

Department of Justice (DOJ) Second Request Overview

- The Second Request is a compulsory process that requires merging companies to produce certain documents and information.
- Parties cannot consummate their transaction until 30 days after both parties certify substantial compliance with the Second Request or as otherwise agreed upon by the parties and the DOJ.
- A Second Request asks for documents and information covering a number of different topics including:
 - Product descriptions, revenues, and strategies;
 - Competition in the relevant market(s);
 - Contracting;
 - Pricing;
 - Customers, including enrollment and information regarding efforts to win/retain customers;
 - Promotional materials, sales and marketing strategies and plans;
 - Post-transaction plans and efficiencies;
 - Ease and cost of entry.
- The definition of “documents” includes hard copy documents, emails, electronic documents and data stored in databases and shared drives, instant messages, information stored on smartphones, text messages, and electronic documents on laptops.
- In addition to requesting information from the merging parties, the DOJ will typically request documents and information from third parties (e.g., payors and other industry stakeholders).
- Information submitted by the parties and third parties pursuant to the Second Request process is subject to a number of confidentiality protections limiting the use and disclosure of the information.