

ELECTRONIC FILING NOW AVAILABLE FOR HSR PREMERGER NOTIFICATION FILINGS

Effective June 23, 2006, the Federal Trade Commission has amended the premerger notification rules of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act").¹ The amended Rules now allow for electronic filing of the *Notification and Report Form for Certain Mergers and Acquisitions* (the "Form") required under the HSR Act. The Federal Register notice announcing the rule change can be found at www.ftc.gov/bc/hsr/hsr.htm.

In addition to eliminating the expensive and time-consuming duplication of submitted paper documents, the Commission anticipates that electronic filing will ease the delivery of completed filings to the reviewing agencies and facilitate circulation of filings within the agencies, reducing the cost and delay associated with traditional delivery methods. Additionally, e-filing will enhance the direct data entry of filing information into the information systems of the agencies, eliminating the more time-consuming and error-prone method of hand data entry. In addition, e-filing complies with the mandate of the Government Paperwork Elimination Act², which requires that governmental agencies, to the extent practicable, provide e-filing and signature options.

Paper filings of the Form by traditional means are still permitted. Additionally, a hybrid filing method permits the Form to be filed electronically, while the required attachments to the Form are filed in paper form by traditional, non-electronic means.

Because HSR Act filings are highly confidential, the new e-filing process has been designed to ensure the confidentiality and security of filings by requiring a pre-verified encrypted signature and transmission over the Internet to a secure dedicated FTC server. Once an electronic Form is received by the agencies, additional multiple security measures, such as digital certificate authentication, unique permanent ID tags and secure storage, are used to maintain security.

A number of relatively technical changes have been made to both the Form and the companion instructions to accommodate e-filing. The current version of the Form and instructions can be obtained on the Commission's web site, www.ftc.gov or www.hsr.gov.

Unrelated to the introduction of e-filing, the Rules also have been amended to facilitate the disaster preparedness of the agencies by permitting the designation of alternate sites for

¹ Section 7A of the Clayton HSR Act, 15 U.S.C. §18a, *et seq.* (additional provisions are located in 11 U.S.C. §363(b)(2) and Pub. L. No. 101-62, §605 (1989)(the "HSR Act"). The premerger notification rules are codified at 16 C.F.R. Parts 801, 802, 803 (1990)(the "Rules").

² Pub. L. 105-277, title XVII (Oct. 21, 1998).

physical delivery of the Form in the event one or both of the FTC and DOJ offices are unexpectedly closed. Notification of such delivery sites will be made through a press release and, if possible, on the www.ftc.gov and www.hsr.gov web sites.

What to Do?

Although electronic filing represents a real opportunity for companies to streamline and enhance the HSR Act filing process, advance planning is key.

Companies desiring to utilize e-filing should take immediate steps to ensure that all needed information is available in the required format. Because certain formats of electronic files cannot be viewed by the e-filing system, the use of specific file formats is required as part of the e-filing process. These include Adobe[®] Acrobat PDFs, Word[®], WordPerfect[®] and Excel[®] documents, plain text, GIFs, and JPEGs. Also, due to technological constraints, the e-filing system currently restricts the size of files that can be submitted electronically to 80 megabytes (including attachments). Although the maximum file submission size will increase as technology improves, the current limitations could prove problematic for certain filers. Because the filing person is responsible for ensuring that all attachments are of an appropriate file format and file size limitations are not exceeded, file size/format problems or transmission shortcomings will result in a deficient filing. See www.hsr.gov/requirements.htm for a current list of acceptable file formats and file size restrictions; and www.hsr.gov for other e-filing requirements.

For more information on this Alert, please contact Frank S. Jones, Jr. (410-347-8707; fjones@wtplaw.com) or Damian J. Mark (410-347-8777; dmark@wtplaw.com).

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This Alert has been prepared for general informational purposes only and is not intended as specific legal advice. Antitrust counsel should be consulted prior to consummating any transaction to ensure that all technical and other aspects of the HSR Act are satisfied.