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US Government Shutdown Impact on Antitrust Enforcement – Expect Delays in Merger Review, Investigations, Litigation

October 1, 2025

With the US federal government now shut down until Congress passes funding legislation, federal agencies have begun furloughing employees. Those furloughs will impact the Department of Justice (DOJ) Antitrust Division and the Federal Trade Commission (FTC) – the federal agencies tasked with enforcing antitrust laws.

The Hart-Scott-Rodino (HSR) Antitrust Improvements Act requires parties to certain transactions to notify the DOJ and FTC and observe an initial waiting period – typically 30 days – before closing. The initial HSR waiting period can be extended if either the DOJ or FTC issues a "second request," a large subpoena-like request for additional information, documents and data, which is typically reserved for transactions that may present substantial antitrust concern.

The FTC has indicated on its website that it will continue to accept and process HSR filings during the shutdown. However, its Premerger Notification Office (PNO), which handles receipt of these filings, will operate on a reduced schedule. As a result, review for completeness and compliance, as well as forwarding copies to agency staff for substantive analysis, may take longer than usual. Additionally, the PNO will not respond to questions or requests for information or advice regarding required filings. Importantly, however, HSR waiting periods will continue to run throughout the shutdown, though early termination will not be granted.

Pursuant to the current DOJ and FTC contingency plans,[1] some agency personnel will continue to review and investigate reported mergers or acquisitions. The FTC has said that 50% of its Bureau of Competition employees are excepted from furlough, and as such, it will be running at half capacity. The DOJ has said it expects that 60% of its Antitrust Division employees would be excepted from furlough.

With reduced staff, agency personnel are more likely to encourage parties to "pull and refile" their HSR notifications. This procedure allows the acquirer to withdraw its filing and refile within two business days without paying an additional fee. A "pull and refile" restarts the HSR waiting period, providing the agencies more time to evaluate the competitive implications of a transaction. If parties do not pull and refile, the reviewing agency may instead issue a second request to ensure the transaction does not close before the government has completed its review.

Other impacts to the agencies' antitrust oversight activities are expected. For example, the FTC will suspend investigations not involving mergers and acquisitions, such as monopolization investigations, unless the pursuit of an investigation is necessary to prevent the lapse of a statute of limitations that would preclude monetary remedies. The DOJ will seek continuances on matters currently being litigated but plans to continue to support ongoing criminal trials, prepare for criminal proceedings that have been scheduled for court and conduct ongoing civil litigation in which a continuance cannot be obtained.

The FTC contingency plan also specifies that the agency will not issue reports or guidelines, attend or provide workshops, conferences or the like, or provide its views through letters or comments to other agencies.

For more information on how the government shutdown will affect the initial public offering (IPO) market and other shutdown-related updates, visit The Governance Beat and CapitalXchange.

Notes

1. See the DOJ's FY 2026 Contingency Plan and the FTC's Shutdown Plan, both published September 29, 2025.

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