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Merger Control in the Current Crisis

Antitrust and competition authorities around the world have responded with consistency to the COVID-19 pandemic, primarily by moving to remote work where possible. While the authorities remain committed to their enforcement mandates to protect and promote competition, they have also signaled that transacting parties should anticipate delays in the review process.

In the United States, Federal Trade Commission and Antitrust Division staff are conducting investigations remotely, including through virtual meetings and depositions. The FTC implemented a novel [electronic HSR filing process](#) to replace physical deliveries; the antitrust bar has advocated such an e-filing system for many years, and it may be a lasting improvement. After a two-week suspension in response to COVID-19, the FTC will [resume granting early terminations](#) of the HSR waiting period next week. Although early terminations may be granted less often than usual, the resumption will accommodate urgent equity investments and asset sales. The Antitrust Division [announced](#) it will require an additional 30 days after substantial compliance with a Second Request to complete its review, and the agency is reopening active timing agreements with parties to reflect the change. While most transacting parties should expect delays as a result of the challenges of remote investigations, the agencies announced that they will *expedite* the issuance of [advisory opinions](#) regarding collaborations among competitors that respond to the COVID-19 pandemic.

International competition authorities have made similar arrangements. Some jurisdictions, notably the European Commission, are encouraging or requiring merging parties to delay formal notifications, while others have suspended statutory deadlines until further notice. We believe those restrictions will likely be eased in the coming weeks.

The antitrust review environment is neither frozen nor “anything goes.” The need for longer review periods—with narrow exceptions for urgent COVID-19 matters—and clear signals that the competition authorities remain active regulators, present potential challenges for M&A matters. Transacting parties should anticipate sophisticated, if somewhat delayed, regulatory review even in the current crisis, and be prepared to respond with creativity, engagement, and cooperation.

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