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DOJ revives “expedited” merger review process

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Late last week, the Antitrust Division of the U.S. Department of Justice (DOJ) announced the return of what it described as a more streamlined approach to merger review for certain transactions. The DOJ’s stated objective is to resolve Second Requests in some transactions more quickly through targeted document production and expedited narrative and data responses. Merging parties should carefully consider, however, the timing concessions required under the DOJ’s expedited process.

On July 23, 2026, the DOJ announced that it is returning to a targeted Second Request process to expedite merger review.[1] According to Associate Attorney General Stanley Woodward, the DOJ intends this process change to “[a]llow for quicker and more efficient review of proposed transactions; [allow for] more effective use of taxpayer resources; and above all, help[] the Department do its job to safeguard a competitive marketplace while keeping America open for business.”[2]

Revised process

The HSR Act requires parties to notify the Federal Trade Commission (FTC) and DOJ of certain transactions valued above a statutory threshold, currently $133.9 million, and observe a statutory waiting period (generally 30 days) before closing the transaction.[3] If the FTC or DOJ have competitive concerns with a proposed transaction that it cannot resolve during the statutory waiting period, it will issue a Request for Additional Information and Documentary Material, known as a “Second Request.” By statute, the issuance of a Second Request extends the waiting period to 30 days after both parties substantially comply with the Second Request.[4] There is no statutory deadline for compliance with a Second Request, but parties may not close the transaction until the waiting period expires.[5]

Second Requests typically contain extensive requests for data, documents, and narrative responses related to the proposed transaction, the parties’ businesses, and broader competitive conditions in the relevant sector(s). Compliance with a Second Request is a lengthy and costly process, typically taking several months and costing millions of dollars.

Parties often negotiate modifications to a Second Request to limit the burden of compliance. In return, the agencies often seek to extend the time for their review of the transaction beyond the 30-day statutory period by entering into a timing agreement in which the parties commit not to close their transaction before a specified time, even if they are otherwise permitted to do so under the HSR Act. Many timing agreements, however, include much more – such as providing an agreed-upon framework for the timing of certain interim steps in the investigation including, for example, information exchanges, depositions, and meetings with agency leadership (i.e., the “Front Office”) in addition to an agreement not to close the proposed transaction for a period of time (e.g., until 60 to 90 calendar days after certifying substantial compliance).[6]

Earlier DOJ model timing agreements, including the one introduced during President Trump’s first administration and used during the Biden administration, incorporated such a staged review process.[7]

The DOJ’s newly published timing agreement now adds a voluntary “expedited track” to allow the DOJ to take an earlier look at issues it considers most critical to the competitive analysis of a particular transaction. Instead of necessarily proceeding with full Second Request compliance, parties can provide targeted initial productions to seek to address DOJ concerns and avoid complying with the full Second Request. The expedited track has three key provisions:

– **To use the expedited process, parties must make a focused "Priority Production."** This Priority Production is a series of productions of a subset of documents, information, and data, and the parties must formally certify the production of priority materials.[8]
– **The DOJ will engage with parties during the expedited process**. The DOJ staff will make a good faith effort to meet with the parties "to promote a continuing dialogue" regarding the DOJ investigation. Unless otherwise agreed, the DOJ Front Office will meet with the parties within 21 days after the parties comply with the production of the priority materials. [9]
– **Within 14 days after the Front Office Meeting**, or as otherwise agreed between the DOJ and the parties, the DOJ will notify the parties whether it intends to close the investigation. If the DOJ does not close the investigation, it will either: (1) modify the Second Requests or otherwise narrow the investigation; or (2) proceed with its investigation without modification of the Second Requests.

If the DOJ decides to continue its investigation, the model timing agreement requires the parties to produce documents for additional custodians (subject to the DOJ's right to add a capped number), submit document and data productions on a rolling basis, make executives available for depositions, and delay closing of their transaction beyond the 30-day period in the statute. In particular, parties may not certify compliance with the Second Request until 30 days after completing their document production and 45 days after producing certain databases. After these periods have run and the parties have certified compliance, the transaction may not close for an additional 60-day post-compliance period.[10]

Takeaways

In releasing the new model timing agreement with an expedited Second Request review process, the DOJ emphasized that "[t]hrough these efforts, the Division is committed to promoting competition and protecting American consumers without imposing undue costs on the workings of the free market."[11] How much more business friendly the new process will be in practice remains to be seen. Given that the DOJ may still decide to continue its investigation even after the parties provide priority productions, many parties may still want to work in parallel to substantially comply with the Second Request as they would have in the past. Further, the new model timing agreement does not impact parties whose transactions are reviewed by the FTC. Although the agency has recently used similar "quick look" Second Request processes in certain transactions, the FTC has not to date formally announced any expedited review track. As a result, when parties anticipate a potential Second Request, they should continue to work closely with antitrust counsel from the outset and to be mindful of potential differences in the available review processes depending on which agency reviews the transaction.

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.

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1 Press Release, U.S. Department of Justice, Antitrust Division, Justice Department Resumes Targeted HSR Merger Review Process (July 23, 2026), https://www.justice.gov/opa/pr/justice-department-resumes-targeted-hsr-merger-review-process (hereinafter "DOJ Press Release").

2 *Id*.

3 *See* Davis Polk client update, *2026 HSR Act jurisdictional thresholds, filing fees and interlocking director thresholds announced* (Jan. 16, 2026), https://www.davispolk.com/insights/client-update/2026-hsr-act-jurisdictional-thresholds-filing-fees-and-interlocking-director.

4 The waiting period is 10 days in the case of an all-cash tender offer or for a transaction under section 363(b) of the bankruptcy code. *See* 15 U.S.C. § 18a(e)(2); *id*. § 18a(b)(1); 11 U.S.C. § 363(b).

5 Under the HSR Rules, if a Second Request is issued but the parties never certify substantial compliance, the HSR notification expires 18 months after the date the notification was filed and the parties must submit a new HSR filing, with a new filing fee and a new waiting period, to proceed. *See* 16 C.F.R. § 803.7; Fed. Trade Comm'n, *Getting in Sync with HSR Timing Considerations* (Aug. 31, 2017), https://www.ftc.gov/enforcement/competition-matters/2017/08/getting-sync-hsr-timing-considerations. Timing agreements do not toll this period.

[6] The FTC also has issued a model timing agreement; *see* Federal Trade Commission, Model Timing Agreement (Feb. 2019); *see also* Davis Polk client update, *The FTC and DOJ appear ready to alter long-standing merger review practices* (Feb. 2, 2022), https://www.davispolk.com/insights/client-update/ftc-and-doj-appear-ready-alter-long-standing-merger-review-practices (citing the FTC and DOJ model timing agreements).

[7] U.S. Department of Justice, Antitrust Division, Model Timing Agreement (Nov. 2018); U.S. Department of Justice, Antitrust Division, Model Timing Agreement (Sept. 2020); *see also* U.S. Department of Justice, Antitrust Division, *Merger Review Process Initiative — Policy* (Oct. 12, 2001; rev. Aug. 4, 2004 & Dec. 14, 2006).

[8] U.S. Department of Justice, Antitrust Division, Model Timing Agreement (July 2026) (hereinafter “2026 Model Timing Agreement”).

[9] 2026 Model Timing Agreement, *supra* note 8.

[10] *Id*.

[11] DOJ Press Release, *supra* note 1.