New Sheriff in Town:
Crafting Regulatory Strategy and Negotiating Today's Antitrust Provisions

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US Antitrust Enforcement – M&A

Federal Enforcers

- Whether transaction's effect "may be substantially to lessen competition or tend to create a monopoly"
- Authority to investigate all transactions, even if not HSR-reportable
- "Clearence" process to determine which agency reviews
- Investigation can vary in length and expense depending on issues/concerns
- Must sue to block a transaction; may be option for negotiated remedies to avoid litigation

Private Parties

- Independent right to challenge deals (rare) or initiate follow-on litigation for damages
- Must file a complaint and litigate in court

States

- Typically, will piggy-back on federal authorities, but not always
- Certain states tend to be more active
- Some states now require notice and access to HSR filings, under certain circumstances

Foreign Enforcers

- Several active jurisdictions around the world
- Foreign jurisdictions can be important to analysis, strategy, and timing
- Enforcers can and do engage in certain coordination with each other

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Current FTC & DOJ Leadership

Abigail "Gail" Slater, Assistant Attorney General, Antitrust Division, US Dept. of Justice

- Experience with the President and Vice-President
- Worked in-house
- FTC alum

Andrew Ferguson, Chair, Federal Trade Commission

- Sitting Republican Commissioner since 2024, named as Chair Jan. 20, 2025
- Former Solicitor General of Virginia
- Former Counsel to U.S. Senate Majority Leader Mitch McConnell

Mark Meador, FTC Commissioner

- Former Counsel to Sen. Mike Lee for antitrust
- Former FTC staff attorney and DOJ Trial Attorney
- Worked in private practice

Melissa Holyoak, FTC Commissioner

- Former Solicitor General with Utah Attorney General's Office
- Beforehand, held leadership positions at Competitive Enterprise Institute and the Center for Class Action Fairness

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Hot Antitrust Issues & Enforcement Trends

Trump 1.0	Biden	Trump 2.0
• Relatively aggressive antitrust enforcement • Brought first vertical merger challenge in a while (AT&T-TW) • Increased profile of labor-related antitrust considerations • Launched several tech investigations	• High volume of litigated merger matters, although large percentage of deals still cleared • Big tech, life sciences, agriculture, transportation, consumer products, private equity, labor • New Merger Guidelines and HSR Rules • Few early termination grants • Skeptical of merger remedies, especially carve-outs • Several non-merger conduct investigations and litigations	• Leaders have publicly indicated a belief in vibrant antitrust enforcement • Strong embrace of merger remedies (vs. litigation) • Viewpoint diversity and other non-price impacts a focus as well • "Big tech," life sciences, consumer products • Resumption of early termination • Kept and implemented new Merger Guidelines and HSR Rules • DOJ task force on compliance with HSR and Second Requests

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DOJ and FTC in Headlines

LAW360

DOJ's Top Antitrust Deputy, Merger Chief Both Fired

By Bryan Koenig ·

Law360 (July 29, 2025, 4:23 PM EDT) -- The U.S. Department of Justice has ousted two of its top Antitrust Division officials, citing insubordination amid growing signs of tension between merger enforcers and the wider Trump administration.

CNN BUSINESS

Trump fires Democratic FTC commissioners

By Ramishah Maruf, CNN

3 min read · Updated 8:28 PM EDT, Tue March 18, 2025

New York (CNN) — President Donald Trump fired two Democratic members of the Federal Trade Commission on Tuesday, with both commissioners saying they were "illegally fired."

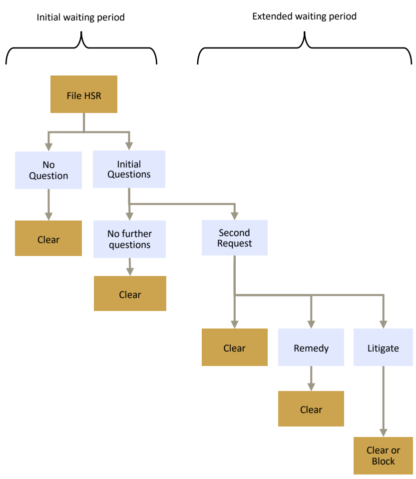
HSR Filings

The HSR Act requires parties notify the DOJ and FTC of certain M&A deals valued over $126.4 mm[1]

Filing HSR triggers a 30-day[2] initial waiting period ("WP")

- If DOJ/FTC does not act, grants ET, or asks questions that the parties resolve promptly, then the WP expires, and the parties can close
- If the Agency continues to have questions, the Agency issues a "Second Request" ("2R"), which extends the WP until the 30th day after the parties "substantially comply" with the 2R
- If the Agency still has concerns after a 2R, it can seek to block a deal, or negotiate a resolution with remedies (e.g., divestitures)

Simplified HSR Review Workflow



1 The HSR size-of-transaction threshold changes annually. Deals may also be subject to a size-of-person test, depending on deal value. HSR includes several filing exemptions, including acquisitions of some foreign issuers, pro rata participation in financing rounds, and passive investments in issuers that are not competitively adjacent to the buyer.

2 Certain deal structures (e.g., cash tender offers) have 15-day waiting periods. DOJ/FTC can shorten an initial waiting period by granting "early termination" ("ET"). Conversely, in some circumstances Parties can extend the initial waiting period from 30 to 60 days by "refiling" their HSR.

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