

TYPES NOT MAPPED YET February 07, 2025 | TTR not mapped yet | Ronald E. Haglof, Nabil G. Al-Khaled

# A Baker's Dozen of Tips for HSR Compliance in the New Environment\*

Over the last several weeks, the Premerger Notification Office of the Federal Trade Commission has published on its blog various guidance documents designed to assist filing parties in completing the new Hart-Scott Rodino (HSR) premerger notification forms, which will govern all filings made after 5 p.m. Eastern Time on February 7. Note, however, that the new jurisdictional thresholds and filing fees are not effective until February 21, so filers have a couple of weeks to submit their filings under the current fee schedule.

Below is a baker's dozen of tips for lawyers to keep in mind as they work on their first filings under the new rules:

1. Acquiring and acquired persons have separate forms, which means that if your client has the status of both in a transaction, you will need to file two forms.
2. Be prepared to describe current transactions between the acquiring and acquired persons.
3. Filers must identify any of their officers or directors who hold similar positions with any other companies (unrelated to the reported transaction) having revenues in the same NAICS code as other party or otherwise being in the same industry, as well as the names of such companies.
4. Consider all non-transaction-related agreements between the parties—the new rules require checkbox disclosure of any non-compete and non-solicit agreements, leases, license agreements, supply agreements, master service agreements, operating agreements or any other agreements between the parties, including a 1-year lookback period.
5. Note the expanded disclosures for minority interests and investment funds. Funds and master LPs that are UPEs must provide an organizational chart of affiliates and associates if one exists. But you don't have a duty to create one.
6. A "select 801.30 transaction," in which an acquiror crosses a threshold without gaining control or the right to name board members, and without the target's involvement, entails a greatly reduced burden of providing information. This will usually be the case with executive compensation awards.
7. Provide a strategic rationale for the transaction, and identify each document that confirms or discusses the stated rationale by the filing party's officers, directors or employees, identifying the pages in the document where the rationale is located.
8. "All means all"—Furnish all transaction-specific documents, including all exhibits, schedules, side letters, and agreements not to compete or solicit.
9. Be prepared to furnish a description of the principal categories of products and services provided or planned to be provided by the acquiring person that are also provided or planned by the target. The

parties cannot exchange information on this item, each must rely on its own industry knowledge.

10. Both filing parties must now disclose supply relationships of \$10 million or more, and 5 years' worth of acquisitions of targets with \$10 million of sales or assets—and these amounts are not indexed.
11. Data generally must be provided by calendar year. Only use fiscal year data if calendar year data are unavailable.
12. Reporting foreign filing requirements is no longer optional, but mandatory, and translations of foreign language documents are now mandatory also.
13. For overlapping NAICS industries, be prepared to disclose subsidies from a foreign entity or "government of concern," as well as large RFPs and contract awards from the Department of Defense.

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\*Always read the instructions carefully. The instructions are now particular to the category of the filer's form (i.e., acquiring person or acquired person).

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