

# Regulatory Alert

## Regulatory Insights

October 2024

### Premerger Notification: FTC and DOJ Final Amendments

#### KPMG Insights:

- **Antitrust:** In advance of US elections, premerger notification amendments by the FTC and DOJ jointly signal the current administration's focus on antitrust in the M&A process.
- **Competition:** New information requirements shed light on "current market realities" such as complex corporate structures, market consolidation, horizontal and vertical mergers, and elimination of nascent competitors.
- **Data:** Analysis at the premerger stage is key to assessing impacts to antitrust laws.
- **Documentation:** Premerger companies must be prepared to provide the documentary material to substantiate antitrust analysis/conclusions.

The Federal Trade Commission (FTC), with concurrence of the Antitrust Division of the Department of Justice (DOJ), [issues](#) a final rule amending the Premerger Notification Rules that implement the Hart-Scott-Rodino Antitrust Improvement Act (HSR Act), including the Premerger Notification and Report Form for Certain Mergers and Acquisitions and related instructions.

The amendments are intended to "improve the efficiency and effectiveness of premerger review" by requiring parties to transactions covered by the HSR Act to submit documentary materials and information that will permit the agencies to determine which transactions necessitate an in-depth antitrust investigation and whether to issue a Request for Additional Information. Notably, several previously proposed information requirements have been omitted in this final rule, including those related to:

- The timeline of key dates for closing the proposed transaction.
- Creating organization charts for filing a notification.
- Geolocation information.
- Information on employees and board observers.

- Prior acquisitions involving entities with less than \$10 million in sales or revenues, or consummated more than 5 years prior to filing.

The final rule creates different information filing requirements for three distinct types of transactions as well as for the different filers (i.e., acquiring and acquired parties) under each transaction type.

In addition, the final rule implements certain requirements of the Merger Filing Fee Modernization Act of 2022, including a requirement for the parties to disclose information on subsidies received from certain foreign governments or entities that are strategic or economic threats to the United States.

#### Key Reforms

The FTC summarizes that the final updates to the Premerger Notification and Report Form include requirements for the filing parties to provide:

- Additional transaction documents from the supervisor of each merging party's deal team as well as a 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), supply relationships, or transactions in which the parties have a history of acquisitions in the same business lines.

- Disclosure of investors in the buyer, including those with management rights.

The information requirements vary by transaction type, with more complex transactions (e.g., deal, corporate structure, entities with overlapping business operations or relationships) requiring more information. In addition, the information requirements vary by filer, with fewer requirements placed on acquired entities.

Three distinct types of transactions are covered by the final rule with increasing information requirements (see table below):

1. “Select 801.30” transactions (defined in the rule as transactions that do not result in the acquisition of

control to which section 801.30 applies and where there is no agreement or contemplated agreement between any entity within the acquiring and acquired person regarding the acquisition).

2. Transactions that will have no NAICS or described overlaps or supply relationships.
3. Transactions that report a NAICS or a described overlap, or a supply relationship, which includes transactions with significant pre-merger competitive interaction between the filers (e.g., a company acquiring one of its principal competitors or suppliers or both parties generating revenue in the same or similar business lines or operating in the same areas of the country).

Updated and New Information Requirements	Select 801.30		No Overlap/No Supply Relationship Transaction		Overlap/Supply Relationship Transaction	
	A-Side	B-Side	A-Side	B-Side	A-Side	B-Side
Translations	✓	✓	✓	✓	✓	✓
Changes to Identification of Additional Minority Interest Holders	✓	✓	✓	✓	✓	✓
Organization of Controlled Entities			✓	✓	✓	✓
Description of Ownership Structure	✓		✓		✓	
Organizational Chart (if exists)	✓		✓		✓	
Identification of Certain Officers and Directors	✓		✓		✓	
Description of Business of the Acquiring Person	✓		✓		✓	
Transactions Subject to International Antitrust Notification	✓		✓		✓	
Transaction Rationale			✓	✓	✓	✓
Transaction Diagram (if one exists)			✓		✓	
Competition Documents from Supervisory Deal Team Lead			✓	✓	✓	✓
Plans and Reports					✓	✓
Transaction Agreements			✓	✓	✓	✓
Other Agreements Between the Parties			✓		✓	
Overlap Description			✓	✓	✓	✓
Supply Relationships Description					✓	✓
Geographic Market Information (new organization, street-level reporting, and reporting of franchisees)	✓	✓			✓	✓
Limiting Minority-held Entity Identification to Overlaps	✓	✓			✓	✓
Prior Acquisitions	✓	✓			✓	✓
Subsidiaries from Foreign Entities or Governments of Concern	✓	✓	✓	✓	✓	✓
Defense or Intelligence Contracts					✓	✓

A-Side is the Acquiring Company; B-Side is the Acquired Company  
Source: FTC

**Effective Date.** The final rule goes into effect 90 days after the date that it is published in the Federal Register. The FTC plans to publish compliance guidance prior to the effective date.

**Public Comment Portal.** In addition to the final rule, the FTC introduces a new online portal through which

market participants, stakeholders, and the general public can directly provide commentary on proposed mergers.

**For more information,** please contact [Amy Matsuo](#) or [Matt McFillin](#).

## Contact the author:



**Amy Matsuo**  
**Principal and National Leader**  
Regulatory Insights  
[amatsuo@kpmg.com](mailto:amatsuo@kpmg.com)

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