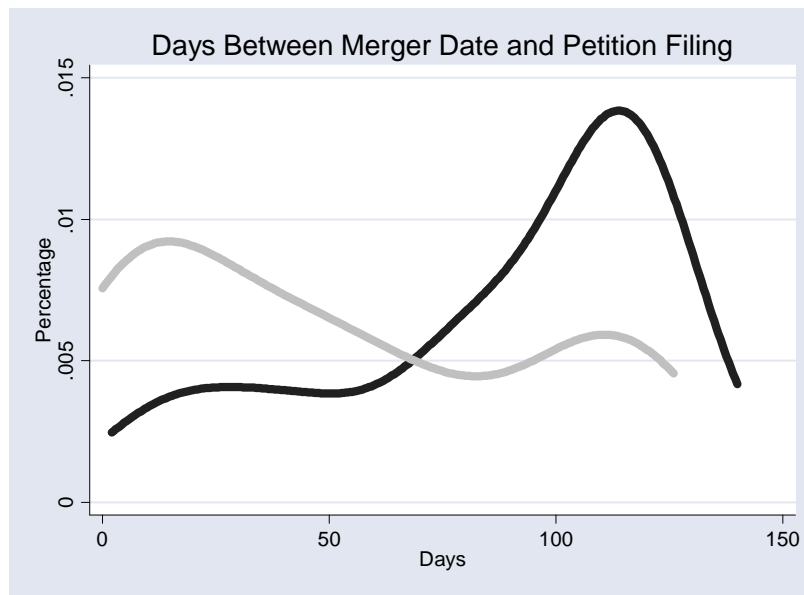


the dissenter does not like the results of the information supplied by the company, it has a statutory right to withdraw its dissent and accept the merger consideration.⁸⁰

C. *The Increasingly Competitive World of Appraisal Litigation*

The manner in which appraisal litigation proceeds also appears to be changing in ways that may indicate increasing competition among appraisal petitioners. Dissenting shareholders have 120 days following the merger’s effective date to file a petition in court demanding the judicial appraisal.⁸¹ That 120-period can often be a time for negotiation, and the parties may settle their dispute before ever filing a claim. Figure 5 shows a kernel density plot of filing times from the effective date of the merger for two appraisal petitions challenging two sets of mergers: (1) those from 2004 through 2010, shown in black and (2) those from 2011 through 2013, shown in gray.

Figure 5



The black line suggests that petitioners commonly took the entire 120 days to negotiate over their disputes before filing in the 2004 through 2010 period. The gray line shows the lag between the merger and the filing from 2011 through 2013, and reveals that parties are filing their petitions much faster, more often not bothering to go through an initial round of settlement discussions before filing. We can only speculate on the causes of this, but one explanation may indeed be increasing competition among shareholders dissenting on the same transaction. One of the advantages of filing is that it compels the surviving company

⁸⁰ 8 D.G.C.L. § 262(e).

⁸¹ DEL. CODE ANN. Tit. 8, § 262(e).