

**W**hat qualifies as a so-called “4(c) document” under the premerger notification reporting requirements of the Hart-Scott-Rodino Act (HSR Act)?<sup>1</sup> It is a question that for close to a quarter-century has confounded parties submitting HSR filings. However, thanks to its recent and unprecedented enforcement action against Hearst Corporation, the government has made this antitrust puzzle a lot easier to figure out: just empty your files — or else.

#### **4(e) R . . . m**

Under the HSR Act, the Federal Trade Commission or Department of Justice will

generally requires a true understanding of the competitive implications of the deal.

- Minutes and notes from any board or executive committee meetings at which the proposed transaction was discussed. The government may be even more interested in these materials than the presentations because they more honestly reflect the corporate deliberations on approving the deal.

- Documents prepared by or for the seller for the purpose of offering the company to prospective purchasers. Investment bankers' books, offering memoranda, and similar documents prepared for the purpose of soliciting interest in the seller should be produced because they typically provide detailed information about the seller's operations and market position which are used by the buyer to evaluate the proposed acquisition. The fact that these documents are prepared before the buyer has been identified does not remove them from the 4(c) ambit.

- Documents prepared by or for the seller that influence the seller's decision to sell. Internal analyses, consultants' reports, and other documents which evaluate potential business combinations, identify potential buyers, or otherwise influence the seller to enter into the ultimate transaction should be produced.

- Documents obtained from the seller through due diligence. These materials might include business reports, strategic plans, competition studies, project development reports, or sales projections prepared by the seller or its consultants. These materials may not be covered by the 4(c) requirement if they were prepared in the ordinary course of the seller's business (and not with the proposed acquisition in mind). Nevertheless, they should be produced because they will provide the agencies with useful information that may speed up the review process.

- Press releases and other corporate relations documents that announce or describe the transaction. These documents should be produced because they typically summarize the benefits, efficiencies, and synergies of the transaction and their impact on