

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

United States of America¹

February 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction's merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]

¹ **IMPORTANT NOTE:** This template has been completed by FTC and DOJ staff and is intended to provide background on the jurisdiction's merger notification and review procedures as of the date above. Reading the template is not a substitute for consulting and adhering to the referenced statutes and regulations.

Statutory Laws

A. Notification provisions

Section 7A of the Clayton Antitrust Act, 15 U.S.C. §18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act” or the “Act”).

The Premerger Notification Rules, 16 C.F.R. Parts 801-803 (the “HSR Rules” or “Rules”).

Other materials related to HSR Premerger Notification include:

- The Statement of Basis and Purpose for the original HSR Rules (“SBP”), 43 Fed. Reg. 33,450 (July 31, 1978), which describes the rationale for the Rules and accompanies their official publication
- Formal interpretations issued pursuant to the HSR Rules as compiled in 6 Trade Reg. Rep. (CCH) at ¶ 42,475

These authorities can be found at

<https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-formal-interpretations>.

For an up-to-date list of Federal Register notices related to the SBP, see

<https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-and-formal-interpretations/statements-basis-purpose>.

B. Substantive merger review Provisions

Clayton Antitrust Act, Section 7, 15 U.S.C. § 18 (“Clayton Act”),
<http://www.law.cornell.edu/uscode/15/18.html>;

Federal Trade Commission Act, Section 5(a), 15 U.S.C. § 45(a),
<http://www.law.cornell.edu/uscode/15/45.html>;

Sherman Antitrust Act, Section 1, 15 U.S.C. § 1 (“Sherman Act”),
<http://www.law.cornell.edu/uscode/15/1.html>.

	<p>Additional information regarding substantive antitrust and merger review-related statutes can be found at www.justice.gov/atr/public/divisionmanual/chapter2.pdf and https://www.ftc.gov/enforcement/statutes.</p>
<p>C. Implementing regulations</p>	<p>The HSR Rules, 16 C.F.R. Parts 801-803.</p> <p>The SBP, 43 Fed. Reg. 33,450 (July 31, 1978) (as background for the HSR Rules)</p> <p>Each of these authorities can be found at https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-formal-interpretations.</p> <p>For an up-to-date list of Federal Register notices related to the SBP, see https://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-and-formal-interpretations/statements-basis-purpose.</p>
<p>D. Notification forms or information requirements</p>	<p>Notification and Report Form, (the “HSR Form”), 16 C.F.R. Part 803 app.</p> <p>The HSR Form and associated Instructions are available at https://www.ftc.gov/enforcement/premerger-notification-program/form-instructions.</p> <p>For links to additional resources, please see the response to Item 1.E.</p>
Interpretative Guidelines and Notices	
<p>E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]</p>	<p>Jurisdictional thresholds are adjusted annually according to a pre-established formula. Current thresholds are available at https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds. See responses to Item 4 in this document for more information.</p>

	<p>A guide to the Steps to Determining Whether an HSR Filing is Required can be found at https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/steps-determining-whether-hsr-filing.</p> <p>The FTC's Premerger Notification Office periodically identifies helpful informal interpretations of HSR laws and regulations that it has provided to the private bar, deletes identifying and confidential information from such interpretations, and publishes them at https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations.</p> <p>A comprehensive list of additional HSR resources is available at https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources. This page includes an introduction to the HSR process, guidance on valuation, guidance on completing the HSR Form, information about HSR Form withdrawal and refiling, and information about Requests for Additional Information and Documentary Material ("Second Requests").</p>
<p>F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]</p>	<p>The Horizontal Merger Guidelines (last updated in 2010) outline the principal analytical techniques, practices, and the enforcement policy of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) with respect to mergers and acquisitions involving actual or potential competitors under the federal antitrust laws. They can be found at http://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf and http://www.justice.gov/atr/public/guidelines/hmg-2010.html.</p> <p>In 2020, the FTC and DOJ issued Vertical Merger Guidelines that outline how the federal antitrust agencies evaluate the likely competitive impact of vertical mergers and whether those mergers comply with U.S. antitrust law. They can be found at https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf.</p>

G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	No.
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	Additional guidance can be found at https://www.ftc.gov/enforcement/premerger-notification-program , https://www.ftc.gov/enforcement/merger-review , and http://www.justice.gov/atr/public/merger-enforcement.html .

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	<p>The FTC and the DOJ (together, the "Agencies") share antitrust enforcement responsibility, including review of mergers and acquisitions. The FTC's Premerger Notification Office ("FTC PNO") administers the premerger notification program, but both the FTC and DOJ have the jurisdiction to conduct merger review. HSR Forms must be filed with both Agencies.</p> <p>Although transactions that trigger a premerger notification filing must be filed with both Agencies, only one agency will substantively review the proposed transaction and only one agency will conduct an investigation and potentially issue Second Requests. The Agencies have a clearance process to allocate responsibility for reviewing each proposed transaction to either the FTC or the DOJ. Allocation generally is made on the basis of the agency's expertise.</p> <p>State Attorneys General may conduct review mergers pursuant to state antitrust laws and can bring suits in federal court under the Clayton Act or the Sherman Act. States may be more likely to investigate mergers that raise issues of local concern and affect commerce in their individual states.</p>

B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	All filings are submitted electronically. For details, see: https://www.ftc.gov/enforcement/premerger-notification-program/guidance-filing-parties
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Parties may email staff at the FTC PNO for guidance on the administration of the premerger notification program and the HSR Act. A PNO staff contact list with email addresses can be found at: https://www.ftc.gov/enforcement/premerger-notification-program/contact-information .

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	The HSR Act and HSR Rules require that certain proposed acquisitions of voting securities, non-corporate interests that yield control (“controlling NCI”), or assets be reported to the Agencies prior to consummation. See Items 3.D and 4 regarding thresholds. For information about joint ventures, see responses to Item 4.F.
B. What is the geographic scope of transactions covered?	Some reportable transactions may be exempt from U.S. reporting requirements because the transaction and/or the parties do not have sufficient ties to the United States. See HSR Rules 802.50-802.52; response to Item 4.C.
C. If change of control is a determining factor, how is control defined and interpreted in practice?	The change of control of an entity is not typically a factor in determining whether an acquisition of voting securities or assets must be reported, but change of control is a

	<p>factor in determining whether an acquisition of an interest in an unincorporated entity must be reported. See HSR Rule 801.2(f)(1)(i).</p> <p>Control is defined in HSR Rule 801.1(b). For corporate entities, control is defined as either holding 50 percent or more of the outstanding voting securities of an issuer or having the contractual power presently to designate 50 percent or more of the directors of a corporation. Percentage of voting securities is calculated in accordance with HSR Rule 801.12. In the case of an unincorporated entity that has no voting securities (<i>e.g.</i>, an LLC or a partnership), control is defined as having the right to 50 percent or more of the profits of the entity or having the right in the event of dissolution to 50 percent or more of the assets of the entity.</p> <p>The concept of control also is relevant to determining what entities are included in the acquiring and acquired persons when calculating whether the statutory Size of Person Test is met (see response to Item 4.A) and what information must be submitted by filing parties. It also is relevant in determining whether the HSR Rule 802.30 exemption for intraperson transactions applies.</p>
<p>D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over “bare” asset purchases, e.g. where the assets purchased do not relate to the acquirer’s existing business?</p>	<p>Yes. Acquisitions of minority interests in voting securities may be reportable if thresholds are met and no exemption applies.</p> <p>HSR Rule 801.1(h) establishes notification thresholds for acquisitions of voting securities. Notification must be made when, as a result of a transaction, an acquiring person holds voting securities:</p> <ul style="list-style-type: none"> - valued at greater than \$50 million (as adjusted) but less than \$100 million (as adjusted); - valued at \$100 million (as adjusted) or greater but less than \$500 million (as adjusted); - valued at \$500 million (as adjusted) or greater;

- constituting 25 percent of the voting securities of an issuer, if the 25 percent (or any amount above 25 percent but less than 50 percent) is valued at greater than \$1 billion (as adjusted); or
- constituting 50 percent of the voting securities of an issuer if valued at greater than \$50 million (as adjusted).

These thresholds are designed to relieve parties of the burden of making another filing every time additional shares of the same person are acquired. When notification is filed, the acquiring person is allowed one year from the end of the waiting period to cross the threshold it indicated in the filing. If within that year the person reaches the stated threshold or any lower threshold, it may continue acquiring shares up to the next threshold for five years measured from the end of the waiting period. The acquiring person must file again, however, before it can cross that next higher threshold.

Under HSR Act Section 7A(c)(9) (15 U.S.C. § 18a(c)(9)) and HSR Rule 802.9, acquisitions resulting in the acquiring person holding 10 percent or less of an issuer's voting securities are exempt if made solely for the purpose of investment.

These notification thresholds do not apply to acquisitions of assets or controlling NCI.

Since 2005, the jurisdictional thresholds have been adjusted annually according to a pre-established formula. The parenthetical "(as adjusted)" has been added where necessary throughout the HSR Rules to indicate where such a change in statutory threshold value occurs. These changes are published in the Federal Register and on the FTC's HSR web page. To reference the current thresholds, see <https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds>. See Item 4.A.

4. Thresholds for notification

**A. What are the general thresholds for notification?
[If the thresholds are subject to adjustment, state on what basis
and how frequently (e.g., for inflation, annually)]**

Whether a particular transaction is reportable is determined by application of the HSR Act, the HSR Rules, and formal and informal staff interpretations. As a general matter, the HSR Act and HSR Rules require both acquiring and acquired persons to file notification under the HSR Program under the following conditions:

1. The acquiring or acquired person is engaged in U.S. commerce or in any activity affecting U.S. commerce (**the Commerce Test**);
2. The amount of voting securities, controlling NCI, or assets held as a result of the acquisition must be over \$50 million (as adjusted) (**the Size of Transaction Test**); and
3. As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities, controlling NCI and/or assets of the acquired person valued in excess of \$50 million (as adjusted) but less than or equal to \$200 million (as adjusted) and the transaction meets **the Size of Person Test***:
 - i. any voting securities, controlling NCI, and/or assets of a person engaged in manufacturing that has annual net sales or total assets of \$10 million (as adjusted) or more are being acquired by any person that has total assets or annual net sales of \$100 million (as adjusted) or more;
 - ii. any voting securities, controlling NCI, and/or assets of a person *not* engaged in manufacturing that has total assets of \$10 million (as adjusted) or more are being acquired by any person that has total assets or annual net sales of \$100 million (as adjusted) or more; or
 - iii. any voting securities, controlling NCI, and/or assets of a person with annual net sales or total assets of \$100 million (as adjusted) or more are being acquired by any person with total assets or annual net sales of \$10 million (as adjusted) or more

	<p>*Note: If the size of the transaction is greater than \$200 million (as adjusted), the Size of Person Test does not apply and, absent an exemption, the transaction is reportable. See HSR Act, Section 7A(a)(2)(A), 15 U.S.C. § 18a(a)(2)(A). See Item 3.D regarding thresholds for acquisitions of voting securities. See Item 4.C regarding rules relevant to the acquisition of foreign assets or voting securities of a foreign issuer.</p> <p>The HSR Act Section 7A(c) (15 U.S.C. § 18a(a)(2)(A)) and HSR Rules (Part 802) exempt various classes of transactions from premerger notification requirements. See, e.g., response to Item 4.C.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>The first step in determining the size of person is to identify the “acquiring person” and the “acquired person.” Under the HSR Act, the obligation to report depends on the size of the “persons” involved. “Person” is defined in HSR Rule 801.1(a)(1) and is the “ultimate parent entity” of the buyer or seller.</p> <p>Identifying the ultimate parent entity involves tracing the chain of “control,” a term defined in HSR Rule 801.1(b). For corporate entities, control is defined as either holding 50 percent or more of the outstanding voting securities of an issuer or having the contractual power presently to designate 50 percent or more of the directors of a corporation. Percentage of voting securities is calculated in accordance with HSR Rule 801.12. In the case of an unincorporated entity (e.g., an LLC or a partnership), control is defined as having the right to 50 percent or more of the profits of the entity or having the right in the event of dissolution to 50 percent or more of the assets of the entity.</p>
<p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<p>Generally, an acquisition of assets located outside the U.S. is exempt unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$50 million (as adjusted) during the acquired person’s most recent fiscal year. See HSR Rule 802.50(a).</p>

	<p>The acquisition of voting securities of a foreign issuer by a U.S. person generally is exempt from the HSR Act unless the issuer (including all entities controlled by the issuer) either holds assets located in the U.S. having an aggregate total value of over \$50 million (as adjusted) or made aggregate sales in or into the U.S. of over \$50 million (as adjusted) in the most recent fiscal year. See HSR Rule 802.51(a).</p> <p>The acquisition of voting securities of a foreign issuer by a foreign person generally is exempt from the HSR Act. However, where the acquisition of foreign voting securities by a foreign person will confer control of the foreign issuer (and all entities controlled by the issuer), <u>and</u> the foreign issuer either holds assets located in the U.S. having an aggregate total value of over \$50 million (as adjusted) or made aggregate sales in or into the U.S. of over \$50 million (as adjusted) in the most recent fiscal year, the transaction may be reportable. See HSR Rule 802.51(b)-(c).</p>
<p>D. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>Generally, no. Where the size of the transaction is in excess of \$50 million (as adjusted) but not in excess of \$200 million (as adjusted), both parties to the transaction must meet the Size of Person Test set forth in HSR Act Section 7A(a)(2)(B)(ii), 15 U.S.C. § 18a(a)(2)(B)(ii).</p> <p>However, where the size of the transaction is in excess of \$200 million (as adjusted), the Size of Person Test does not apply and the transaction is reportable under the HSR Act, unless an exemption applies.</p> <p>For a discussion of the filing(s) required to report the formation of a joint venture, please see the response to Item 4.F.</p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>HSR Act Section 7A(c), 15 U.S.C. § 18a(c), and Part 802 of the HSR Rules provide exemptions for various types of acquisitions related to certain types of assets, including real property assets and carbon-based mineral reserves.</p>

	<p>Note that mergers in some sectors, such as banking, are subject to antitrust and other review by other federal agencies. Thus, HSR Act Sections 7A(c)(6), (c)(7), and (c)(8), 15 U.S.C. § 18a(c)(6), (c)(7), and (c)(8), exempt transactions from HSR reporting requirements when they are subject to certain U.S. federal regulatory agency review and approval. In some instances, parties must file a copy of the information and documentary material filed with such agency contemporaneously with the FTC and the DOJ.</p>
<p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial investments)? If yes, for which sectors and types of transactions?</p>	<p>Not usually, but see response to Item 4.E.</p> <p>HSR Rule 801.40 (covering formations of joint ventures or other corporations) and HSR Rule 801.50 (covering formations of unincorporated entities and requiring reporting only where control is acquired), are subject to a special Size of Person Test.</p> <p>When a joint venture or unincorporated entity is formed, all contributors are deemed acquiring persons and the joint venture or unincorporated entity is deemed the acquired person and does not file. The Size of Person Test is satisfied if either:</p> <ol style="list-style-type: none"> 1. The acquiring person has annual net sales or total assets of \$100 million (as adjusted), the joint venture or new entity will have total assets of \$10 million (as adjusted) or more, and at least one other acquiring person will have annual net sales or total assets of \$10 million (as adjusted) or more; or 2. The acquiring person has annual net sales or total assets of \$10 million (as adjusted) or more, the joint venture or acquiring entity will have total assets of \$100 million (as adjusted) or more, and at least one other acquiring person has annual net sales or total assets of \$10 million (as adjusted) or more.
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign</p>	<p>Yes; see the response to Item 4.C (discussing HSR Rules 802.50 and 802.51).</p>

<p>transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</p>	
<p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p>	<p>Yes; Section 7 of the Clayton Act, 15 U.S.C. § 18, prohibits mergers and acquisitions which may substantially lessen competition or tend to create a monopoly.</p> <p>The Agencies may investigate a transaction at any time and issue compulsory process pursuant to the HSR Act, the FTC Act, or the Antitrust Civil Process Act.</p>
<p>I. Are current notification criteria catching relevant transactions related to digital markets?</p>	<p>The FTC is conducting a study to examine trends in acquisitions and the structure of deals, including whether acquisitions not subject to HSR notification might have raised competitive concerns.</p>

Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>As discussed in response to Item 4.A, unless an exemption applies, premerger notification is required if a transaction meets three tests:</p> <ul style="list-style-type: none"> (1) the Commerce Test; (2) the Size of Transaction Test; and (3) the Size of Person Test. <p>Guidance on each test is available at https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/steps-determining-whether-hsr-filing and an Introductory Guide II (“To File or Not to File”) is available at https://www.ftc.gov/sites/default/files/attachments/premerger-introductory-guides/guide2.pdf.</p> <p>(i) Size of Transaction Test. The HSR Rules specify different techniques for valuing transactions involving assets, voting securities, and controlling NCI, depending upon the</p>
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	<p>circumstances. HSR Rules 801.10 through 801.15 should be consulted for more precise guidance on valuation issues.</p> <p>The FTC’s Premerger Notification Office has published several guidance documents on valuation:</p> <ul style="list-style-type: none"> • Valuation Summary • Valuation in More Detail • Valuation Examples • Section 802.4 Tip Sheet • Converting Foreign Currency • Stock-for-Stock Transactions <p>(ii) and (iii) Size of Person Test. The procedures for calculating the annual net sales and total assets of a person are set out in HSR Rule 801.11. Generally, a person’s annual net sales and total assets are as stated on its last regularly prepared annual statement of income and last regularly prepared balance sheet. These financial statements must be as of a date not more than 15 months old and must have been prepared in accordance with procedures normally used by the filing person.</p> <p>(iv) Not applicable.</p>
<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>In order to determine whether they meet the Size of Person Test under the HSR Act, investment funds must calculate the revenues and assets of all entities that they control under HSR Rule 801.1(b).</p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control?</p>	<p>For acquiring entities, certain information regarding associates of the acquiring person is required in the HSR Form. See also HSR Rule 801.1(d)(2). Only controlled entities are</p>

Are those other funds considered as part of the transaction for turnover purposes?	included when calculating revenues and assets for the purposes of the Size of Person Test.
M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].	The daily average interbank exchange rate is used. See https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/convertng-foreign-currency-hsr-purposes .
5. Pre-notification	
A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].	The PNO does not accept documents or information prior to the submission of an HSR filing, but parties may contact staff of the FTC's PNO for informal advice on the potential reportability of transactions and help in completing the HSR Form.
B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?	Not applicable.

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	Notification is mandatory in the premerger phase if thresholds are met.
B. If parties can make a voluntary merger filing when may they do so?	Parties can voluntarily alert the Agencies about a planned transaction any time, but HSR Forms will only be accepted for transactions that meet the jurisdictional thresholds and are not exempt.
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)	In consensual transactions, the parties can notify the Agencies based on an executed document (<i>e.g.</i> , a letter of intent) that sets forth the primary terms of the agreement. Whether the parties notify the Agencies based on an executed letter of intent or an executed agreement, the HSR Rules generally require parties, except the B side in Rule

	801.30 transactions, to attest in an affidavit to a good faith intention to complete the acquisition. See HSR Rule 803.5.
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D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	<p>Parties may file the HSR Form at any time, however parties cannot close a transaction until the statutory waiting period expires or is terminated.</p> <p>The parties have one year from the expiration or grant of early termination of the waiting period in which to complete the acquisition or to meet the notification threshold previously reported. If they have not done so after one year, the parties must file a new notification and observe the resulting new waiting period before completing the acquisition. See HSR Rule 803.7(a).</p>
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E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	There is no notification deadline; however, parties cannot close on a transaction until a notification has been made and the statutory waiting period expires or is terminated.
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7. Simplified Procedures

A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	Not applicable.
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B. Describe the criteria adopted to consider a transaction under the simplified procedure.	Not applicable.
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8. Information and documents to be submitted with a notification

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).</p>	<p>A cover letter, an executed letter of intent or agreement among the parties, a certification page, and affidavit must be filed with the HSR Form.</p> <p>Item 3 of the HSR Form requires submission of all agreements between parties, including non-competition agreements.</p> <p>Item 4 of the HSR Form also requires that the parties attach certain documents.</p> <p>In particular, Item 4(c) requires attachment of all studies, surveys, and analyses which were prepared by or for any officer or director, or by individuals exercising similar functions, for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth, or expansion into product or geographic markets.</p> <p>Item 4(d) requires attachment of confidential information memoranda (CIMs), bankers' books and other third party consultants' materials, and synergies documents.</p> <p>Parties may voluntarily submit additional information under HSR Rule 803.1(b).</p>
<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<p>Not at the premerger notification stage.</p>
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>Documents evaluating or analyzing synergies and/or efficiencies may be responsive to Item 4(d)(iii) of the HSR Form.</p>

D. What information is required in case the target company is experiencing financial insolvency?	Generally, information regarding financial insolvency is not requested or required at the premerger notification stage.
E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?	Target companies in hostile/unsolicited bids are subject to similar filing requirements to the buyers in such transactions. A target company in a hostile or unsolicited bid must file its HSR Form no later than 15 days after the buyer has filed with both Agencies (10 days in the case of a cash tender offer). See HSR Rules 801.30 and 803.10.
F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?	<p>Yes. As discussed above, HSR Rule 803.5 requires a sworn affidavit, and the HSR Form itself must be certified by a representative with the actual authority to make the certification on behalf of the person filing notification. For more information on certification, see the response to Item 12.D.</p> <p>In the alternative, a party may substitute the language found in 28 U.S.C. § 1746 relating to unsworn declarations under penalty of perjury (“I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).”).</p> <p>Wet-ink signatures or e-signatures are acceptable for certifications and affidavits. If wet-ink signatures are obtained, scanned copies in PDF format are sufficient for submission. S-signatures, digitally captured handwritten signatures, and electronically generated signature images are all acceptable e-signature formats.</p>
G. What are the agency’s rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?	Filing requirements are the same for all reportable transactions. For example, Items 3 and 4 of the HSR Form apply to foreign filers to the same extent that they do to U.S. filers. For a discussion on the submission of documents in a foreign language, see the response to Item 9.B.

<p>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</p>	<p>FTC or DOJ can require submissions from third parties by issuing compulsory process to third parties pursuant to the FTC Act or the Antitrust Civil Process Act.</p> <p>At any time, third parties may voluntarily contact FTC or DOJ and voluntarily submit information regarding a proposed transaction.</p>
<p>I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?</p>	<p>Yes. Parties may voluntarily submit additional information pursuant to HSR Rule 803.1(b).</p> <p>Guidance for Voluntary Submission of Documents During the Initial Waiting Period is available at https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/guidance-voluntary-submission-documents.</p>
<p>J. Are there different forms for different types of transactions or sectors?</p>	<p>No.</p>
<p>K. With respect to investment funds:</p> <p>i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market?</p> <p>ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market?</p>	<p>No.</p> <p>If an investment fund is controlled, that investment fund and its controlling entity are part of the same Person/UPE. See, e.g., Item 4.K.; Item 4.L.</p>

<p>iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?</p>	<p>No.</p>
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<p>9. Translation</p>	
<p>A. In what language(s) can the notification forms be submitted?</p>	<p>English.</p>
<p>B. Describe any requirements to submit translations of documents:</p> <ul style="list-style-type: none"> i) with the initial notification; and ii) later in response to requests for information. <p>In addition:</p> <ul style="list-style-type: none"> iii) what are the categories or types of documents for which translation is required; iv) what are the requirements for certification of the translation; v) which language(s) is/are accepted; and vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted? 	<p>If, at the time of filing, an English language outline, summary, extract, or verbatim translation exists, it must be supplied along with the foreign language information or materials. See HSR Rule 803.8(a).</p> <p>Documents and information submitted in response to a Second Request must be translated in accordance with the terms of the Second Request. See HSR Rule 803.8(b).</p>

<p>10. Review Periods</p>	
<p>A. Describe any applicable review periods following notification.</p>	<p>Filing parties must wait to consummate the transaction (i) for 30 days (15 days in the case of a cash tender offer or bankruptcy filing), generally measured from the date complete filings are received by the Agencies from all parties required to file or (ii) until the Agencies grant early termination of the waiting period.</p>

	<p>The acquiring person may voluntarily withdraw an HSR Form within the first 30-day statutory waiting period and refile to start a new 30-day waiting period. Forms refiled within two days of withdrawal do not require an additional filing fee. See HSR Rule 803.12. See HSR Form Tip Sheet at https://www.ftc.gov/system/files/attachments/form-instructions/hsr_form_tip_sheet_107.pdf.</p> <p>Should the reviewing agency issue Second Requests, the waiting period is extended by 30 days (or 10 days in the case of a cash tender offer or a bankruptcy sale) after all parties have substantially complied with the request (or, in the case of a tender offer, an acquisition from a third party, or a bankruptcy sale, after the acquiring person substantially complies). See HSR Rule 803.10; see also the response to Item 10.B regarding cash tender offers.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>Cash tender offers are subject to a shortened waiting period (noted above). In all tender offers and acquisitions otherwise subject to HSR Rule 801.30, the waiting period begins to run from the date that the acquiring person files a complete HSR Form. See HSR Rule 803.10. The acquired person must then file within 15 days (10 days in the instance of a cash tender offer or bankruptcy filing). See HSR Rule 801.30.</p> <p>For all tender offers, acquisitions otherwise subject to HSR Rule 801.30, and bankruptcy transactions, a Second Request issued to the acquiring person (rather than the acquired person or both parties) extends the waiting period. See 15 U.S.C. § 18a(e)(2) and HSR Rule 803.10.</p>
<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p>See the responses to Item 10.A regarding withdrawal and refiling procedures and the issuance of Second Requests.</p>
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>See the response to Item 11.E.</p>

<p>E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?</p>	<p>Parties may provide a timing agreement to the reviewing agency. A timing agreement is a letter signed by the parties in which the parties agree not to close the transaction or certify compliance with a Second Request until notice is given to the reviewing agency or a specified time period passes. A timing agreement does not alter the statutory waiting periods.</p> <p>The DOJ has a Model Process and Timing Agreement, available at http://www.justice.gov/atr/public/220240.htm.</p>
<p>F. What are the time periods for accelerated review of non-problematic transactions, if any?</p>	<p>Parties may request early termination of the statutory waiting period on the HSR Form. See response to Item 11.F.</p>
<p>G. If remedies are offered, do they impact the timing of the review?</p>	<p>Parties may discuss remedies with the reviewing agency's staff at any time.</p> <p>The FTC's guidance on remedies is available at https://www.ftc.gov/enforcement/merger-review.</p> <p>The DOJ's Policy Guide to Merger Remedies is available at http://www.justice.gov/atr/public/guidelines/272350.pdf.</p>
<p>11. Waiting periods / suspension obligations</p>	
<p>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	<p>The statutory waiting period is described in the response to Items 10.A and 10.B. The acquiring person cannot acquire voting securities, controlling NCI, or assets prior to the expiration of the waiting period if, as a result of the acquisition, it would "hold" a reportable amount. "Hold" is defined in terms of "beneficial ownership" under HSR Rule 801.1(c).</p>

	<p>The FTC and DOJ have sued for civil penalties when parties have transferred operational control of the seller's business to the buyer prior to expiration of the waiting period on the grounds that this transferred beneficial ownership. See, e.g., <u>United States v. Canon Inc. and Toshiba Corporation</u>, Civil Action No. 1:19-cv-01680 (D.D.C. filed June 10, 2019, available at https://www.ftc.gov/enforcement/cases-proceedings/161-0129/canon-inc-toshiba-corporation; <u>United States v. Titan Wheel Int'l, Inc.</u>, No. 96-01040, 1996 WL 351143 (D.D.C. May 10, 1996).</p>
<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>Parties may request early termination of the statutory waiting period on the HSR Form. See the response to Item 11.F.</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	<p>No. The waiting period applies to the entire transaction as it is reported on the HSR Form. However, if a foreign portion of a transaction is exempt from the HSR filing requirements, the parties may sometimes proceed to acquire the exempt assets, controlling NCI, and/or voting securities depending on the structure of the transaction. In such circumstances, the parties should seek advice from FTC PNO staff. See the response to Item 2.C. (providing contact information).</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>If the initial statutory waiting period expires or is terminated, the parties can close their deal.</p> <p>If the statutory waiting period following substantial compliance with a Second Request has passed, and the reviewing agency has not sought a court order forbidding the merger, the parties can close their deal at the end of the waiting period.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>If Second Requests are issued, the waiting period is suspended until the relevant party or parties certify substantial compliance. The waiting period will expire 30 days after the party or parties certify substantial compliance.</p>

	<p>Aside from the Second Request procedure, there is no provision in the HSR Act for extension of the waiting period. In limited circumstances, several practices effectively extend the time for premerger review. As discussed in the response to Item 10.A, during the initial phase of the waiting period, parties may withdraw their filing and refile within two business days to start another 30-day waiting period without having to pay another filing fee.</p> <p>Parties can delay certification of their submission until they are ready to proceed. In addition, as discussed in Item 10.E, the parties can agree by letter agreement not to close the transaction or certify substantial compliance until notice is given to the reviewing agency or a specified time period passes.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>Filing parties can request early termination of the statutory waiting period by checking the appropriate box on the HSR Form. Only one filing person need request early termination. Early termination can be granted at any time after filing. The majority of early terminations occur within two weeks from the date that filings have been made by all parties required to file.</p> <p>A grant of early termination is published in the Federal Register, on the FTC's web page, and on the FTC's Twitter account. See response to Item 15.A for more information.</p>
<p>G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>Not applicable.</p>

<p>12. Responsibility for notification / representation</p>
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<p>A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?</p>	<p>In most transactions, both the acquiring and acquired persons must file separately. See HSR Rule 803.1. In formations of joint ventures and unincorporated entities, only the acquiring person(s) must file. See HSR Rules 801.40 and 801.50.</p>
<p>B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>In public tenders (hostile or non-hostile), as well as in acquisitions otherwise subject to HSR Rule 801.30, the waiting period begins to run from the time a complete filing is received from the acquiring person. See HSR Rules 801.30 and 803.10. The acquired person must file within specified time periods.</p>
<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>The HSR Form requires that a person be designated as a primary contact regarding the HSR Form. The primary contact is typically an attorney. See Item 12.D regarding who may certify the contents of the HSR Form.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p>	<p>The contents of the HSR Form must be certified to be true and correct by a representative with the actual authority to make the certification on behalf of the person filing notification. HSR Rule 803.6 specifies who may certify:</p> <ul style="list-style-type: none"> - for a partnership – any general partner - for a corporation – any officer or director - for persons without officers, directors, or partners – any individual having similar functions - for a natural person – the natural person or his or her legal representative - for an estate of a deceased natural person – any duly authorized legal representative of such estate <p>Foreign filing persons must provide a name and title, firm name, address, telephone number, fax number, and email address of an individual located in the U.S. for the limited purpose of receiving notice if a Second Request is issued.</p>

13. Filing fees

<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]</p>	<p>Yes. The fees for notification are tiered based on the size of the transaction. Current fee tiers can be found at https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information; see also HSR Rule 803.9.</p>
<p>B. Who is responsible for payment?</p>	<p>HSR Rule 803.9(a) requires that each acquiring person shall pay the filing fee required by the HSR Act. In practice, any party may pay the fee on behalf of the acquiring person.</p>
<p>C. When is payment required?</p>	<p>At the time of filing the HSR Form. For more detail, see, e.g., https://www.ftc.gov/news-events/blogs/competition-matters/2020/05/hsr-filing-fees-reminders-tips.</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>Electronic Wire Transfer (EWT) is the preferred method of payment. The FTC strongly discourages payment of the filing fee by check.</p> <p>See https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information; https://www.ftc.gov/news-events/blogs/competition-matters/2020/05/hsr-filing-fees-reminders-tips; and HSR Rule 803.9.</p>

<p>14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]</p>	
<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</p>	<p>Parties may file HSR Forms at any time, however parties cannot close a transaction until the statutory waiting period expires or is terminated. Waiting periods are discussed in response to Items 10.A and 10.B.</p> <p>After HSR Forms are filed and it is determined that the filed notification poses potential competitive concern, DOJ and FTC will decide which agency's staff will review the matter. During the initial waiting period, staff may conduct an initial investigation to determine whether further inquiry is warranted. Generally, during the initial waiting period, reviewing staff may analyze documents and information submitted with the</p>

	<p>HSR Form, as well as publicly available information. Staff may seek voluntary information from parties and third parties. See Introductory Guide I, available at https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources.</p> <p>Should the reviewing agency issue Second Requests, staff at the reviewing agency will analyze the additional information and documents provided by the merging parties and by third parties. Recipients of Second Requests can discuss modifications with staff of the issuing agency, and each agency has a second request appeals process. See Introductory Guide III, available at https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources. Also see Best Practices for Merger Investigations, available at https://www.ftc.gov/system/files/attachments/merger-review/best_practices_for_merger_investigations_august_2015.pdf.</p> <p>If the reviewing agency believes that a proposed transaction may violate the antitrust laws, it may seek an injunction in federal district court to prohibit consummation of the transaction.</p> <p>The Agencies can also investigate and challenge consummated transactions and transactions that fall below notification thresholds. See Item 4.H.</p> <p>The Horizontal Merger Guidelines (last updated in 2010) outline the principal analytical techniques, practices, and the enforcement policy of the DOJ and the FTC with respect to mergers and acquisitions involving actual or potential competitors under the federal antitrust laws. They can be found at https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf.</p>
<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p>Section 7 of the Clayton Act, 15 U.S.C. § 18, prohibits mergers and acquisitions the effect of which may be to substantially lessen competition, or to tend to create a monopoly.</p>

<p>C. What theories of harm does the agency consider in practice?</p>	<p>See Horizontal Merger Guidelines, available at https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf.</p>
<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>For all types of transactions, DOJ and FTC seek to identify and challenge those that are competitively harmful while avoiding unnecessary interference with transactions that are either competitively beneficial or neutral.</p> <p>Litigation shop staff analyze evidence during an investigation to address the central question of whether a merger may substantially lessen competition. Staff consider evidence in order to understand: competitive effects; market definition, shares, and concentration; competitors; entry; efficiencies; and other aspects of the market. Merger analysis is a fact-specific process through which the Agencies, guided by their extensive experience, apply a range of analytical tools to the reasonably available and reliable evidence to evaluate competitive concerns in a limited period of time.</p> <p>For a description of the analytical techniques, practices, and enforcement policy, see Horizontal Merger Guidelines, available at http://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf.</p>
<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>No. See Horizontal Merger Guidelines, available at https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf.</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>After analyzing all of the information available, the litigation shop or investigative staff of the reviewing agency make a recommendation to either the Federal Trade Commission (if the FTC has performed the substantive review) or the Assistant Attorney General (if the DOJ has performed the substantive review).</p> <p>Possible outcomes include a recommendation: to take no further action; to seek injunctive relief; or to settle with the parties. See the Premerger Introductory Guides</p>

	available at https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources .
G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?	Negotiated remedies are tailored to maintain or restore competition that would have been lost because of the merger, and remedies may include structural or behavioral elements. See Item 10.G regarding remedies and FTC and DOJ guidance documents cited in those responses.

15. Confidentiality	
A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?	<p>Under the HSR Act, all information received in premerger notification filings must be treated as confidential and cannot be made public, except as may be relevant to a judicial or administrative proceeding involving the FTC or DOJ (15 U.S.C. § 18a(h)) or subject to a party's waiver of confidentiality. As a result, HSR premerger notification documents are statutorily classified as confidential.</p> <p>The Agencies may not disclose that parties to an acquisition have filed a notification unless the parties have requested, and are granted, early termination of the waiting period. The fact of early termination is published in the Federal Register, on the FTC web page, and on the FTC's Twitter account.</p> <p>If requested, disclosure may be made to to a duly authorized committee or subcommittee of the U.S. Congress. <i>See</i> 15 U.S.C. § 18a(h).</p>
B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?	No. See response to Item 15.A regarding confidentiality.

<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>Disclosure of materials submitted pursuant to the HSR Act to other governmental agencies (<i>e.g.</i>, State Attorneys General, federal or state law enforcement agencies, non-U.S. antitrust authorities) may be made if parties grant waivers of confidentiality. The decision whether to grant such a waiver is within each party's discretion.</p> <p>For more information about the Agencies and State Attorneys General, see https://www.ftc.gov/tips-advice/competition-guidance/merger-investigations.</p> <p>See Item 17 for more information regarding cooperation with non-U.S. competition authorities.</p>
<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Not necessary; see response to Item 15.A.</p>
<p>E. Can the agency deny a party's claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>Not applicable; see responses to Items 15.A and 15.F.</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>The statutory restrictions and rules governing the treatment of confidential information continue to apply after the Agencies have filed a complaint in federal court or initiated administrative proceedings. The HSR Act expressly allows the Agencies to use confidential information produced by the parties and third parties in judicial or administrative proceedings.</p> <p>Parties to a transaction or third-party sources of information can request that the court grant a protective order to protect confidential information from disclosure beyond individuals identified in the order. Rule 26(c) of the Federal Rules of Civil Procedure</p>

	<p>enables parties in civil cases in federal courts to seek judicial protective orders to limit public access to discovery materials upon a showing of “good cause,” and FTC Rule 3.31(d) allows for an administrative law judge to issue a protective order “to protect the parties and third parties against improper use and disclosure of confidential information.”</p> <p>Judicial and administrative courts have extensive experience evaluating requests for protective orders and, in determining whether to issue such orders, will consider several factors, including the confidentiality interests at issue, the fairness and efficiency of limiting public access to information, and the importance of the litigation to the public. Parties often seek protective orders from the court to restrict public dissemination of confidential business information. In many cases, the parties and the FTC or DOJ will seek to reach agreement on the terms of proposed protective orders sought from a court. When requesting a protective order, a party may file a motion with the court to file confidential information under seal, meaning that the information may be reviewed by the court without becoming a public record.</p> <p>Federal Rule of Civil Procedure 5.2 and the FTC’s administrative law judges also allow a redacted copy of a document to be made public while an un-redacted copy containing confidential information remains under seal.</p>
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16. Transparency	
<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>Yes. The FTC and DOJ publish annual reports at https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports.</p> <p>The DOJ publishes a Ten Year Workload Statistics Report available at http://www.justice.gov/atr/public/workload-statistics.html.</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these</p>	<p>The DOJ and FTC typically issue a press release whenever a transaction is challenged in court and, in some instances, when a transaction is restructured or abandoned after the</p>

<p>be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>parties become aware of the investigating agency's competition concerns. On appropriate occasions, the Agencies may issue a public statement describing the reasons for closing an antitrust investigation.</p> <p>In matters involving consent agreements, the proposed settlement and accompanying materials are placed on the public record for a notice and comment period before the consent agreement can be made final.</p> <p>A notice describing the Issuance of Public Statements Upon Closing of Investigations may be found at http://www.justice.gov/atr/public/guidelines/201888.htm and https://www.ftc.gov/enforcement/cases-proceedings/closing-letters-and-other-public-statements/commission-closing-letters.</p>
<p>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</p>	<p>See response to Item 16.B.</p>
<p>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</p>	<p>HSR Annual Reports are available at https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports.</p> <p>The DOJ publishes a Ten Year Workload Statistics Report, available at http://www.justice.gov/atr/public/workload-statistics.html.</p>
<p>17. Cooperation</p>	
<p>A. Is the agency able to exchange information or documents with international counterparts?</p>	<p>When the FTC or DOJ and a non-U.S. antitrust agency review a case that raises competition concerns in one or both jurisdictions, the agencies may exchange investigative information. This may include public information as well as “agency confidential” information -- information that the agency does not routinely disclose but on which there are no statutory disclosure prohibitions (examples include staff views on</p>

	<p>market definition, competitive effects, and remedies, and the fact that the FTC or DOJ is investigating a particular party).</p> <p>As noted in response to Item 15.A, information and materials submitted pursuant to the HSR Act are confidential, and the agencies can only cooperate on the basis of such information after obtaining waivers of confidentiality from parties and third parties. Parties to merger investigations routinely waive confidentiality protections to facilitate cooperation. Waivers can benefit parties by reducing information production burdens and avoiding incompatible remedies.</p>
<p>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>While the agreements do not permit the exchange of statutorily protected confidential information without a waiver from the party, the Agencies have bilateral cooperation agreements with ten jurisdictions: Germany (1976); Australia (1982); the European Communities (1991); Canada (1995); Brazil, Israel, and Japan (1999); Mexico (2000); Chile’s competition enforcement agency (2011); and Colombia (2014). The U.S. antitrust agencies have a Memorandum of Understanding with the Russian Federal Antimonopoly (2009), with the three Chinese antitrust agencies (2011), the Indian competition authorities (2012).), and the Korean (2015) and Peruvian competition authorities (2016).</p> <p>The Agencies also follow The Recommendation of the Organization for Economic Cooperation and Development (“OECD”) on international competition cooperation (last updated in 2014). The U.S. has entered into enhanced positive comity agreements with the EC (1998) and Canada (2004) that include, inter alia, a presumption of deference to the other jurisdiction to take the lead on antitrust enforcement in certain circumstances, though these agreements have not yet been invoked.</p> <p>The International Antitrust Enforcement Assistance Act (“IAEAA”) authorizes the United States to enter into mutual assistance agreements that, among other things, permit agencies to share certain confidential information not covered by the HSR Act and to use compulsory process to obtain evidence for the other jurisdiction’s competition agency. The IAEAA sets out specific confidentiality safeguards for sharing information under</p>

	<p>antitrust mutual assistance agreements. The United States has entered into only one such agreement, with Australia (1997). All agreements are available at https://www.ftc.gov/policy/international/international-cooperation-agreements and http://www.justice.gov/atr/public/international/int-arrangements.html.</p> <p>The ICN Framework for Merger Review Cooperation (2012) facilitates cooperation, but does not remove the need for waivers if sharing HSR-confidential information. It is available at https://www.internationalcompetitionnetwork.org/portfolio/icn-framework-for-merger-review-cooperation/</p>
<p>C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN’s model waiver of confidentiality in merger investigations form.</p>	<p>Yes. Parties or third parties may choose to waive confidentiality protections to permit the Agencies and non-U.S. antitrust agencies to share the party’s or third party’s confidential information.</p> <p>The Agencies have published a joint Model Waiver of Confidentiality and accompanying FAQ, available at https://www.ftc.gov/policy/international/international-competition/international-waivers-confidentiality-ftc-antitrust and https://www.justice.gov/atr/public/international/index.html.</p> <p>See the response to 17.B regarding the IAEEA.</p>
<p>D. Is the agency able to exchange information or documents with other domestic regulators?</p>	<p>Some mergers and acquisitions may become subject to simultaneous federal and state investigations by either the FTC or DOJ, and one or more State Attorneys General. To the extent lawful, practicable and desirable in the circumstances of a particular case, the Antitrust Division or the FTC and the State Attorneys General will cooperate in analyzing the merger. A Protocol for Coordination in Merger Investigations sets forth a general framework for the conduct of joint investigations with the goals of maximizing cooperation between the federal and state enforcement agencies and minimizing the burden on the parties. Pursuant to the protocol, DOJ and the FTC will, with the consent of the merging parties, provide certain otherwise confidential information to State Attorneys General.</p>

18. Sanctions/penalties	
<p>A. What are the sanctions/penalties for:</p> <ul style="list-style-type: none"> i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency? 	<p>Depending on the circumstances, the DOJ or FTC may decide to pursue civil penalties of up to \$43,792 (as adjusted annually for inflation) for every day that the parties have been in violation of the HSR filing requirements. See FTC Rule 1.98, 16 C.F.R. § 1.98.</p> <p>Civil penalties may be applied in instances such as: failure to file; violation of the statutory waiting period after filing; incomplete or misleading information; and deliberate avoidance of filing. See HSR Rule 801.90.</p>
<p>B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?</p>	<p>Anyone who signs on behalf of any acquiring or acquired person, or any officer, director, or partner of the acquiring or acquired person.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>The reviewing agency cannot impose penalties directly for violations of the HSR Act. Such penalties may be recovered in a civil action brought by the United States. To date, all such civil penalty cases have settled without trial, and most have settled simultaneously with filing of the complaint.</p>
<p>D. Are there any recent or significant fining decisions?</p>	<p>An Index of HSR enforcement actions is available at https://www.ftc.gov/enforcement/premerger-notification-program/post-consummation-filings-hsr-violations.</p>
19. Independence	
<p>A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger</p>	<p>Not applicable.</p>

decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	
B. What are the grounds for such ministerial intervention?	Not applicable.
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	Not applicable.

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	When the FTC or DOJ challenges a transaction in court, the court's rules govern timing. The Federal Rules of Civil Procedure apply in federal court cases, and the FTC's administrative court follows procedures set forth in the FTC Rules.
B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.	See the response to Item 15.F.
C. Are there any limitations on the time during which an appeal may be filed?	Under the Federal Rules of Appellate Procedure, most appeals must be filed within 30 days of a district court's entry of judgment, an order, or a decree. See 28 U.S.C. § 2107. For merger-related administrative decisions by the FTC, an automatic appeal from the administrative law judge's initial decision is heard by the FTC Commissioners. Parties may submit appellate briefs within 20 days of the issuance of the initial decision. FTC Rule 3.52. Parties, but not FTC staff, may appeal a decision by the full Commission in federal court. Appeals of a decision by the full Commission are governed by the Federal Rules of Appellate Procedure.

21. Additional filings	
A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?	<p>Filings/clearances may be required with some sectoral regulators, such as in banking, transportation, and communications. See the response to Item 4.E.</p> <p>Parties may need to comply with Securities and Exchange Commission (“SEC”) filing and reporting requirements. The Committee on Foreign Investment in the United States (“CFIUS”) reviews transactions that could result in control of a U.S. business by a foreign person, in order to determine the effect of such transactions on the national security of the United States. See http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx.</p>
22. Closing Deadlines	
A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?	The parties have one year from the expiration or grant of early termination of the waiting period in which to complete the acquisition or to meet the notification threshold previously filed upon. If they have not done so after one year, the parties must file a new notification and observe the waiting period before completing the acquisition. See HSR Rule 803.7(a).
23. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	The HSR Act Section 7A(i)(1), 15 U.S.C. § 18a(i)(1), provides that any action taken (or not taken) by the Agencies shall not bar any future action by the Agencies with the respect to the acquisition.
B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?	The FTC’s Bureau of Economics announced in 2020 a revamped Merger Retrospective Program, which expanded and formalized the Bureau’s retrospective research efforts that have already produced studies analyzing the effects of a range of consummated mergers over the last 35 years. Some of the new initiatives to the revitalized Merger Retrospective Program include providing an annual report on the lessons from recent retrospective studies and developing and maintaining a website devoted to research on retrospectives that includes a bibliography of retrospective studies .

