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Kirkland Alert

U.S. Antitrust Agencies Substantially Expand Hart-Scott-Rodino Filing Burdens in New Rules

10 October 2024

Earlier today, the Federal Trade Commission (“FTC”) voted 5–0 to adopt new rules that substantially expand the scope of information and documents parties must disclose in deals subject to notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”). The Antitrust Division of the U.S. Department of Justice similarly endorsed the new rules. While not as burdensome as the originally proposed rules, these new requirements will increase substantially the preparation required to make HSR filings and will lead to longer timelines to prepare such filings, as well as increased burdens and costs on transacting parties.

Below we provide a high-level recap of the key changes. The new rules will be applicable to any transaction reportable under the HSR Act.

What has changed?

- The new rules require filing parties to provide more deal-related and ordinary course documents.
- Parties will be required to identify and describe the:
 - competitive overlaps,
 - vertical relationships, and
 - rationale for the transaction.
- New data requests call for, among other things, detailed disclosure about:
 - customers in areas of overlapping product and supply relationships;
 - certain existing agreements among parties; and

- foreign subsidies.
- The rules also require new disclosures about:
 - officers and board members, including their positions in other companies;
 - minority owners, including certain significant minority owners in LLCs and LPs; and
 - prior acquisitions over the last 5 years by both the Acquiring and Acquired Persons in certain transactions.
- While the policy was suspended in February 2021, the new rules also announced the return of Early Termination of the HSR waiting period.
 - Early Termination will likely be limited to select transactions without overlap and, as always, be entirely within the Agencies' discretion.

When will the new rules be effective?

- The new rules will come into effect 90 days after publication in the Federal Register, which is expected to occur in the next few days.
- Accordingly, parties should plan for the new rules to be effective for notifications filed no sooner than **January 9, 2025**.
- It is possible that the new rules will be challenged in court. How such litigation plays out is uncertain, although it is possible that a court will elect to stay the implementation. We will monitor for any developments.

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What should transaction planners do now?

- Parties making HSR filings after the effective date should plan for significantly more preparation time: the government estimates HSR filings will now take at least three times as many hours to prepare under the new rules compared to the current rules.
- Transaction planners should familiarize themselves with the additional information required to be included in HSR filings and develop processes systematically for

collecting and analyzing such information.

- Kirkland has been preparing for release of these rules since they were announced in June 2023. Our upcoming webinar is designed to help clients understand the scope of the new requirements, as well as how to implement best practices so that your organization is prepared to gather and collect the required materials most efficiently. We hope you will join us.

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Suggested Reading

- 14 November 2024 Kirkland Alert New HSR Rules Are Effective February 10, 2025
- 05 February 2024 Kirkland Alert [MOBILE DOWNLOAD] Revised HSR Act Thresholds, Filing Fees and Civil Penalty Amounts Announced
- 06 July 2023 Kirkland Alert Dramatic Overhaul Proposed to Hart-Scott-Rodino Pre-Merger Form

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