

## Policy Alert

September 12, 2014

### House Judiciary Committee Acts to Harmonize Antitrust Review Standards and Processes

On September 10, the House Judiciary Committee passed, by voice vote, legislation to eliminate certain disparities to antitrust review by the Department of Justice (DOJ) and the Federal Trade Commission (FTC). The Standard Merger and Acquisition Reviews Through Equal Rules Act (SMARTER Act), H.R. 5402, introduced by Rep. Blake Farenthold (R-TX), would codify certain recommendations included in a 2007 report by the Antitrust Modernization Commission.

Under existing law, the rules for reviewing a merger or acquisition differ depending on whether the FTC or the DOJ reviews the merger. According to Judiciary Committee Chairman Bob Goodlatte (R-VA), “[t]he SMARTER Act is a commonsense measure that reduces disparities in the merger review process. The legislation ensures that companies face the same standards and processes regardless of whether the Federal Trade Commission or Department of Justice reviews the merger.”

Specifically, H.R. 5402 would amend the Clayton Act and the Federal Trade Commission Act to provide the antitrust enforcement agencies with consistent authority and processes when seeking to prevent a proposed merger or acquisition by first extending to the FTC the same authority that DOJ presently possesses under the Clayton Act. Second, the SMARTER Act would remove the FTC’s authority to initiate an administrative proceeding challenging “a merger, acquisition, joint venture or similar transaction subject to Section 7 of the Clayton Act.” The FTC would retain the ability to initiate administrative proceedings as an enforcement tool in other contexts. However, in the context of a merger, acquisition or joint venture, the Commission’s sole enforcement avenue under the SMARTER Act would be similar to DOJ’s: filing a complaint in federal district court.

The SMARTER Act would otherwise preserve each agency’s authority to challenge monopolistic transactions or practices that would substantially lessen competition and would not affect the judicial remedies available to address them.

*Outlook:* Given the limited legislative calendar for the remainder of the year and further that the Senate Judiciary Committee is not prepared as of yet to act on similar legislation, prospects for enactment in this Congress remain unlikely. However, the action taken by the House Judiciary Committee sets the table for additional consideration in the House during the postelection “lame duck” session in November and December and for further action in the 114th Congress in 2015-16.

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