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Increased HSR Thresholds Announced for 2022

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Effective on February 23, 2022, the mandatory notification thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), will be increasing. The Size of Transaction threshold will jump from \$92 million currently to **\$101 million**. Several other associated thresholds will increase as well, as detailed below. The revised thresholds were published today in the Federal Register, and become effective in 30 days. They apply to all transactions that close on or after February 23, 2022.

Background: The Hart-Scott-Rodino Antitrust Improvements Act of 1976

The HSR Act provides that, where certain jurisdictional thresholds are met, parties intending to merge or make acquisitions must (absent any applicable exemptions) furnish the Premerger Notification Office of the FTC and the Antitrust Division of the Department of Justice with prescribed information regarding their respective businesses and the proposed transaction, and wait a specified period of time before consummating the transaction. The statutory “waiting period” stays consummation of the transaction for a minimum of 30 days (15 days in the case of bankruptcy or cash tender offers), absent a grant of early termination. However, the agencies have not been granting early terminations in the ordinary course since February 2021, when the FTC announced the procedure suspended indefinitely in light of an “unprecedented volume” in HSR filings. As a result, even transactions raising no competitive concerns are required to observe the full 30-day waiting period if the HSR Act notification thresholds are met.

Revised Notification Thresholds

The 2000 amendments to Section 7A of the Clayton Act mandate annual adjustments of the HSR Act thresholds each year, based on changes in the gross national product. Due to U.S. GNP growth in 2021, the revised jurisdictional and filing fee thresholds for this year increase the dollar amount limits for the Size of Transaction and the Size of Person at which parties to a transaction are required to make an HSR filing, as well as the filing fee thresholds. Many of the other filing requirements related to dollar amounts in the HSR Act have similarly been increased to remain consistent with the revised jurisdictional and filing fee thresholds. Any transactions that were expected to trigger HSR notification requirements based on the 2021 thresholds should be reevaluated if closing may occur on or after February 23, 2022.

An overview of the updated thresholds for the most common HSR filing issues is included below.

New Jurisdictional Thresholds

	Revised 2022 Thresholds	2021 Thresholds
Size of Transaction Test	The Acquiring Person will hold, as a result of the transaction, an aggregate total amount of voting securities, assets and/or interests in non-corporate entities of the Acquired Person valued at in excess of \$101 million .	\$92 million
Size of Person Test	Transactions valued at more than \$403.9 million are reportable, regardless of the size of person test above.	\$368 million
	One party has annual net sales or total assets of \$202 million or more, and the other party has annual net sales or total assets of \$20.2 million or more.*	\$184 million \$18.4 million
Subsequent Acquisitions of Voting Securities	Voting securities valued at \$202 million or more;	\$184 million
	Voting securities valued at \$1.0098 billion or more;	\$919.9 million
	Voting securities constituting 25% of the issuer's securities if valued at more than \$2.0196 billion ; and	\$1.8398 billion
	Voting securities constituting 50% of the issuer's securities if valued at more than \$101 million .	\$92 million

* Where the target is not engaged in manufacturing, it must have total assets of \$20.2 million or annual net sales of \$202 million to satisfy the lower Size of Person threshold.

New HSR Filing Fee Ranges

Filing Fee	Revised 2022 Filing Fee Thresholds	2021 Thresholds
\$45,000	Transactions valued at more than \$101 million but less than \$202 million .	\$92 million \$184 million
\$125,000	Transactions valued at \$202 million or more but less than \$1.0098 billion .	\$184 million \$919.9 million
\$280,000	Transactions valued at more than \$1.0098 million .	\$919.9 million

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