

# U.S. Antitrust Agencies Propose Sweeping Changes to the HSR Premerger Notification Program

## Publications

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On June 27, 2023, the Federal Trade Commission (“FTC”) in collaboration with the Department of Justice (“DOJ”) announced a proposal to overhaul the Hart-Scott-Rodino (HSR) Act premerger notification program. If adopted, the new requirements would dramatically increase the time and cost of preparing filings. The FTC estimates that the new rules will increase the time filers need to prepare the HSR filing by 12 to 222 hours per submission, imposing a substantial burden on transacting parties.

Filings under the proposed rules would require a competitive analysis and additional related information, including:

- A description of horizontal overlaps and supply relationships between the parties.
- Detailed descriptions of all vertical relationships between the transacting parties.
- A detailed description of the strategic rationale for the transaction.
- Company location information at the street-address and latitude-longitude level for certain overlaps in NAICS codes.
- Detailed information regarding acquisitions within the last 10 years of businesses that offer a product that overlaps with the other party.
- A narrative describing business lines, operations, products, and services, and identifying which subsidiaries and operations generate which revenues.
- Projected revenue streams for pre-revenue companies and products.
- Mandatory disclosure of required foreign merger control filings (currently voluntary).

In its Notice, the FTC justified these sweeping changes due to deal volume growth and increasing complexities of transactions because the current rules were implemented 45 years ago. Further,

the FTC mentioned that expanding the necessary information would align the U.S. merger control filing process more closely with the standards of other jurisdictions, most notably the European Union standard merger notification form (“Form CO”).

The proposed HSR rules are reflective of an U.S. antitrust landscape that is already complex and difficult to navigate. These changes will thus heighten the importance of involving antitrust counsel early in the deal process.

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