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FTC Announces New HSR Filing Fees Of Up to \$2.25 Million and Revised HSR Thresholds for 2023

The Federal Trade Commission (“FTC”) announced the new filing fee structure, along with the annual adjustment to jurisdictional thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR”), as amended. The new thresholds will take effect 30 days after publication in the Federal Register and will apply to all transactions closing on or after that date. The new jurisdictional and filing fee thresholds were published in the Federal Register on January 26 and will become effective on February 27.

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Increased HSR Filing Fees Under the Merger Filing Fee Modernization Act of 2022

The FTC yesterday approved publication of a Federal Register notice announcing a new filing fee structure pursuant to the recently enacted Merger Filing Fee Modernization Act of 2022 (“MFFMA”). The MFFMA introduced the first changes to the HSR filing fee structure since 2001. The MFFMA introduces a six-tier fee structure, with the fee for the largest transactions increasing to \$2.25 million, from the current cap of \$280,000.

The new fee schedule is as follows:

Value of Transaction	Filing Fee
less than \$161.5 million	\$30,000
\$161.5 million or greater but less than \$500 million	\$100,000
\$500 million or greater but less than \$1 billion	\$250,000
\$1 billion or greater but less than \$2 billion	\$400,000
\$2 billion or greater but less than \$5 billion	\$800,000
\$5 billion or more	\$2,250,000

The new fees will take effect 30 days after publication in the Federal Register and will apply to all transactions closing on or after that date.

The MFFMA also adds a foreign subsidy disclosure requirement to the HSR notification process. Under this new reporting requirement, any notifying party that received a subsidy from a "foreign entity of concern" must disclose information regarding that subsidy within its HSR Notification and Report form. The MFFMA defines "subsidy" broadly to include not only direct subsidies but also grants, loans, loan guarantees, tax concessions, preferential government procurement policies, and government ownership or control.

Revised Jurisdictional Thresholds Announced for HSR Act

The FTC also announced revised jurisdictional thresholds to the HSR Act for 2023. These thresholds are adjusted annually based on gross national product.

- **Size-of-Transaction Test:** The \$50 million (as adjusted) threshold used in the size-of-transaction test will increase from \$101 million to \$111.4 million.
- **Size-of-Persons Test:** The \$10 million (as adjusted) and \$100 million (as adjusted) sales and assets thresholds used in the size-of-persons test will increase from \$20.2 million to \$22.3 million and from \$202 million to \$222.7 million, respectively. The \$200 million (as adjusted) threshold, below which the size-of-persons test applies, will increase from \$403.9 million to \$445.5 million.

Additionally, the civil penalty for failure to comply with the HSR Act has increased from \$46,517 to \$50,120 per day.

For additional information regarding HSR jurisdictional thresholds and reporting requirements, please feel free to contact any member of Ropes & Gray's [antitrust practice group](#).