



Resuming early termination of HSR reviews

Share This Page

Ian Conner, Bureau of Competition

Mar 27, 2020

TAGS: [Coronavirus \(COVID-19\)](#) | [Hart-Scott-Rodino Act \(HSR\)](#) | [Bureau of Competition](#) | [Competition](#) | [Merger](#)

On Friday, March 13, as part of [the Bureau's response to the COVID-19 coronavirus situation](#), and in partnership with the [Antitrust Division of DOJ](#), we announced that the Bureau's Premerger Notification Office would adopt a [temporary e-filing program](#) for notifications under the Hart-Scott-Rodino Act. Among other changes, this transition involved the temporary suspension of the Bureau's processing of requests to grant early termination of the Act's waiting periods.

We are pleased to announce that, in light of the success of the temporary e-filing program to date, we will return to processing requests for early termination, but with some changes in our ordinary process. Effective Monday, March 30, the FTC and DOJ will resume the practice of granting early termination of the HSR Act's waiting periods when both have determined that no enforcement action will be taken during the waiting period.

Parties to transactions that are notifiable under the Act, and their counsel, should be aware of the following:

1. **Early termination is not a right.** Parties to a transaction are not entitled to early termination of the HSR Act's required waiting periods.
2. **Parties should not reach out to request early termination.** Parties and their counsel should not call the PNO or the litigation shops to advocate for early termination of the waiting period applicable to a notified transaction. We understand that all parties who request it would like early termination of the waiting period, but current conditions require us to prioritize processing filings that raise competitive concerns. 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. Forcing our staff to spend additional time engaging with parties or their counsel will slow our review, not expedite it, and will increase the stress on the premerger program.
3. **Early termination will be granted but only as time and resources allow.** Early termination will, for the duration of the COVID-19 pandemic crisis, be available on a more limited basis than has historically been the case. Specifically, it will be granted in fewer cases, and more slowly, than under normal circumstances.
4. **Competitive concerns will be fully investigated in every case, and doubts will be resolved against granting early termination.** Neither the legal standards that apply to transactions nor the Bureau's investigational standards have been relaxed in light of the coronavirus pandemic. If the Bureau's competitive concerns cannot be eliminated or resolved during the initial waiting period, the Bureau will issue a Second Request and will continue to investigate those concerns. This practice reflects the Bureau's broader policy that its scrutiny of anticompetitive transactions and practices will not be relaxed, notwithstanding the difficult circumstances caused by the coronavirus pandemic. Accordingly, and consistent with the Bureau's normal practice, investigations will not be closed if doubts remain, and early termination will not be granted for any transaction for which enforcement action may be necessary.

5. **We will continue to monitor our workflow and make adjustments at any time.** The resumption of early termination is being implemented based on the best information available to us right now. We may modify or rescind this policy at any time, in light of changes in circumstances, new information, availability of resources, and/or further experience with the temporary e-filing system.

Our teams are working very hard under difficult circumstances to ensure that competition and consumers are fully protected despite the challenges caused by the pandemic. In the meantime, we thank you for your continued understanding.

Any questions about our early termination policy or the e-filing system can be directed to Premerger@ftc.gov.



ftc.gov