

Additional Information on Hart-Scott-Rodino Act COVID-19 FTC and DOJ Procedures

MARCH 20, 2020

Following the Federal Trade Commission's (FTC) recent [announcement](#) regarding temporary changes to its Hart-Scott-Rodino (HSR) processes, the DOJ Antitrust Division ("Division") announced that it also has adopted temporary changes to its HSR processes, which will apply during the COVID-19 emergency. For "mergers currently pending or that may be proposed," the Division announced that it is "requesting from merging parties an additional 30 days to timing agreements to complete its review of transactions after the parties have complied with document requests." This follows a similar announcement from the FTC in which it indicated that it would seek modifications to timing agreements with merging parties on a "matter-by-matter" basis.

The Division's announcement will almost certainly result in longer transaction review times for transactions reviewed by the Division. Under the HSR Act, submission of completed filings to the Division and FTC begins a 30-day waiting period during which the agencies decide whether competitive concerns warrant a request for additional documents and information (a so-called "Second Request"). Although under the HSR Act the waiting period does not expire until 30 days after both parties have substantially complied with the Second Request, ordinarily, merging parties that receive a Second Request enter into a timing agreement with the reviewing agency under which they agree not close the transaction until 60 to 90 days after the parties' substantial compliance with the Second Request. With the Division's request for an additional 30 days, the investigation of transactions under review by the Division is likely to be prolonged. The Division advised that it may revisit timing agreements with merging parties as the situation continues to develop.

At the same time, the Division announced it also is accepting electronic filing of HSR submissions, that it will conduct nearly all meetings by phone or videoconference, and that all currently scheduled depositions would be postponed and rescheduled using secure videoconferencing capabilities. These measures may likewise impact 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.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

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