

## Further Updates on Hart-Scott-Rodino Act COVID-19 FTC and DOJ Procedures

MARCH 27, 2020

In good news for parties seeking to quickly close transactions potentially reportable under the Hart-Scott-Rodino (HSR) Act, the Federal Trade Commission (FTC) announced that it will return to processing requests for early termination of the HSR Act waiting period, although grants of early termination will be less frequent and may take longer than normal practice. This announcement follows the recent suspension of grants of early termination while the FTC and Department of Justice (DOJ) implemented a temporary electronic filing program. Winston's briefings on the agencies' efforts to cope with the COVID-19 emergency are available [here](#) and [here](#).

Parties that submit HSR filings have the option to request early termination of the HSR Act waiting period. If granted, early termination shortens the statutory 30-day waiting period and permits the parties to close the transaction immediately upon receipt of the notice of early termination. The agencies typically grant early termination when a transaction is unlikely to lead to anticompetitive effects.

In light of the COVID-19 emergency, the agencies suspended the grant of early termination notices on March 16, 2020. Beginning on March 30, 2020, however, the agencies "will resume the practice of granting early termination of the HSR Act's waiting period when both have determined that no enforcement action will be taken during the waiting period." The FTC credited its return to closer-to-normal operations to the success of the temporary electronic filing system.

The FTC warned, however, that early termination will be granted "on a more limited basis than has historically been the case" for the duration of the COVID-19 emergency and that any "doubts" as to the competitive effects of a proposed transaction "will be resolved against granting early termination." Accordingly, the FTC cautioned that **early termination "will be granted in fewer cases, and more slowly, than under normal circumstances."**

The FTC cautioned parties and their counsel that its staff is "at capacity" and that contacting its Premerger Notification Office (which is responsible for processing HSR filings) and litigation shops will only slow its review of transactions. It further reserved the right to modify or rescind its policy on early termination at any time.

Winston lawyers regularly guide clients through the HSR Act and global merger control processes, including the defense of any government investigations that may follow, and are available to advise parties regarding any unique concerns related to this emergency guidance or the HSR Act process more generally.

If you have further questions, contact your Winston relationship attorney for more information.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

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