



Antitrust Developments Update for March 2025

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FTC Announces Revised HSR Thresholds and Filing Fees

The Federal Trade Commission (FTC) adjusts the minimum dollar jurisdictional thresholds that determine reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) based on changes to gross national product in the prior year; it also adjusts annually the filing fee tiers pursuant to the 2023 Consolidated Appropriations Act. Last month, the FTC announced new jurisdictional thresholds and filing fee tiers, which took effect on February 21, 2025. The FTC also adjusted the penalty for HSR Act violations.

For the size-of-transaction test, the minimum reportability threshold increased from \$119.5 million to \$126.4 million. The threshold at which the size-of-persons test becomes inapplicable increased from \$478.0 million to \$505.8 million.

For the size-of-persons test, the annual net sales and total assets thresholds increased from \$23.9 million to \$25.3 million for the smaller party test and from \$239.0 million to \$252.9 million for the larger party test.

The new HSR Act filing fees are shown below.

2024 Filing Fee	2024 Filing Fee Threshold	2025 Filing Fee	2025 Filing Fee Threshold
\$30,000	less than \$161.5 million	\$30,000	less than \$179.4 million
\$105,000	\$161.5 million to \$500 million	\$105,000	\$179.4 million to \$555.5 million
\$260,000	\$500 million to \$1 billion	\$265,000	\$555.5 million to \$1.111 billion
\$415,000	\$1 billion to \$2 billion	\$425,000	\$1.111 billion to \$2.222 billion

\$830,000	\$2 billion to \$5 billion	\$850,000	\$2.222 billion to \$5.555 billion
\$2,335,000	\$5 billion or more	\$2,390,000	\$5.555 billion or more

Finally, the maximum daily civil penalty for HSR Act violations increased from \$51,744 to \$53,088.

The HSR Act is complex, and the ongoing uncertainty regarding the recent HSR rule changes greatly increases the compliance burden. Frost Brown Todd's [Antitrust and Trade Regulation Team](#) regularly advises on the applicability of the HSR Act to mergers, acquisitions, and joint ventures, including an analysis of all applicable exemptions. When premerger notifications are required, FBT is experienced in preparing the necessary filings and handling Second Requests from the enforcement agencies.

Chamber Challenges New HSR Rules

On October 10, 2024, the FTC confirmed a final rule that significantly increased the amount of material and information required for the premerger notification forms under the HSR Act. According to the FTC own's estimates, the new and expanded rules are expected to increase the average time spent preparing the premerger notification form by 68 hours.^[1] The final rule became effective on February 10, 2025. Last year, we detailed the expanded scope of [the final rule and its impact on M&A costs and timelines](#).

On January 10, 2025, the U.S. Chamber of Commerce, Business Roundtable, American Investment Council, and Longview Chamber of Commerce^[2] challenged the final rule by filing suit in the United States District Court of the Eastern District of Texas against the FTC and its chair, Lina Khan. The complaint alleges that the final rule violates the Administrative Procedures Act by exceeding the FTC's statutory authority to modify the premerger notification form. The plaintiffs argue that the rule exceeds the HSR Act's requirement that only necessary and appropriate information be included in the initial premerger notification form. Relying on prior interpretations of similar statutory language,^[3] the plaintiffs allege that the FTC was required to perform a cost-benefit analysis of the burden imposed on filers from the expansion.

The plaintiffs argue that no rational cost-benefit analysis would have led to the adoption of the final rule, which they contend could more than quadruple the amount of time and expense to prepare premerger notification forms. Critically, according to the plaintiffs, the final rule failed to identify a single transaction that the FTC would have stopped or investigated further with the benefit of the new information added to the premerger notification forms. The complaint also attacks the FTC's method of estimating the additional costs imposed on filers by the final rule, which consisted of internal surveys asking its own staff to estimate the expected additional time per filing imposed by the rule.

The plaintiffs also challenge the final rule's requirement that certain buyers identify the officers and directors of the buyer and its subsidiaries to avoid impermissible interlocking directorates and officers under Section 8 of the Clayton Act. They argue that this provision exceeds the authority granted by the HSR Act, as impermissibly interlocked boards or officers are unrelated to the legality of an acquisition subject to the premerger notification process. The plaintiffs assert that the issue of interlocking officers and directorates resulting from acquisitions was addressed in the Clayton Act, as evidenced by Section 8's one-year grace period for the resignation of offending parties following the development of impermissible interlocking through an acquisition or other means.

Also at issue is the rule's requirement that filers provide their own substantive antitrust analysis included within the initial premerger notification form. The plaintiffs emphasize that the HSR Act was intended to establish a premerger notification system, not a premerger approval process. They raise concerns about the requirement for filers to submit certified position statements on transaction rationale, overlap descriptions, and supplier relationships, as these statements could potentially be used as evidence in future litigation.

Finally, the complaint highlights the general success of the prior, less burdensome premerger notification form and questions why the FTC, in the absence of even one example of a transaction missed by the prior form, did not investigate less burdensome means of improved enforcement, such as increased use of the existing information gathering tools.^[4]

The FTC has not yet filed an answer, and it is unclear what justifications it will employ to defend the expansion to the initial premerger notification form. Our [antitrust team](#) regularly advises on the applicability of the HSR Act to proposed transactions and prepares premerger notifications. We will continue to monitor the litigation and advise clients on continued compliance with the HSR Act.

President Trump Fires Both Democratic FTC Commissioners

On March 18, President Trump fired Alvaro Bedoya and Rebecca Kelly Slaughter, the FTC's two Democratic commissioners. Under the Federal Trade Commission Act (FTC Act), the president is empowered to nominate FTC commissioners, subject to Senate confirmation, to fill seven-year staggered terms. The FTC Act also requires that there be no more than three commissioners from the same party as the president. The president is also empowered to appoint the FTC chairperson. While Mr. Bedoya was nominated by President Biden, Ms. Slaughter was originally appointed to the FTC in 2018 by President Trump in his first term to fill the seat vacated by Edith Ramirez. During her first term, she served as acting chair for five months in 2021. She was nominated by President Biden to a

second term in 2023.

In a 1935 decision, *Humphrey's Executor v. United States*, the U.S. Supreme Court upheld the FTC Act's limitations on the president's ability to remove FTC commissioners. The Supreme Court held that because the FTC performed both quasi-legislative and quasi-judicial functions, commissioners could only be fired for cause. The remaining two FTC commissioners, Andrew Ferguson and Melissa Holyoak, both Republicans, have stated publicly that they believe *Humphrey's Executor* should be overturned. Based on comments from Mr. Bedoya and Ms. Slaughter, it appears almost certain that both will pursue legal challenges to their firings.

Unless and until Mr. Bedoya and Ms. Slaughter are reinstated by a court, the FTC can continue to operate with a quorum comprised of Commissioner Ferguson and Commissioner Holyoak. Because FTC votes only require a simple majority, the two remaining commissioners can take official action along party lines. Prior to the filings, at least one of the Democratic commissioners would have had to vote with the Republican commissioners. President Trump has also nominated Mark Meador to fill the third Republican commissioner position. That nomination has not yet been confirmed by the Senate.

The FTC plays a significant role in antitrust enforcement and merger control, and this uncertainty with the commissioners could have serious effects on policy and litigation. It could even slow down merger review under the HSR Act.

DOJ Antitrust Division Alleges HSR Act Avoidance by Private Equity Firm

On January 14, 2025, the Department of Justice's (DOJ) Antitrust Division brought an enforcement action in the U.S. District Court for the Southern District of New York against KKR & Co, Inc. and fourteen related entities, alleging that the defendants "systematically flouted the requirements of the HSR Act."^[5] Specifically, the complaint alleges that KKR failed to make complete and accurate premerger notification filings required by the HSR Act more than sixteen times between 2021 and 2022, including at least

two instances in which KKR is alleged to have failed to file any premerger notification.

Notably, the complaint focuses on what it describes as a “culture of noncompliance with the [HSR] Act that pervades [KKR’s] investment business.”^[6] It highlights communications from KKR executives, partners, and employees encouraging revisions to documents for “HSR purposes” and emphasizing that, in the context of premerger notification forms, “less is more.”^[7] Interestingly, the Antitrust Division also takes aim at the actions of KKR’s outside counsel, attributing the alleged HSR Act violations to a “failure by [KKR’s] executives and outside counsel to take the steps needed to ensure that KKR and its affiliates complied with the law.”^[8]

KKR is accused of omitting or modifying what are commonly referred to as Item 4 documents in the transactions at issue. Several withheld documents were claimed to be privileged, but the Antitrust Division asserts “these documents were **withheld** from KKR’s own outside antitrust counsel.”^[9] Others, according to the Antitrust Division, were deliberately modified by KKR deal teams, resulting in the deletion of numerous pages of Item 4 documents. Several violations are alleged to be ongoing as KKR has not submitted corrective filings for the referenced transactions.

KKR faces penalties of more than \$50,000 per day per violation and is alleged to have been in violation for more than 10,000 days since early 2021, taking into account each of the 16 separate violations of which the United States is aware.^[10] According to the complaint, KKR could be subject to a civil penalty in excess of \$500,000,000. Critically, these civil penalties apply without regard to whether the underlying transactions at issue violate antitrust laws.

Two days later, on January 16, 2025, KKR filed its own complaint in the Southern District of New York against Doha Meeki, in her official capacity as acting assistant attorney general of the DOJ’s Antitrust Division, the FTC, and the United States.^[11] In its complaint, KKR seeks declarations that it did not violate the HSR Act, that the government’s HSR guidance is unconstitutionally vague, and that the fines the Antitrust Division seeks are unconstitutionally excessive.

KKR's complaint alleges that the "errors" identified by the Antitrust Division are trivial and that "not a single alleged error was material to or interfered with any merger review."^[12] KKR further alleges that the Antitrust Division's investigation was politically motivated and designed to weaponize the FTC's confusing guidance to chill merger and acquisition activity involving the private equity industry. In support of this assertion, KKR cited substantial increases in antitrust enforcement action, noting that nearly half of the S&P 500, by market capitalization, was under direct antitrust investigation as of October 1, 2024. KKR also notes that it fully cooperated with the Antitrust Division's investigation, voluntarily reported the results of their own investigation, and undertook "extensive remedial measures to train [their] employees and enhance [their] HSR filing procedures."^[13]

As of this article's publication, neither party has responded to the other's complaint. A recent court order requires KKR to file its answer by April 17, 2025, and the government by April 23, 2025. The HSR Act and its rules are complex, as discussed above, and the failure to fully comply can lead to serious consequences. For more information or assistance navigating FTC requirements in connection with M&A activity, please contact the authors or any attorney with the firm's [Antitrust and Trade Regulation Team](#). We have proven experience advising clients on the applicability of the HSR Act to their transactions, including lawful use of all applicable exemptions. When required, our team is able to efficiently prepare the necessary premerger notifications.

^[1] *Premerger Notification; Reporting and Waiting Period Requirements*, 89 Fed. Reg. 89,216, 89,333 (Nov. 12, 2024).

^[2] *Chamber of Commerce of the United States of America et al v. Federal Trade Commission et al*, Civil Action No. 6:25-cv-00009-JDK (E.D. Tex. filed 2025).

^[3] *Michigan v. EPA*, 576 U.S. 743, 752 (2015); *Mexican Gulf Fishing Co. v. Department of Com.*, 60 F.4th 956, 965 (5th Cir. 2023).

^[4] Plaintiffs identified tools available to the FTC under the current status quo, including Second Requests, voluntary access letters, and informal competitor and customer surveys as alternatives to

the burdensome scheme imposed by the final rule.

[\[5\]](#) *United States v. KKR & Co. Inc., et. al.*, Civil Action No. 1:25-cv-00343 (S.D.N.Y. filed 2025).

[\[6\]](#) See Antitrust Division's Complaint at 2.

[\[7\]](#) *Id.*

[\[8\]](#) *Id.*

[\[9\]](#) *Id.* at 10.

[\[10\]](#) *Id.* at 2.

[\[11\]](#) *KKR & Co. Inc. v. Meeki, et. al.*, Civil Action No. 1:25-cv-00448 (S.D.N.Y. filed 2025).

[\[12\]](#) See KKR Complaint at 2.

[\[13\]](#) *Id.* at 28.

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