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## Impact of COVID-19 on Hart-Scott-Rodino and DG Comp Filings and Merger Review Process

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The COVID-19 outbreak has led to several changes to merger filing and review procedures, both in the U.S. and abroad.

In the U.S., both the DOJ and the FTC remain open and are continuing to accept pre-merger filings and conduct merger reviews. However, both agencies have been transitioning employees en masse to working remotely over the past few days, and the agencies plan to conduct all meetings by telephone or video conference absent exigent circumstances.

With respect to HSR pre-merger filings, the DOJ and FTC have implemented a temporary electronic filing system, and will not be accepting hard copy or DVD filings while that system is in place. The e-filing system entails uploading HSR filing documents to a secure file-transfer platform. The agencies have announced that they will not grant early termination of the waiting period on any filing while the e-filing system is ongoing, and neither agency has indicated how long they expect the temporary system to remain in effect. While the agencies are still bound by the statutory 30-day HSR initial waiting period, it is possible that the e-filing system and the move to teleworking will cause delays that, in some instances, may lead the agencies to issue Second Requests in order to give themselves more time to evaluate proposed transactions. In such cases, parties should consider using the “pull and refile” procedure, which involves resubmitting an HSR filing in order to give the reviewing agency a second 30-day initial waiting period to complete its review without having to issue a Second Request. As the e-filing system was only put into place this Tuesday, March 17, it is not yet clear whether or to what extent the system will lead to delays. More delays may be announced in the future.

For mergers that are already under review by the DOJ and that are subject to a Second Request following the initial 30-day HSR waiting period, the agency is asking parties to agree to amend their timing agreements with the Antitrust Division in order to give the Division an additional 30 days to complete their review. With this change, the DOJ would have 90 days after the parties comply with a Second Request to decide whether to file a lawsuit to

block the transaction, as opposed to the 60 days the DOJ would otherwise have. The change applies only to mergers that are subject to a Second Request, and does not extend the initial 30-day HSR waiting period.

In the EU, the European Commission Directorate General for Competition has asked companies to delay the filing of merger notifications where possible until further notice. The Commission has said it is taking this step in part because it anticipates facing difficulties in collecting the information it needs to analyze mergers from customers, competitors, and other third parties in the weeks to come. The Commission is encouraging companies that do need to file merger notifications to do so electronically rather than in person.

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