

The Importance of New Merger Notification Rules

Last year, the Federal Trade Commission (FTC) and Department of Justice (DOJ) Antitrust Division released new [guidelines](#), updating how the government evaluates proposed corporate mergers and acquisitions. The antitrust agencies guidelines now prioritize preserving meaningful competition in the American economy.

As part of the update, [changes](#) were made to a form that companies must file with the two agencies (the [HSR Form](#)). Companies provide details of their proposed transaction on this form so that the FTC and the Antitrust Division can determine whether a merger would comply with the Clayton Act, a law that bars mergers that “may substantially lessen competition or tend to create a monopoly.” The information is also shared with the Department of Defense so that the Pentagon can better track defense contractor ownership.

Accurate HSR data helps the government more quickly clear mergers that do not threaten competition, while identifying and blocking those that do. The form had not been modernized in a meaningful way since the 1970s, despite many innovations in business models and financing structures in the intervening years.

The FTC also created an [online portal](#) for the public to comment on proposed mergers and acquisitions that may be reviewed by the agency. This is consistent with the FTC’s ongoing effort to make its actions and review process more transparent to hear from the public. Similarly, the FTC under Chair Khan has held Open Commission Meetings that for the [first time](#) included written and verbal comments from the public.

This brief explains what the HSR form is, what the changes are, and why they are important. It also addresses common misconceptions about the previous HSR form and merger approval process.

WHAT IS THE HSR FORM?

The HSR form was created by the Hart-Scott-Rodino (HSR) Antitrust Improvement Act. Enacted by Congress in 1976, it was designed to strengthen the enforcement of existing federal antitrust laws. This law requires that transacting parties notify the FTC and DOJ before consummating proposed mergers, acquisitions, and other transactions above a certain monetary threshold, which is currently set at \$119.5 million and updated on an [annual basis](#). The law was updated in 2022 by Congress, with

a mandate that the agencies require the disclosure of any subsidies received from a foreign entity of concern in HSR-reportable mergers.

Under the HSR Act, the antitrust agencies determine what information transacting parties must submit for review “to enable the [agencies] to determine whether such [transactions] may, if consummated, violate the antitrust laws.”¹ The Act also enables the antitrust agencies to “prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section,” including by updating the HSR forms.²

WHAT DID THE PREVIOUS PROCESS ENTAIL?

The HSR Act requires companies to report any proposed transaction valued above a certain threshold ([currently](#) \$119.5 million) to the FTC and DOJ. It also prohibits companies from finalizing a transaction before a 30-day³ statutory waiting period has expired. If the antitrust agencies determine that a transaction is likely to substantially lessen competition or tend to create a monopoly, one of the two agencies will initiate an investigation, and the agency will negotiate with the transacting parties or block the [transaction](#).

The previous HSR form was cumbersome yet largely uninformative for regulators. The form required basic information, like the names of the parties involved in the transaction, final contract documents between the parties, and final evaluation documents. It also required extraneous and irrelevant information, like the Census NAIC industry for the merging firms. It did not, however, include details on the purpose of the deal, the competitive overlaps between the parties, financing and investment vehicle details, prior related transactions by either party, or much other information likely to help the agencies identify unlawful transactions.

WHAT ARE THE NEW CHANGES TO THE HSR FORM?

On June 27, 2023, the FTC, in collaboration with the DOJ, [proposed](#) changes to the premerger notification [form and instructions](#), along with the premerger notification rules that implement the HSR Act. The goal was to provide the FTC and DOJ with more relevant information so the agencies can better understand a deal’s impact on competition within a short period of time and upon first review. These changes were [finalized](#) on October 7, 2024.

The new HSR form asks companies to provide the purpose of the deal, financing and investment vehicle details, competitive overlaps in horizontal and nonhorizontal relationships, and details on prior related transactions, among other key details. It also requires the merging companies to provide internal documents describing market conditions, projected revenue, and private equity involvement in the transaction. None of this information was captured in the previous form.

WHY IS THIS CHANGE NECESSARY?

¹ 15 U.S.C. 18(a)(d)(1)

² 15 U.S.C. 18(a)(d)(2)(c)

³ 15 U.S.C. 18(a)(b)(1)

The HSR form had not been significantly updated in almost half a century. Over that same time period, 75% of American [industries](#) have become increasingly [consolidated](#), as companies have grown larger by acquiring their competitors instead of relying on new or better products for growth. Yet staffing levels at the FTC are below that of the [1970s](#), and agency funding at the [FTC](#) and [DOJ](#) has only recently begun to trend upward under the Biden-Harris administration. Deal volume [surged](#) more than 50% in 2021 and 2022 over the pre-pandemic period. These deals are also much more [complex](#) due to investment vehicles and technological changes to the [economy](#).

The FTC and DOJ only have 30 days to review transactions that may threaten competition once the HSR form is filed. Because the previous form asked for such limited information, the FTC and DOJ were forced to spend their scarce time and staff resources trying to understand both the impact and legality of a proposed merger. There is growing [evidence](#) that the resource strain for the agencies has led to anti-competitive transactions either not being challenged, or getting approved with remedies that have failed to protect competition. As a result, the information the FTC and DOJ received, as FTC Chair Khan noted, was “[insufficient...](#) to determine ... whether a proposed deal may violate the antitrust laws.” Additionally, much of the key information regulators needed is only known to the transacting parties, and seeking this information “voluntar[ily] ... can leave key [gaps](#).”

But the status quo is often problematic, even from the perspective of the merging parties. Because the companies seeking to merge initially provided such limited information on their HSR forms, it often did not provide an adequate basis for deciding whether a merger would preserve or reduce competition. When agencies do not have adequate information up front, they issue a “second request” to the merging parties, asking for more detailed information. This can drag out the review process, extending the waiting period and preventing the companies from finalizing a deal until they have “[substantially complied](#)” with the request. Second requests extend the average review from 98 days to 237 days.⁴

DO THESE CHANGES VIOLATE CONGRESSIONAL INTENT?

The new changes align with the congressional intent of the HSR Act and other federal antitrust laws. Nowhere in the statute does Congress require the onus to be put on the antitrust agencies, nor does it call for skimpy paperwork from companies. It certainly does not shield companies from providing basic facts that are readily on hand and simple to provide, such as the purpose of the deal.

WHAT IS MOTIVATING COMPLAINTS ABOUT THIS CHANGE?

Corporate lobbyists and lawyers are complaining about these new changes. They claim to fear that requiring additional information will not only burden businesses with increased bureaucracy and unnecessary work, costing time and resources, but might impede corporate growth and innovation.

⁴ p. 100, https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf.

These complaints are overwrought. For the vast majority of companies seeking to merge, the new HSR form will have no effect, because most mergers are under the threshold for filing. For example, between 2018 and 2022, only 16.5 percent of the nearly 15,000 transactions were subject to the HSR requirements.⁵ For those that file, the majority are simple transactions with almost no increase in the burden for filing. For the largest, most complex transactions, it will modestly increase the time required to complete the form. But these companies and their law firms already possess this information and providing it to the government up front will expedite reviews and avoid much costlier second requests – which on average cost between \$3 and \$4 million.⁶

These changes to the HSR form aren't designed to stop companies from consummating legal mergers. The FTC and DOJ are seeking more information so they can prevent *illegal* mergers from sneaking through. This happens when complicated corporate structures are utilized to disguise a merger's harms or otherwise mislead the government about the companies' true motivations for merging.

The revised HSR form will help the government focus on truly harmful mergers, ultimately reducing the bureaucratic burden on the vast majority of businesses.

CONCLUSION

After almost five decades of putting the onus on the underfunded, under-resourced antitrust agencies, it is time to shift the burden to the merging parties. The decades long underenforcement of federal antitrust laws has resulted in excessive corporate consolidation, giving corporations free rein to wield monopoly power over workers, customers, and smaller, less powerful businesses. Ultimately, there is less competition and economic opportunity throughout the American economy. **The revised HSR form is a reset, a way of prioritizing and encouraging healthy competition that benefits business owners, workers, and consumers alike.**

⁵ Table 1, p. 11, https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf.

⁶ p. 100, https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf.