

# New Government Shutdown Plan—No New HSRs

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The Federal Trade Commission (the “FTC”) has released an updated plan addressing how a federal government shutdown will impact antitrust enforcement. The plan states that the FTC’s Premerger Notification Office (the “PNO”) “will be closed during the shutdown, and the Commission will not receive, accept, or process premerger notification filings under [the Hart-Scott-Rodino (“HSR”) Act], or respond to questions or requests for information or advice from outside parties.” This is a significant departure from prior shutdowns, when the PNO remained open to accept HSR filings. While the Department of Justice’s (the “DOJ”) existing plan is silent on HSR filings, the FTC PNO administers HSR intake on behalf of both agencies, including the electronic portal via which filings are submitted. If the PNO shuts down the portal, the DOJ will also not receive HSR filings.

The current U.S. Congress continuing resolution gives Congress until early March to finalize and pass the Fiscal Year 2024 appropriations bills (or a further continuing resolution).

In the event of a shutdown, the FTC and DOJ will, however, continue to review already-filed HSRs. The FTC will continue HSR investigations “[t]o the extent that the circumstances of a reported merger or acquisition indicate that a failure by the government to challenge the transaction before it is consummated will result in a substantial impairment of the government’s ability to secure effective relief later.” The DOJ will also continue merger reviews and prepare cases that must be filed due to HSR deadlines “only when an extension or waiver cannot be obtained and [Antitrust Division] leadership determines that allowing a proposed merger to go forward without objection would pose a reasonable likelihood of peril to property in which the United States has an immediate interest.”

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Please do not hesitate to contact us with any questions.



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