

## FTC and DOJ Expand Scope of Information and Documents Required for HSR Notification

On July 7, 2011, the FTC and DOJ jointly published changes to the Hart-Scott-Rodino Act premerger notification form. The agencies originally noticed the proposed changes in August 2010 (discussed in our August 19, 2010 [Alert Memo](#)), and accepted comments through October 2010. The new rules will become effective thirty days after publication in the Federal Register, which is anticipated shortly.

The final changes for the most part track the original proposal, with certain clarifications that should reduce the burden of compliance somewhat.

The most significant changes:

- broaden the scope of documents that must be submitted with the notification to include deal books and similar documents even where the documents do not address competition and third-party competitive analyses of the target business;
- require additional information about so-called “associates,” which are certain entities under common management but not common control for HSR purposes; and
- expand the revenue reporting obligations to include information about non-U.S. manufacturing activities for products sold into the United States.

In addition, the new rules will reduce certain categories of information required to be submitted and make minor changes that will apply to certain unusual circumstances.

Additional documents required. While Item 4(c) of the notification form remains the same, new Item 4(d) requires submission of additional documents, including (i) the offering memorandum or similar materials relating to the acquired entity or assets, (ii) documents prepared by investment bankers, consultants, or other third-party advisors that “specifically relate to the sale of the acquired entity(s) or assets” and have competitive content, and (iii) documents analyzing or evaluating the synergies or efficiencies of the proposed transaction.

Additional information regarding “associate” companies (likely to affect investment funds and private equity firms). The new rules will require acquiring persons to disclose any entities that have the right to manage or are under common management with the acquiring person, but which are not under common “control” for HSR purposes. This revision may be of particular interest to investment funds and private equity firms, which often utilize such structures. The new rules also impose substantial new information reporting requirements regarding such associates, including the provision of 6-digit NAICS code revenue data and geographic sales information.

Non-U.S. manufacturing revenues. The new rules will require firms to report revenues for products manufactured outside the United States that are exported to the United States at the same level of detail currently required for U.S. manufacturing revenue. The requirement that revenue from wholesaling or retailing from a separate establishment than the associated manufacturing be reported in both the manufacturing and wholesaling or retailing code will, however, be eliminated. Such revenue will only be reported in the appropriate manufacturing code.

The full text of the FTC’s announcement can be found [here](#). The new notification and report form is available [here](#).

If you have questions or would like additional information, please contact any of our practitioners listed under Antitrust and Competition in the “Practices” section of our website, <http://www.clearygottlieb.com/>.

CLEARY GOTTLIEB STEEN & HAMILTON LLP

## New York

One Liberty Plaza  
New York, NY 10006-1470  
1 212 225 2000  
1 212 225 3999 Fax

## Washington

2000 Pennsylvania Avenue, NW  
Washington, DC 20006-1801  
1 202 974 1500  
1 202 974 1999 Fax

## Paris

12, rue de Tilsitt  
75008 Paris, France  
33 1 40 74 68 00  
33 1 40 74 68 88 Fax

## Brussels

Rue de la Loi 57  
1040 Brussels, Belgium  
32 2 287 2000  
32 2 231 1661 Fax

## London

City Place House  
55 Basinghall Street  
London EC2V 5EH, England  
44 20 7614 2200  
44 20 7600 1698 Fax

## Moscow

Cleary Gottlieb Steen & Hamilton LLC\*  
Paveletskaya Square 2/3  
Moscow, Russia 115054  
7 495 660 8500  
7 495 660 8505 Fax  
\* an affiliate of Cleary Gottlieb Steen & Hamilton LLP

## Frankfurt

Main Tower  
Neue Mainzer Strasse 52  
60311 Frankfurt am Main, Germany  
49 69 97103 0  
49 69 97103 199 Fax

## Cologne

Theodor-Heuss-Ring 9  
50688 Cologne, Germany  
49 221 80040 0  
49 221 80040 199 Fax

## Rome

Piazza di Spagna 15  
00187 Rome, Italy  
39 06 69 52 21  
39 06 69 20 06 65 Fax

## Milan

Via San Paolo 7  
20121 Milan, Italy  
39 02 72 60 81  
39 02 86 98 44 40 Fax

## Hong Kong

Bank of China Tower  
One Garden Road  
Hong Kong  
852 2521 4122  
852 2845 9026 Fax

## Beijing

Twin Towers – West (23rd Floor)  
12 B Jianguomen Wai Da Jie  
Chaoyang District  
Beijing 100022, China  
86 10 5920 1000  
86 10 5879 3902 Fax

## Buenos Aires

CGSH International Legal  
Services, LLP-  
Sucursal Argentina  
Avda. Quintana 529, 4to piso  
1129 Ciudad Autonoma de Buenos Aires  
Argentina  
54 11 5556 8900  
54 11 5556 8999 Fax