

Insights

SIGNIFICANT CHANGES TO U.S. PREMERGER FILING FEES UNDER THE CONSOLIDATED APPROPRIATIONS ACT 2023

Jan 04, 2023

The Consolidated Appropriations Act, 2023 was signed into law by President Biden on December 29, 2022. Included in this massive bill was the Merger Filing Fee Modernization Act of 2022 (the “Fee Modernization Act”). The Fee Modernization Act radically changes the premerger filing fees charged under the Hart Scott-Rodino Antitrust Improvement Act of 1976 (the “HSR Act”) in connection with U.S. premerger filings. Although the size of reportable transactions has increased over time with inflation, the fee structure has been static for over 20 years. The Federal Trade Commission is expected to announce the effective date of these changes in the coming weeks.

Under the Fee Modernization Act, the filing fees for smaller deals will be reduced, while those for larger deals will significantly increase. Specifically, parties to reportable deals valued at less than \$500 million will pay lower fees, but for any transactions above \$500 million, parties will experience large increases:

- Transactions valued between \$1 billion and \$2 billion would be subject to a fee of \$400,000;
- Transactions valued between \$2 billion and \$5 billion would be subject to a fee of \$800,000; and
- Transactions valued above \$5 billion would be subject to a fee of \$2.25 million.

Consistent with current practice, the size of transaction thresholds will be adjusted annually for inflation, and these changes will be published by the Federal Trade Commission each January.

| | Transaction Valued At | Current Filing Fee |
|----------------|--|---------------------------|
| Current | More than \$101 million but less than \$202 million | \$45,000 |
| | \$202 million or more but less than \$1.0098 billion | \$125,000 |
| | \$1.0098 billion or more | \$280,000 |
| | | |

| Revised | Transaction Valued At | New Filing Fee |
|----------------|------------------------------|-----------------------|
| | | |

| | |
|--|-------------|
| More than \$101 million, but less than \$161.5 million | \$30,000 |
| \$161.5 million or more, but less than \$500 million | \$100,000 |
| \$500 million or more, but less than \$1 billion | \$250,000 |
| \$1 billion or more, but less than \$2 billion | \$400,000 |
| \$2 billion or more, but less than \$5 billion | \$800,000 |
| \$5 billion or more | \$2,250,000 |

If you have any questions about these changes and their impact to your business, please reach out to our Antitrust & Competition team for further guidance.

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