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Merger Filing Fee Increases Among Antitrust Measures Included in 2023 Spending Bill

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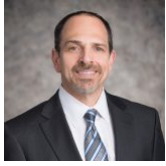
December 27, 2022 - The government spending bill passed by Congress on December 23 includes several antitrust measures. The most notable of these makes significant changes to pre-merger notification filing fees, with the goal of increasing the financial resources available to antitrust enforcers. President Biden is expected to sign the bill into law imminently.

The Merger Filing Fee Modernization Act establishes a new filing fee structure for transactions that require Hart-Scott-Rodino pre-merger filings, decreasing the filing fee required for most transactions while raising fees significantly for the largest deals. The new fee structure is as follows: (i) transactions valued at under \$1 billion will incur fees ranging from \$30,000 to \$250,000; (ii) transactions valued between \$1 billion and \$2 billion will require a \$400,000 filing fee; (iii) transactions valued between \$2 billion and \$5 billion will require a \$800,000 fee; and (iv) transactions valued above \$5 billion will require a \$2.25 million fee. Future fee increases will be tied to inflation. By contrast, the previous fee structure sets fees at a minimum of \$45,000 for smaller reportable transactions, and a maximum of \$280,000 for transactions valued at \$1.00098 billion or more. Following enactment of the bill, the FTC is expected to issue guidance regarding when the new fee structure will take effect.

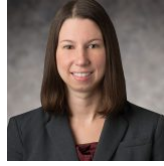
The bill also incorporates the State Antitrust Enforcement Venue Act, which protects the ability of state antitrust enforcers to litigate cases in their chosen venue. The law prevents antitrust lawsuits filed by state attorneys general from being transferred to other district courts by the federal Judicial Panel on Multidistrict Litigation. Suits brought by the FTC and the DOJ already receive this protection. The act will not apply retroactively to matters that are already pending.

Finally, the bill includes the Foreign Merger Subsidy Disclosure Act, which will require pre-merger notifications to disclose detailed information regarding foreign subsidies such as loans, grants, tax concessions, government ownership or control, and other forms of assistance from certain "foreign entities of concern." The applicable definition of "foreign entities of concern" includes entities owned or controlled by, or subject to the jurisdiction of, certain foreign governments, including China, Iran, North Korea, and Russia.

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