

February 4, 2021

FTC and DOJ Temporarily Suspend Early Terminations of HSR Waiting Period

Today, the Federal Trade Commission (FTC) [announced](#) that the FTC and the Antitrust Division of the Department of Justice (DOJ) will temporarily suspend granting early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements (HSR) Act. The statutory waiting period in most cases is 30 days, or 15 days for cash tender offers or bankruptcies. Therefore, for transactions required to be notified under the HSR Act, parties should expect to observe the full applicable waiting period while this suspension is in place.

According to the announcement, this is expected to be a brief, temporary suspension. The FTC cited the transition to a new administration and an “unprecedented volume of HSR filings for the start of a fiscal year” as reasons for the action. In supporting the decision, Deputy Assistant Attorney General and Senior Supervisory Official of the Department of Justice’s Antitrust Division called this a “challenging transition period.” Last [March](#), amidst the agencies’ implementation of remote work and adoption of an electronic filing system, the agencies also paused granting early terminations. That pause [lasted](#) less than two weeks. Though the current pause was announced today, only a single early termination has been granted by the agencies since January 15, 2021.

This action comes in the first week of Commissioner Slaughter’s tenure as Acting Chairwoman of the FTC, and was [criticized](#) by Commissioners Wilson and Phillips who wrote that they “see no rationale sufficient to justify suspending all grants of” early termination and that this was the first time the agencies “suspended early termination because of leadership transitions or increased merger filings.” They write that they are “concerned that freezing grants of ET will delay the consummation of competitively innocuous transactions” and that “during a time of economic difficulty, impeding the transfer of assets could have knock-on effects that harm employees, small businesses, and financially imperiled firms.” They note that historically “roughly half” of notified transaction were granted early termination.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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