



## DETAILS OF MAJOR NEW REQUIREMENTS FOR HSR FILINGS

<b>New HSR Requirements: Written Descriptions &amp; Data</b>	
<p><b>Description of Actual and Potential Competition</b> (Horizontal Overlaps)</p>	<p>Written descriptions from each party of their “principal categories of products and services,” as well as those products and/or services that compete with the other party’s offerings, in the United States or abroad.</p> <p>The descriptions must include potential competition from each party—both products or services that “could compete with” the products or services of another party, as well as “known planned” products or services from either party that could or would be in competition. According to the new HSR forms, “[t]he acquiring and acquired person should not exchange information for the purpose of answering this item.”</p> <p>While the FTC has stated that these descriptions should be “brief” and exclude legal argument, parties should engage counsel to carefully consider these descriptions to avoid prejudicing themselves during a more extensive Second Request investigation, as well as for future filings.</p>
<p><b>Sales Data, Customer Descriptions, and Lists</b> (Horizontal Overlaps)</p>	<p>For each identified overlapping product/service, the party must:</p> <ol style="list-style-type: none"> <li>(1) produce sales data (in dollars) for the most recent year;</li> <li>(2) describe “all categories of customers” that “purchase or use” the product/service; and</li> <li>(3) list the top 10 overall customers for the most recent year, as well as the top 10 customers for each customer category.</li> </ol>
<p><b>Supply Relationships</b> (Vertical Supply Relationships)</p>	<p>Describe any vertical supply relationships where a party is in the same supply chain as the other party to the transaction, such as upstream purchases and downstream sales of products, services, or assets (including data). This includes sales/purchases directly between the parties, as well as sales/purchases with a third party that competes with the other party.</p> <p>Under the new HSR rules, “[t]he acquiring and acquired person should not exchange information for the purpose of answering this item.”</p>
<p><b>Sales/Purchase Data, Customer and Supplier Lists</b> (Vertical Supply Relationships)</p>	<p>For each identified vertical supply relationship, the party must:</p> <ol style="list-style-type: none"> <li>(1) produce sales/purchase data for the most recent year;</li> <li>(2) list the top 10 customers/suppliers; and</li> <li>(3) describe the party’s terms of purchase/supply with each of them.</li> </ol>

<p><b>Officers and Directors</b> (Horizontal Overlaps or Vertical Supply Relationships)</p>	<p>Buyer only: For all entities within the acquiring person that are part of either identified horizontal overlapping products or services or identified vertical supply relationships, a list of current and recent officers and directors must be provided, if the officers or directors are also officers or directors of another entity that derives revenue in the same industry as the target.</p> <p>This new requirement is designed to assist the FTC with investigations into potential Clayton Act Section 8 violations for interlocking directorates.</p>
<p><b>Transaction Rationale</b></p>	<p>Describe the strategic rationale for the transaction.</p> <p>Identify any documents being submitted in response to other items that confirm or discuss the transaction rationale (does not require submission of additional documents).</p>
<p><b>Corporate Structure and Minority Ownership</b></p>	<p>Describe the ownership structure of the acquiring entity, and for funds and master limited partnerships, produce organizational charts that exist in the ordinary course.</p> <p>In addition, identify minority shareholders throughout the ownership structure—from the buyer through the acquiring entity and its subsidiaries—including limited partners holding minority stakes or having the right to the right to serve as, nominate, appoint, veto, or approve board members. Previously, only general partners had to be disclosed.</p>
<p><b>Foreign Subsidies</b></p>	<p>Each filing party must disclose (1) whether it has received any subsidies or subsidy commitments from any foreign entity or government of concern, which currently include China, Iran, North Korea, and Russia, and (2) information about products that are produced in any of those countries.</p> <p>Given that this requirement reaches outside the traditional antitrust ecosystem, additional resources may be required to prepare the HSR filing.</p>

**New HSR Requirements:  
Documents**

<p><b>Competition Documents</b></p>	<p>Provide all studies, surveys, analyses, and reports prepared by or for any officers, directors, or the supervisory deal team lead 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>This requirement mirrors the types of documents currently required under Item 4(c) but expands the custodians beyond officers and directors to include a supervisory deal team lead. This “lead” individual will be the person “who has primary responsibility for supervising the strategic assessment of the deal, and who would not otherwise qualify as a director or officer.” For ease of document collection, this person should be identified as early in the deal process as possible.</p> <p>This change only applies to the collection “Competition Documents” and does not impact the collection of documents responsive to former Item 4(d), which include “Confidential Information Memoranda,” “Third Party Documents,” and “Synergies and Efficiencies Documents.”</p>
<p><b>Regularly Prepared CEO Reports on Overlapping Competition</b>  (Horizontal Overlaps)</p>	<p>Provide all regularly prepared plans and reports that were provided to the CEO, within one year of filing, that analyze market shares, competition, competitors, or markets pertaining to any identified horizontal overlapping products or services. This requirement includes analysis relating to overlapping products or services that each party knows to be under development by the other party.</p> <p>Parties do not need to submit recurring documents that are prepared more frequently than on a quarterly basis (i.e., do not provide weekly or monthly reports), and one-time or special reports are not required to be submitted.</p>
<p><b>Board Reports on Overlapping Competition</b>  (Horizontal Overlaps)</p>	<p>Provide all plans and reports that were provided to the board of directors (not just an individual director), within one year of filing, that analyze market shares, competition, competitors, or markets pertaining to any identified horizontal overlapping products or services. This requirement includes analysis relating to overlapping products or services that each party knows to be under development by the other party.</p> <p>Such reports do not need to be regularly prepared; one-time or special reports with responsive content must be submitted.</p>
<p><b>Transaction-Specific Agreements</b></p>	<p>Provide the transaction agreement, including all exhibits, schedules, side letters, and agreements not to compete or solicit, excluding clean team agreements.</p> <p>This requirement expands on the existing requirement to submit transaction agreements under Item 3(b). Previously, schedules and exhibits could be excluded unless they contained agreements not to compete, other agreements between the parties, or important deal terms.</p>

<p><b>Other Agreements Between Buyer and Target</b></p>	<p>Buyer only: Buyer must identify the existence of certain types of agreements with the target that are current or had expired within one year of filing. These include non-competition agreements, non-solicitation agreements, leases, licensing, master services agreements, operating agreements, supply agreements, and other agreements that affect the antitrust assessment of the transaction.</p> <p>Identify only: While these documents are not required to be submitted with the filing, their identification will likely require collection and review of a larger set, and they may be requested during an investigation.</p>
<p><b>Organizational Chart</b></p>	<p>Buyer only: If the acquiring person is a fund or master limited partnership, provide a pre-existing organizational chart showing affiliates and associates. New charts do not need to be created.</p>
<p><b>Transaction Diagram</b></p>	<p>Buyer only: Provide a pre-existing diagram illustrating the transaction. New diagrams do not need to be created.</p>
<p><b>Defense or Intelligence Contracts</b> (Horizontal Overlaps or Vertical Supply Relationships)</p>	<p>Parties must identify bids and awarded contracts for U.S. defense or intelligence contracts valued over \$100 million if they will result in revenue, products, or services in either identified horizontal overlapping products or services or identified vertical supply relationships.</p> <p>Identify only: While these documents are not required to be submitted with the filing, their identification will likely require collection and review of a larger set, and they may be requested during an investigation.</p>
<p><b>Translation</b></p>	<p>All non-English text and documents must be translated into English. This additional task must be accounted for in the filing timeline.</p>