Debevoise & Plimpton

The Debrief

Justice Department Announces "Expedited" Merger Review Process

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On July 23, 2026, the U.S. Department of Justice, Antitrust Division ("DOJ") announced that it will reinstate targeted Second Request investigations as part of an effort to streamline its merger review processes. This announcement includes the introduction of an "Expedited Consideration" option that, according to the DOJ, may "allow for quicker and more efficient review of proposed transactions" filed under the Hart-Scott-Rodino ("HSR") Act. The DOJ also published a revised model timing agreement designed to significantly reduce the burden and scope of Second Requests.

Under the HSR Act, parties to certain large transactions must notify the Federal Trade Commission ("FTC") and the DOJ (each individually an "Agency," and together, the "Agencies") before closing. If either Agency determines that it needs additional information to evaluate the transaction, it may issue a request for extensive documents and information about the proposed transaction—a "Second Request." Complying with a Second Request is time-consuming, expensive and burdensome—it can cost millions of dollars, disrupt the business of the transacting parties and delay closing by several months.

Parties can seek to opt into an Expedited Consideration by entering into a timing agreement with the DOJ. Under the new model agreement, parties may make rolling "Priority Productions" consisting of a subset of documents responsive to the Second Request in exchange for agreeing to certain post-compliance timing concessions. These productions are expected to focus on issues the DOJ considers "potentially determinative," allowing the DOJ to succinctly analyze potential competitive concerns earlier in its review. The process, formerly deemed a "Quick Look Second Request," had been in place for many years prior to the previous administration.

DOJ officials have emphasized, however, that Expedited Consideration may not be appropriate for every transaction and will be determined on a case-by-case basis. However, for transactions given Expedited Consideration, once the parties certify completion of the Priority Production, the DOJ's senior leadership must meet within 21 days and, within 14 days of that meeting, decide whether to "(1) close the investigation or provide early termination [of the HSR waiting period]; (2) modify the Second

Request or otherwise narrow the investigation; or (3) proceed with the investigation without modification."

Key Takeaways. There are several key takeaways from these developments:

- **Greater Flexibility & Transparency.** The announcement reflects the DOJ's willingness to work with transacting parties to reduce the burden of a Second Request, and provides greater visibility into the Agency's merger review process.

- **Potentially Shorter Second Request Timelines.** The model timing agreement sheds the Biden Administration's prohibition on closing until 180 days after substantial compliance with an issued Second Request. Parties should anticipate likely shorter review periods and a more commercially favorable closing period.

- **No Guarantee of Expedited Treatment.** An Expedited Consideration is not guaranteed and even if granted, the DOJ may still proceed with full Second Request requirements even after the expedited process has completed.

- **Applies Only to the DOJ.** The announcement reflects an internal policy change at the DOJ only. The FTC has not announced a similar targeted review, nor has it published guidance on anything similar to the Expedited Consideration.

- **HSR Rulemaking Pending.** Both the DOJ and FTC are still considering broader changes to the HSR Form, which are expected to be announced by the end of this year.

- **Potential Tradeoffs.** Although this development is likely to ease the burden on parties facing a Second Request, Expedited Consideration may also require parties to comply with additional production obligations and timing requirements under the timing agreement.

Debevoise lawyers are well versed in HSR Act and Second Request compliance. We are available to advise parties regarding the reportability of their transactions, as well as guide clients through the reporting process and any following government investigation and/or litigation. Please do not hesitate to contact us with any questions.

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