

Hart-Scott-Rodino COVID-19 FTC and DOJ Updates

MARCH 16, 2020

In significant news for parties considering transactions potentially reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”), the Federal Trade Commission (“FTC”) announced that it and the Department of Justice (“DOJ”) are temporarily suspending grants of early termination for HSR Act-reportable transactions. At the same time, the FTC also announced that it was temporarily implementing an electronic filing system for acceptance of HSR Act filings. The announcements were made pursuant to COVID-19-related emergency guidance issued by the U.S. government’s Office of Personnel Management (“OPM”).

Ordinarily, filing parties have the option to request early termination of the HSR Act waiting period which, if granted, shortens the statutory 30-day waiting period, and filing parties are permitted to close the subject transaction immediately upon receiving notice of early termination. The agencies typically grant early termination when a transaction is unlikely to lead to competitive effects. Starting today, March 16, the government will not be granting early termination of the waiting period for any transaction.

The FTC’s announcement of the suspension of grants of early termination applies both to transactions currently under review as well as those that have yet to be filed.

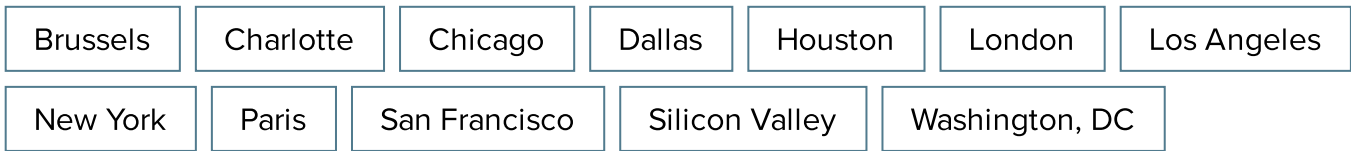
The FTC also announced that it would implement, until further notice, a temporary electronic filing system for receiving HSR Act filings. Currently, HSR Act filings are submitted in hard copy, either in print or on DVD. The move to electronic filing is designed to allow the agencies to promote telework consistent with OPM’s COVID-19-related guidance.

In addition to these procedural changes, the FTC and DOJ’s move to increased telework will affect the nature of in-depth merger reviews, including shifting to video and telephone conferences instead of the in-person agency meetings that are typical during such investigations. Ultimately, this may lead to longer transaction review times.

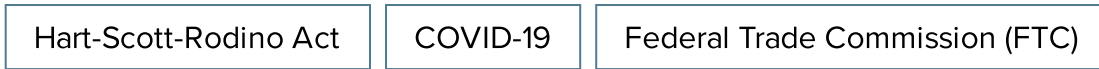
Winston lawyers regularly guide clients through the HSR Act and global merger control processes, including the defense of any government investigations that may follow, and are available to advise parties regarding any unique concerns related to this emergency guidance or the HSR Act process more generally.

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