

IN-DEPTH

# Merger Control

USA



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# Merger Control

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In-Depth: Merger Control (formerly The Merger Control Review) provides an incisive overview and analysis of the pre-merger competition and notification regimes across key jurisdictions worldwide, as well as a discussion of recent decisions, strategic considerations and likely upcoming developments. Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously.

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# USA

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## Introduction

In 1976, the United States became the first jurisdiction with a mandatory pre-merger notification requirement, when Congress promulgated the Hart-Scott-Rodino Antitrust Improvements Act (the HSR Act) to enhance enforcement of Section 7 of the Clayton Act. Under the HSR Act, the US Federal Trade Commission (FTC or the Commission) and the US Department of Justice's Antitrust Division (DOJ) (collectively, the agencies) receive such notifications concurrently and, through a clearance process, decide which agency will investigate transactions that potentially raise issues under Section 7 of the Clayton Act. The HSR Act provides both a 'size-of-transaction' test and a 'size-of-person' test for determining whether a filing is required. Subject to certain exemptions, for 2025,<sup>[2]</sup> the size-of-transaction test is satisfied if the acquirer would hold an aggregate total amount of voting securities and assets of the target in excess of US\$126.4 million. Transactions in which holdings post-acquisition will be valued between US\$126.4 million and US\$505.8 million are reportable only if the size-of-person threshold is also met: either the acquiring or acquired person must have total assets or annual net sales of at least US\$252.9 million, and at least one other person must have total assets of US\$25.3 million (or, if engaged in manufacturing activities, US\$25.3 million in annual net sales). Transactions valued over US\$505.8 million are not subject to the size-of-person test and are reportable unless otherwise exempt.

Important exemptions are provided in the implementing regulations,<sup>[3]</sup> most notably for:

1. acquisitions of goods or real property in the ordinary course of business;
2. acquisitions of bonds, mortgages and other debt obligations;
3. acquisitions of voting securities by an acquirer holding at least 50 per cent of the issuer's voting securities prior to the acquisition;
4. acquisitions made solely for investment purposes in which, as a result of the acquisition, the acquirer holds 10 per cent or less of the outstanding voting securities of the issuer;
5. intra-corporate transactions;
6. acquisitions of convertible voting securities (but not the conversion of such securities);
7. acquisitions by securities underwriters in the process of underwriting;
8. acquisitions of collateral by creditors upon default; and
9. acquisitions involving foreign persons if the assets or revenues involved fall below certain adjusted thresholds that are intended to focus on assets located in the United States or for which there are sufficient sales in or into the United States.

Failure to file can result in civil penalties of up to US\$53,088 for every day that the person does not comply with the HSR Act.

The non-reportability of a transaction under the HSR Act does not preclude either the FTC or the DOJ from reviewing, and even challenging, a transaction under Section 7 of the Clayton Act. Nor does the expiry or termination of the HSR Act waiting period

immunise a transaction from post-consummation challenge under Section 7.<sup>[4]</sup> In addition, even in reportable transactions, state attorneys general may review, and even challenge, transactions, typically, but not always, in conjunction with the federal enforcement agency handling the transaction.<sup>[5]</sup> Certain industries also require pre-merger approval from federal regulatory agencies. For instance, (1) the Federal Energy Regulatory Commission will review electric utility and interstate pipeline mergers; (2) the Federal Communications Commission will review telecommunications and media mergers;<sup>[6]</sup> (3) the Board of Governors of the Federal Reserve System will review bank mergers;<sup>[7]</sup> and (4) the Surface Transportation Board will review railway mergers. A recent law requires that parties to certain defence-related transactions provide information submitted to the antitrust agencies concurrently to the US Department of Defense (DOD).<sup>[8]</sup> State public utilities commissions may have separate authority to review telecommunications and utilities mergers.

Finally, foreign investments can be subject to review. Under the Exon-Florio Act, the Committee on Foreign Investment in the United States may review acquisitions by foreign persons that raise national security issues. On 9 August 2023, President Biden issued an Executive Order (EO) applying a 'reverse CFIUS' process to outbound US investments for development of critical technologies in 'countries of concern' for 'military, intelligence, surveillance, or cyber-enabled capabilities.'<sup>[9]</sup>

## Year in review

On 18 December 2023, the agencies released new merger guidelines that marked a significant departure from precedent.<sup>[10]</sup> The new guidelines demonstrated a fundamental ideological shift of antitrust enforcement and adoption of structural screens at lower levels of concentration than the guidelines they replaced. Undeterred by recent litigation losses where courts have rejected more expansive theories of harm, the agencies nonetheless incorporated these ideas into the guidelines. The guidelines, however, are not law and do not have any independent legal effect. Rather, the guidelines are intended to influence the federal courts and to provide guidance as to how the agencies may analyse the competitive impact of transactions and decide whether to challenge them. Surprisingly, President Trump-appointed FTC Chair Andrew Ferguson announced that the FTC will continue to use the 2023 Merger Guidelines as its framework, including being open to using less-common antitrust theories of harm, discovering new ways to apply competition statutes and expanding the purview of the law.

In the United States, there are two agencies that have concurrent jurisdiction over merger review. The FTC uniquely possesses the ability to seek a PI to block completion of a proposed merger in a federal district court and to challenge both proposed and completed mergers in its own administrative proceeding.<sup>[11]</sup> In addition, the FTC can enter into a binding consent decree with the transaction parties without judicial intervention. In contrast, the DOJ must bring its challenges (and file any consents) in federal district court, with a judge ultimately deciding the case. The duration of the administrative process is sufficiently long that rarely will a pending transaction survive the appeals process.

For instance, in the challenge of the September 2017 *Otto Bock/Freedom Innovations* transaction, the FTC brought its administrative challenge in December 2017, the

administrative law judge (ALJ) ruled in May 2019 that the transaction violated the law, and the full Commission unanimously affirmed the decision on 30 December 2019. Otto Bock petitioned the DC Circuit to review the Commission's decision, but pending the DC Circuit's decision, agreed to settle with the FTC by divesting Freedom's microprocessor-equipped prosthetic knee business to Proteor on 9 October 2020 (almost three years after the FTC had commenced its challenge).

The FTC's appeal to the Ninth Circuit of the *Microsoft/Activision* district court decision remained pending at the outset of, and throughout, 2024.<sup>[12]</sup> In addition, a federal district court case challenging a multiyear series of consummated acquisitions by US Anesthesia Partners, Inc and Welsh, Carson, Anderson & Stowe (Welsh Carson) remained pending at the beginning of 2024; on 13 May 2024, the federal district court dismissed the complaint against Welsh Carson, but kept the case alive against US Anesthesia Partners.<sup>[13]</sup>

On 25 January 2024, the FTC challenged Novant Health's proposed acquisition of two North Carolina hospitals from Community Health Systems, Inc; on 5 June 2024, the federal district court in North Carolina denied issuance of a PI,<sup>[14]</sup> but, on 18 June 2024, the Fourth Circuit granted the injunction pending appeal,<sup>[15]</sup> and the parties abandoned the transaction.

On 26 February 2024, the FTC challenged Kroger's proposed acquisition of Albertsons in federal district court in Oregon and in its administrative court.<sup>[16]</sup> The transaction parties filed an action in federal court in Ohio challenging the constitutionality of the FTC's administrative proceeding.<sup>[17]</sup> On 10 December 2024, both the federal district court in Oregon and the Washington state court decided against the transaction parties.<sup>[18]</sup> The next day, Albertsons terminated its merger agreement and sued Kroger for willful breach of contract.<sup>[19]</sup>

On 22 April 2024, the FTC challenged Tapestry's proposed acquisition of Capri in both the federal district court in New York and its administrative court.<sup>[20]</sup> On 24 October 2024, the district court granted the FTC a PI,<sup>[21]</sup> which the transaction parties initially appealed to the Second Circuit but then chose to abandon the transaction.

On 2 July 2024, the FTC challenged Tempur Sealy's proposed acquisition of Mattress Firm in federal district court in Houston and in its administrative court.<sup>[22]</sup> The transaction parties filed an action in the same federal court challenging the constitutionality of the FTC's administrative proceeding, and requested that this action be assigned to the same judge as the PI case.<sup>[23]</sup> On 31 January 2025, the district court judge denied the FTC's request for a PI.<sup>[24]</sup>

The FTC entered into no consent decrees in 2024 other than those dealing with board seats in two petroleum deals. In addition, the FTC permitted Global Partners' purchase of Gulf Oil petroleum terminals only after the parties excluded a petroleum terminal in South Portland, Maine from the deal.<sup>[25]</sup> The FTC investigated a number of transactions that were ultimately abandoned because of antitrust concerns by the parties, but before the FTC formally acted to challenge the transaction.<sup>[26]</sup>

In March 2025, the FTC brought a PI action in the Northern District of Illinois to block GTCR BC Holdings, LLC's acquisition of Surmodics, Inc, alleging that the deal, which seeks to combine the two largest manufacturers of critical medical device coatings, is anticompetitive.<sup>[27]</sup> On 17 April 2025, the FTC filed an amended complaint adding the

States of Illinois and Minnesota as co-plaintiffs in the Commission's complaint, and adding GTCR, LLC as an additional defendant in the case.<sup>[28]</sup>

The DOJ began 2024 by winning its *JetBlue/Spirit* case,<sup>[29]</sup> although Jet Blue initially appealed this decision, it subsequently abandoned the transaction.<sup>[30]</sup> In November 2024, the DOJ filed a federal PI action in Maryland against UnitedHealth Group's (UHG) acquisition of home health and hospice rival, Amedisys.<sup>[31]</sup> In addition, the DOJ announced the abandonment of a number of transactions that were terminated because of antitrust concerns.<sup>[32]</sup> These included, in July 2024, UHG's abandonment of its proposed acquisition of Stewardship Health Group Inc as well as a second acquisition of an unnamed physician group. AAG Kanter issued a statement indicating that these provider deals 'raised questions about quality of care, cost of care and working conditions for doctors, nurses and other healthcare providers'.<sup>[33]</sup>

In the final days of the Biden Administration, the DOJ brought a PI action seeking to block American Express Global Business Travel's proposed acquisition of corporate travel rival CWT Holdings,<sup>[34]</sup> as well as a civil penalty action against private equity firm KKR, alleging serial and flagrant violations of the HSR Act.<sup>[35]</sup> In 2024, the DOJ did not enter into any consent decrees to resolve concerns about transactions; however, a number of acquisitions were reportedly abandoned by the transaction parties when faced with DOJ opposition.

On 30 January 2025, the DOJ – by then nominally under the Trump Administration's leadership – brought a PI action in the Northern District of California, seeking to enjoin Hewlett Packard Enterprise's acquisition of Juniper Networks.<sup>[36]</sup>

## The merger control regime

New rules went into effect on 10 February 2025, which substantially and materially increased the information and documents required to be included in the HSR Act notification by both parties. Parties may approach the agencies prior to the filing of an HSR Act notification (or, in transactions that are not notifiable but that may raise antitrust concerns, in lieu of filing under the HSR Act) and the agencies can extend confidentiality to any substantive discussions by officially commencing an investigation. In contrast with many other jurisdictions, such consultations are not common prior to the public announcement of a transaction.

An acquisition that is subject to an HSR Act notification may not be completed until the requisite HSR Act notification has been filed with the agencies and the applicable waiting period has expired or has been terminated early. For most of the Biden Administration, early terminations were not available. The Trump Administration has reinstated the availability of early terminations of the waiting period.

In most transactions, the acquired and the acquiring parties must file separate HSR Act notifications, and the waiting period will not commence until both parties make their filings. In tender offers, the waiting period commences with the filing of the HSR Act notification by the acquirer.

The initial waiting period is 30 days (or 15 days, in the case of a cash tender offer or bankruptcy filing). If the period expires on a weekend or holiday, then it will be

extended until the following business day. At the parties' request, the waiting period can be terminated earlier by the agencies. Technically, the waiting period may not be extended other than by the issuance of a request for additional information and documentary material (second request). In practice, however, the acquiring party may withdraw and refile its HSR notification (recommencing the waiting period), agree not to complete the transaction to grant the antitrust enforcement agency additional time, or agree with the enforcement agency out of court that compliance with the HSR Act will not occur until a further submission is made.

The FTC and the DOJ have concurrent jurisdiction over HSR Act notifications. A clearance process exists between the agencies whereby one of the agencies can get 'cleared' to investigate the transaction. Once an agency is cleared, it can contact the parties (and third parties) for information relating to the transaction. The agencies have adopted policies to facilitate the investigation of transactions during the initial waiting period, aimed at decreasing the number of transactions in which second requests are issued and developing more precise second requests. The ability to engage in meaningful review of a transaction during this initial waiting period, however, depends on the transaction parties' willingness to provide certain documents and information quickly and voluntarily.

If, prior to the expiry of the initial waiting period, the reviewing agency issues a second request (typically on the last business day of the waiting period), then the clock stops until the transaction parties comply with the second request. Unless terminated earlier or otherwise agreed to by the parties, the second waiting period ends on the 30th day (or, in the case of a cash tender offer or bankruptcy, the 10th day) following substantial compliance with the second request. Again, if the waiting period expires on a weekend or holiday, it is extended to the following business day. In tender offers, the waiting period is determined according to when the acquiring party substantially complies with the second request. It is not unusual for the parties to agree to extend the waiting period in exchange for a dialogue with the agency regarding the concerns presented, particularly if the parties are willing to resolve any remaining concerns with a consent decree.

In merger investigations, the agencies typically seek information from third parties (competitors, customers, suppliers, etc.) that is relevant to the review of the transaction. The information may be requested or required. Both agencies can also seek interviews or depositions. Generally, the information provided by the merger parties and third parties is not subject to public disclosure. State attorneys general can also review mergers; a process has been in place for about a decade that facilitates their participation in HSR review. With the consent of the merger parties, the agencies will discuss the information received by them and coordinate their investigations with the state enforcers. Ultimately, if the transaction is challenged, the state attorneys general often, but not always, join with the agency as plaintiffs. In some transactions, the state attorneys general will seek additional relief. State attorneys general will sometimes also require transaction parties to pay 'attorneys' fees' for their review of the transaction as part of the settlement. In addition, the US antitrust authorities regularly consult with their foreign counterparts during a merger investigation. Such coordination and dialogue require consent from the transaction parties. The US authorities recently signed a cooperation agreement with China to facilitate such cooperation.

A high percentage of the transactions for which an agency issues a second request will result in some type of enforcement action (i.e., court challenge, consent decree or

restructuring). The agencies have a strong preference for structural relief and require upfront buyers. The DOJ will occasionally forgo the need for a consent decree if the merger parties eliminate the potential anticompetitive problems through a voluntary restructuring of the transaction or a sale of assets (a 'fix-it-first' solution). In the past, the DOJ also used 'pocket consent decrees' (decrees that are entered into by the parties and the DOJ but not filed with the court unless either the agency decides that it needs relief or the parties fail to implement the remedy or obtain a regulatory order). These pocket consent decrees also permitted a transaction to proceed before the agency completed its investigation; for instance, in a hostile tender offer situation where the target was uncooperative and used the HSR review as a means of delay or process denial. Both the FTC and the DOJ permit the transaction to close once they provisionally accept the consent decree and publish it for public comment. The FTC approves the final consent decree after the public comment period expires and the Staff sends its recommendation to the Commission; the DOJ files the proposed judgment with a federal district court and seeks approval and entry of the judgment by the judge following the public comment period provided under the Tunney Act.<sup>[37]</sup>

If the parties and the reviewing agency are unable to reach an agreement that resolves the agency's concerns, then the agency can seek a preliminary injunction from a federal district court to block the transaction's completion. The DOJ can also challenge a completed merger in federal district court. The FTC, regardless of whether it seeks a preliminary injunction, can also challenge a proposed or consummated merger in its own administrative court.

The agencies can challenge a transaction at any time post-consummation. There is no statute of limitations barring the challenge or suspensory effect from the expiry of the HSR Act waiting periods. State attorneys general can bring challenges as well, on their own behalf or as *parens patriae* of their citizens. Private parties can bring challenges, although, in most jurisdictions, the standing requirements may be difficult to meet.

## Other strategic considerations

Although providing the state attorneys general with an active role in the HSR Act review may complicate the process and potentially delay the resolution of the review at the agency, it is generally advisable that transaction parties consent to such a request. Most states have compulsory process authority and, absent the protocol, can issue subpoenas for information, documents and even testimony. States can also bring challenges. Having the states work with the agency eliminates confusion, an additional burden of compliance with requests and potentially diverging outcomes. Although the *T-Mobile/Sprint* transaction provided an example of where some states may diverge with a federal antitrust agency, in a number of recent FTC challenges, state attorneys general joined with the FTC in the matter.

Similarly, many transactions meeting the jurisdictional thresholds of the HSR Act will also require notification in a number of other jurisdictions.<sup>[38]</sup> The trend is for the FTC and the DOJ to cooperate with other jurisdictions in reviewing cross-border mergers. In that regard, the US agencies have entered into several bilateral and multilateral cooperation agreements. The agencies have cooperated extensively with Canada, Mexico and the

European Commission on several mergers, and this cooperation is likely to continue. Transaction parties should consider agreeing to such cooperation for the same reasons as with the states: to avoid confusion, the burden of compliance with requests and potential diverging outcomes. Such coordination is particularly crucial when remedies are likely to be required that affect assets or businesses in more than one jurisdiction. Even with such cooperation, however, geographic and analytical differences can exist among reviewing jurisdictions. It is more likely that divergence will occur between the established competition authorities (e.g., the United States and the European Commission's) and the newer competition authorities (e.g., India's and China's).

## Outlook and conclusions

United States antitrust enforcement continues unabated as at the time of writing. Now that the Trump Administration's leadership is taking the helm, we may see some changes, but what these changes will be remain unknown. If the first Trump Administration's conduct is indicative, we should continue to see active antitrust enforcement, particularly based on horizontal and vertical theories of harm, and resistance to behavioural remedies, but a willingness to consider divestitures as a means to resolve antitrust concerns raised by a strategic transaction. In addition, the statements issued with the various leadership announcements have stressed that the technology sector will remain an enforcement focus. We may potentially see broader policy considerations impacting merger outcomes in some transactions. Parties must continue to be prepared for antitrust scrutiny from the outset.

## Endnotes

- 1 Ilene Knable Gotts is a partner at Wachtell, Lipton, Rosen & Katz. [^ Back to section](#)
- 2 The jurisdictional thresholds are inflation-adjusted each year. The current thresholds are available at [www.ftc.gov/enforcement/premerger-notification-program/current-thresholds](https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds). [^ Back to section](#)
- 3 16 CFR Part 802. [^ Back to section](#)
- 4 For instance, in April 2020, the FTC challenged Altria's 35 per cent investment in Juul, even though the HSR Act waiting period had expired over a year prior to commencement of the administrative action. Complaint, *In the Matter of Altria Grp, Inc*, FTC Docket No. 9393 (1 April 2020), available at [www.ftc.gov/system/files/documents/cases/d09393\\_administrative\\_part\\_ii\\_i\\_complaint-public\\_version.pdf](https://www.ftc.gov/system/files/documents/cases/d09393_administrative_part_ii_i_complaint-public_version.pdf). [^ Back to section](#)

- 5 In the *T-Mobile/Sprint* transaction, 16 state attorneys general unsuccessfully challenged the combination despite the DOJ and the Federal Communications Commission having approved the transaction after lengthy reviews and commitments. *New York v. Deutsche Telekom AG*, 439 F.Supp.3d 179 (SDNY 2020). In the *Albertsons/Kroger* transaction, the state attorneys general of Washington and Colorado filed suits to block the transaction before the FTC (along with eight other states and the District of Columbia) brought its preliminary injunction (PI) action on 26 February 2024. See Press Release, Office of Washington State Att'y Gen, 'AG Ferguson files lawsuit to block Kroger-Albertsons merger' (15 January 2024), available at <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-block-kroger-albertsons-merger>; Press Release, Office of Colorado State Att'y Gen, 'Colorado Attorney General Phil Weiser files lawsuit to block proposed Kroger/Albertsons merger' (14 February 2024), available at <https://coag.gov/2024/colorado-attorney-general-phil-weiser-files-lawsuit-to-block-proposed-kroger-albertsons-merger/>; Press Release, Fed Trade Comm'n, 'FTC challenges Kroger's acquisition of Albertsons' (26 February 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons>. ^ [Back to section](#)
- 6 See, e.g., Memorandum Opinion and Order, Declaratory Ruling, and Order Proposing Modification, *In the Matter of Applications of T-Mobile US, Inc and Sprint Corp*, WT Docket No. 18-197, 34 FCC Rcd. 10578 (2019), available at <https://docs.fcc.gov/public/attachments/FCC-19-103A1.pdf>. ^ [Back to section](#)
- 7 See, e.g., Order Approving the Merger of Bank Holding Companies, BB&T Corp, FRB Order No. 2019-16 (19 November 2019), available at [www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf](http://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf). ^ [Back to section](#)
- 8 Section 857 of the National Defense Authorization Act for Fiscal Year 2024, Pub L No. 118-31 (2023). The DOD's Industrial Base Policy mergers and acquisitions office is charged with reviewing transactions affecting or related to the defence industrial base and considering whether a proposed transaction would overly limit competition, have a negative impact on national security, costs or innovation, or otherwise adversely impact the DOD's mission. Transaction parties in defence-related sectors should confirm whether there are additional details available on when these obligations apply. ^ [Back to section](#)
- 9 Exec Order 14105, 'Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern' (9 August 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-08-11/pdf/2023-17449.pdf>. The US Department of the Treasury is tasked with adopting implementing regulations. Parties involved in outbound investments that might be deemed to involve the development of critical infrastructure in sensitive countries should monitor whether such regulations have been adopted. ^ [Back to section](#)

- 10** Merger Guidelines, US Dep't of Justice and Fed Trade Comm'n (issued 18 December 2023), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P234000-NEW-MERGER-GUIDELINES.pdf). [^ Back to section](#)
- 11** On 12 March 2024, the FTC appointed a second ALJ, Jay L Himes; on 23 April 2024, the FTC announced the appointment of a third ALJ, Dania L Ayoubi. Press Release, Fed Trade Comm'n, 'FTC announces appointment of Jay L. Himes as New Administrative Law Judge' (12 March 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-announces-appointment-jay-l-himes-new-administrative-law-judge>; Press Release, Fed Trade Comm'n, 'FTC announces appointment of Dania L. Ayoubi as New Administrative Law Judge' (23 April 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-appointment-dania-l-ayoubi-new-administrative-law-judge>. It has been decades since the FTC has had three ALJs. [^ Back to section](#)
- 12** On 7 May 2025, the Ninth Circuit affirmed the district court's denial of the FTC's *PIFTC v. Microsoft Corp*, No. 23-15992, -- F.4th --, 2025 WL 1319069 (9th Cir. 7 May 2023). [^ Back to section](#)
- 13** *FTC v. US Anesthesia Partners, Inc*, No. 4:23-cv-03560, 2024 WL 2137649 (S.D. Tex. 13 May 2024). On 17 January 2025, the FTC settled a proposed administrative case with Welsh Carson under a consent decree that altered Welsh Carson's role in US Anesthesia Partners. Press Release, Fed. Trade Comm'n, 'FTC secures settlement with private equity firm in antitrust roll-up scheme case' (17 January 2025), available at <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-secures-settlement-private-equity-firm-antitrust-roll-scheme-case>. [^ Back to section](#)
- 14** *FTC v. Cmty Health Sys, Inc*, 736 F.Supp.3d 335 (WDNC 2024), vacated as moot, 2024 WL 3561941 (4th Cir. 24 July 2024). [^ Back to section](#)
- 15** *FTC v. Novant Health, Inc*, No. 24-1526, 2024 WL 3042896 (4th Cir. 18 June 2024). [^ Back to section](#)
- 16** Press Release, Fed Trade Comm'n, 'FTC challenges Kroger's acquisition of Albertsons' (26 February 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons>. [^ Back to section](#)
- 17** Complaint for Declaratory and Injunctive Relief, *Kroger Co v. Fed Trade Comm'n*, No. 1:24-cv-00438-DRC (S.D. Ohio 19 August 2024). [^ Back to section](#)
- 18** *FTC v. Kroger Co*, No. 3:24-cv-00347-AN, 2024 WL 5053016 (D Or 10 December 2024); Findings of Fact and Conclusions of Law, *State v. Kroger Co*, No. 24-2-00977-9 (Wash Super Ct 19 December 2024). [^ Back to section](#)

- 19 Complaint, *Albertsons Cos v. Kroger Co*, No. 2024-1276-LWW (Del Ch 10 December 2024). On 25 March, Kroger filed an answer to the complaint and asserted its own breach of contract counterclaims against Albertsons. <sup>^</sup> [Back to section](#)
- 20 Press Release, Fed Trade Comm'n, 'FTC moves to block Tapestry's acquisition of Capri' (22 April 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-moves-block-tapestry-acquisition-capri>
- 21 *FTC v. Tapestry, Inc.*, 755 F.Supp.3d 388 (SDNY 2024). <sup>^</sup> [Back to section](#)
- 22 Press Release, Fed Trade Comm'n, 'FTC moves to block Tempur Sealy's acquisition of mattress firm' (2 July 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-moves-block-tempur-sealys-acquisition-mattress-firm>
- 23 Complaint, *Tempur Sealy Int'l, Inc v. FTC*, No. 4:24-cv-03764 (SD Tex 4 October 2024). <sup>^</sup> [Back to section](#)
- 24 *FTC v. Tempur Sealy Int'l, Inc*, No 4:24-cv-02508, -- F.Supp.3d --, 2025 WL 617735 (SD Tex 31 January 2025). <sup>^</sup> [Back to section](#)
- 25 Press Release, Fed Trade Comm'n, 'FTC statement on amendment to Global Partners, Gulf Oil acquisition' (9 April 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-statement-amendment-global-partners-gulf-oil-acquisition>
- 26 In January 2024, Bodycote plc, the world's leading provider of heat treatment and specialist thermal processing services, announced it was cancelling its acquisition of rival heat treatment and metal finishing services company Metallurgical Group because the closing condition could not be satisfied. Press Release, Bodycote, 'Acquisition update and announcement of £60m Share Buyback Programme' (22 January 2024), available at <https://www.bodycote.com/press-releases/press-release-2024/acquisition-update-and-announcement-of-60m-share-buyback-programme/>. On 31 January 2024, the FTC issued an official statement regarding the abandonment of the *Amazon/iRobot* transaction. Press Release, Fed Trade Comm'n, 'Statement regarding the termination of Amazon's proposed acquisition of iRobot' (31 January 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/01/statement-regarding-termination-amazons-proposed-acquisition-irobot> (the FTC indicated that its investigation 'focused on Amazon's ability and incentive to favor its own products . . . and associated effects on innovation, entry barriers, and consumer privacy' and it 'revealed significant concerns about the transaction's potential competitive effects.'). On 23 March 2024, Qualcomm Inc abandoned its proposed acquisition of Autotalks Ltd because of FTC concerns that the combination might harm competition in markets for vehicle-to-everything chipsets and related products used in automotive safety systems. Press Release, Fed Trade Comm'n, 'Statement regarding the termination of Qualcomm's proposed acquisition of Autotalks' (25 March 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/03/statement-regarding-termination-qualcomms-proposed-acquisition-autotalks>. Also, on 23 March 2024, Choice Hotels International abandoned its hostile tender offer for Wyndham Hotels & Resorts because of the FTC's serious competition questions; both companies compete for hotel franchises of 'quality affordable lodging'. Press Release, Fed Trade Comm'n, 'Statement regarding the termination of Choice Hotel's proposed takeover of Wyndham Hotels & Resorts' (12 March 2024), available at <https://www.ftc.gov/news-events/news/press-releases/2024/03/statement-regarding-termination-choice-hotels-proposed-takeover-wyndham-hotels-resorts>. On 21 May 2024, the FTC praised Altus Group's abandonment of its acquisition of Situs Group's REVS business, which the FTC stated was Altus Group's closest rival for valuation management services. Press Release, Fed Trade Comm'n, 'Statement regarding the termination of Altus Group's proposed acquisition of Situs Group's

- 27** Press Release, Fed Trade Comm'n, 'FTC challenges medical device coatings deal' (6 March 2025), available at <https://www.ftc.gov/news-events/news/press-releases/2025/03/ftc-challenges-medical-device-coatings-deal>. [^ Back to section](#)
- 28** Press Release, Fed Trade Comm'n, 'Illinois and Minnesota join FTC lawsuit challenging medical device coatings deal' (17 April 2025), available at <https://www.ftc.gov/news-events/news/press-releases/2025/04/illinois-minnesota-join-ftc-lawsuit-challenging-medical-device-coatings-deal>. [^ Back to section](#)
- 29** *United States v. JetBlue Airways Corp*, 712 F.Supp.3d 109 (16 January 2024). [^ Back to section](#)
- 30** On 4 March 2024, JetBlue and Spirit announced that they had signed a definitive merger agreement, with the goal of completing the transaction by the end of 2024. JetBlue and Spirit Merger Fact Sheet, 4 March 2024, available at <https://www.jetblue.com/sites/default/files/2024-03/JetBlue-Spirit-Merger-Fact-Sheet.pdf>. [^ Back to section](#)
- 31** *SeeSpirit Airlines, Inc v. Federal Trade Comm'n*, No. 23-1162 (4th Cir. 2023). [^ Back to section](#)
- 32** On 28 March 2024, Fresh Express Acquisition LLC abandoned its proposed acquisition of Dole plc's Fresh Vegetable division. The DOJ's concerns focused on 'competition in the packaged salad market'. Press Release, US Dep't of Justice, 'Fresh Express abandons proposed acquisition of Dole's packaged salad business in response to Antitrust Division's concerns' (28 March 2024), available at <https://www.justice.gov/opa/pr/fresh-express-abandons-proposed-acquisition-doles-packaged-salad-business-response-antitrust>. On 22 April 2024, TopBuild abandoned its proposed acquisition of building insulation products rival Specialty Products & Insulation. Press Release, US Dep't of Justice, 'TopBuild abandons proposed acquisition of SPI after Antitrust Division concerns' (22 April 2024), available at <https://www.justice.gov/opa/pr/topbuild-abandons-proposed-acquisition-spi-after-antitrust-division-concerns>. In May 2024, Principal Deputy Assistant Attorney General Doha Mekki indicated that there had been 'roughly 20 or so [deals] that have been abandoned' since AAG Jonathan Kanter's appointment because of antitrust concerns. Ben Brody, 'Questions from US DOJ preceded roughly 20 deal abandonments under Kanter, Mekki Says', MLex (2 May 2024), available at <https://www.mlex.com/mlex/articles/2154805/questions-from-us-doj-preceded-roughly-20-deal-abandonments-under-kanter-mekki-says>. [^ Back to section](#)
- 33** Press Release, US Dep't of Justice, 'UnitedHealth Group abandons two acquisitions following Antitrust Division scrutiny' (25 July 2024), available at <https://www.justice.gov/opa/pr/unitedhealth-group-abandons-two-acquisitions-following-antitrust-division-scrutiny>. [^ Back to section](#)

- 34** Press Release, US Dep't of Justice, 'Justice Department sues to block Global Business Travel Group's proposed acquisition of CWT Holdings' (10 January 2025), available at <https://www.justice.gov/opa/pr/justice-department-sues-block-global-business-travel-groups-proposed-acquisition-cwt>. ^ [Back to section](#)
- 35** Press Release, US Dep't of Justice, 'Justice Department sues KKR for serial violations of Federal Premerger Review Law' (15 January 2025), available at <https://www.justice.gov/opa/pr/justice-department-sues-krk-serial-violations-federal-premerger-review-law>. ^ [Back to section](#)
- 36** Press Release, US Dep't of Justice, 'Justice Department sues to block Hewlett Packard Enterprise's Proposed \$14 Billion Acquisition of Rival Wireless Networking Technology Provider Juniper Networks' (30 January 2025), available at <https://www.justice.gov/opa/pr/justice-department-sues-block-hewlett-packard-enterprises-proposed-14-billion-acquisition>. ^ [Back to section](#)
- 37** Antitrust Procedures and Penalties Act, 15 USC Sections 16(b)–(h) and 2(b). ^ [Back to section](#)
- 38** See Ilene Knable Gotts, 'Navigating Multijurisdictional Merger Reviews: Suggestions from a Practitioner', 9*Competition Law International* 149 (October 2013). ^ [Back to section](#)

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