

Insights

U.S. ANTITRUST AGENCIES PROPOSE MAJOR CHANGES TO PRE-MERGER REVIEW PROCESS

Jun 29, 2023

On June 27, 2023 the Federal Trade Commission, with the concurrence of the Antitrust Division of the Department of Justice, (together, the “Agencies”) [announced](#) proposed amendments to the premerger notification rules that implement the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended, the “HSR Act”). Among other things, the proposed amendments include a thorough revamping of the Premerger Notification and Report Form (the “HSR Form”) that parties are each required to complete if their transaction is reportable under the HSR Act.

As it [stands today](#), the HSR Act rules require parties to reportable transactions to include in their HSR Forms certain information about the parties themselves and their proposed transaction for review by the Agencies, and to wait a specified period (usually 30 days) before consummating their deal. The proposed amendments would substantially increase the amount of information parties would need to provide in their HSR Forms and also the scope and type of the parties’ documents that are required to be submitted with the HSR Forms. Key proposed changes include the following new requirements:

- Details about the transaction rationale, structuring, timelines and key deal-team personnel;
- Disclosure of additional transaction documents, potentially including draft agreements and any other agreements between the parties;
- Projected revenue streams, transactional analyses and internal ordinary-course documents describing market conditions;
- Disclosure of details relating to investment vehicles, the structure and ownership of entities involved (such as private equity funds), and relationships with other entities;
- Translations of foreign-language documents;
- Information in narrative form related to products or services for which the parties are actual or potential horizontal competitors as well as vertical business relationships between the parties, such as supply agreements;

- Information regarding buyer group's prior acquisitions over the previous 10 years;
- Disclosure of subsidies or grants from particular foreign governments;
- Disclosure of information regarding the parties' employees to allow the Agencies to evaluate the potential effect of the transaction on labor markets;
- Information about other merger control jurisdictions that will review the transaction (previously a voluntary option);
- Identification of communication and messaging systems used by the parties; and
- A voluntary waiver to permit sharing of information submitted in the HSR review process with state attorneys general and international competition authorities.

The proposed amendments, if implemented unchanged, would substantially increase the information-gathering burden on parties required to file HSR Forms and may have a meaningful impact on deal timetables as parties negotiate their deals and work towards closing. The public will have the opportunity to comment on the proposed rules for at least 60 days after they are published in the Federal Register, which is scheduled for June 29. The proposed amendments are subject to change in response to public comments, and the timetable for the final release of new rules is not set.

Our antitrust team will be engaged with the Agencies and closely tracking these proposed amendments as they progress through the review and comment period. We will be ready to guide clients through whatever changes are ultimately made to the rules and to the HSR Form. Don't hesitate to contact us for guidance and advice as to what these changes could mean to your transaction.

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