

Axinn Antitrust Insight: FTC Announces Revised HSR Thresholds for 2023

January 26, 2023

PRACTICE AREAS

Antitrust

Axinn Update

What You Need to Know

- The FTC has announced an increase of the minimum size of a transaction potentially requiring HSR notification to \$111.4 million, which will apply to all transactions closing on or after February 27, 2023.
- Congress has also substantially changed the filing fees required with HSR filings, which will apply to filings made on or after February 27, 2023. (The new fees are shown in the table below.)

Each January, the Federal Trade Commission announces the new thresholds for pre-merger notifications under the HSR Act, which are updated each year based on changes in the gross national product. This year's revised thresholds will be effective on February 27, 2023. The FTC has also announced that filings made on or after that date will be subject to new—and in some cases substantially higher—filing fees that were adopted in recently-enacted legislation.

Most importantly, the base threshold for HSR notification will increase from \$101 million to **\$111.4 million**, while the higher size-of-transaction threshold will go from \$403.9 million to **\$445.5 million**. That means:

- Transactions valued at \$111.4 million or less will not require HSR notification;
- Transactions valued at more than \$111.4 million but not more than \$445.5 million may require notification depending on the parties' sizes (assets and revenue), unless an exemption applies; and
- Transactions valued at more than \$445.5 million will require notification, unless otherwise exempt.

The size-of-person thresholds will also increase, so transactions in the middle band will generally be reportable if one party has total assets or annual net sales of **\$222.7 million or more** and the other has total assets or annual net sales of **\$22.3 million or more**.

February 27th will also be the effective date for the most significant changes to the HSR filing fee structure in several decades. The Merger Filing Fee Modernization Act of 2022, adopted as part of last year's omnibus spending package, imposes substantially higher fees for larger transactions, and modestly decreases fees for many transactions valued at \$500 million or less. The Act also requires the FTC to increase annually the filing fees beginning next year in line with changes in the consumer price index.

The following table summarizes the new fees for 2023: **Transaction Value Revised Filing Fee**

More than \$111.4 million, but less than \$161.5 million	\$30,000	At least \$161.5 million, but less than \$500 million	\$100,000	At least \$500 million, but less than \$1 billion	\$250,000	At least \$1 billion, but less than \$2 billion	\$400,000	At least \$2 billion, but less than \$5 billion	\$800,000	\$5 billion or more	\$2.25 million
--	----------	---	-----------	---	-----------	---	-----------	---	-----------	---------------------	----------------

Determining whether an HSR filing is required and what exemptions may apply can be a complicated analysis, with substantial penalties for getting it wrong: the FTC recently increased the maximum civil penalty for violations to **\$50,120** per day of non-compliance.

If you have any questions regarding HSR filing or the recent changes, please contact any of the Axinn antitrust partners.

