

**Insights****FTC ANNOUNCES 2023 THRESHOLDS UNDER HSR ACT AND CLAYTON ACT**

Jan 24, 2023

The Federal Trade Commission announced the annual revised thresholds for merger notifications under the Hart Scott-Rodino Antitrust Improvements act of 1976, as amended (“HSR Act”). The thresholds are revised annually based on changes in U.S. gross national product. The new thresholds (“2023 Thresholds”) will become effective 30 days after publication in the Federal Register, which is expect in the next few days. The 2023 Thresholds will be applicable through the next annual adjustment expected in January 2024.

**HSR Act - 2023 Thresholds**

The HSR Act requires premerger notification of transactions that satisfy the “size of transaction” and “size of person” tests and are not otherwise exempt.

**Size of Transaction – 2023 Threshold**

Under the 2023 Thresholds, the size of transaction primary notification threshold will be met if, as a result of a transaction, the acquiring person at the ultimate parent entity (“UPE”) level will hold aggregate voting securities, assets, or non-corporate interests of the acquired person valued at more than \$111.4 million.

For transactions valued at more than \$111.4 million but less than or equal to \$445.5 million, the parties must also meet the size of person test. Transactions valued at more than \$445.5 million will be reportable regardless of the size of the parties, unless an exemption applies.

Size of Transaction		
	Current (2022)	Revised (2023)
Primary Notification Threshold	\$101 million	\$111.4 million
Alternative Notification Threshold	\$403.9 million	\$445.5 million

## Size of Person – 2023 Threshold

Under the 2023 Thresholds, the size of person test will be satisfied where one party to the transaction at the UPE level has total assets or annual net sales of \$222.7 million or more and the UPE of the other party has total assets or annual net sales of \$22.3 million or more.

Size of Person	
Current (2022)	Revised (2023 Thresholds)
\$20.2 million	\$22.3 million
\$202 million	\$222.7 million

## Summary

Value of transaction	HSR Filing Required?
\$111.4 million or less	No
More than \$111.4 million, but less than or equal to \$445.5 million	Only if size of person thresholds met
More than \$445.5 million	Yes

## HSR Filing Fees

The 2023 Thresholds do not affect the filing fees due under the HSR Act, as recently amended by the Consolidated Appropriations Act, 2023 – detailed [on our post 'Significant Changes to U.S. Premerger Filing Fees under the Consolidated Appropriations Act 2023'](#). However, filing fees will be based on the 2023 thresholds as follows:

Revised	Transaction Valued At	New Filing Fee
	More than \$111.4 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

The filing fees will become effective 30 days from publication in the Federal Register, which is expected this week.

### **2023 Updates to Civil Penalties**

The FTC also recently announced increases to the maximum civil penalty amount for violations of the HSR Act from \$46,517 to \$50,120 per day, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. These adjustments took effect January 11, 2023.

### **RELATED CAPABILITIES**

- M&A & Corporate Finance

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