

CLASS 3 SLIDES

Unit 2. The DOJ/FTC Merger Review Process

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Topics

- Inquiry risk: HSR Act merger reviews
- Premerger notification
- Preparing for an investigation
- Initial waiting period investigations
- Second request investigations
- DOJ/FTC merger review outcomes

Inquiry Risk: HSR Merger Reviews

Recall the three types of antitrust risks

1. Inquiry risk

- The risk that legality of the transaction will be put in issue

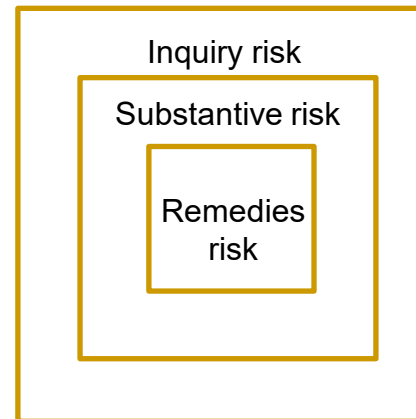
2. Substantive risk

- The risk that the transaction is anticompetitive and hence unlawful

3. Remedies risk

- The risk that the transaction will be blocked or restructured

Risks are nested



Framing inquiry risk

- There are two factors to consider in assessing inquiry risk—
 1. Does the putative challenger have the **means** to initiate an inquiry?
 2. Does the putative challenger have the **incentive** to initiate an inquiry?

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1. The means: Two potential means—
 - a. The ability to initiate a precomplaint investigation
 - b. The ability to initiate litigation
 2. The incentive calculus: Three questions—
 - a. What is the reward/payoff to success?
 - b. What is the probability of success?
 - c. What is the cost of raising the issue?

Federal enforcement agencies

■ Ability: Causes of action and forums

□ DOJ

■ Causes of action

- Preliminary and permanent injunctive relief under Clayton Act § 15 in federal district court
- Treble damages under Clayton Act § 4A in federal district court for injuries (overcharges) to federal agencies

■ The practice

- Sue in federal court—consolidate the preliminary injunction hearing with a trial on the merits under Federal Rule of Civil Procedure 65(a)(2) or, more commonly today, a stipulated TRO

□ FTC

■ Causes of action

- Preliminary and permanent injunctive relief in federal district court under FTC Act § 13(b)
- Permanent injunctive relief under Clayton Act § 11 in an FTC administrative adjudicative proceeding

■ The practice

- Historically, sought—
 - Preliminary injunctive relief in federal district court under Section 13(b)—the FTC has no power to issue interim relief
 - Permanent injunctive relief under Clayton Act § 11 in an FTC administrative adjudicative proceeding
- Trump 2.0
 - Announced a policy to seek both preliminary and permanent injunctive relief in federal district court and forego administrative adjudication of the merits
 - Only one challenge brought so far—and the merging parties agreed to a “standstill” on the acquisition pending a decision on the merits

Federal enforcement agencies

- *Incentive:* The DOJ/FTC are by far the most likely challengers
 - Both charged with enforcing Section 7 of the Clayton Act
 - Are large, experienced in merger antitrust enforcement, and reasonably well-funded
 - Have the benefit of the HSR Act—
 - Premerger reporting
 - Waiting period before the merger can be consummated
 - Precomplaint investigation tools (second requests, CIDs)
 - Have litigation experience (and young attorneys eager to litigate)

The Premerger Notification Process

HSR Act

■ Hart-Scott-Rodino Act¹

- ❑ Enacted in 1976 and implemented in 1978
- ❑ Applies to large mergers, acquisitions and joint ventures
- ❑ Imposes reporting and waiting period requirements
 1. *Preclosing reporting* to both DOJ and FTC by each transacting party
 2. *Post-filing waiting period* before parties can consummate transaction
- ❑ Authorizes investigating agency to obtain additional information and documents from parties during waiting period through a *second request*
- ❑ Designed to alert DOJ/FTC to pending transactions to permit them to investigate—and, if necessary, challenge—a transaction prior to closing
 - *Idea*: Much more effective and efficient to block or fix anticompetitive deal prior to closing than to try to remediate it after closing
- ❑ Not jurisdictional: Agencies can review and challenge transactions—
 - Falling below reporting thresholds,
 - Exempt from HSR reporting requirements, *or*
 - “Cleared” in a HSR merger review—no immunity attaches to a transaction that has successfully gone through a HSR merger review

¹ Clayton Act § 7A, 15 U.S.C. § 18a.

Basic prohibition

■ Section 7A(a)

[N]o person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) **file notification** . . . and the **waiting period** . . . has expired

■ A reportable transaction is one that—

1. Involves the **acquisition** of **voting securities** or **assets**
2. Satisfies the **dollar thresholds** for **prima facie reportability**
3. Does not fall into one of the **exemptions** provided by the HSR Act or implemented by the HSR Rules

■ Dollar thresholds adjusted annually for inflation

Prima facie reportability¹

Size of transaction*	Prima Facie Reportability		
Up to and including \$133.9 million	Not reportable		
Above \$133.9 million up to and including \$535.5 million	Reportable if:		
	(1) satisfies the “size of person” test, and		
	(2) no exemption applies		
	Size of person test		
	Acquiring person		Acquired person
	\$267.8 million (in total assets or annual net sales)	and	\$26.8 million (in total assets or annual net sales of a person engaged in manufacturing)
	Or		
	\$267.8 million (in total assets or annual net sales)	and	\$26.8 million (in total assets of a person not engaged in manufacturing)
	Or		
	\$26.8 million (in total assets or annual net sales)	and	\$267.8 million (in total assets or annual net sales)
In excess of \$535.5 million	Reportable absent an exemption		

* Based on the value of voting securities and assets the acquiring person will hold as a result of the acquisition, including the value of any previously acquired voting securities.

¹ See Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 Fed. Reg. 2133 (Jan. 16, 2026) (effective Feb. 17, 2026).

Prima facie reportability

- Simple rule (in 2026)

If the acquiring person will hold more than **\$133.9 million** of the voting securities or assets of the acquired person, then the acquisition is likely reportable absent an exemption

- A transaction that satisfies the dollar thresholds is called ***prima facie reportable***
- NB: Every year the dollar threshold will be adjusted for inflation

Selected exemptions

■ Intraperson

- Acquiring and acquired person are the same

■ Investment

- Hold no more than 10% of target's outstanding voting securities
 - 15% for certain institutional investors
- Acquirer must have a purely passive investment intention
 - Any membership on the board of directors or other involvement in the management of the company (other than voting shares) voids exemption

■ Convertible voting securities

- Acquired securities have no present voting rights

■ Acquisitions of non-U.S. assets

- Must not generate sales in or into the U.S. of more than \$133.9 million

■ Acquisitions of non-U.S. voting securities by non-U.S. persons that either

- Do not confer control over the target, or
- Do not involve assets in the U.S. or sales in or into the U.S., over \$133.9 million

Notification thresholds

- An otherwise reportable transaction is not subject to the reporting and waiting period requirements of the HSR Act if—
 1. The parties previously filed HSR notifications for an acquisition of voting securities of the same issuer;
 2. Within one year after the prior waiting period expired or was terminated, the acquiring person met or exceeded the notification threshold identified in that filing;
 3. The reporting and waiting period requirements were satisfied within the last five years for a prior acquisition, *and*
 4. The pending acquisition will not cause the acquiring person to cross a notification threshold

Notification thresholds for voting securities ¹
\$133.9 million
\$267.8 million
\$1.339 billion
25% of the voting securities if their value exceeds \$2.678 billion
50% of the voting securities if their value exceeds \$133.9 million

¹ See Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 Fed. Reg. 2133 (Jan. 16, 2026) (effective Feb. 17, 2026).

Filing fees

2022		2026 ²	
Value of Transaction ¹	Filing Fee	Value of Transaction ¹	Filing Fee
≤ \$101.0 million	No filing required	≤ \$133.9 million	No filing required
> \$101.0 million but < \$202.0 million	\$45,000	>\$133.9 million - <\$189.6 million	\$35,000
≥ \$202.0 million but < \$1.0098 billion	\$125,000	≥\$189.6 million - <\$586.9 million	\$110,000
≥ \$1.0098 billion	\$280,000	≥\$586.9 million - <\$1.174 billion	\$275,000
		≥\$1.174 billion - <\$2.347 billion	\$440,000
		≥\$2.347 billion - <\$5.869 billion	\$875,000
		\$5.869 billion or more	\$2,460,000

- Paid by the purchaser, unless the parties agree to a different arrangement (e.g., split the fee)

¹ See Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 87 Fed. Reg. 3541 (Jan. 24, 2022) (effective Feb. 23, 2022).

² See Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 91 Fed. Reg. 2133 (Jan. 16, 2026) (effective Feb. 17, 2026). Congress changed the baseline of the filing fees in the Merger Filing Fee Modernization Act of 2022, contained in the Consolidated Appropriations Act of 2023, Public Law 117–328, Div. GG, 136 Stat. 4459, 5967 (Dec. 29, 2022).

HSR Act filing: The current form

- Both the acquiring and acquired persons must submit their own filing on a form prescribed by the FTC's regulations
- Key information required:
 1. Transaction documents (e.g., stock purchase agreement)
 2. Annual reports and financial statements
 3. Revenues by North American Industry Classification System (NAICS) codes
 4. Corporate structure information
 - Majority-owned subsidiaries
 - Significant minority shareholders
 - Significant minority shareholdings
 5. "4(c)" and "4(d)" documents ←
- Uses a prescribed form: Requires no—
 - ❑ Market definition
 - ❑ Calculation of market shares or market concentration statistics
 - ❑ Presentation of any antitrust analysis or defense

These are the only parts of the filing that really matter

HSR Act filing: The current form

■ 4(c) and 4(d) documents

- 4(c) documents: four requirements—
 1. Studies, surveys, analyses or reports
 2. Prepared by or for officers or directors of the company (or any entities it controls)
 3. That analyze the transaction
 4. With respect to markets, market shares, competition, competitors, potential for sales growth, or expansion into product or geographic markets
- 4(d) documents: three types—
 1. Confidential Information Memoranda (“CIM”)
 2. Third-party advisor documents
 3. Synergy and efficiency documents
- Failure to provide all 4(c) and 4(d) documents
 - Makes the HSR filing ineffective, so that the waiting period never started
 - Usually discovered by investigating agency in the document production in a second request
 - Agencies have required parties to refile and go through the entire process (including a second request)
 - Subjects the parties to daily civil penalties (fines) from the time they close their transaction until they make a corrective filing and observe the required waiting period

Statutory waiting periods

■ General rules

- ❑ Cannot close a reportable transaction until the waiting period is over
- ❑ The duration of the waiting period is prescribed by the HSR Act and cannot be extended by agreement of the parties
- ❑ Investigating agency can grant *early termination* at any point in the waiting period

■ Initial waiting period

- ❑ 30 calendar days generally
- ❑ 15 calendar days in the case of—
 - a cash tender offer, *or*
 - acquisitions under § 363(b) of bankruptcy code

■ Extension of waiting period

- ❑ Waiting period extended by the issuance of a second request in the initial waiting period
- ❑ Waiting period extends through—
 - “Compliance” by all parties with their respective second requests
 - PLUS *final waiting period* of 30 calendar days
 - ❑ 10 calendar days in case of a cash tender offer

HSR Act violations

■ HSR Act prohibition

“[N]o person shall acquire, directly or indirectly, any voting securities or assets of any other person” in a reportable transaction without observing the filing and waiting period requirements¹

- Recall that the HSR regulations provide that a person holds voting securities or assets when it has a “beneficial interest” in them²

■ Two basic types of violations

1. *Failure to file* a reportable transaction and nonetheless closing the transaction
2. “*Gun jumping*”: Acquiring a beneficial interest in the target’s assets or voting securities prior to the expiration of the HSR Act waiting period

■ Violations can be expensive

- As of 2026, \$53,088 per day for every day of the violation—Equals \$19.4 million per year³
- Also can put the violator on the radar screen of the agencies for future acquisitions

¹ 15 U.S.C. § 18a(a).

² 16 C.F.R. § 801.1(c).

³ Fed. Trade Comm’n, Adjustments to Civil Penalty Amounts, 90 Fed. Reg. 5580 (Jan. 17, 2025) (increasing civil penalty from \$51,744 to \$53,088 per day effective January 17, 2025, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 599 (2015) (requiring a catch-up CPI inflation adjustment from the date of the statute’s enactment)). No adjustment in 2026.

Preparing for an Investigation

Build your complete defense

- Need to do this prior to the first contact with the investigating staff
 1. Want to make the strongest defense possible at the first substantive encounter with the investigating staff
 2. Do not want to be surprised later by a new fact that undermines the defense
 3. Need buy-in from the client
 - They will eventually have to make the defense themselves before the staff, in depositions, and perhaps ultimately in court
 4. Need buy-in from the merger partner
 - They too will eventually have to make the defense themselves
 - There needs to be a *common* defense—merging parties should not be making different, and perhaps inconsistent, arguments

Identify the “face of the deal”

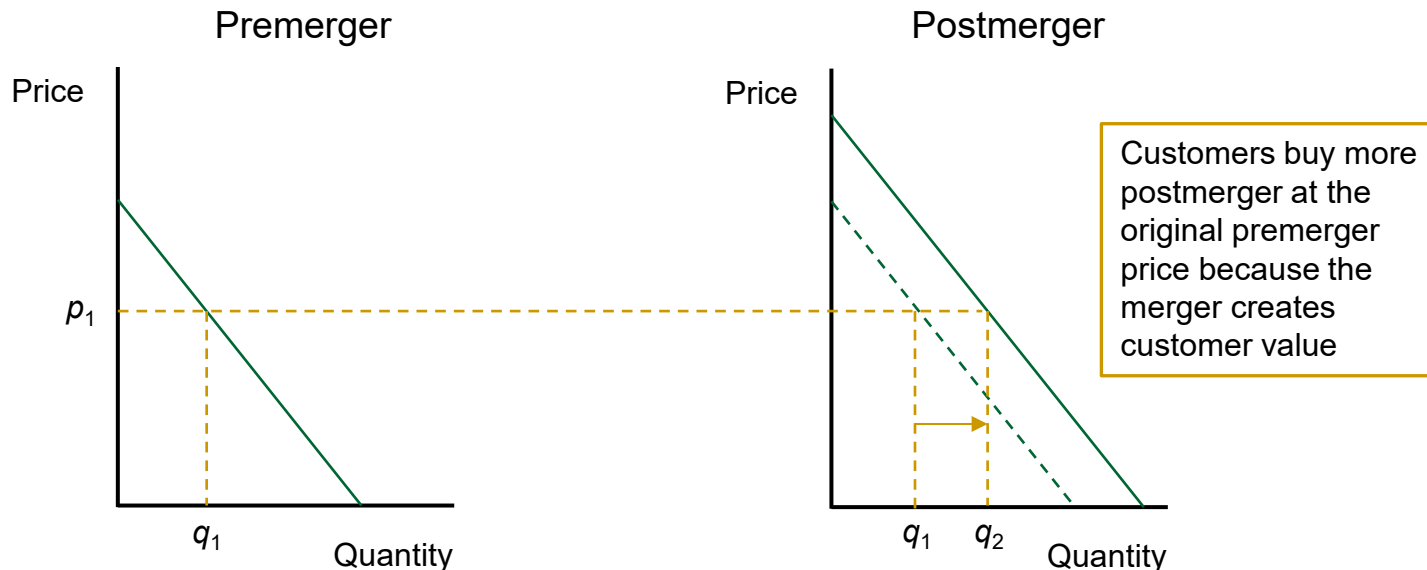
- Which business representative is going to be the most effective in—
 1. Marshalling resources—especially access within the company—to defend the deal?
 2. Leading the defense team within the client?
 3. Working with the merger partner in creating a strong, consistent defense?
 4. Advocating the defense of the deal before the agency?
- Start working with this individual as soon as possible
 - Have to teach them the operational principles of merger antitrust law
 - Need to be involved in every step of building the defense—they need to “own” the defense to be an effective advocate

Work with the merger partner

- Critical for three reasons—
 1. Need to understand the evidence that is in the hands of the merger partner
 2. Need to ensure that both merging parties are making consistent arguments in defense of the transaction (“singing from the same song sheet”)
 3. Need to work with the merger partner on the rollout of the deal to neutralize customer opposition and gain customer support
- Agree in the purchase agreement that the parties will—
 1. Cooperate in the sharing of information
 - Highly confidential information may be shared on an “outside counsel only” basis
 2. Cooperate in the defense of the transaction
 - With the buyer usually taking the lead and making all final strategic decisions
 3. Attend each other’s meetings with the investigating agency
- Agencies accept that joint defense meetings between merging parties are protected under the “*common interest*” doctrine
- Maneuver to get and begin to prepare the best witnesses from the merger partner

Prepare and implement a customer rollout

- Work with the merging parties to develop and implement a plan to reach out to customers to—
 - Neutralize customer complaints
 - Maximize customer support
- Create a “win-win” argument—
 1. The combined firm will make lots of money
 2. By *shifting the demand curve to the right* by creating a better *customer value proposition*:



Prepare and implement a customer rollout

- Argument must work for customers of both the buyer *and* the target
 - *Remember:* The seller's customers are usually the more difficult to convince that the deal will be good for them
 - They had the opportunity to purchase from the buyer but instead chose to purchase from the target
- Work with the client and the merger partner to find the best people within the company to make the sales pitch for the deal to customers

Prepare and implement a customer rollout

- Form of customer pitch:

“You probably have heard about our deal with Company X. We are very excited about it. We think that it is great for our company, great for our shareholders, and great for our customers. You are one of our most valued customers and we hope that you are as excited by the benefits the deal will provide to you as we are. Let me tell you why.

[FILL IN CUSTOMER BENEFITS]

Do you have any questions or concerns about the deal? We would really like to know what they are so that we can address them.”

Initial Waiting Period Investigations

Preliminaries

- Parties must file their respective HSR forms with both the DOJ and the FTC
 - Separate forms are required for each reporting person
- FTC Premerger Notification Office (PNO) review of filings
 - Only for technical compliance on form—no review of substance
 - NB: The PNO is also responsible for providing informal interpretations of the HSR Act and implementing regulations
- Allocated to DOJ or FTC for review through the agency “clearance” process
- Responsible agency assigns transaction to a litigating section for substantive review

Initial contact by investigating staff

- Usually occurs 7-10 days after filing
- Three purposes
 1. Inform parties of the investigation and introduce the investigating staff
 2. Request that the parties provide certain information to the staff on a voluntary basis—
 - a. Most recent strategic, marketing and business plans
 - b. Internal and external market research reports for last 3 years
 - c. Product lists and product descriptions
 - d. (Perhaps) competitor lists and estimates of market shares
 - e. Customer lists of the firm's top 10-20 customers (including a contact name and telephone number)
 - The agencies do not ask for customer lists in transactions at the retail level involving consumer goods, since retail customers are not considered sufficiently sophisticated and reliable in predicting the effect of a merger on them
 3. Invite the parties to make a presentation to the staff on the competitive merits of the transaction

Initial merits presentation

- Critical to do completely, coherently, and quickly
 1. Often a substantial “first mover” advantage in being the first to give the staff a systematic way to think about the transaction
 2. Well-prepared business people are the best to present
 - Agencies not impressed with “testifying” lawyers—especially outside counsel
 3. Need to anticipate and answer staff questions
 - Avoiding answers causes the staff to be more skeptical about the transaction and increases the probability of an in-depth investigation
 4. Need to be clear and compelling
 - Cannot win on an argument that the staff does not understand or finds ill-supported
 5. Need to anticipate and be consistent with what the staff is likely to see in the company documents and hear from customers
 - Staff will almost always accept the customer view in the event of an inconsistency
 6. Need to do the presentation quickly after the initial contact by the investigating staff
 - By the time you get the initial call from the staff, one-third of the initial waiting period will be over
 - Accordingly, must have the presentation “in the can” by the end of the first week of the initial waiting period—and preferably before the filing of the HSR forms

Initial merits presentation

- The best presentations—
 1. anticipate all the issues the staff will raise,
 2. provide answers that are supported by company documents and consistent with customer perceptions, *and*
 3. have all the facts right

Ideally, the rest of the investigation needs to do no more than defend the analysis in the first presentation

Initial merits presentation

- Ideal structure (when the facts fit)
 1. Provide an overview of the parties and the transaction
 - Identify other jurisdictions in which the transaction is reportable
 2. Provide an overview of the industry (if the staff is not familiar with the industry)
 3. Explain the business model driving the transaction—How will the buyer make money
 - The deal is procompetitive—a win-win for the company and the customers
 - “We make the most money by providing more value to customers, improving productive efficiency, and reducing costs without reducing product or service quality”
 - Essential to give a compelling reason for doing the deal that is not anticompetitive
 4. Identify the customer benefits implied by the business model
 - Customers will be better off with the transaction than without it
 - NB: Agencies give little or no credit in the competitive analysis to efficiencies or cost savings that are not passed along to customers
 5. Explain why market conditions would not allow the transaction to be anticompetitive in any event
 - “We could not raise price even if we wanted. Customers have alternatives to which they can turn to protect themselves in the event we try to raise price or otherwise harm them.”
 - Alternatives can be other current suppliers, firms in related lines of business that can expand their product lines, new entrants, or customer self-supply/vertical integration

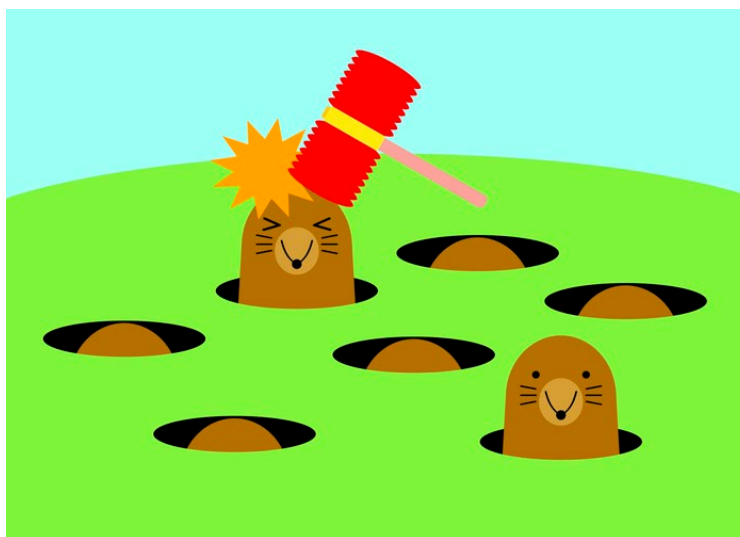
Customer/competitor interviews by staff

- Occupies the bulk of the remaining time in the initial investigation
- Customer views are given great weight
 - *Theory*: The purpose of the antitrust laws is to protect customers from competitive harm, and sophisticated customers should have a good idea of whether they will be competitively harmed by the transaction under review
 - Staff will attempt to call all the contacts on the customer lists provided by the merging companies in response to the initial voluntary request
 - Staff often will uncritically accept customer complaints but question customer support
 - Customer reactions may differ depending on the position of the contact person
- Competitor conclusions on competitive effect are given little weight
 - *Theory*: Anticompetitive transactions are likely to benefit competitors, so competitor complaints are more likely the result of concerns about procompetitive efficiencies than anticompetitive effect
 - But competitor interviews can be useful in understanding more about the industry
 - Complaining competitors are often willing to spend considerable time educating the staff
 - Customers usually just want the staff to go away unless they strongly oppose the deal

Respond to staff questions

- Questions may arise as a result of customer and competitor interviews
- Need to anticipate and respond to these quickly
 - Likely hear from staff in the last week of the initial waiting period
 - A failure to negate any staff concerns will almost surely extend the investigation

Think of this as a serious game of Wack-A-Mole



End of the initial waiting period

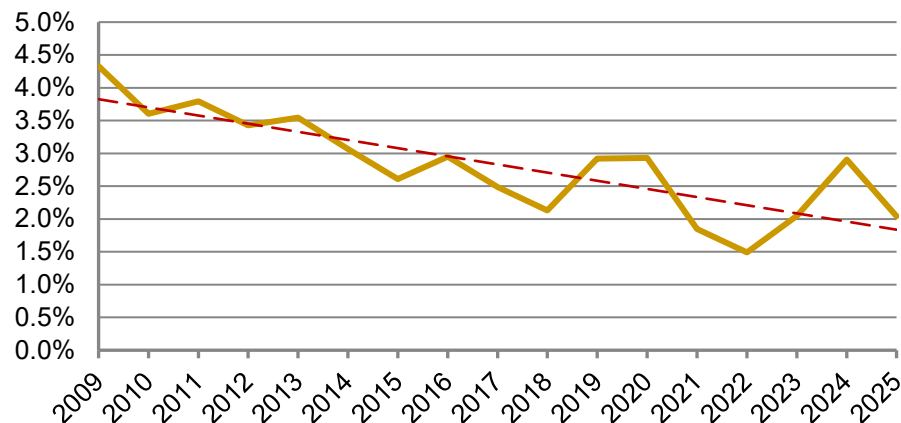
- Three options for the agency
 1. Close the investigation
 2. Issue a second request
 3. Convince the parties to “pull and refile” their HSR forms to restart the initial waiting period

Second Request Investigations

The second request

- HSR Act authorizes investigating agency to issue one request for additional information and documentary material (a “second request”) during the initial waiting period to each reporting party
- Issuance of a second request extends waiting period until—
 - All parties comply with their respective second requests, *and*
 - Observe a final waiting period (usually 30 days) following compliance

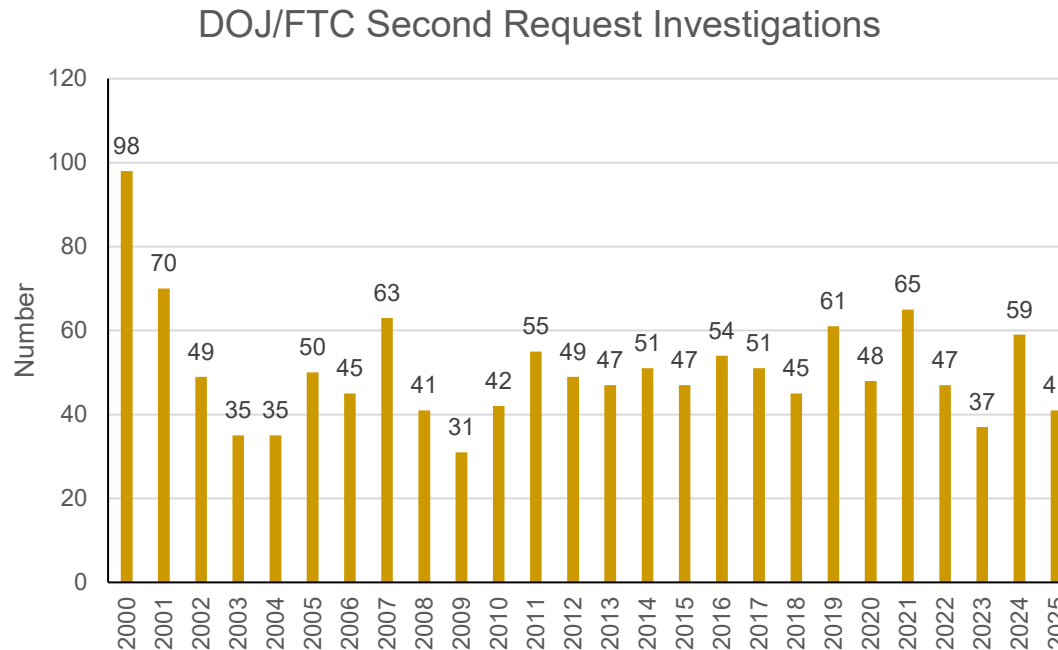
Percentage of Reportable Transactions
Receiving Second Requests



Source: Fed. Trade Comm’n & U.S. Dept. of Justice, [Hart-Scott-Rodino Annual Report Fiscal Year 2025](#), at App. A (and prior annual reports)

Total number of second request investigations

- By year since 2000



Source: Fed. Trade Comm'n & U.S. Dept. of Justice, [Hart-Scott-Rodino Annual Report Fiscal Year 2025](#), at App. A (and prior annual reports)

The second request

- Blunderbuss request
 - If you can only ask once, ask for everything
 - DOJ and FTC each have “model” second requests, but substantially customize with additional specifications for each investigation
 - Covers all company documents, including e-mail and other electronic documents

The second request

- Typically takes 4-8 months to comply
 - Can cover 60-120 custodians in large multiproduct deals
 - In the past, the agencies had made meaningful efforts to reduce this number, targeting 30-35 custodians
 - The DOJ is pursuing something along these lines today
 - BUT often condition limitations on a “timing agreement” and other commitments that effectively negate the benefits
 - Document requests, including—
 - Business, strategic and marketing plans
 - Pricing documents
 - Product and R&D plans
 - Documents addressing competition or competitors
 - Customer files and customer call reports
 - Data interrogatories, including—
 - Detailed production, sales, and price data
 - Bid and win/loss data
 - Narrative interrogatories, including—
 - Requirements for entry into the marketplace
 - Rationale for deal
 - Non-English language documents must be translated into English

The second request

- Typically takes 4-8 months to comply
 - Also need to prepare a *privilege log* listing any information withheld in whole or in part on a claim of privilege
 - The agencies require that privilege logs contain—
 - An identification of the information (including a Bates number of a document)
 - A brief description or summary of the contents of the document
 - The date of the document
 - The author(s) and recipient(s) of the document
 - The privilege asserted, *and*
 - How each element of the privilege is met

Second request investigations

■ Depositions of business representatives of parties

- Often 3-5 employees for each party
 - Typically includes the senior person knowledgeable about U.S. sales and competition for U.S. customers
 - Can include sales representatives for key accounts
 - R&D directors (if R&D is important to defense)
- Location: Typically Washington
- Attendance can be compelled
 - Civil Investigative Demand (CID) by the DOJ
 - Subpoena by the FTC
- Transcribed and under oath (sometimes videotaped)
- Typically, each lasts 6-8 hours (sometimes much longer)

■ Documents and testimony from customers and competitors

- Adverse testimony may be memorialized in a sworn declaration and perhaps videotaped deposition

■ Expert economic analysis

- By experts retained by the parties
- By agency experts

Final waiting period

■ Timing

- ❑ Begins when all parties have submitted proper second request responses
 - *Exception:* In open market transactions, timing depends only on when the acquiring person complies (to avoid delaying tactics by the target in hostile transactions)
- ❑ Ends 30 calendar days later
 - 10 days in a cash tender offer

■ The final waiting period is often too short to complete the investigation given the time it takes—

- ❑ For the investigating staff to analyze information and documents submitted by the parties in response to their second requests
- ❑ For the investigating staff to finalize its analysis and recommendation, *and*
- ❑ For agency management to review the staff's recommendation and make a decision on the disposition of the investigation
- ❑ *Conclusion:* The final waiting period provides too little time for the agency to make an informed decision

Timing agreements

- Timing agreements in second request investigations
 - The merging parties can—and typically do—voluntarily commit to give the agency additional time to complete the investigation by executing a contractual timing agreement
 - *Typical commitment:* An additional 30-60 days beyond the end of the HSR Act waiting period
 - BUT a timing commitment does not technically extend the statutory waiting period

The End of the Investigation

The final arguments

- Four formal meetings at the end of the investigation

	DOJ	FTC
1	Investigating staff	Investigating staff
2	Section Chief & staff	Assistant Director & staff
3	Deputy Assistant Attorneys General (legal and economics)	Directors meeting (Bureau of Competition/ Bureau of Economics)
4	Assistant Attorney General	FTC Commissioners (meet individually)

Note: The last meeting with the AAG or the Commissioners is sometimes inappropriately called a “last rites” meeting

- Numerous informal meetings can occur up the chain at the end of the investigation
- *Critical question:* How much of its analysis will the investigating staff disclose to the parties?

Merger Review Outcomes

Outcomes in DOJ/FTC reviews

Close investigation

- Agency closes investigation without taking enforcement action
- If the HSR Act waiting period has not expired, agency may grant early termination

Litigate

- DOJ: Seeks preliminary and permanent injunctive relief in federal district court
- FTC: Currently, same as DOJ
Historically, sought preliminary injunctive relief in federal district court and permanent injunctive relief in an administrative trial

Settle w/consent decree

- Typical resolution for problematic mergers
- DOJ: Consent decree entered by federal district court
- FTC: Consent order entered by FTC in administrative proceeding

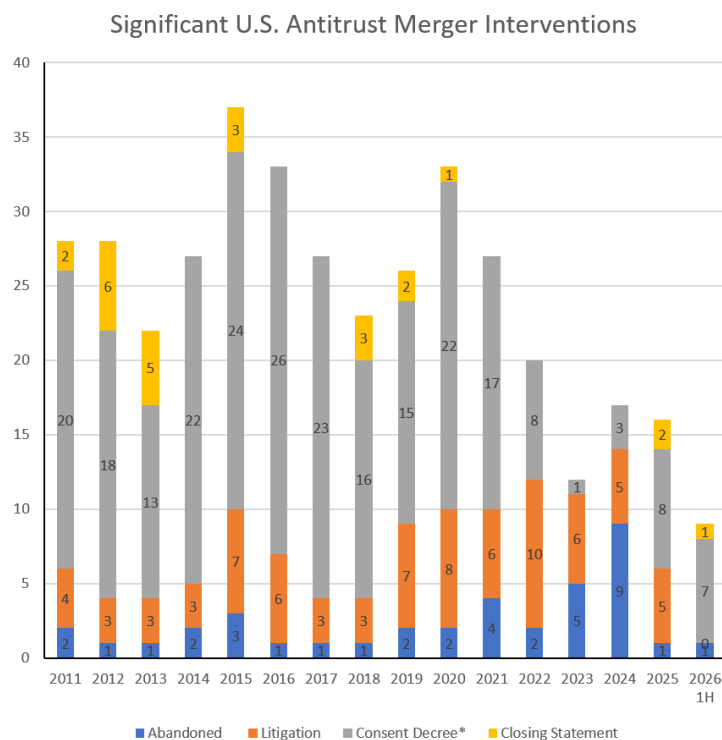
Parties terminate transaction

- Parties will not settle at the agency's ask and will not litigate, or
- Agency concludes that no settlement will resolve the agency's concerns and the parties will not litigate
 - Examples: AT&T/T-Mobile, NASDAQ/NYSE Euronext

"Fix it first"

- Merging parties restructure transaction to eliminate problematic overlap by narrowing assets to be purchased or selling assets to a third party
- Merging parties may need to file new HSR notifications for the restructured transaction
- When done to the agency's satisfaction, eliminates the need for a consent decree or other enforcement action

U.S. antitrust merger intervention outcomes



Year	Consent Decree*	Abandoned	Litigation	Closing Statement	Total
2011	20	2	4	2	28
2012	18	1	3	6	28
2013	13	1	3	5	22
2014	22	2	3		27
2015	24	3	7	3	37
2016	26	1	6		33
2017	23	1	3		27
2018	16	1	3	3	23
2019	15	2	7	2	26
2020	22	2	8	1	33
2021	17	4	6		27
2022	8	2	10		20
2023	1	5	6		12
2024	3	9	5		17
2025	8	1	5	2	16
2026 1H	7	1	0	1	9

* Includes two "fix it first" resolutions in 2012

Source: Dechert LLP, [DAMITT Q2 2026: Merger Timelines Shorten and EU Updates Merger Guidance](#) (July 30, 2026). Dechert LLP, [DAMITT 2018 Year in Review](#) (Jan. 24, 2019). Dechert defines a "significant" investigation as one that involves a deal that is HSR reportable for which the result of the investigation is a consent order, a complaint challenging the transaction, an official closing statement by the reviewing antitrust agency, or the abandonment of the transaction with the antitrust agency issuing a press release. It does not include an in-depth second request investigation in which the agency concludes there is no antitrust concern, so in this sense a significant investigation is the same as an intervention outcome. Dechert calculates the duration of an investigation from the date of announcement to the completion of the investigation (presumably including any time necessary to negotiate a consent decree).