

Insights: Alerts

FTC and DOJ Issue Final Changes to HSR Premerger Notification Form

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Fifteen months ago, the FTC and DOJ proposed a radical expansion of the information required to be provided to the antitrust agencies by merging parties as part of a premerger notification filing under the Hart-Scott-Rodino (HSR) Act. On October 10, 2024, the FTC and DOJ finally issued the Final Rule ([Final Rule: Premerger Notification: Reporting and Waiting Requirements | Federal Trade Commission \(ftc.gov\)](#)) removing or scaling back many of the most controversial and burdensome proposed changes, but nevertheless substantially increasing the breadth and scope of the information required from merging parties. When the Final Rule goes into effect in January 2025 (90 days after publication in the Federal Register), the FTC will simultaneously lift the “temporary” suspension of its “early termination” procedures designed for expedited review of transactions with no competitive complexities.

The Final Rule, issued upon a unanimous 5-0 Commission vote, revamps the HSR form used to screen proposed mergers – a form which had remained largely unchanged for 48 years. Under the new form, merging parties will have to provide additional information not previously required with an initial HSR filing, including for example:

- Additional transaction documents from each merging firm's deal team lead;
- High-level business plans related to competition and market shares;
- A description of competitive overlaps of the merging firms citing company documents accompanying the HSR filing;
- The most recent year's sales data (by value) for all overlapping products or services;
- The 10 largest customers in the most recent year (by units and sales) and the 10 largest customers for each customer category in overlapping products/services;
- Description of business lines of each firm (including products and services that are in development that could compete);
- Details on contractual and supply relationships of the merging firms to include a description of products, services, or assets representing at least \$10 million in sales that are (i) sold to or purchased from the other party or (ii) sold to or purchased from a business that competes with the other party;
- Identity of investors in the buyer including those with management rights; and
- Information on subsidies received from certain foreign governments or entities that are deemed strategic or economic threats to the U.S. (currently China, Iran, North Korea, and Russia).

The Final Rule also jettisons many of the most controversial and burdensome elements of the agencies' Proposed Rule issued in June 2023. For example, the Final Rule does not include any requirements for Labor Market information such as classification of employees within U.S. Bureau of Labor Statistics codes or U.S. Dept of Agriculture ERS commuting zones. The Final Rule also abandoned the Proposed Rule's requirement that merging parties provide all drafts of transaction-related documents sent to a company officer, director, or deal team lead. Also discarded were several of the Proposed Rule's requirements to provide documents from a broader array of company employees.

Despite the scaling back of many requirements outlined in the Proposed Rule, the Final Rule will nevertheless significantly increase the burden and time to prepare HSR Filings. The FTC estimates an average of 68 additional hours required to prepare an HSR Filing under the Final Rules, with an average high of 121 hours for filings from acquiring persons in transactions with competitive overlaps or supply relationships. Most antitrust practitioners believe the actual burdens will be significantly greater than the FTC's estimates.

Some takeaways for parties considering a transaction under the Final Rule include, at a minimum:

- Consider whether a transaction can be signed (including under a letter of intent) and the HSR filing made prior to the implementation of the Final Rule in January 2025.
- If filing HSR under the Final Rule, extend the time in deal agreements allotted for preparing and filing the HSR from the traditional 5 or 10 business days.
- Select a supervisory deal team lead early in the process as merging parties will need to submit certain documents on competitive issues from that individual (as well as from officers and directors).
- Work early in the process to collect any private equity structure information that will be required to be submitted with the HSR filing.
- Be careful in creating documents as ordinary course documents about competition (including markets, market shares, competitors, etc.) will be required to be submitted if shared with the HSR filer's CEO.

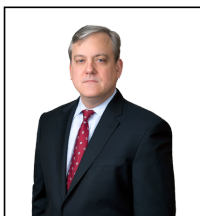
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