ALERTS

Hart-Scott-Rodino — No HSR Act Merger Filings March 16 — Temporary Electronic Filing Procedures to Start March 17, with No Early Terminations

March 16, 2020

The Federal Trade Commission Premerger Notification Office ("PNO") announced last Friday that the PNO and the Antitrust Division of the Department of Justice ("DOJ") will not accept filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") on Monday, March 16, 2020, and will initiate a new temporary electronic filing procedure starting Tuesday, March 17, 2020.

As with PNO policy during government funding shutdowns, the PNO has stated that early terminations of the HSR Act waiting period will not be granted until normal operations resume. This applies to HSR filings already under review as well as filings made after the new procedures take effect. Parties hoping for early termination will now need to plan to wait the full 30-day review period before closing (or 15 days for cash tender offers and certain bankruptcy transactions).

The FTC said that these steps have been undertaken with guidance from the Office of Personnel Management to address the developing COVID-19 pandemic.

The HSR Act requires that certain transactions be reported to the PNO and DOJ and a waiting period be observed or terminated early by the agencies prior to consummation if, as a result, the acquiring person will hold voting securities, assets and/or non-corporate interests of an acquired person valued above $94 million.

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The temporary procedures require electronic filing of notifications using a secure file transfer system similar to what the FTC has used for submissions in other contexts. This system will temporarily replace the standard hard copy and DVD filing procedures that require physical delivery of filings to the PNO and DOJ offices in Washington, DC.

After filing under the new procedures, the PNO and DOJ review of filings for antitrust compliance will continue as normal. After the resumption of normal agency operations, filing parties may have to submit hard copies or DVDs of filings made using the temporary e-filing system to both the PNO and DOJ. The current method for paying the HSR Act filing fees by wire transfer will not be affected.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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