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Client Memorandum

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DOJ Implements "Expedited Consideration" Merger Review Process

On July 23, 2026, the Department of Justice Antitrust Division (the "DOJ") announced that it will implement targeted Second Request investigations to expedite merger review and published a new model timing agreement with an "Expedited Consideration" procedure. The optional new procedure, which allows for "quicker and more efficient review of proposed transactions," represents a clear departure from the way the prior administration negotiated timing agreements and their associated timelines. However, the DOJ will retain the option to proceed with an unmodified version of the Second Request.

The DOJ's Announcement

- "**[M]ore efficient review of proposed transactions**." Associate Attorney General Stanley E. Woodward Jr. stated that the initiative is designed to "eliminate bureaucratic burdens while still preserving the integrity of Second Request investigations, which are aimed at protecting American consumers and affordability." Woodward emphasized that the targeted approach will allow for "quicker and more efficient review of proposed transactions; more effective use of taxpayer resources; and above all, helps the Department do its job to safeguard a competitive marketplace while keeping America open for business."
- "**[R]eturn to historical practice**." The DOJ characterized the return to targeted investigations as a "return to historical practice," noting that it had previously used this approach to reduce administrative burden and focus government resources on the specific aspects of proposed transactions that raise competitive concerns. The DOJ stressed that it "remains open to good faith negotiations regarding modifications to Second Requests in all cases" but "will continue to require full compliance in circumstances in which broader information is necessary to reach an enforcement decision."
- **Timing agreement; resolution prior to full compliance**. The release states that "[u]nder a targeted Second Request investigation, the DOJ and the merging parties enter into a timing agreement that prioritizes the submission of certain information and documents that could resolve the DOJ's questions prior to full compliance." The DOJ then has three options: close the investigation, modify the Second Request or require full compliance.

2018 Merger Review Reforms; Biden Administration DOJ Practice

In 2018, then Assistant Attorney General for the DOJ Antitrust Division Makan Delrahim announced a package of reforms intended to modernize and expedite the DOJ's merger review process, including making the DOJ's model timing agreement publicly available. A DOJ FAQ published alongside the 2018 announcement said that timing agreements could be mutually beneficial for both the merging parties and the DOJ. "The [DOJ] gets certainty on timing — which is in the parties' control — and the parties get certainty, among other things, on the number of custodians, the number of depositions, treatment of deficiencies, and the availability of meetings with the Front Office."

In the following administration, the DOJ no longer made the model timing agreement publicly available on its website. As described more fully below in Practical Takeaways, the Biden administration negotiated timing agreements from the Front Office rather than through staff, extended the timeline for merger reviews, and rarely allowed a shortened merger review.

New “Expedited Consideration” Process

The new model timing agreement introduces an optional “Expedited Consideration” process. This mechanism creates a structured, front-loaded pathway for potentially resolving the DOJ’s competitive concerns before full Second Request compliance is required.

- “**Potentially determinative**” **issues**. Under this process, the DOJ will identify, in its sole discretion, issues it considers “potentially determinative” and will prioritize its review around those issues.
- “**Priority Production**.” The parties produce a subset of responsive materials—the “Priority Production”—consisting of documents, information and data from priority custodians and specifications identified in an attachment to the agreement.
- **Front Office meeting**. After the parties certify the Priority Production is complete, the DOJ will offer a Front Office meeting within 21 days. The Front Office is the senior leadership of the DOJ Antitrust Division, including the Assistant Attorney General and his or her major deputies.
    - Within 14 days of that Front Office meeting, the DOJ will notify the parties whether it intends to: (1) close the investigation or provide early termination; (2) modify the Second Requests or otherwise narrow the investigation; or (3) proceed with the investigation without modification. If the DOJ proceeds, the parties must then comply with the Second Requests, in full or as modified.
- **Abbreviated privilege log**. The Expedited Consideration process also includes its own abbreviated privilege log requirements, permitting the parties to produce a streamlined privilege log during the priority phase, with full privilege logs required only if the investigation continues beyond Expedited Consideration.

Practical Takeaways

- **Departure from prior administration practice**. The DOJ’s announcement and release of a new model timing agreement signal a clear departure from the prior administration’s DOJ.
    - **Transparency**. The prior administration’s DOJ withheld public access to its timing agreement and negotiated its timing agreements from the Front Office, with almost no discretion provided to the staff. This model agreement suggests a more transparent process that will likely include the staff as part of ordinary course negotiations.
    - **Commercially friendly timeline**. The prior administration’s DOJ extended merger reviews significantly by seeking agreements not to close a transaction until 180 days after compliance with a Second Request, and in the event of a lawsuit, agreements not to challenge 180 days of pretrial discovery. The effect was a significantly lengthier and more expensive review timeline. The new model timing agreement drops those provisions and signals a more streamlined, commercially friendly review timeline. Associate Attorney General Woodward’s statement that the DOJ aims to “safeguard a competitive marketplace while keeping America open for business” underlines this business-friendly posture.
    - **Abbreviated Second Requests**. The prior administration’s DOJ very rarely agreed to shorten or curtail merger reviews. The new Expedited Consideration procedure allows the DOJ to conduct an abbreviated version of a Second Request without having to move to full compliance—a signal of a more commercial posture.
- **DOJ retains optionality**. However, nothing in the model timing agreement prevents the DOJ from proceeding with an unmodified Second Request or from challenging a transaction, even after the Expedited Consideration procedure. Expedited Consideration is a potential path for the DOJ, but the DOJ has not signaled that it will become the default mode of merger review.
- **Consider tradeoffs**. Benefitting from the Expedited Consideration procedure will involve tradeoffs that merging parties should keep in mind, including the obligation to agree to abide by the timing in the agreement; make rolling productions of documents, information and data; and agree to certain DOJ friendly provisions if the matter is eventually litigated.

- **More settlement-friendly posture**. As described in our prior client alerts on the FTC's Micromarket Kiosk merger settlement and Deere right-to-repair settlement, the DOJ and FTC continue to signal openness to settlements. The DOJ's targeted Second Request process is another indication of that trend.

- **DOJ procedure only**. The FTC has not yet announced a similar targeted Second Request process. The FTC has a model timing agreement on its website, but it does not include something akin to the Expedited Consideration procedure.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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