

HSR Act Update: Agencies to Resume Granting Early Termination of Waiting Period

March 30, 2020

Effective today, the FTC and DOJ will resume processing requests for early termination of the HSR Act waiting period.

In light of the success of the first two weeks of the temporary e-filing program, the FTC and DOJ have announced they will return to processing requests for early termination when both have determined that no enforcement action will be taken during the waiting period.¹

The agencies reminded parties that early termination is not a right, and stated that termination will be available for fewer transactions and granted more slowly than it was prior to the crisis due to strains on agency resources. The FTC and DOJ cautioned that scrutiny of anticompetitive transactions will not be relaxed during the crisis, and they advised that they will continue to monitor the situation and may modify or rescind the revised early termination policy at any time.

The agencies made two additional points regarding requests for early termination in the update:

- **Parties should not reach out to the agencies to request early termination.** Premerger staff is at capacity, and both agencies' litigation teams are already working hard to evaluate the extent to which individual transactions might present competitive concerns.
- **Competitive concerns will be fully investigated in every case, and doubts will be resolved against granting early termination.** If the agencies' competitive concerns cannot be eliminated or resolved during the initial waiting period, they will issue a second request and will continue to investigate those concerns.

As noted in our earlier alert on this topic, there are still open questions regarding use of pull and refile, issuance of second requests, and new timing agreements. We will continue to provide updates as information becomes available.

¹ The full text of the FTC's blog post regarding resuming early termination is available here: <https://www.ftc.gov/news-events/blogs/competition-matters/2020/03/resuming-early-termination-hsr-reviews>.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

| | | |
|--------------------------------------|--------------|--|
| Arthur J. Burke | 212 450 4352 | arthur.burke@davispolk.com |
| Ronan P. Harty | 212 450 4870 | ronan.harty@davispolk.com |
| Jon Leibowitz | 202 962 7050 | jon.leibowitz@davispolk.com |
| Howard Shelanski | 202 962 7060 | howard.shelanski@davispolk.com |
| Jesse Solomon | 202 962 7138 | jesse.solomon@davispolk.com |
| Christopher Lynch | 212 450 4034 | christopher.lynch@davispolk.com |
| Mary K. Marks | 212 450 4016 | mary.marks@davispolk.com |
| Suzanne Munck af Rosenschold* | 202 962 7146 | suzanne.munck@davispolk.com |

*Ms. Munck is admitted to practice in California, and is practicing in DC under the supervision of partners of the firm.

© 2020 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy notice](#) for further details.