

**SANGRA MOLLER LLP***Barristers & Solicitors***LEGAL CURRENCY***A Client Communication****FTC Proposes Changes to U.S. Premerger Filing Requirements***

On June 27, 2023, the Federal Trade Commission (the "FTC") announced a Notice of Proposed Rulemaking that would change the premerger filing requirements under the *Hart-Scott-Rodino Antitrust Improvements Act of 1976* (the "HSR Act") and significantly increase the reporting burden for merging parties.

**The HSR Act**

The HSR Act and its implementation rules require that parties to certain mergers and acquisitions valued in excess of US\$111.4 million (2023) give advance notice to the FTC and the Department of Justice (the "DOJ"), provide information about the proposed transaction by filling out the premerger notification form (the "HSR Form"), and wait until the expiration of the waiting period (typically 30 days or 15 days for certain transactions such as cash tender offers) before completing the transaction. During the waiting period, the FTC or the DOJ reviews the premerger notification filings in order to determine whether the transaction would be in violation of antitrust laws.

**The Proposed Changes**

The proposed changes would affect the HSR Form, its associated instructions and the premerger notification rules implementing the HSR Act. The proposed changes would require parties to provide more information and documents at the time of filing, including, but not limited to:

- Information regarding the transaction rationale;
- Details relating to investment vehicles and corporate relationships;
- Projected revenue streams;
- Transaction diagrams;
- English translations of all non-English-language documents;
- All agreements between the parties, including those that are not specific to the transaction;
- Details relating to prior acquisitions;
- Description of any competitive or supply relationships between the parties;
- Description of labor markets, including employee, geographic and workplace safety information;
- Description of overlapping products and services;
- Any subsidies from foreign entities or governments of concern;

- Internal documents describing market conditions; and
- Information regarding interest holders that may exert influence over the parties, such as officers, directors and board observers.

The proposed changes purport to also require ongoing document retention obligations during the waiting period for a transaction. This includes a requirement to affirm that directors, officers and others have taken steps to prevent destruction of documents (including communications and message platforms) relating to the transaction prior to the end of the waiting period.

**Reasons for the Proposed Changes**

The FTC states that the proposed changes to the HSR Form and instructions will allow the FTC and DOJ to successfully screen mergers and acquisitions for competition issues within the waiting period and identify which transactions require a more in-depth review. The proposed changes will also implement requirements mandated by the *Merger Filing Fee Modernization Act of 2022*.

The proposed changes would move the U.S. closer to the approach of other jurisdictions that require more upfront disclosure in merger filings, with detailed information regarding the parties, their business lines, operations and markets.

**Next Steps**

On June 29, 2023, the Notice of Proposed Rulemaking was published in the Federal Register. The 60-day public comment period is now open and will end on August 28, 2023, at which time the FTC may issue a final rule that will become effective 30 days after it is published in the Federal Register.

**Potential Impacts of the Proposed Changes**

The FTC estimates that the proposed changes will result in nearly a four-fold increase in the time required to prepare premerger notification filings under the HSR Act, from a current average of 37 hours per filing to an average of 144 hours. Companies projecting to be involved in transactions that fall under the HSR Act should be cognizant of the potential increase in time and costs associated with preparing the relevant filings.

*This communication is intended to provide general information as a service to our clients and should not be construed as legal advice or opinions on specific facts.*