

Client Alert

August 2011

Major Changes to the Hart-Scott-Rodino Act (“HSR”) Report Form To Go Into Effect August 18

On August 18, 2011, final rules adopting changes to the report form required for certain transactions under the Hart-Scott-Rodino Act go into effect, the Federal Trade Commission (“FTC”) recently announced, with the concurrence of the Department of Justice (“DOJ”) Antitrust Division.

These form changes are the most significant since the introduction of the HSR program. The announced final changes impose additional requirements for information and documents as part of the HSR filing, while eliminating the need to provide certain information that the FTC and DOJ have found to be of little use. In response to public comments, several important clarifications and adjustments were made to the original changes proposed last year.

New Requirements

The elimination of a number of items from the current form is significant. However, of greater interest to merging parties are the requirements for additional documents and information. These include:

- Filers will need to provide additional categories of documents prepared by investment advisors and documents discussing merger-related efficiencies. (Item 4(d))
- Filers who sell in the U.S. products that they manufacture in a foreign country will need to allocate such sales by 10-digit-level North American Industrial Classification System codes. (Item 5(a))
- Acquiring party filers will need to determine the identity of their “Associates” (i.e., certain commonly managed affiliates) and provide certain information regarding their holdings that overlap with the target. (Items 6 and 7)

Parties filing HSR notifications after August 18 will need to ensure that their filings comply with the new rules. HSR compliance is particularly important because parties who violate the requirements of the HSR Act may be subject to a maximum \$16,000 per day civil penalty.

Hunton & Williams Lawyer Authors First Major Review of Changes

Greg Kinzelman, counsel with the Hunton & Williams competition practice group, has authored the first significant published article addressing these changes, in the August issue of the ABA Antitrust Section journal, [The Antitrust Source](#). Kinzelman’s analysis of the new HSR form changes serves as a practical guide for practitioners and was prepared in consultation with the FTC’s Premerger Notification Office.

Hunton & Williams LLP assists clients with all aspects of the HSR process, from the evaluation of whether a transaction is HSR reportable, to filing the report form, through substantial compliance with Second Requests where necessary. Clients with questions relating to how these HSR changes may impact their plans for reporting future mergers or acquisitions are encouraged to contact us.

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