

FTC and DOJ Propose Overhaul of Merger Filings

Alert

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By Bill Kearney

On June 27, 2023, the Federal Trade Commission, in concurrence with the U.S. Department of Justice's Antitrust Division (the Agencies), proposed changes to the premerger notification form, as well as the premerger notification rules implementing the Hart-Scott-Rodino (HSR) Act. The HSR Act and its implementing rules require the parties to certain mergers and acquisitions to submit premerger notification to the Agencies and to wait a specified period of time before consummating their transaction.

The proposed changes implement mandates as required by the Merger Filing Fee Modernization Act of 2022 that would require filers to provide information on subsidies received from certain foreign government or entities that are strategic or economic threats to the United States.

The proposed changes would also require filers to submit additional information providing the Agencies with a more complete picture of a proposed transaction's competitive impact. Some of these additional information requests include: key information about the terms of the transaction and the transaction rationale; employee information to assess the impact on labor markets; horizontal product or service overlaps; additional transaction and strategic documents, as well as ordinary-course business documents that discuss competition in the markets affected by the transaction; disclosure of any foreign jurisdictions that must review the deal; and information about previous acquisitions.

These proposed changes aim to provide the Agencies with a more complete picture of a proposed transaction's competitive impact and enhance the Agencies' ability to complete the review of a reportable transaction within the initial waiting period, which is typically 30 days.

It is unclear exactly when these changes will take effect, or whether the proposed rule will be enacted as currently proposed. The Notice will be published in the *Federal Register* later this week and then go out for public comment. Comments are due 60 days after publication. For more details about the Notice of

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Proposed Rulemaking, please read the related [FAQ on the *Federal Register* Notice page](#).

Merging parties should note that, if enacted as proposed, the changes will increase the burden on the filing parties and will result in longer timelines to file, which could impact the timing of closing of transactions. Parties likely to have transactions late this year or in 2024, should consult antitrust counsel to discuss the Agencies' proposal.

For more information on changes to the HSR Act rules, please contact [Jeetander Dulani](#), Bill Kearney, [Nicci Warr](#) or the Stinson LLP contact with whom you regularly work.

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