

# THE COMPREHENSIVE GUIDE TO SECOND REQUESTS

**Compressing timelines, modernizing review, and meeting HSR Act compliance with confidence.**

Modern technology has fundamentally changed what is operationally possible in a Second Request response — compressing timelines that once took weeks into days and giving legal teams analytical capabilities that simply did not exist a decade ago. This guide addresses the legal framework, operational challenges, technology infrastructure, and best practices that legal teams must command to respond effectively.

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**PUBLISHED**

May 7, 2026

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## PART ONE / MODERN INFRASTRUCTURE

# How Technology Reshapes a Second Request Response

Veterans of the Hart-Scott-Rodino (HSR) Act Second Request practice know the demands well. Parties to a pending merger often have hundreds of millions or billions of dollars at stake and a closing schedule that drives every decision. The government files a broad request for additional information to complete its antitrust analysis. The parties race the calendar while simultaneously negotiating scope and compliance dates with the reviewing agency.

Top antitrust lawyers understand — patiently or otherwise — that ediscovery takes time. But as data volumes grow, government requests broaden, and deal value accumulates by the day, those same lawyers have every right to ask: *is there a better way?* The answer, increasingly, is yes. Modern technology has fundamentally changed what is operationally possible in a Second Request response — compressing timelines that once took weeks into days and giving legal teams analytical capabilities that simply did not exist a decade ago.

## Hold, Collection, Uploading & Processing

Gone are the days of sequencing a response to a Second Request as a linear series of steps — hold, then collect, then process, then review. That waterfall model was a product of legacy technology constraints, not of legal necessity, and it cost responding parties weeks they could not easily afford to lose.

Modern cloud-to-cloud connectors into Microsoft 365 and Google Workspace can ingest, process, index, and make data available for review at volumes of **many terabytes per day**. Collection can include hyperlinked content from M365 and Google email stores, collaboration tools, and file storage. Critically, a legal hold can be placed on an entire collection simultaneously, and the team can begin analysis and review of priority custodians — and negotiate scope — while additional data continues to upload and process in parallel.

The result is a compression of the early-stage timeline that prior-generation workflows could not achieve. While data continues to flow into the platform, the review team is already working. While negotiations of scope are ongoing, the ediscovery team is modeling the data. The old constraint of having to wait for loading and processing before being able to do anything is over.

## Issue Spotting

Document discovery and AI-powered analysis tools like **EverlawAI Deep Dive** allow counsel to ask questions of the data in natural language and surface responsive documents, themes, and narratives without waiting for a full linear review pass. A reviewer can prompt the system with a specific antitrust issue — pricing coordination, market allocation, competitive response strategy — and receive a ranked set of documents and synthesized context within seconds.

This capability is particularly valuable for short-form communications, which are among the most consequential and most difficult document types in Second Request practice. Slack messages, Teams chats, and text threads are frequently informal, context-dependent, and stripped of the structural cues that make email easier to classify. AI tools trained to find meaning in short messages — identifying the competitive significance of a brief exchange that a first-pass reviewer might miss — directly address one of the most persistent landmines in antitrust document review.

## PART ONE / CONTINUED

# From Scope Negotiation to Substantial Compliance

## Analysis & Negotiation of Scope

Negotiation of scope in a Second Request has historically been an exercise in estimation fraught with risk. Counsel would propose custodian lists and date ranges based on organizational knowledge and experience, and both sides would negotiate largely in the dark about the actual data burden implications of their positions. Modern ediscovery platforms have changed this dynamic fundamentally.

Data visualizations and search term reports (STRs) allow counsel to model scope changes and see the resulting impact on review burden in real time — within seconds of adjusting a parameter. Counsel can respond to a government ask in the room: "You want to add these eight custodians for all five years and limit these twenty to email and chat for the same period? Give me sixty seconds." That capability reshapes the negotiating dynamic in favor of the party that has built the infrastructure to use it.

## Speed to Production

Modern ediscovery platforms have eliminated several of the most time-consuming steps in the production workflow. Productions can be transmitted directly through the platform using the same secure infrastructure that regulators already use, delivering the production set instantly and generating a verified transmission log at the moment of delivery. Rolling productions are a standard feature of Second Request practice, and each production cycle under a legacy workflow consumes time that accumulated across a multi-week response. Eliminating manual steps from each cycle compresses the overall timeline meaningfully.

## Transparency

As AI-assisted review becomes standard practice, the defensibility of that review has become both an internal quality imperative and a potential subject of regulatory inquiry. Running **EverlawAI Coding Suggestions** alongside a simultaneous predictive coding (TAR) model for each coding category gives legal teams that level of transparency. A separate PC-TAR model tracks precision and recall in real time, every day. Selecting to the left of the F1 score surfaces a statistically valid sample for defensibility documentation — the answer is not an estimate; it is a number with documentation to support it.

*"Everlaw is able to navigate the changes and demands of a Second Request seamlessly due to its unique admin tools. It allows for quick reassessment and workflow strategies that can be adjusted multiple times a day, which is a feat other tools are not able to easily handle."*

**ANNA-MARIA LICATA COOMBS — REGIONAL DIRECTOR, BEACON HILL LEGAL**

## Compliance Standards & Follow-Up

Certification of substantial compliance is not the end of the government's engagement. The agency routinely surfaces follow-up questions about specific documents, custodians, or gaps in the record. AI tools allow counsel to respond using the same natural language prompting capability applied during initial review. For more complex inquiries, **Everlaw's Storybuilder** assembles dossiers organized by hot topic — pulling the relevant record into a coherent narrative that supports the response to the government and ongoing internal case assessment.

## PART TWO / LEGAL FRAMEWORK

# The HSR Act & the Role of Ediscovery

When the Federal Trade Commission (FTC) or Department of Justice (DOJ) issues a Second Request in connection with a pending merger, the transaction's waiting period is tolled. Compliance is not optional, and delay carries real cost: strained deal financing, signals of unreadiness to regulators, and the prospect of a collapsed transaction worth hundreds of millions or billions of dollars make speed and precision the defining imperatives.

## What Is the HSR Act?

The **HSR Antitrust Improvements Act of 1976** requires parties to a proposed transaction to file premerger notifications when the deal exceeds certain size thresholds. The FTC's Bureau of Competition and the DOJ's Antitrust Division share jurisdiction over HSR filings, with one agency taking the investigative lead based on industry expertise and clearance protocols. Their review is designed to determine whether the proposed transaction would substantially lessen competition or tend to create a monopoly under Section 7 of the Clayton Act.

Most filings are cleared within the initial 30-day waiting period. When an agency determines that a transaction warrants closer scrutiny, it issues a Second Request — a formal demand for documents, data, and written narrative responses that tolls the waiting period until the parties certify substantial compliance. The filing parties cannot close until the agency either clears the deal or files suit to block it.

**30–70**SECOND REQUESTS  
ISSUED ANNUALLY**2–5%**OF QUALIFYING LARGE  
TRANSACTIONS**30-Day**INITIAL HSR WAITING  
PERIOD**\$100M+**TYPICAL DEAL VALUE AT  
STAKE

## The Role of Ediscovery in a Second Request

A Second Request is, at its core, a massive and time-pressured document production that unfolds in an adversarial but negotiated environment. The responding parties must identify custodians, preserve ESI under legal hold, collect and process data across multiple platforms and geographies, review for responsiveness and privilege, and produce to the government on a rolling basis — often while simultaneously negotiating the scope of what must be produced. These requests routinely implicate terabytes of data spanning email, enterprise messaging platforms, financial models, board and investor presentations, strategic planning documents, and marketing materials.

Once the parties certify substantial compliance, the agency has thirty days either to challenge the deal or to allow it to proceed. The merging parties have an interest in limiting scope, controlling cost, and moving toward closing as quickly as possible. These competing interests are reconciled through ongoing negotiation — often while production is already underway.

Efficient, defensible ediscovery is not merely a compliance function in this context — **it is a strategic asset**. The quality of a party's ediscovery infrastructure directly affects its ability to negotiate scope credibly, meet rolling production deadlines, and certify substantial compliance on a timeline that protects deal value and keeps financing in place.

## PART THREE / OPERATIONAL REALITY

# The Challenges of Second Requests

Responding to a Second Request demands simultaneous performance across three dimensions that are each difficult to manage independently: **speed, accuracy, and negotiating agility**. Legal teams must identify custodians, issue and track legal holds, collect and process data across distributed environments, and produce responsive documents — all while maintaining a defensible record and managing an ongoing dialogue with the reviewing agency about scope.

## 01 | Large Data Volumes & Moving Targets

The volume of data implicated by a Second Request is rarely static. Initial estimates expand as custodian lists grow, date ranges shift, and the government requests additional categories. Responses routinely involve millions of documents spanning enterprise email, Slack, Microsoft Teams, spreadsheets and financial models, board and investor presentations, competitive intelligence files, and audio or video recordings of internal meetings.

Scope negotiation runs in parallel with production. Effective ediscovery teams treat scope as a **dynamic variable** and build workflows that can absorb changes — including the addition of custodians or the expansion of date ranges — without requiring a full restart of review or processing.

## 02 | Tiers of Custodians Generate Complexity

Second Requests typically arrive as broad subject-matter categories rather than precise custodian lists. The parties must negotiate the specifics — producing a tiered structure: full communications and business files for a core group of senior executives, and communications only within a specified date range for a second tier of operational custodians. Each tier requires its own volume assessment, collection strategy, and review protocol.

Executives, product managers, pricing analysts, sales leaders, and competitive intelligence personnel may each hold material data across enterprise email, collaboration platforms, shared drives, local devices, and third-party cloud services. Scalable, cloud-based ediscovery infrastructure is a baseline operational requirement.

## 03 | Regulatory Scrutiny & Privilege Risk

Every document produced in response to a Second Request enters an environment of close regulatory scrutiny. Routine internal communications — pricing discussions, competitive assessments, product roadmaps, and executive correspondence — are examined for evidence of market intent, deal rationale, and competitive strategy. The agencies frequently request not just final documents but drafts, versions, and associated metadata.

Counsel should consider securing a **Federal Rules of Evidence 502(d) order** early in the process to limit the risk of subject-matter waiver arising from inadvertent disclosure on a fast-moving, high-volume production. Privilege review workflows must be both thorough and scalable — a combination that requires deliberate protocol design and capable review technology from the outset.

PART FOUR / REGULATORY LANDSCAPE

# Recent Changes to the Second Request Process

The legal and operational framework governing Second Requests has changed substantially in recent years, driven by statutory updates, new agency rulemaking, and a sustained shift toward more expansive antitrust enforcement. Playbooks built five or ten years ago will find that both the scope of what must be produced and the administrative burden of certifying compliance have materially increased.

2022 / AMENDMENT

## Amendments to the HSR Act

The **Merger Filing Fee Modernization Act of 2022** overhauled the filing fee structure, substantially increasing fees for larger transactions, reducing them for smaller ones, and expanding the categories of transactions subject to HSR reporting obligations.

The intent was to direct greater agency resources toward high-value transactions — those most likely to draw Second Requests.

2021-2023 / FTC POSTURE

## FTC Guidelines

The FTC's enforcement posture has shifted considerably. In August 2021, the agency withdrew its 2020 Vertical Merger Guidelines. In December 2023, the FTC and DOJ jointly issued new **Merger Guidelines** articulating an expanded analytical framework.

The agency has broadened thematic scope to include algorithmic pricing, AI-driven product and platform strategies, and labor market competitive effects.

2023 / DOJ POSTURE

## DOJ Guidelines

The DOJ's Antitrust Division co-authored the 2023 Merger Guidelines and has applied their expanded framework across Second Requests in digital markets, healthcare, financial services, and defense.

Requests now routinely seek **technical data, product roadmaps, internal innovation strategy documents, and competitive assessments** — categories of ESI that were less commonly targeted under prior enforcement norms. Parties should also anticipate requests for structured data alongside traditional ESI.

FEB 2025 / EFFECTIVE

## Changes in 2024 / Revised HSR Rules

The FTC's revised HSR rules — finalized October 2024, effective **February 10, 2025** — represent the most substantive overhaul of premerger notification since the original implementing regulations. Running ~460 pages, the rules significantly expand what a compliant submission must contain.

Parties must submit documents and narratives addressing overlapping products, supplier and distribution relationships, transaction rationale, and anticipated market impact — broader and more burdensome than the prior framework.

PART FIVE / RESPONSE FRAMEWORK

# Urgency & Handling a Second Request

## Are Second Requests Urgent?

**Yes** — and urgency operates on multiple dimensions simultaneously. Issuance of a Second Request tolls the HSR waiting period, meaning the parties cannot close until the government either clears the deal or files suit to block it. That pause is not passive: acquisition financing commitments carry expiration dates, stock prices and market conditions move, and deal fatigue accumulates on both sides of the table. Once the parties certify substantial compliance, the government has thirty days to challenge the deal or allow it to proceed. Speed and accuracy are not competing priorities; both are non-negotiable from the moment the request arrives.

## DOJ vs. FTC: Two Distinct Processes

FEDERAL TRADE COMMISSION

**29**

specifications in model Second Request

Focuses on competitive effects in customers, facilities, pricing, and sales — a traditional product-market analytical approach. Conducts review through Bureau of Competition staff with a liaison process.

DEPARTMENT OF JUSTICE

**39**

specifications in model Second Request

Seeks technical data, product architecture, forward-looking business plans, and competitive assessments — emphasizing innovation competition. Tends toward direct staff-level negotiation on scope.

### Key Documents to Gather

- Executive and board-level communications regarding the transaction
- Competitive analyses and market assessments
- Pricing data and models
- Product roadmaps and technical specifications
- Financial projections and due diligence materials
- Internal communications involving competitors, customers, or market strategy

A **data map** documenting systems, custodians, data types, and locations implicated by each specification is an essential early deliverable.

### Team Organization

A dedicated project manager should be assigned the moment a Second Request is received. The core response team typically includes:

- Antitrust counsel (lead and supporting)
- Ediscovery project manager or litigation support director
- Client's internal IT and records management contacts
- Economic experts (for market share analysis)
- Ediscovery platform vendor or service provider

Each role, decision-making authority, and escalation path should be defined **in writing within the first 24 to 48 hours**.

## Need a partner for your next Second Request?

Right Discovery delivers litigation support, eDiscovery consulting, and AI-assisted review — featuring Everlaw — for law firms and corporations navigating the most demanding HSR Act timelines.

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