

Client Alert | October 16, 2024

Sweeping Changes to the Hart-Scott-Rodino (HSR) Filing Rule

After more than a year's delay following the issuance of its proposed rulemaking, on October 10 the Federal Trade Commission (with concurrence from the Department of Justice) announced the final rule implementing a comprehensive revision to the requirements governing the filing of premerger notifications by constituent parties engaged in a transaction that meets the jurisdictional thresholds under the Hart-Scott-Rodino Act. The new rule, with accompanying forms and instructions, will become effective (absent judicial intervention) 90 days following publication in the Federal Register. For planning purposes, clients should anticipate the rule will become effective by mid-January 2025.

While the new rule does not affect who must file or change the jurisdictional tests to determine which transactions are reportable, the filing process will require parties seeking HSR clearance to prepare and submit to the FTC and DOJ notification reports incorporating a substantial increase in the nature and amount of information compared to the current HSR filing regime. Below are some of the more significant changes in the new rule.

- Narrative descriptions and details will be required addressing the rationale for the transaction, the markets for products or services in which the parties compete, deal structure diagrams and operating businesses within the filing parties.
- Expanded document disclosures (i.e., the 4(c), 4(d) documents) will apply to include any documents created not only by or for officers and directors of the filing party, but also documents created by or for the "supervisory deal team leader" within a year of the transaction and which discuss markets, competition or competitors in respect to overlapping products or services.
- Disclosure will be required of both buyer and seller to note any prior acquisitions of businesses with overlapping revenues made by the parties within the prior five years.
- The buyer will be required to describe its ownership structure and, in particular for private equity sponsors, an organizational chart showing the relationships between affiliates and associates.
- The parties now will need to describe any vertical supply relationships between buyer and seller or any other person known to compete with either of the parties.
- While it still is the case that a definitive acquisition agreement is not required to be submitted with the filing, parties must file a written document that reflects the key terms and elements of their agreement, and it will no longer be acceptable to submit a bare bones letter of intent to accelerate their filings.
- On a more positive note, the FTC has stated that in January it will reinstate the "early termination" protocol (which has been suspended since 2021) at least for those transactions that do not raise potential anticompetitive concerns. This should accelerate the 30-day waiting period and deal timing for select transactions.

The bottom-line reality presented by the new HSR rule is that what was once a relatively straightforward compliance exercise will now be a significantly more burdensome, time-consuming and expensive process. A premium will be placed on advance preparation by parties who anticipate entering into transactions that may be HSR reportable. Early assessment of potential anticompetitive risks that may be inherent in a combination transaction will be critical to managing a successful process.

Key Contacts

Our transactional HSR team is available to assist clients in navigating compliance with the HSR Act and filings required thereunder.

Peter K. Anglum
Deputy Managing Partner – Finance

D 212.735.8822
panglum@morrisoncohen.com

Matthew Der Manuelian
Partner

D 212.735.8654
mmanuelian@morrisoncohen.com

This document is attorney advertising and is provided for informational purposes only as a service to clients and other friends. This document does not constitute legal advice. Reading or receiving this document does not create an attorney-client relationship, nor should the information in the document be deemed to be provided to you confidentially. Please contact one of our attorneys should you wish to engage Morrison Cohen LLP to represent you, so that an attorney-client relationship may be established between our Firm and you. Prior results do not guarantee a similar outcome.