

FTC and DOJ release FY 2020 HSR Annual Report

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The U.S. antitrust agencies report that merger enforcement activity increased during 2020, even as reportable transactions decreased from 2019. In related statements, FTC Democratic Commissioners continue to press for sweeping policy changes, while Republican Commissioners openly question the justification for the Democrats' approach. Merging parties will likely continue to face lengthier FTC, and perhaps DOJ, review periods with more partisan divide than a consensus-driven approach.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

D. Jarrett Arp

+1 202 962 7150
jarrett.arp@davispolk.com

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Ronan P. Harty

+1 212 450 4870
ronan.harty@davispolk.com

Christopher Lynch

+1 212 450 4034
christopher.lynch@davispolk.com

Suzanne Munck af Rosenschold

+1 202 962 7146
suzanne.munck@davispolk.com

Howard Shelanski

+1 202 962 7060
howard.shelanski@davispolk.com

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¹ Fed. Trade Comm'n and U.S. Dep't. of Justice Antitrust Division, Hart-Scott-Rodino Annual Report: Fiscal Year 2020, (available at https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_-_hsr_annual_report_-_final.pdf).

- o During 2020, 1,673 transactions were reported under the HSR Act, a 21.6% decrease from the 2,089 reported transactions in 2019.
- o The FTC brought 28 merger enforcement challenges in 2020, the highest number of challenges since 2001. An FTC "challenge" includes deals in which the agency reached a settlement with the merging parties (10 deals); deals in which the parties abandoned or restructured their agreement in response to agency concerns (11 deals); and deals that the agency litigated to block or undo (7 deals). In contrast, in 2019, the FTC brought 21 merger challenges.
- o The DOJ challenged 15 transactions in 2020. These challenges include 8 deals where the DOJ filed a complaint in district court (including 7 that settled upon filing the complaint); 4 deals that were abandoned; and 3 challenges that "were resolved after the parties addressed the Division's concerns during the course of the investigation." In contrast, in 2019, the DOJ challenged 17 transactions.
- o The agencies issued second requests in a minority of transactions (3.1% overall). This is similar to the rate in 2019 and about average for the rate over the last ten years.
- o The rate of second request issuance was split roughly evenly between the FTC and DOJ (very slightly higher at the DOJ).
- o The agencies issued second requests across all deal sizes: 31.3% for deals over \$1 billion; 31.3% for deals between \$500 million and \$1 billion; and 37.5% for deals under \$500 million.
- o In terms of sector, most transactions notified were in securities and financial investments (9.9%), professional, scientific, and technical services (7.2%), and chemical manufacturing (6.5%).
- o The sectors most likely to receive second requests were hospitals (6); insurance (5); and chemical manufacturing (4).