

Insights

GOVERNMENT SHUTDOWN'S IMPACT ON ANTITRUST MERGER REVIEW

Oct 02, 2023

With one day for Congress to enact appropriations funding federal government operations, the Federal Trade Commission and Department of Justice, Antitrust Division (the “Agencies”) each issued a contingency plan (the “Plans”) for how a prolonged shutdown would impact their review of Hart-Scott Rodino Act (“HSR”) filings.

In summary, the Plans explain:

- The Federal Trade Commission has funding to continue normal operations for approximately three weeks following a shutdown.
- In the event of a longer shutdown, up to approximately 50% of personnel at the Federal Trade Commission’s Bureau of Competition and 40% of personnel at the Department of Justice, Antitrust Division may be impacted. Certain employees connected to antitrust enforcement within the Agencies will be excepted from the furlough, and those remaining employees would continue to conduct antitrust enforcement activities, including issuing Second Requests.
- Nevertheless, during the shutdown, the Agencies will still accept electronic HSR filings.
- The Premerger Notification Office will also continue operations but with limited personnel and resources. Consequently, it will not be able to respond to questions from parties and counsel.
- HSR waiting periods will continue to run during a government shutdown, and the Agencies will continue to review premerger filings. However, this potential shutdown may delay the review of mergers. The Agencies may request that merging parties refile their HSR forms, for example, thereby starting a new 30-day waiting period.

Not addressed specifically in the Plans is whether a shutdown might delay the Agencies’ implementation of their recently proposed changes to the HSR form and their recently issued proposed new merger guidelines.

For additional details, please see the DOJ’s [2024 Contingency Plan](#) and the FTC’s [Operations Shutdown Plan](#).

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