

the processing of ET requests continued.¹ And the number of filings has fallen approximately 70 percent since last November. Absent exigent circumstances, an indefinite suspension of the ET process—with no clarity regarding when and under what circumstances it will resume—is unwarranted. We write to express our concern.

Our understanding is that this decision to suspend grants of ET is premised on a desire to avoid inadvertently allowing potentially anticompetitive transactions to evade scrutiny during a period of political transition, a heightened number of HSR filings, and the ongoing Covid-19 emergency. But in more than four decades of HSR Act review, the Agencies have never suspended early termination because of leadership transitions or increased merger filings. We did not suspend early termination in September 2001, after the nation was attacked; or in November of that year, when filings reached 451 in a month. Nor were ETs suspended during the financial crisis of 2008. The experienced, knowledgeable career staffers who directly handle and advise on early terminations remain in place. And while the pandemic and the agency-wide move to telework in March 2020 prompted a two-week suspension of ET as we implemented an electronic filing system, that new process has been operating smoothly for the last ten months under the competent oversight of our diligent and dedicated career staff. For these reasons, we view the proffered justifications for suspending early termination as unpersuasive. We are concerned that freezing grants of ET will delay the consummation of competitively innocuous

transactions early. The Agencies consistently have used this discretionary authority – in both Democrat and Republican administrations – to avoid imposing unnecessary burdens on transactions.³

For transactions where the Agencies do not grant ET, the HSR Act still mandates a strict timeline in which we must complete our review.⁴ These statutorily imposed deadlines reflect Congress's intent to balance the need for the Agencies to scrutinize carefully transactions that may harm competition, with the need for the markets to allocate assets efficiently. Deadlines fo2t2rTr15.7 (g)24i8 (s)1 Ds-impfeedt toeedurky 13.56 n

the COVID-19 emergency. There is no similar limitation here, and thus no reason to interfere with the functioning of the capital markets and the efficient allocation of resources.

Fear that one anticompetitive transaction may obtain an ET should not hold up the thousands that are competitively benign. We have the authority to enforce against consummated transactions that we later find to be anticompetitive. As several transactions have been abandoned recently in the face of enforcement, we can shift resources to the Premerger Notification Office if the office on the front line of HSR review is strained. It is not.

The Agencies can do merger review today, and we are. Last year, some in Washington called for a moratorium on mergers,⁹ arguing that the Agencies couldn't possibly do their jobs adequately while working remotely. Those proposals lacked a sound basis at the time.¹⁰ Commission staff subsequently

Suspending early terminations introduces inefficiency into market operation, harming consumers and other stakeholders involved in the transactions that would have consistently received ET at any point during the last 45 years. Because we do not believe a sound basis exists to incur those costs, we object.