



## Antitrust / Mergers & Acquisitions ADVISORY ■

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### Antitrust Agencies Temporarily Suspend Early Termination of Pre-Merger Waiting Periods

by [Matthew Kent](#)

Yesterday, the Antitrust Division of the U.S. Department of Justice (DOJ) and Federal Trade Commission (FTC) temporarily suspended the grant of early termination of waiting periods under the Hart–Scott–Rodino (HSR) Act. In the [announcement](#), the FTC indicated that it anticipates the “temporary suspension will be brief.” But acting FTC Chair Rebecca Kelly Slaughter stated that it was needed given the “unprecedented volume of filings during a leadership transition [at the FTC] amid a pandemic” and desire to review the early termination process during the transition to the new Administration. The DOJ stated it supported the FTC’s decision.

The HSR Act requires companies contemplating mergers or acquisitions of voting securities or assets that [meet or exceed certain monetary thresholds](#) to file notification forms with the FTC and DOJ and to observe a waiting period before consummating the deal. For HSR reportable transactions, this means that the parties now must wait and observe the full HSR waiting period (30 days, or 15 days in the case of a cash tender or bankruptcy transaction) before closing their deal. Under previous protocols, the antitrust agencies had the discretion, but not the obligation, to end the waiting period before its expiration if there was no apparent competitive concern.

#### **Practical Advice:**

- Any party with a pending HSR filing should expect to observe the full HSR waiting period (*typically* 30 days) before being able to complete its proposed deal.
- Parties currently negotiating deals or contemplating acquisitions should assume that they will need to observe the full HSR waiting period.
- If time is of the essence to complete a transaction, the parties should consider making their HSR filings on a letter of intent to allow the waiting period to expire as they continue to negotiate the terms of the transaction.

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