

FTC Finalizes Changes to Premerger Notification Form

Alert

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On October 10, 2024, the Federal Trade Commission (FTC) [announced](#) long-awaited finalized changes to the premerger notification form and associated instructions, as well as the [premerger notification rules implementing the Hart-Scott-Rodino \(HSR\) Act](#). The HSR Act and its implementing rules require the parties of certain mergers and acquisitions to submit premerger notification (HSR forms) to the federal government and to wait a specified period before consummating their transaction. The FTC and Antitrust Division of the U.S. Department of Justice (DOJ) use this information to conduct a premerger assessment during the “waiting period” of the HSR Act, typically 30 days.

According to the FTC’s press release, “[t]he final rule implements changes that will improve the ability of the FTC and Antitrust Division of the U.S. Department of Justice (DOJ) to detect illegal mergers and acquisitions prior to consummation.” Proposed changes to the HSR rules and forms were announced by the FTC, with the concurrence of the DOJ, on June 27, 2023. Yesterday’s final rule incorporates public feedback about the proposed changes. In response to public comments, the FTC revamped its proposals.

KEY CHANGES

The new HSR rules require more detailed information and additional information in several areas, including:

- Terms of the transaction and the rationale for the transaction.
- Structure of entities involved in the transaction, such as minority private equity investors.
- Transaction and strategic documents, as well as additional ordinary-course business documents that discuss competition in the markets affected by the transaction (collectively called 4(c) documents), to

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include any documents prepared for the deal team leaders (rather than only those prepared for officers and directors of the merging entities).

- Sales and customer information in overlapping business lines.
- Sales and customer information in non-horizontal business relationships (such as supply relationships) and products and services still in the development stage.

The final rule also requires parties to disclose information on subsidies received from certain foreign governments or entities that are strategic or economic threats to the United States.

Several requirements that existed in the 2023 proposed rule were removed from the final rule, including:

- Submission of employee information under Standard Occupational Classification to assess the effect of the transaction on labor markets.
- Submission of draft 4(c) documents.

ADDITIONAL INFORMATION

Along with these changes to the HSR rules and form, the FTC is introducing a [new online portal](#) for market participants, stakeholders, and the public to directly submit comments on proposed transactions that may be under review.

The final rule will become effective 90 days after it is published in the *Federal Register*.

Merging parties should understand that the changes to the HSR rules and form will increase the burden on the filing parties and result in longer filing timelines, which could impact the timing of closing transactions. This will be particularly true in transactions where there is an identified overlap. Merging parties can use the old HSR form to file 89 days from publication in the *Federal Register*, regardless of the closing date of the transaction.

Following the final HSR rule coming into full effect, the FTC will also lift its temporary suspension on issuing early termination of the HSR waiting period instituted during the COVID-19 pandemic. This may provide merging parties in less complicated transactions with a quicker determination on their transaction and more certainty on the ability to close.

The FTC's [press release](#) and [final rule](#) provides more information about the changes to the premerger notification process. Additional compliance information will be shared on the FTC's Premerger Notification Office's website in the weeks to come.

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