

CLIENT ALERT

DOJ Issues Merger Process Reforms

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The Antitrust Division of the Department of Justice recently announced a series of important reforms to its merger review process. These reforms are designed to improve the efficiency of the Division's investigations, and to reduce both the cost and time required to complete merger investigations in which a "Second Request" has been issued pursuant to the Hart-Scott-Rodino ("HSR") Antitrust Improvements Act.

At the core of the DOJ's issued reforms is a voluntary option through which companies may be able to significantly reduce the burden of complying with a Second Request. In exchange for the parties' agreement to certain timing and other procedural agreements, the Division announced that it will limit the scope of a Second Request to require only the production of responsive materials from a firm's central files and a targeted list of no more than 30 employees. The Division also announced a change in its Model Second Request, reducing the default search period from between three to four years to two years prior to the date of the request's issuance. These reforms recognize that explosive growth in the amount of electronic data stored by firms has substantially increased the volume of material potentially responsive to a Second Request, and are intended to provide a mechanism to reduce the burden of production. These reforms are largely similar to those issued earlier by the Federal Trade Commission, although they provide a more flexible mechanism with respect to the length of the second waiting period following the parties' certification of compliance with the Second Request.

In addition to these changes, the Division also announced that it will seek greater participation by the parties to a transaction during the initial 15-or 30-day waiting period. Through more substantive consultation, including the issuance of voluntary information requests and interviews with corporate representatives, this initiative is intended to further facilitate a more efficient and effective merger review process.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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