

Federal Trade Commission Adopts Electronic HSR Filing and Suspends Early Terminations for COVID-19 Emergency

March 16, 2020

On March 13, 2020, the Federal Trade Commission (“FTC”) Premerger Notification Office announced that it would adopt an e-filing system for all submissions under the Hart-Scott-Rodino Act (“HSR Act”) for the duration of the COVID-19 coronavirus emergency. The FTC also announced that it would not be granting requests for early termination of the HSR waiting period during the use of the e-filing system.

The FTC announced that from 5 PM on Friday, March 13, 2020, through March 16, 2020, the FTC and Department of Justice (“DOJ”) would not accept any HSR submissions. Starting tomorrow, March 17, the agencies will both accept HSR filings only through an electronic file transfer system. No additional information regarding the timeframe for the new system has been made available at this time.

Filers will upload documents to the cloud, where they will be transmitted simultaneously to both the FTC and DOJ. The FTC has advised that more guidance will follow, as the system gets up and running, and the agencies may require filers to submit paper or DVD copies of HSR submissions after the use of the e-filing system has ended.

Once filed, the agencies will continue to send filers notification of their waiting periods, but importantly, will not grant early termination of the HSR waiting period while the e-filing system is in use. This means that filers should expect to wait at least 30 days to consummate any transaction for which an HSR submission is made during the COVID-19 emergency. The agencies could also issue second requests for additional information in order to extend the time for their review.

In addition to these filing changes, one news source has reported that a DOJ spokesperson advised that the agency is also considering asking merging companies that have entered into timing agreements to extend upcoming HSR deadlines for 30-60 days.¹ It would not be surprising to see other actions by the antitrust enforcement agencies in the U.S. and abroad to slow the merger review process.

The FTC’s guidance regarding its e-filing system is available [here](#).

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

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¹ See this link on [The Capitol Forum](#).

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