

March 16, 2020

U.S. FEDERAL TRADE COMMISSION AND DG COMP IMPLEMENT CHANGES TO U.S. AND EU MERGER FILING PROCEDURES IN RESPONSE TO COVID-19

To Our Clients and Friends:

Antitrust and competition enforcers in the United States and Europe have announced adjustments to how they will process and review reportable transactions in light of COVID-19 mandatory remote working requirements affecting the agencies and industry participants. As work-from-home protocols are stress-tested in the coming week, additional changes in the filing procedures and review timelines may be announced. Gibson Dunn will continue to monitor these changes and update clients with any important new developments.

United States (Hart-Scott-Rodino)

On Friday, March 13, 2020, the Federal Trade Commission's Premerger Notification Office announced new e-filing procedures for Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") premerger notification filing submissions, which will become effective on Tuesday, March 17.[1] Although the new procedures involve only logistical changes that will impact how filings are made, the Premerger Notification Office has stated that *early termination of HSR Act waiting periods will not be granted while the e-filing procedures are in effect*. Because early termination is granted at the discretion of the agencies, and is occasionally not granted even for deals raising no substantive issues, parties should always account for the possibility that early termination will not be granted. Parties to transactions subject to the HSR Act, therefore, **must be prepared to wait at least the full 30 days (or 15 days for certain transactions) before the initial HSR Act waiting period expires**.[2]

For the time being, the only material change for parties to a transaction subject to HSR Act review is that, at least for the foreseeable future, early termination will not be granted. Until further notice from the FTC, this change applies to all future and pending HSR Act filings, including filings submitted prior to Friday's announcement.

It remains to be seen whether other merger enforcement decisions or procedures at the FTC or its sister agency, the U.S. Department of Justice, Antitrust Division are affected by COVID-19-related protocols.

The European Union

As of 16 March 2020, the European Commission's Directorate-General for Competition (DG COMP) has implemented remote working measures in response to the COVID-19 situation. While DG COMP has put in place measures to ensure continuity of its merger enforcement activities, the authority encourages companies to delay, where possible, merger notifications until further notice.[3]

DG Comp has reminded companies that intend to notify a merger that it might face difficulties in collecting information from third parties (e.g., customers, competitors and suppliers) in the coming weeks. DG COMP's services might also face limitations with regard to access to information and databases and with regard to information exchanges.

Given that DG COMP is expecting more of its staff to work remotely, the authority also encourages companies to make submissions in digital format for the time being. For example, DG COMP recommends that companies use eTrustEx (Trusted Document Exchange), a software tool that DG COMP has been operating since February 2019 to ensure secure transmission of documents between DG Competition and external stakeholders. The delivery of paper originals can be arranged at a later time.

In light of the special circumstances, we encourage companies that are planning a merger to contact outside counsel as early as possible and to open a dialogue with DG COMP to ensure an effective and efficient merger review process.

Other Jurisdictions

Several other authorities, like the State Administration for Market Regulation in China, the Competition and Markets Authority in the UK, the Bundeskartellamt in Germany, or the Autorité de la concurrence in France continue to attempt to operate their merger control review as "business as usual" so far. Other authorities may soon implement changes. We are monitoring the situation.

[1] FTC, GUIDANCE FOR FILING PARTIES (03-13-20), <https://www.ftc.gov/enforcement/premerger-notification-program/guidance-filing-parties>

[2] See 16 C.F.R. §803.5(b).

[3] EUROPEAN COMMISSION – COMPETITION, SPECIAL MEASURES DUE TO CORONAVIRUS / COVID-19, <https://ec.europa.eu/competition/mergers/news.html>



*Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact any member of the firm's **Coronavirus (COVID-19) Response Team**.*

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