

## Antitrust/Competition

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# Federal Trade Commission Announces Higher 2022 HSR Thresholds

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The Federal Trade Commission has announced new, nearly 10 percent higher premerger notification thresholds that will take effect February 23, 2022, and thus apply to transactions closing on or after that date. The new minimum size-of-transaction threshold will be \$101 million.

Under the 2001 amendments to the Hart-Scott-Rodino (HSR) Act, 15 U.S.C. 18a, the act's jurisdictional thresholds are adjusted annually to reflect changes in nominal (non-inflation-adjusted) gross national product.

The increase in the minimum size-of-transaction threshold to \$101 million from the 2021 threshold of \$92 million is the largest such increase in both dollar and percentage terms since annual adjustments began in 2005.

The annual adjustments pursuant to the 2001 HSR Act amendments have resulted in the minimum size-of-transaction threshold more than doubling from the \$50 million threshold established by those amendments (which increased the original \$15 million threshold that was established in 1976).

### Adjustments to size-of-transaction thresholds

*Transactions that are never reportable:* A transaction that results in holdings of \$101 million or less will not require HSR notification.

*Transactions that are always reportable:* At the other end of the size spectrum, a transaction that results in holdings of more than \$403.9 million will trigger HSR notification and waiting requirements unless an exemption from filing applies.

*Transactions that may be reportable:* For transactions resulting in holdings falling between these two size-of-transaction thresholds (that is, greater than \$101 million but no greater than \$403.9 million), whether HSR applies depends on whether both parties meet the size-of-person thresholds. (Note that these thresholds apply to the size of the *parties* and not merely to the size of the acquiring entity and the acquired entity, so it is necessary to look to the ultimate parent entity of each and include all entities controlled by it.)

### Adjustments to size-of-person thresholds

The adjusted size-of-person thresholds for 2022 are \$20.2 million and \$202 million, meaning that acquisitions resulting in holdings greater than \$101 million but no greater than \$403.9 million will not require HSR notification unless one person has total assets or annual net sales of \$20.2 million or more and the other person \$202 million or more. (Note that, additionally, if the acquired person is not engaged in manufacturing, it must have annual net sales of \$202 million or total assets of \$20.2 million.)

### What else changes?

The HSR Rules (16 CFR parts 801-803) provide several exemptions that contain dollar value limitations described by the parenthetical "(as adjusted)." Those limitations (for example, the nexus with commerce limitations for the exemptions for acquisitions of foreign assets (16 CFR 802.50) and acquisitions of voting securities of a foreign issuer (16 CFR 802.51)) will also be adjusted upward.

The HSR Rules also provide, for voting securities acquisitions, "notification thresholds" (see 16 CFR 801.1(h)) setting forth levels of holdings that would require another HSR notification. (Note, however, that once the 50 percent level is reached, no additional notification is required.) As the dollar values for these notification thresholds are set forth with the parenthetical "(as adjusted)," they will similarly be adjusted upward.

The 2001 amendments established a sliding scale for HSR filing fees, with fees of \$45,000, \$125,000, or \$280,000 based on the transaction value. While the filing fees themselves are not adjusted annually, the points at which the different fees apply are adjusted, so that the \$45,000 fee will apply to transactions valued in excess of \$101 million but less than \$202 million, the \$125,000 fee to transactions valued at \$202 million or greater but less than \$1.0098 billion, and the \$280,000 fee to transactions valued at \$1.0098 billion or greater.

## HSR Thresholds

(in millions)

Base Threshold (HSR Act or Rules)	2021 Threshold	2021 Threshold (effective March 4, 2021)
\$10	\$18.4	\$20.2
\$50	\$92	\$101
\$100	\$184	\$202
\$110	\$202.4	\$222.2
\$200	\$368	\$403
\$500	\$919.9	\$1,009.8
\$1,000	\$1,839.8	\$2,019.6

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