

US Legislation Implements New Filing Fees, Adds Foreign Subsidy Disclosure Requirements to HSR Rules

Congress passes the Merger Filing Fee Modernization Act of 2022, changing Hart-Scott-Rodino Act filing fees and adding disclosure requirements for certain foreign subsidies.¹

On December 23, 2022, as part of a broader omnibus spending bill, Congress passed the Merger Filing Fee Modernization Act of 2022 (Fee Modernization Act), which was signed into law by President Biden on December 29, 2022. The Fee Modernization Act reduces the merger notification filing fees for some smaller reportable transactions, while increasing the fees for larger transactions. The FTC is expected to announce the effective date of the new fees shortly. In addition, the Fee Modernization Act imposes new disclosure obligations on parties that have received a subsidy from a foreign entity of concern, among other changes.

New HSR Filing Fee Structure

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), parties to mergers and acquisitions that exceed certain transaction- and party-size thresholds must file premerger notifications with the Federal Trade Commission and Department of Justice, pay a filing fee, and comply with statutory waiting periods before consummating their transactions.

Under the Fee Modernization Act, HSR filing fees will be as follows for 2023:

HSR Filing Fees ²	
Size of Transaction	HSR Filing Fee
< \$161.5 million	\$30,000
\$161.5 million – \$499.999 million	\$100,000
\$500 million – \$999.999 million	\$250,000
\$1 billion – \$1.999 billion	\$400,000
\$2 billion – \$4.999 billion	\$800,000
≥ \$5 billion	\$2,250,000

This new fee structure reflects several changes compared to the prior HSR filing fee structure.

- **Large deals will incur substantially higher filing fees.** Previously, deals valued over \$1 billion faced a filing fee of \$280,000. Under the new legislation, those filing fees will increase substantially depending on deal value: transactions valued between \$1 billion and \$2 billion will incur a \$400,000 fee; transactions between \$2 billion and \$5 billion will incur an \$800,000 fee, and deals valued at or over \$5 billion will incur a filing fee of \$2.25 million.
- **Smaller deals will have lower filing fees.** Reportable transactions with a value of less than \$161.5 million will have a filing fee of \$30,000, instead of \$45,000 under the prior fee structure.
- **There will be more fee levels for medium-sized deals.** Historically, all deals between \$201 million and \$1 billion incurred a \$125,000 filing fee. Under the new structure, moderately sized deals will have more fee levels: deals valued from \$161.5 million to less than \$500 million will have a \$100,000 fee, while deals valued from \$500 million to less than \$1 billion will have a \$250,000 fee.
- **The HSR fees will now vary by year.** Under the new structure, HSR filing fees will be increased annually by an amount equal to the percentage increase in the Consumer Price Index, if any, as determined by the Department of Labor.

New “Foreign Entity of Concern” Subsidy Disclosure Requirements

The Fee Modernization Act adds a foreign subsidy disclosure requirement to the HSR notification process. Under this new reporting requirement, any person filing HSR that received a subsidy from a “foreign entity of concern” must disclose information regarding that subsidy as part of their HSR notification.

For purposes of this notification requirement, a “foreign entity of concern” includes the following:³

- Entities owned by, controlled by, or subject to the jurisdiction or direction of China, Russia, Iran, or North Korea (covered nations)
- Entities designated as foreign terrorist organizations
- Entities on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury
- Entities alleged by DOJ to have been involved in activities for which a conviction was obtained under the Espionage Act, the Arms Export Control Act, the Atomic Energy Act, the Export Control Reform Act, or the International Emergency Economic Powers Act
- Entities determined to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States

The legislation defines “subsidy” broadly as including not only direct subsidies but also grants, loans, loan guarantees, tax concessions, preferential government procurement policies, and government ownership or control. The Fee Modernization Act does not define the scope of the required subsidy disclosures. Instead, the legislation requires FTC and DOJ to work with the Chairperson of the Committee on Foreign Investment (CFIUS) and other stakeholders to define the required subsidy disclosures. Rulemaking defining the scope of these disclosure obligations will follow shortly.

The addition of subsidy disclosure requirements to the US HSR reporting process parallels other jurisdictions that have added foreign subsidy disclosures to their merger control regimes. In particular, the European Union's Foreign Subsidies Regulation (FSR) (effective mid-2023) will require that mergers, acquisitions, and other transactions be notified to the European Commission (EC) if one of the merging parties generates a turnover of at least €500 million in the EU and all merging parties receive aggregate financial contributions from non-EU countries totalling over €50 million in their last three financial years.⁴ Although the EC's process is broader in scope than the new US subsidy disclosure rules (since FSR will not be limited to covered nations), both the EU and the US addition of subsidy disclosure requirements reflects a growing concern about the impact that subsidized competition may have on global markets.

If you have any questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Lindsey S. Champlin
lindsey.champlin@lw.com
+1.202.637.2122
Washington, D.C.

Ian R. Conner
ian.conner@lw.com
+1.202.637.1042
Washington, D.C.

Jason D. Cruise
jason.cruise@lw.com
+1.202.637.1033
Washington, D.C.

Makan Delrahim
makan.delrahim@lw.com
+1.424.653.5421
+1.202.637.2102
Century City / Washington, D.C.

Alan J. Devlin
alan.devlin@lw.com
+1.202.637.1071
Washington, D.C.

Michael G. Egge
michael.egge@lw.com
+1.202.637.2285
Washington, D.C.

Kelly Fayne
kelly.fayne@lw.com
+1.415.646.7897
San Francisco

Joshua N. Holian
joshua.holian@lw.com
+1.415.646.8343
San Francisco

Hanno F. Kaiser
hanno.kaiser@lw.com
+1.858.509.8458
+1.415.391.0600
San Diego / San Francisco

Farrell J. Malone
farrell.malone@lw.com
+1.202.637.1024
Washington, D.C.

Amanda P. Reeves
amanda.reeves@lw.com
+1.202.637.2183
Washington, D.C.

Katherine A. Rocco
katherine.rocco@lw.com
+1.212.906.1215
New York

E. Marcellus Williamson
marc.williamson@lw.com
+1.202.637.2200
Washington, D.C.

Jason L. Daniels
jason.daniels@lw.com
+1.415.646.7857
San Francisco

Britton Dale Davis
britton.davis@lw.com
+1.202.654.7103
Washington, D.C.

Patrick C. English
patrick.english@lw.com
+1.202.637.1030
Washington, D.C.

Joseph A. Simei
joseph.simei@lw.com
+1.202.637.2147
Washington, D.C.

Peter M. Todaro
peter.todaro@lw.com
+1.202.637.2380
Washington, D.C.

Sean Patrick Mulloy
sean.mulloy@lw.com
+1.202.637.1054
Washington, D.C.

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Endnotes

¹ See Latham’s Client Alert 2924 [Annual HSR Threshold Adjustments Announced for 2022](#) for a more complete description of the HSR Act’s annual filing thresholds.

² All values are in US\$.

³ See 42 USC §18741(a) (defining foreign entities of concern).

⁴ See [Latham’s Client Briefing: EU Regulation on Foreign Subsidies](#)