

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

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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>.

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