

New HSR Form and Rules

Publications

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On October 10, 2024, the Federal Trade Commission (FTC) unanimously approved changes to the premerger filings required under the Hart-Scott-Rodino (HSR) Act. The new rules go into effect on February 10, 2025, after which any transactions that are notifiable under the HSR Act must use a new HSR form.

The new rules do not modify the filing thresholds and do not affect the substantive merger review process. Instead, the new rules will require far more information and documents to be submitted alongside most premerger filings. Accordingly, parties to HSR-reportable deals should expect an increased burden in preparing their HSR filings and gathering the required information.

Narrative Description Requirements, Data, and Customer Lists - The new rules introduce two new requirements that are applicable to both the acquiror and the target parties: First, a filer must describe and identify current or planned products or services that may overlap or compete. To the extent there is an overlap, parties must produce all plans and reports that address such overlaps. Second, a filer must identify significant existing or potential supply relationships and overlaps in such relationships. Finally, with respect to such overlapping products and services, the parties must list out the prior year's top ten customers.

Three Transaction Categories - Under the new rules, there are three types of HSR-reportable transactions:

- First, the FTC created a new category of transactions called “select 801.30 transactions.” These are transactions where the acquiror will not gain control over the target, will not have any rights of appointing board members, and will not have any written agreement with the target. Because select 801.30 transactions are expected to have a minimal impact on competition, the FTC exempted the transactions from the certain requirements otherwise posed by the new rules.
- Next, the new rules provide for a category of transactions where there are no reportable competitive overlaps. These are transactions where there are i) no NAICS code overlaps and ii) no overlaps as reported in the descriptions. The FTC noted that these transactions have limited antitrust risks and are therefore exempt from some, although not all, of the new disclosure requirements under the new rules.

- Finally, transactions with overlaps or supply relationships are subject to the reporting requirements under the new rules.

Disclosure of Subsidies from Foreign Entities or Governments of Concern - The new rules require parties to disclose whether they have received, within the two years prior to the HSR filing, any subsidy from any “foreign entity or government of concern.”

Disclosure of Organizational Structure - The acquiring party must provide a description of its ownership structure. To the extent that private equity stakeholders exist, the acquiring party must provide an organizational chart illustrating the relationships between the sponsor’s affiliates and its associates.

Translation of Foreign Documents - The new rules require filing parties to provide verbatim translations of all foreign language documents into English. The FTC notes that such translations must be “readily understood, materially accurate, and complete.”

Prior Acquisition Information by the Acquired Party - The new rules require both parties to report acquisitions that occurred in the last five years for any transaction where the acquired entity had at least \$10 million in annual net sales or total assets in the year preceding the transaction.

Significant Additional Document Requirements

- The new rules require filing parties to provide copies of any responsive 4(c)/(d) documents that were shared with *any* member of the board of directors.
- Filing parties must submit all regularly prepared plans and reports—within one year of the HSR filing—that were provided to the CEO, if such documents analyze competitive topics related to overlapping products or services.
- Finally, parties must submit transaction-related documents from the supervisory-deal team lead that describe the deal rationale or otherwise touch on issues of competition.

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