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Washington Introduces State-Level Merger Notification Rules

States' merger review and enforcement initiatives continue to expand as Washington adopts the nation's first "mini-HSR" rule.

On April 4, 2025, the State of Washington passed the Antitrust Premerger Notification Act (APNA). Under this law, starting July 27, 2025, any party to an M&A transaction that triggers a federal Hart-Scott-Rodino Act (HSR Act) filing with the US Federal Trade Commission (FTC) and US Department of Justice (DOJ) must also submit a copy of the HSR filing to the Washington Attorney General (WA OAG) if the filing party (1) maintains a principal place of business in Washington, (2) generates in-state net revenues over certain thresholds described below, or (3) provides healthcare in the state.

Unlike the HSR Act, a Washington State APNA filing will not trigger a waiting period that suspends the parties from closing their transaction pending antitrust review. However, the APNA filing will be mandatory, and parties that fail to submit an APNA may be subject to civil penalties. In effect, the APNA seeks to provide the WA OAG with better visibility into HSR-reportable transactions that are taking place within the state, and to better position the WA OAG to participate in and coordinate with federal reviews of M&A transactions that intersect with Washington State.

At least six other states are considering merger notification laws similar to Washington's APNA — California,[1] Colorado,[2] Hawaii,[3] Nevada,[4] Utah,[5] and West Virginia[6] — and others may follow.[7]

Washington's adoption of the APNA represents just the latest development in a long-running effort by state enforcers to take a more prominent role in the antitrust merger review process. Several states already maintain industry-specific merger notification requirements — most commonly, for transactions that involve healthcare or charitable trust operations, but also for insurance, gaming, and public utilities. In addition, state attorneys general regularly participate in HSR-reportable merger reviews alongside DOJ and the FTC through efforts facilitated by the National Association of Attorneys General (NAAG).

Given these trends, parties pursuing strategic M&A activity should consider the potential for state-level review of their transactions, in addition to DOJ/FTC review under the HSR Act, as they form their regulatory review and approval strategy.

APNA Adds to Growing State, Federal, and International Merger Review Requirements

When the APNA becomes effective on July 27, 2025, Washington will be the first state with a general-purpose merger notification requirement that applies to any HSR-reportable deal with a nexus to the state, regardless of industry.

The APNA rule facilitates coordination and information-sharing between APNA states and DOJ and the FTC, which creates a natural incentive for states to pass APNA measures and improve their ability to participate in these merger review efforts. Accordingly, additional states may choose to adopt their own versions of the APNA moving forward.

Washington's APNA is the most comprehensive state-level reporting merger rule, but it is not the first. A patchwork of state-level merger reporting regimes apply to a range of industries, most prominently healthcare, public utilities, gaming, insurance, and charitable trusts (depending on the state). In particular, the number of healthcare-focused filing regimes has increased significantly in recent years. (See this Client Alert for more information.)

Beyond these statutory merger reporting requirements, many state attorneys general monitor and investigate transactions under federal and state law. For transactions undergoing federal HSR review, state attorneys general may seek waivers from the parties granting the states access to federal agency HSR materials. State attorneys general can also issue investigative subpoenas to merger parties under state law. State enforcers may join DOJ or the FTC in seeking to challenge a merger, and in some instances, state attorneys general will bring enforcement actions or negotiate merger remedies that go beyond the relief sought by federal enforcers.

At the federal level, recently effective HSR rules have significantly expanded the amount of information parties must submit to DOJ and the FTC to file under the HSR Act as compared to the decades-old HSR notification form. (See this Client Alert for more information.) Moreover, international transactions remain subject to competition, foreign direct investment, and other applicable filing requirements across jurisdictions.

Practical Implications

As states expand their merger review capabilities via statutes like the APNA while demonstrating a willingness to litigate state issues, transacting parties are increasingly compelled to adopt state-level assessments as a standard part of their overall antitrust assessment. Analyzing potential state-level filing requirements, developing strategies to identify state-level considerations, and assessing engagement with state regulators during the transaction process can help transacting parties reduce potential complexities flowing from relevant state-level interests.

More broadly, as the number and scope of filings for M&A activity increases, early engagement with antitrust counsel and full coordination across filings has become more valuable. Maintaining a common strategic antitrust posture across all relevant jurisdictions and ensuring confidentiality for submitted company information has increased in complexity with expanded multijurisdictional review.

How Washington's APNA Works

The Filing Thresholds: A party filing an HSR notification on or after July 27, 2025, may also trigger an APNA filing obligation with the WA OAG if three criteria are met:

1. The party is a "person" as defined under the APNA, which broadly includes "an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity."[8]

2. The party is a filing person in an HSR filing. The APNA explicitly does not apply to parties who do not need to make an HSR filing.

3. The party has sufficient ties with Washington State. Per the APNA, a party has sufficient ties if it satisfies any of the following criteria:

    a) **Principal Place of Business in Washington:** A company's principal place of business is determined by where its "nerve center" is located, or where officers direct, control, and coordinate the corporation's activity. This is most often (but not always) the state where a corporation is headquartered.

    b) **Transaction Relates to (Relatively) Material Activity in Washington:** In the previous year, the party (or a person it controls directly or indirectly) had annual net sales in Washington State (1) "of the goods or services involved in the transaction" that (2) totaled 20% of the minimum HSR filing threshold (i.e., greater than or equal to $25.28 million based on current threshold of $126.4 million). Put more simply, the APNA will apply to a party that files HSR after the effective date if they sold at least $25.28 million worth of goods or services in Washington State and whose proposed transaction involves those same goods or services.

    c) **The Party Is a Healthcare Provider:** The APNA is triggered if the party is a healthcare "provider" or "provider organization" in Washington State. These terms are broadly defined under Washington law, encompassing many healthcare professions and organizations involved in the delivery or management of healthcare provider services.

What to File and When: If a party triggers an APNA, it must submit its HSR form to the WA OAG's office. If a party's Washington nexus arises from their principal place of business being in the state, then the party must also submit all documents submitted alongside the HSR form. The WA OAG's office must affirmatively request these additional documents from parties when the Washington nexus arises from the material activity or healthcare prongs. The APNA filing must be made "contemporaneously" with the HSR filing. The WA OAG may seek a civil penalty of up to $10,000 per day for noncompliance.

Impact of Filing: The APNA is **not suspensory**. The APNA does not mandate a "waiting period" prior to closure, nor does it require collecting or filing additional materials beyond those already produced in an HSR filing.

Confidentiality: The WA OAG is prohibited from disclosing information related to the proposed transaction or the materials submitted by a party, except in limited circumstances. Submitted materials are exempted from Washington State's Freedom of Information Act. However, the APNA does allow the WA OAG to disclose information in either an administrative or judicial proceeding if the information is relevant to that proceeding and a protective order has been entered. The APNA also allows the WA OAG to coordinate and discuss the filing with federal antitrust agencies and other state attorneys general who have enacted their own version of the APNA or similar legislation that includes confidentiality protections.

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Endnotes

[1] SB-25 Antitrust: premerger notification.

[2] SB25-126.

[3] SB348 RELATING TO THE UNIFORM ANTITRUST PRE-MERGER NOTIFICATION ACT.

[4] SB218.

[5] H.B. 466 Uniform Antitrust Pre-Merger Notification Act Amendments.

[6] H.B.2110: Establishing the Uniform Antitrust Pre-Merger Notification Act; S.B. Uniform Antitrust Pre-Merger Notification Act.

[7] The existing state measures are modeled after the Uniform Antitrust Pre-Merger Notification Act (U-APNA), as adopted by the Uniform Laws Commission

[8] APNA Section 2(6).