

2022 Hart-Scott-Rodino Requirements

What You Need To Know

Hart-Scott-Rodino (HSR) filing thresholds will be adjusted upward effective February 23, 2022.

What You Need To Do

Parties involved in a merger or acquisition should analyze whether it will exceed the new thresholds. The HSR Act dollar thresholds are adjusted each year. The next set of adjustments will take effect on February 23, 2022. These adjustments may affect whether a company is required to make a premerger notification filing in any given transaction.

By way of background, the HSR Act is designed to provide notice to the federal antitrust enforcement agencies (the Federal Trade Commission and the U.S. Department of Justice Antitrust Division) in advance of large mergers and acquisitions. Where the HSR Act applies, the parties to such a transaction must submit a detailed form, along with copies of certain internal documents and consultant documents accompanied by a filing fee (\$45,000, \$125,000 or \$280,000, depending on the size of the transaction). When Congress passed the HSR Act in 1976, Congress set dollar thresholds for its application, and those dollar amounts stayed frozen for 24 years. Congress then reformed the HSR law in 2000 by increasing the thresholds and by providing that they will be adjusted for changes in the U.S. gross national product.

Adjusted Filing Thresholds as of 2022

The dollar figures for this year have been increased, because the nation's overall economic activity increased. Below is a short reference:

2000 Threshold	2021 Threshold	Revised 2022 Threshold
\$10 million	\$18.4 million	\$20.2 million
\$50 million	\$92 million	\$101 million
\$100 million	\$184 million	\$202 million
\$200 million	\$368 million	\$403.9 million

By way of brief review, and after giving effect to the 2022 adjustments to the thresholds, in most instances the parties to a transaction must make an HSR filing if:

- One party has a size of at least \$202 million (measured by sales or assets);
- The other party has a size of at least \$20.2 million (measured by sales or assets if engaged in manufacturing; by assets, usually, if not engaged in manufacturing); and
- The size of the transaction is at least \$101 million.

Regardless of the size of the parties, an HSR filing will be required if the size of the transaction is at least \$403.9 million. These figures will be adjusted for changes in GNP again next year.

Some transactions that would have required an HSR filing last year will not require a filing if they close on or after February 23, 2022. For example, the new size-of-transaction threshold will be \$101 million. Suppose a given transaction has a size of \$93 million. If this transaction closes before February 23, it will require an HSR filing—if the other tests are met—because it is above the current threshold figure of \$92 million. If this transaction closes on or after February 23, however, it will not require an HSR filing.

The FTC and DOJ are discussing potential major changes to merger enforcement, and as a result HSR review may include some unexpected activity this year. Toward the end of 2020, the FTC invited comments on a set of important proposed revisions to the HSR regulations. Under the current regulations, each private equity fund is usually its own “person” for HSR purposes. Under the proposed new regulations, the HSR “person” will include all funds that have the same manager. Once the new regulations go into effect, it will take more time and effort to prepare an HSR filing for a private equity fund, and some transactions will require an HSR filing that would not have required a filing under the current regulations. To date the FTC has not responded to comments and has not stated when any new regulations will go into effect.

HSR analysis often involves nuances and detailed rules. The parties should consult counsel early in the planning of any transaction that has the potential to cross these thresholds.

If you have questions about these developments, please contact one of the following attorneys.

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