

HART-SCOTT-RODINO FILING FEES TO DRAMATICALLY INCREASE FOR LARGER DEALS

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The Consolidated Appropriations Act of 2023¹ recently passed by Congress and signed by President Biden will dramatically restructure the filing fees charged for the submission of Hart-Scott-Rodino (HSR) filings typically required for mergers and acquisitions meeting certain financial thresholds.² For larger deals, the fees will increase significantly.

Currently, HSR filings require payment of the following fee, based upon the value of the transaction:

Transaction Value (Adjusted Annually)	Filing Fee
More than US\$101 million but less than US\$202 million	US\$45,000
At least US\$202 million but less than US\$1.0098 billion	US\$125,000
US\$1.0098 billion or more	US\$280,000

Once published by the FTC's Premerger Notification Office, the filing fees for HSR filings will be adjusted as follows:

Transaction Value (Adjusted Annually)	Filing Fee
More than US\$101 million but less than US\$161.5 million	US\$30,000
At least US\$161.5 million but less than US\$500 million	US\$100,000
At least US\$500 million but less than US\$1 billion	US\$250,000
At least US\$1 billion but less than US\$2 billion	US\$400,000
At least US\$2 billion but less than US\$5 billion	US\$800,000
At least US\$5 billion	US\$2,250,000

Thus, the filing fee will decrease for smaller transactions, but will increase substantially for larger deals. Implementation of the new fee structure is expected to occur in early 2023.

While payment of the filing fee is ultimately the responsibility of the buyer under HSR regulations, the fee may be allocated between the parties by agreement. For larger deals, it is expected that fee payment will increasingly be

a negotiated item in the acquisition or merger agreement. Additionally, with the prospect of having three additional fee thresholds for reportable acquisitions and considerably higher filing fees, the determination of transaction value for HSR purposes will become increasingly important and parties should consider consulting with HSR counsel earlier in the process.

For more information, please contact the authors or any other member of the K&L Gates antitrust team.

FOOTNOTES

¹ H.R. 2617, 117th Cong. (2021–2022).

² See 15 U.S.C. § 18a. An HSR filing is commonly required for transactions currently valued in excess of US\$101 million where the parties meet certain revenue or asset thresholds. The amount is adjusted annually for inflation, typically in late January.

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