On Notice: FTC Releases Final Changes to Hart-Scott-Rodino Premerger Notification Form

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After leaving practitioners and their clients waiting for months with bated breath, the Federal Trade Commission (FTC) recently released its final changes to the Hart-Scott-Rodino (HSR) premerger notification form. The consensus seems to be that the proverbial bark that accompanied the amendments when they were initially published in June 2023 may have been worse than the bite taken by the final rule announced on October 10.

Under the HSR Act, transacting parties whose contemplated mergers exceed certain size and dollar thresholds must submit a notification form to the FTC and to the Antitrust Division of the Department of Justice at least 30 days before closing so that those regulators can review the competitive effects of a deal before it is consummated. Most deals proceed to close after the 30-day waiting period with no regulatory action taken, but a small subset garner a "second request" for additional information, and a few of those wind up in litigation with regulators seeking to enjoin the deal because of its potential to harm competition in the relevant market.

Proposed amendments to the form – the most far-reaching updates in more than four decades – created a stir when they were published two summers ago. As proposed, the changes worked a significant overhaul, with businesses concerned about what was perceived to be a torrent of invasive new disclosure mandates and practitioners predicting that the new requirements would dramatically increase the time – and cost – to prepare the form.

These fears may still be realized to a degree. In the end, however, the new disclosure obligations were narrowed, and some of the potentially onerous amendments – including, for example, creating timelines for closing, compiling drafts of submitted documents, and reporting on labor-market information – were dropped altogether. The considerable changes that are set to be implemented, according to the FTC, "will enable the Agencies to detect

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transactions that may violate the law in light of modern commercial realities" and do so "more quickly and with greater accuracy."

Key reforms require:

- Submission of transaction-related documents prepared by or for the supervisor of each side's deal team, as well as regularly prepared strategic plans provided to the CEO and board of directors
- A narrative description of each merging firm's business lines to reveal overlapping areas of competition in terms of products/services, top customers, and supply relationships
- Disclosure of investors in the buyer, including ownership structure, etc.

Relatedly, the FTC plans to unveil a new online portal that market participants and other stakeholders, including the general public, can use to submit comments about proposed transactions. Notably, too, as a nod to the enhanced efficiency the amendments are anticipated to spur, the FTC intends to reinstate the possibility of early termination of the 30-day waiting period – a practice that has been suspended since the pandemic.

The new amendments are expected to take effect in mid-January 2025. Companies contemplating M&A activity in the new year would be wise to begin planning now to address these additional premerger notification requirements and the extra lead-time they will entail.

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