
Hughes Hubbard & Reed

HSR Early Termination After a Second Request Issues

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March 13, 2021 - On March 12, the FTC clarified the extent of its temporary suspension of early termination of the initial 30-day waiting period under the Hart-Scott-Rodino (HSR) Act. Historically, the FTC and DOJ have exercised their discretion to grant early termination of the initial waiting period in appropriate circumstances if requested by the parties to an HSR reportable transaction. On February 4, 2021, the DOJ and FTC announced the temporary suspension of that policy during the transition to the new administration and in light of a recent spike in HSR filings.

In its clarification announced March 12, the FTC, with the support of the DOJ, stated that the early termination policy had not been suspended with respect to a later period in the HSR review process — after the reviewing agency has issued a Request for Additional Information, also known as a Second Request, but before the parties have substantially complied with that request. The FTC explained that the agencies would continue to grant early terminations during this period in two circumstances — first, where the agency has resolved its competitive concerns through its investigation, and second, where the parties enter into a Consent Agreement to resolve the agency's competitive concerns. Under both circumstances, the HSR Act prohibits the parties from closing their transaction without first substantially complying with the Second Request. Because such compliance would serve no purpose, the agencies will continue to grant early termination in these two circumstances in order to allow the transaction to close without requiring substantial compliance with the Second Request.

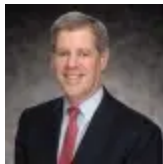
The original suspension of early termination during the initial waiting period remains in effect however, and the FTC and DOJ have not provided any guidance regarding when they might lift it. Such guidance may not be forthcoming until the Biden administration nominates a new FTC Chairperson and a new Assistant Attorney General of the DOJ Antitrust Division, and they both have been confirmed by the U.S. Senate.

The FTC announced its clarification its Competition Matters [website](#).

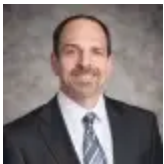
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