

## Early Termination of HSR Waiting Period Temporarily Suspended

FEBRUARY 4, 2021

In significant news for parties considering transactions potentially reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), the Federal Trade Commission (FTC) and the Department of Justice (DOJ) announced that they are temporarily suspending grants of early termination for HSR Act-reportable transactions. The FTC and DOJ did not announce how long the “brief” suspension will last.

Ordinarily, filing parties have the option to request early termination of the HSR Act waiting period which, if granted, shortens the statutory 30-day waiting period, and filing parties are permitted to close the subject transaction immediately upon receiving notice of early termination. The agencies typically grant early termination when a transaction is unlikely to lead to competitive effects.

In a [joint statement](#) issued by the FTC and DOJ, the agencies stated that they will be reviewing the process for granting early termination during the suspension and that they anticipate that the suspension will be temporary and brief. According to the agencies, the reasons for the current suspension included the unprecedented volume of merger filings they received at the beginning of the year, the change in administration, and the ongoing pandemic.

The statement likened the current suspension to the agencies’ prior suspension of grants of early termination from March of 2020, which lasted approximately two weeks.

Following the announcement, two FTC Commissioners issued a [written statement](#) strongly objecting to the agencies’ suspension of early termination. Republican Commissioners Christine Wilson and Noah Phillips called the suspension “unwarranted” absent exigent circumstances “when a crisis made them unable to discharge their duties.” The commissioners argued that the normal merger review process “has been operating smoothly for the last ten months” and thus the justifications for the suspension are “unpersuasive.” Moreover, Commissioners Phillips and Wilson pointed out that early termination was not suspended during any previous changes in administrations, or during other times of uncertainty, including after September 11th and the 2008 financial crisis, suggesting that the current suspension is unwarranted. The effect of the decision, they believe, will be to “delay the consummation of competitively innocuous transactions.”

Winston’s briefings on the prior suspension of early termination are available [here](#) and [here](#). During the last suspension of early termination, filing parties could continue to request early termination to allow the FTC to grant it when the suspension is lifted. The announcement did not explicitly indicate whether this policy will continue, but we

expect that parties will continue to seek early termination to avail themselves to it when the temporary suspension is lifted.

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