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How DOJ And FTC Updates May Narrow 2nd Request Reviews

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On Oct. 16, MiMedx Group Inc. disclosed that the Federal Trade Commission had issued a request for additional information, or a second request, about its planned $350 million acquisition of Sanara MedTech Inc.

The second request came after the parties pulled on Sept. 11 and refiled on Sept. 15 their notification under the Hart-Scott-Rodino Antitrust Improvements Act, and it prevents the companies from closing until 30 days after they substantially comply.

Like other merging parties facing a second request, MiMedx, a supplier of surgical products, and Sanara, a developer of regenerative products used during surgery, will now navigate an investigation under procedures that the federal antitrust agencies have revisited in recent months.

In the second half of 2026, the U.S. Department of Justice's Antitrust Division and the FTC each articulated new policy and procedural clarifications on how second request investigations may be conducted.

On July 23, the DOJ's Antitrust Division announced a return to targeted second requests connected to a model timing agreement.[1]

Then, on Sept. 23, the FTC said it was amending its Rules of Practice to codify the factors staff may weigh when deciding whether to modify a second request.[2]

In the same week, the director of the FTC's Bureau of Competition confirmed that the agency has been using phased second requests, under which parties may avoid full compliance if priority productions of potentially dispositive materials resolve the agency's concerns.

Taken together, the changes mark a deliberate departure from the Biden administration's approach, when expedited or so-called quick-look reviews were largely curtailed.

Full compliance remains the default in second request investigations, but in appropriate cases, merging parties may now have a path to narrower, and potentially shorter, investigations.

The Second Request Process

Transactions reportable under the Hart-Scott-Rodino Act cannot close until 30 days after the parties file an HSR form notifying the DOJ and the FTC of the transaction.

The reviewing agency may ask the parties to voluntarily pull and refile the form, as MiMedx and Sanara did in September, giving the agency an additional 30 days to evaluate the transaction.

If the agency is unable to resolve its competition concerns within the initial waiting period, it may issue a second request — a broad request for additional documents and information. The transaction cannot close until 30 days after both parties have substantially complied.

Achieving substantial compliance with a second request typically takes several months and comes at significant expense to the parties, requiring the collection, review and production of large volumes of documents and data, as well as detailed narrative responses.

Timing agreements have long been one avenue for relief: The parties agree to extend the postcompliance waiting period beyond the statutory 30 days in exchange for modifications that limit the scope of compliance.

Historically, both agencies offered expedited or quick-look second request investigations of certain transactions, in which the parties produced a prioritized set of potentially dispositive materials.

If that production resolved the agency's concerns, the investigation closed without full second request compliance. The practice was largely curtailed under the Biden administration.

DOJ's Targeted Second Request Process

In the DOJ's Antitrust Division's July announcement that it had returned to implementing targeted second request investigations and published a related model timing agreement, Associate Attorney General Stanley Woodward said the initiative is intended to "eliminate bureaucratic burdens while still preserving the integrity" of investigations in second requests.

The DOJ model timing agreement includes an optional expedited consideration procedure.[3] The Antitrust Division identifies, in its discretion, the issues it considers potentially determinative, and the parties produce a priority set of documents and data from designated custodians and specifications.

Once the parties certify that production is complete, the Antitrust Division offers a front office meeting within 21 days and, within 14 days after that meeting, tells the parties whether it intends to close the investigation, narrow it or proceed with the full second request.

The division framed the change as a return to historical practice rather than a relaxation of enforcement. It remains open to good faith negotiation of second request modifications in all cases but will continue to require full compliance where staff believes broader information is necessary to reach an enforcement decision.

The FTC's Amended Rule and Phased Second Requests

On Sept. 24, the FTC published a final rule amending Title 16 of the Code of Federal Regulations, Section 2.20, its rule of practice governing second requests.

Because the rule concerns agency procedure only, it took effect immediately without notice and comment.

Previously, Section 2.20 provided only that the commission's authorized representative could modify a second request upon determining that "a less burdensome request would be consistent with the needs of the investigation."

Under the amended rule, staff may consider all relevant factors, including:

- Timing agreement negotiations;
- Competitive issues involved;
- The manner in which information and documents are maintained by the recipient;
- Type of information available to the recipient;
- Relative burdens of producing the requested information; and
- Whether a less burdensome request would be consistent with the needs of the investigation.

By spelling out the factors that staff may weigh, the amended rule gives merging parties firmer footing to negotiate a narrower second request and thereby reduce associated costs and burdens.

The rule draws an explicit connection between modifications and timing agreements, formalizing a link that staff had long applied in practice but that the rule itself had never recognized. However, the other enumerated factors in the amended rule remain equally relevant to merging parties' negotiations with staff.

In the same week the FTC published the updated rule, Daniel Guarnera, director of the Bureau of Competition, said the bureau has used a phased approach to second requests since the current leadership took office.

Speaking at a Washington, D.C., event on Sept. 22, Guarnera described the agency's objective as reaching a so-called go/no-go decision as early as possible — through early termination, resolution of the matter within the initial waiting period or reassessment of a second request's scope as staff's understanding of the facts and markets develops.

Guarnera also cautioned that a phased review is not a prediction of clearance. The phased approach gives the FTC a way to test a discrete factual question early and, where the evidence does not eliminate its concerns, then proceed with a broader investigation.

As one of the first FTC second requests issued since the amended rule took effect, the MiMedx-Sanara investigation may offer an early indication of how these updated processes work in practice, including whether the parties pursue a modification under the enumerated factors or a phased review, and how quickly the FTC reaches a go/no-go decision.

Considerations for Merging Parties

The agencies' changes do not alter the baseline: A second request remains a broad demand, and a targeted or modified process is available only where staff believes the facts support it.

The amended rule may make it harder for FTC staff to disregard the enumerated factors, but it does not make modifications easier to obtain, and the DOJ's targeted process is available only at the Antitrust

Division's discretion.

In both settings, the burden of making the case for a narrower investigation remains on the parties. For MiMedx and Sanara, that means persuading FTC staff that the competitive questions raised by combining two suppliers of surgical and wound-care products can be resolved on a narrower record.

First, parties should identify the potentially dispositive issues during the initial waiting period. Before both agencies, expedited review depends on the parties and staff agreeing on what evidence would resolve the agency's concerns.

That requires a clear theory of why the transaction is not problematic, supported by documents and data. For MiMedx and Sanara, any questions that remain outstanding that were raised by the staff during the additional 30 days afforded by the September pull-and-refile are the natural starting point for any proposal to narrow the investigation.

Second, parties should advocate affirmatively for a targeted or modified second request process rather than wait for staff to propose it. At the DOJ, that means presenting facts that support a targeted investigation. At the FTC, it means building the record for a modification early and submitting written requests that tie the enumerated factors to the specifics of the transaction.

Regardless of the reviewing agency, parties should be prepared to explain their document systems and data capabilities in detail, ideally as soon as the second request is issued. With their second request issued in mid-October, MiMedx and Sanara have a narrow window: A written modification request under the amended rule is likely to carry the most weight before productions are far along.

Third, parties should weigh the trade-offs of a targeted or phased review, particularly the risk to the overall timeline.

Neither agency treats a targeted initial review as a substitute for a full investigation: The model timing agreement preserves the Antitrust Division's discretion to proceed with the full second request after expedited consideration, and the FTC has said a phased review is not a prediction of clearance.

Parties that opt in also take on commitments up front — rolling productions, a description of their collection methodology and the agreement's timing provisions — with no assurance that the investigation will end after the priority review.

If the priority production does not resolve the agency's concerns, the parties must then complete the full or modified second request, and the time spent on expedited consideration may be added to, rather than substituted for, the conventional compliance period. MiMedx, which signaled that it will continue to work constructively with the FTC, will need to weigh whether a phased approach would shorten its path to closing or risk lengthening it.

Finally, parties should not assume uniformity across the agencies. The FTC's rule governs only FTC-issued second requests, and the DOJ's targeted approach will not be offered in every investigation. Strategy should be tailored to the reviewing agency and the specific transaction. For MiMedx and Sanara, that means working within the FTC's updated processes.

Conclusion

The second half of 2026 has produced the clearest signal yet that both agencies are willing, in cases they deem appropriate, to narrow the scope of a second request investigation.

The FTC's amended rule and DOJ's targeted review share a common premise: A full second request is costly for the parties and the government alike, and where the competitive issues are narrow, a targeted investigation may suffice.

That outcome is not the norm, but parties that prepare to negotiate modifications before a second request issues will be best positioned to make the case for such an approach. The MiMedx-Sanara review may offer an early test of whether that preparation pays off.

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[1] https://www.justice.gov/opa/pr/justice-department-resumes-targeted-hsr-merger-review-process.

[2] https://www.federalregister.gov/documents/2026/09/24/2026-19597/rules-of-practice.

[3] https://www.justice.gov/atr/media/1453731/dl?inline.