

FTC and DOJ Merger Review Changes in Response to COVID-19

I. Overview

To address the Coronavirus (“COVID-19”) pandemic, the Federal Trade Commission (“FTC”)¹ and the U.S. Department of Justice Antitrust Division (“Antitrust Division”)² have each implemented temporary changes in merger review procedures that will last during the pendency of the crisis. Effective March 17, 2020, both agencies have switched to an e-filing system for notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”). The FTC and Antitrust Division will no longer grant early termination of the HSR Act waiting period, and the Antitrust Division is requesting an additional thirty-day extension on timing agreements to complete its review of transactions subject to an extended review period. However, the regular thirty-day waiting period for most transactions remains in effect. Merging parties should take into account potential delays in review caused by these temporary changes for ongoing merger reviews and when preparing to file. We will continue to monitor these ongoing developments.

II. Federal Trade Commission

The FTC Premerger Notification Office has temporarily shifted to an e-filing system for HSR notifications and will no longer accept submissions via hard copy or DVD. Given these changes, the FTC will accept electronic signatures and will continue to count submissions received after 5PM as submitted on the following business day. The FTC will not be granting early termination of the waiting period at this time.

The FTC Bureau of Competition is reviewing its investigations and litigations to determine appropriate timing modifications. The Bureau has shifted to working remotely, and thus will hold the majority of internal and external meetings via telephone or videoconference until further notice. FTC personnel will participate remotely in most conferences and public events, and official travel is restricted to “compelling circumstances,” requiring permission by top-level management. The FTC continues to update its Premerger Notification Program page, available [here](#), and Guidance for Filing Parties page, available [here](#), with important information and guidance.

III. Antitrust Division

The Antitrust Division has also implemented temporary changes to its civil merger investigation processes. Like the FTC, the Antitrust Division has switched to an electronic HSR Act filing system and employees will participate in meetings via phone or video conference except for under “extenuating circumstances.” Depositions will be temporarily postponed and conducted by videoconference. The Division has also requested that current and future proposed mergers’ timing agreements be extended an extra thirty days for the Division to complete its review after the merging parties substantially comply with document requests (often referred to as “Second Requests”). Division staff may reassess timing agreements “in light of further developments.”³

¹ Premerger Notification Office Implements Temporary e-Filing System, FTC (March 13, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/premerger-notification-office-implements-temporary-e-filing>.

² Justice Department Announces Antitrust Civil Process Changes for Pendency of COVID-19 Event, United States Department of Justice Antitrust Division (March 17, 2020), <https://www.justice.gov/opa/pr/justice-department-announces-antitrust-civil-process-changes-pendency-covid-19-event>.

³ *Id.*

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to email publications@cahill.com or call or email Elai Katz at 212.701.3039 or ekatz@cahill.com; or Lauren Rackow at 212.701.3725 or lrackow@cahill.com.

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