

SECOND SUPPLEMENT TO MEMORANDUM 2023-49

Antitrust Law: Status Update (Presentation)

The staff received the attached PowerPoint¹ from Professor Daniel Crane, who is making a presentation on the Uniform Law Commission's draft Uniform Act on Antitrust Pre-Merger Notification at the Commission's December 21, 2023, meeting.

Respectfully submitted,

Sharon Reilly
Executive Director

¹ The staff notes that slide 6 of the attached presentation references two recently enacted bills. For reference, the links to the bills can be found below:

[Senate Bill No. 184](#) (2022 Cal. Stat. ch. 47, § 19).
[Assembly Bill No. 583](#) (2023 Cal. Stat. ch. 457).



UNIFORM LAW COMMISSION UNIFORM ACT ON PRE-MERGER NOTIFICATION

Dan Crane, ULC Reporter
University of Michigan
December 21, 2023

Context

- Since 1976, federal Hart Scott Rodino (“HSR”) Act has required companies engaging in covered mergers and acquisitions to provide pre-merger notification to the FTC and DOJ.
- The HSR filing contains basic information about the merger, together with supplemental documentary information required by FTC regulations.
 - *FTC is currently in process of increasing amount of information needed to be submitted.*
 - i.e., information about merger’s effects on workers.
- HSR makes filings confidential and FOIA-exempt.
- State Attorneys General do not have access.
 - *If they learn of transaction, may be able to subpoena HSR file or negotiate a waiver with merging parties, but that process can cause significant expense and delay.*
 - *Given that HSR process and agency investigation moves quickly, AGs are often at a significant disadvantage*

Goals and Spirit of Uniform Act

- Improve process of State participation in merger review by allowing State AGs to obtain immediate access to HSR filings, subject to same confidentiality restrictions as apply to federal agencies.
- Allow State AGs to participate in merger review with same information and on same time-frame as federal agencies, without imposing additional burdens on merging parties.
- This is a “good government” Act that takes no position on ongoing debates about the overall direction of antitrust law.

Process

- Study Committee consulted with broad range of stakeholders.
- Input from DOJ & FTC.
- Support from AG community.
 - *Sept 27, 2023 letter to FTC from AGs of New York, Arizona, California, Colorado, Connecticut, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, the United States Virgin Islands, Washington, and Wisconsin:*
 - “Following the growing patchwork of State premerger notification laws and the shortcomings of the current state of affairs—where States either do not become aware of transactions affecting their jurisdictions or do not have enough time to investigate such transactions—the Uniform Law Commission has proposed ‘The Antitrust Pre-Merger Notification Act,’ which would create a non-burdensome mechanism for States to receive access to HSR filings at the same time as the Agencies. The anticipated effect is to facilitate early information sharing and coordination amongst States and the Agencies.”

Mechanics

- Filing requirement triggered if:
 - *Person is a citizen of state (i.e., incorporated) or principal place of business in state; or*
 - *Annual net sales in state 20% of HSR filing threshold (i.e. around \$20m today)*
- Must file HSR form with AG, and if citizen or PPB, must submit additional documentary material.
 - *(May need qualification based on final HSR rules.)*
 - *If AG doesn't receive additional materials under citizen/PPB test, may request them.*
- No filing fee.
- Confidentiality.
- Reciprocity.
 - *Receiving AG may share with any other AG whose state has passed Act.*
 - *Must give notice to merging parties.*
 - *Aspiration: AGs collaborate with FTC to set up a central database, accessible only to AGs from enacting states.*

Potential objections

- Increasing burdens on business community or AG offices.
 - *Push of a button for merging parties.*
 - *For AGs, will reduce subpoena and timing burdens and enable better collaboration and division of labor with other AGs and federal agencies.*
- Preempting other state legislation.
 - *No effect on sector-specific pre-merger notification requirements.*
 - CA Senate Bill 184 (2022) (health care)
 - CA Assembly Bill 853 (2023) (retail)
 - *If this is a concern, happy to recommend savings clause in Act.*



UNIFORM LAW COMMISSION UNIFORM ACT ON PRE-MERGER NOTIFICATION

Dan Crane, ULC Reporter
University of Michigan
December 21, 2023