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FTC Finalizes Changes to Premerger Notification Form

Final rule fills information gaps to ensure effective antitrust review

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The Federal Trade Commission voted unanimously to finalize changes to the premerger notification form and associated instructions, as well as the premerger notification rules implementing the Hart-Scott-Rodino (HSR) Act.

The [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.

The final rule requires additional information that is necessary to determine which deals require an in-depth antitrust investigation, including through the issuance of Second Requests. The Commission is responding to changes in corporate structure and deal-making, as well as market realities in the ways businesses compete, that have created or exposed information gaps that prevent the agencies from conducting a thorough antitrust assessment of transactions subject to mandatory premerger review. The final rule also will reduce the current burden on third parties, including small businesses, that the agencies routinely rely upon to fill in existing information gaps.

“Premerger review is a critical task for the antitrust agencies and to do it well, we need information about each deal’s potential antitrust risk,” said Shaoul Sussman, Associate Director for Litigation of the FTC’s Bureau of Competition. “This rulemaking is a much needed update to address changes in the marketplace that have undermined the agencies’ ability to detect and prevent illegal mergers, while at the same time creating a more efficient review process. The Bureau thanks the entire cross-agency team that has worked tirelessly on this important rulemaking.”

Under the HSR Act, parties to certain mergers and acquisitions are required to submit premerger notification forms that disclose certain information about their proposed deal and business operations. The agencies use this information to conduct a premerger assessment in the short time allowed under the HSR Act, typically 30 days.

The HSR Act was intended to improve federal merger enforcement by requiring parties to notify the agencies of their proposed acquisition, then wait a short period of time to permit the agencies to bring a lawsuit to stop an illegal merger prior to consummation. Mandatory premerger review is a key feature of U.S. merger law, and the agencies devote significant resources every year to review thousands of proposed transactions and challenge those that pose a threat to competition.

The [final rule](#) updates the HSR form, which the agencies have relied on for more than 45 years to screen proposed mergers in advance and identify those that may violate the antitrust laws. From this accumulated experience, the agencies identified critical gaps in the information provided in the form that, over time, have impeded the detection of mergers that may violate the antitrust laws. The final rule requires filers to provide information that is readily available to them about their business operations to allow the agencies to accurately and effectively fulfill their mandate to screen reportable transactions before they close.

The final rule incorporates public feedback received on the [FTC's notice of proposed rulemaking](#). In response to these comments, the Commission substantially modified its proposals, resulting in a final rule that is tailored to the potential antitrust risk of a reported transaction.

As mandated by Congress, 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 as required by the Merger Filing Fee Modernization Act of 2022.

Key reforms included in the final rule require:

- Additional transaction documents from the supervisor of each merging party's deal team as well as a small set of high-level business plans related to competition;
- A description of the business lines of each filer to reveal existing areas of competition between the merging firms (including for products or services that are in development) and supply relationships; and
- Disclosure of investors in the buyer, including those with management rights.



The final rule will be effective 90 days after it is published in the Federal Register. The FTC's Premerger Notification Office (PNO) will be working to provide future compliance guidance in advance of the final rule's effective date. Compliance guidance information will be shared on the PNO's website in the coming weeks.

The Commission vote on the final rule was 5-0. Chair Lina M. Khan [issued a statement](#) joined by Commissioners Rebecca Kelly Slaughter and Alvaro M. Bedoya. [Commissioners Melissa Holyoak](#) and [Andrew N. Ferguson](#) each issued separate statements. Commissioner Alvaro M. Bedoya [issued a statement](#) joined by Chair Lina M. Khan and Commissioner Rebecca Kelly Slaughter.

In addition to these updates to the HSR Form, the Commission is also introducing a [new online portal](#) for market participants, stakeholders, and the general public to directly submit comments on proposed transactions that may be under review by the FTC. The Commission welcomes information on 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.

Following the final rule coming into full effect, the Commission will lift its categorical suspension on early termination of filings made under the Hart-Scott-Rodino Act. Because the final rule will provide the agencies with additional information necessary to conduct antitrust assessments, the rule will help inform the processes and procedures used to grant early terminations.

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Press Release Reference

[FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review](#)

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