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M&A Antitrust Update: FTC Approves Significant Changes to HSR Filings

The Federal Trade Commission (FTC) announced it approved changes to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), as amended, that apply to parties who enter into HSR Act reportable mergers, acquisitions, and joint ventures. The HSR Act governs which transactions must be reported to the FTC and U.S. Department of Justice (DOJ) prior to their consummation through a HSR filing, along with what information must be disclosed as part of a HSR filing. The final changes to the HSR Act increase the amount of information and documents that must be disclosed by parties who must submit HSR filings. The changes will likely go into effect in January 2025—90 days after the FTC's publication of the final rule in the Federal Register.

HSR filings will require more time, information

Proposed revisions to the HSR Act were previewed in June 2023, the first major overhaul of the HSR Act in more than 45 years. The final changes to the HSR Act, unanimously approved by the FTC, represent a scaled-down version of the June 2023 draft rule. However, the final rule still includes significant revisions to the HSR filing process that will require filing parties to submit additional information and incur additional time and expense to prepare their HSR filings. The FTC estimates that a filing under the new rule will require, on average, 68 additional hours to prepare.

Starting in early 2025, the final HSR rules will require parties submitting HSR filings to include:

Additional transaction documents from the supervisor of each party's deal team as well as high-level business plans relating to competition, including

ordinary course documents unrelated to the transaction if they were shared with CEOs and boards of directors;

A description of the business lines of each party regarding existing areas of competition between the parties (including for products or services that are in development) and supply relationships;

Disclosure of investors in the buyer, including those with management rights.

FTC announces new public portal for comments

The FTC also announced a new online portal for market participants, stakeholders, and the general public to submit comments on proposed transactions that may be under review by the FTC. The FTC states it wants to hear from the public regarding “specific transactions and how they may affect competition from consumers; workers; suppliers; rivals; business partners; advocacy organizations; professional and trade associations; local, state, and federal elected officials; academics; and others.”

What this means to you

For companies or organizations evaluating growth and expansion opportunities, the newly finalized changes to the HSR filing process will increase deal timelines, the parties’ time and expense, and the potential risk that a transaction will be reviewed by the FTC and DOJ. Companies evaluating a merger or acquisition that is reportable under the HSR Act should take into account the potential for increased scrutiny by the agencies, along with a longer timeline to prepare the HSR filing.

Contact us

If you have any questions relating to the HSR Act thresholds or the new final rule, please contact Wendy Arends, Victoria Sitz, Mark Tobey, Kelsey Toledo, Blake Heyer, or your Husch Blackwell attorney.