FOREWORD

The Section of Antitrust Law of the American Bar Association is pleased to publish this fifth edition of the Premerger Notification Practice Manual. This Manual collects and discusses summaries of informal interpretations by the staff of the Federal Trade Commission and enforcement actions regarding the premerger notification requirements contained in Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the FTC’s implementing regulations.

Like the first four editions, published in 1985, 1991, 2003, and 2007, this fifth edition of the Manual continues to be the most comprehensive published source for such materials. The extensive involvement of the FTC’s Premerger Notification Office staff in the review of the drafts of this edition, for which the Section is most grateful, assures that its contents are as accurate and as current as possible.

This edition of the Manual was prepared by a working group led by Michele S. Harrington and Ellen M. Jakovic. The Section appreciates the experience, expertise, and effort contributed to this new edition, which we believe will be invaluable to premerger notification practice.

February 2015

Howard Feller
Chair, Section of Antitrust Law
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2014-2015
PREFACE


Since 2007, many of the Rules have changed, and the body of informal HSR Act lore continues to expand. A working group consisting of private practitioners, along with several staff of the FTC’s Premerger Notification Office (PNO) coordinated by Michele S. Harrington and Ellen M. Jakovic, revised the *Manual*. This fifth edition supersedes the 2007 version of the *Manual*. Interpretations have been revised and expanded as necessary and, in a few cases, deleted as obsolete. Many new interpretations have been added.

Like the earlier editions, the fifth edition of the *Manual* is organized by specific sections of the HSR Act and Rules. In addition, however, the fifth edition is organized into chapters by general subject matter, namely (1) HSR control tests/ultimate parent entity, (2) size of transaction threshold test, (3) size of person threshold test, (4) exemptions, (5) HSR form/process, and (6) enforcement actions. Unlike the earlier editions, the fifth edition does not include the FTC’s formal interpretations, which are now readily available on the PNO’s website. See http://www.ftc.gov/enforcement/premerger-notification-program/statute-rules-and-formal-interpretations.

Each numbered interpretation within each chapter of the fifth edition describes the issue and analysis, identifies support for the conclusions, and may comment on the issue and the interpretation. Within each general subject matter, the interpretations are organized broadly by specific sections of the HSR Act and Rules. Like the fourth edition, every interpretation in this *Manual* was reviewed and discussed in detail with the PNO staff. The fifth edition attempts to present as accurately as possible the current position of that office, as discussed more fully in the Introduction.

Special thanks are due to Michele S. Harrington and Ellen M. Jakovic who coordinated preparation of the new edition; to Deborah Feinstein (Director, Bureau of Competition), Marian Bruno (Deputy Director, Bureau of Competition), Robert L. Jones (Assistant Director...
and Clearance Officer, PNO), Kathryn E. Walsh (Deputy Assistant Director, PNO), B. Michael Verne (PNO), and Susan H. Pope (PNO), who provided invaluable assistance. We would also like to thank Marie L. Middledorf for her tremendous assistance in revising and finalizing the fifth edition of the Premerger Notification Practice Manual. Many other individuals in the private bar and in the government assisted in this project, including:

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Finally, the Committee would like to recognize the debt that it owes to Malcolm R. (“Sandy”) Pfunder, who conceived and edited the first edition of the Manual, and to Bruce J. Prager, who expanded on the original concept as editor of the second edition of the Manual. Building on this strong foundation, and on the labors of the individuals named above, the new fifth edition of the Manual is the most comprehensive collection and explanation of Hart-Scott-Rodino lore available to company counsel and antitrust practitioners.

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