

M&A Insights:

Implications of Second Requests on M&A Communications

Heightened bipartisan antitrust scrutiny continues to influence M&A activity and conversations about deal certainty are ever prevalent in boardrooms. An increase in Second Requests under the Hart-Scott-Rodino Act of 1976 is one factor extending transaction closing timelines and challenging dealmakers, advisors and Boards in completing M&A transactions.

Abernathy's M&A advisory team analyzed Second Request data from January 1, 2023 through June 30, 2024 to understand which transactions are more likely to experience a prolonged regulatory review, how receipt of a Second Request may lengthen a transaction's expected closing timeline, and the communications and stakeholder engagement strategies to mitigate these risks.

4.4%

Percentage of \$1bn+ deals that received a Second Request between Jan. 1, 2023 and June 30, 2024



Healthcare is the most targeted sector for Second Requests – 8.4% of \$1bn+ healthcare transactions announced since Jan. 1, 2023 have received a Second Request

20%

Percentage of \$10bn+ deals that received a Second Request between Jan. 1, 2023 and June 30, 2024

2X

More likely \$1bn+ deals with strategic buyers are to receive a Second Request than deals with a private equity buyer



235 days on average to complete deals if a Second Request is received vs. 103 days for deals that do not receive a Second Request

64%

Of the transactions announced between January 1, 2023 and June 30, 2024 that received a Second Request, 64% had not closed as of September 1, 2024

Aligning Stakeholder Engagement Strategies to the Evolving Regulatory Environment

- **Prepare stakeholders for an uncertain timeline:**
Employees, customers and other stakeholders are likely unfamiliar with the mechanics of a regulatory review process. Prioritize consistent communication at key milestones (i.e.: disclosure of Second Request receipt) to allay concerns among employees, address questions from customers and business partners, and maintain business continuity.
- **Take a broad approach to closing timing guidance:**
Project confidence without over-promising. Even if optimistic of rapid approval for the transaction, avoid making too affirmative of a timing commitment as much of the regulatory process is out of the company's control. Opting for a more disciplined timeline disclosure (i.e.: "early next year" vs. "the first quarter") and closing ahead of expectations provides greater optionality.
- **Understand the media covering regulatory processes:**
While the M&A press typically moves on after a deal is announced, specialized outlets and a separate cohort of Washington-based policy reporters will begin to cover the twists and turns of federal merger investigations, including specific issues the agencies may be scrutinizing. Build relationships with these reporters and engage with them along the way to educate and advance an understanding of deal rationale.
- **Develop a plan for Capitol Hill and relevant states:**
Identify allies, potential critics and the lawmakers most relevant to the business/industry both in D.C. and in key states. An effective outreach strategy can create important advocates ahead of any federal or state-specific challenge.
- **Leverage public communications to reinforce deal rationale:**
For deals with significant regulatory risk, announcement day should kick off a concerted campaign effort. Leaning into public communications moments, like quarterly earnings, as well as opportunistic media engagement in the weeks and months following a deal announcement, are essential steps to driving a positive narrative around transaction benefits for both internal and external stakeholders.

About H/Advisors Abernathy

H/Advisors Abernathy consistently ranks among the top M&A communications and stakeholder engagement advisors in the U.S. and globally. Our experienced M&A advisory team has advised public companies, private equity firms, privately held organizations and founder-led businesses on more than 425 transactions valued at more than \$450 billion since the beginning of 2022. Abernathy's tailored and customizable cross-stakeholder approach leverages our deep relationships with the financial media, corporate governance, investment banking and legal communities and utilizes proprietary research and analytics to help our clients preserve value and complete transactions while successfully navigating today's dynamic, fast-moving environment.