

Practical Guidelines for Newly Effective HSR Form

February 11, 2025

On February 10, 2025, the new Hart-Scott-Rodino (“HSR”) notification form became effective. Transactions that meet the HSR thresholds (currently \$119.5 million but increasing to \$126.4 million next week) and are not otherwise exempt must be made on the new HSR form.¹

These guidelines highlight a few tips and best practices that companies and sponsors should keep in mind to facilitate a smooth transition to the new HSR form.

- **Increased Time to Prepare:** The prior form was less onerous and could often be completed in 10 days or less. Under the new HSR form, the estimated time to prepare an average filing with competitive overlaps is roughly one month. And for more complex deals or transactions involving significant competitive or supply overlaps, more time likely will be needed. Preparation time will be less for transactions with no competitive overlaps and preparation times may diminish if regulators offer further guidance and as parties and practitioners adapt to the new form.
- **Identification of Overlaps:** Identification of competitive and vertical supply overlaps is a threshold question that will significantly impact document collection and broader advocacy throughout the HSR filing. Parties should collaborate early with antitrust counsel to identify these overlaps (if any) and develop a plan for antitrust analysis and strategy.
- **Deal Rationale:** The new HSR form requires parties to describe their strategic rationale for the transaction and to identify the specific business documents that discuss and support that rationale. Deal rationales should be consistent across documents and should focus on the procompetitive motivations of the transaction (e.g., facilitating innovation, offering complementary / expanded / enhanced

¹ You can read more about the specific changes in our client alert, here:
<https://www.debevoise.com/insights/publications/2024/10/us-antitrust-agencies-finalize-expanded-hsr>

products or services, lowering prices or increasing value, expanding into new geographies, creating more efficient distribution networks).

- **Preemptive Data Collection:** Repeat filers should maintain (and create if they don't have it yet): (i) a current list of D&Os of all subsidiaries, (ii) a running list of acquisitions made in the last 5 years, and (iii) the foreign subsidies and countervailing duties data required by the new HSR form.
- **Document Collection:** Filers will need to submit an expanded array of competition-related documents (formerly known as the 4(c)/(d) documents), including documents from the "Supervisory Deal Team Lead," drafts sent to any director in their role as director (including, at PE sponsors, any investment committee member), and certain ordinary course periodic reports that discuss competition- or market-related subjects for the overlapping products/services. The drafts requirement applies to the directors of the ultimate parent and all subsidiaries, including those anticipated to be named directors of newly-formed entities in the acquisition stack.
- The Supervisory Deal Team Lead (defined as the individual who has "primary responsibility for supervising the strategic assessment of the deal") should be identified early in the deal timeline, as competition-related documents prepared by or for this person will need to be collected. At sponsors, this could be the lead partner or principal on the deal. At corporates, this person might be the lead corporate development individual or the businessperson sponsoring the deal.
- If a director holds another role within an organization, only drafts shared with the individual in their role as a board member need to be produced. For example, if a deal team member who also serves on the board of a subsidiary or acquisition stack entity (or on the IC) receives draft competition-related documents in their capacity as a deal team member (i.e., the receipt is unrelated to the employee's director/IC role), the documents remain non-responsive drafts.
- Drafts of documents relating to the deal (e.g., CIMs and board/IC decks), including those prepared by bankers and advisors, and ordinary-course periodic reports (e.g., strategic reports and business plans) – to the extent they discuss competition, markets, market share, pricing changes, etc. – should ideally be run past antitrust counsel before going to any person described above. Whether this is practicable will depend on the composition of the buyer deal team (including, at sponsors, whether the principal(s) on the matter will serve on the board of the portfolio company post-closing).

- Companies and sponsors should evaluate their existing safeguards, or implement new ones, around document creation. Deal teams should avoid creating documents that inaccurately describe or mischaracterize competition or competitive effects of the transaction in a way that might lead to misimpressions with readers, including regulators.

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Guidelines cannot anticipate every question. Debevoise lawyers are well versed in pre- and post-filing U.S. merger control. We are available to advise parties regarding how the new HSR form will affect their current and future deals.



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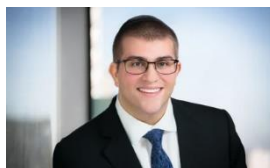
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