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An Update on Merger Review During the COVID-19 Coronavirus Outbreak: Early Terminations to Resume

Last week we [wrote](#) about developments in the United States and European Union affecting merger review procedures in those jurisdictions as a result of the COVID-19 Coronavirus pandemic. At that time, the United States antitrust agencies announced that they would not grant any requests for early termination under the Hart-Scott-Rodino Antitrust Improvements (HSR) Act and that the FTC had implemented a temporary e-filing system for premerger notifications.

Today, the agencies [announced](#) that, given the success of the e-filing program, effective as of March 30, they “will resume the practice of granting early termination of the HSR Act’s waiting periods when both agencies have determined that no enforcement action will be taken during the waiting period.” In a [blog post](#), the Director of the FTC’s Bureau of Competition emphasized that early termination is discretionary and that during this time, given resource allocation concerns, the agencies expect to grant fewer requests than normal and that requests will take longer to grant. According to the blog post, the staff of the Premerger Notification Office “is at capacity, and both Agencies’ litigation teams are already working hard to evaluate the extent to which individual transactions might present competitive concerns;” therefore, parties should not reach out to advocate for early termination.

In our earlier memorandum, we also reported that the European Commission Directorate-General for Competition requested deal parties to consider delaying merger filings “due to the complexities and disruptions caused by the Coronavirus” if possible. This request is still in effect.

It remains a possibility that parties may need to pull and refile their HSR submission in the event the FTC and DOJ are unable timely to process HSR filings in the current environment. Furthermore, with respect to deals currently under review or to be reviewed, there has been no change to the DOJ’s earlier [announcement](#) that it is asking parties to add 30 days to timing agreements in order for the DOJ to complete its review, or to the FTC’s earlier [announcement](#) that it too may ask for timing extensions. More broadly, it remains the case that competition review and approval delays are possible on a global basis given the magnitude of the pandemic. We continue to monitor news affecting competition enforcement during the pandemic and will issue updates as warranted.

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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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