notified transactions and to allow the agencies to adjust to the enforcement priorities of the Biden administration. If those conditions no longer obtain, early termination may be back.

** See the [FTC's Premerger Notification Program](#) page, noting that the number is a preliminary estimate. Broadly speaking, "HSR transactions" are transactions that require pre-merger notification to FTC and the antitrust division of the United States Department of Justice (DOJ) and a mandatory 30-day waiting period prior to transaction close pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976; while the HSR rules are complex and there are multiple exemptions based on the size and nature of the parties and the applicable industry, as a general matter, HSR*

transactions are those valued over an annually adjusted threshold, which in 2022 is \$101 million. Note that if the FTC or DOJ determines during the waiting period that a particular transaction may cause harm to competition, the waiting period may be extended to allow time for a detailed agency review and potential challenge.

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