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Antitrust authorities on high alert for merger control violations



PART OF OUR REPORT

Global trends in merger control enforcement

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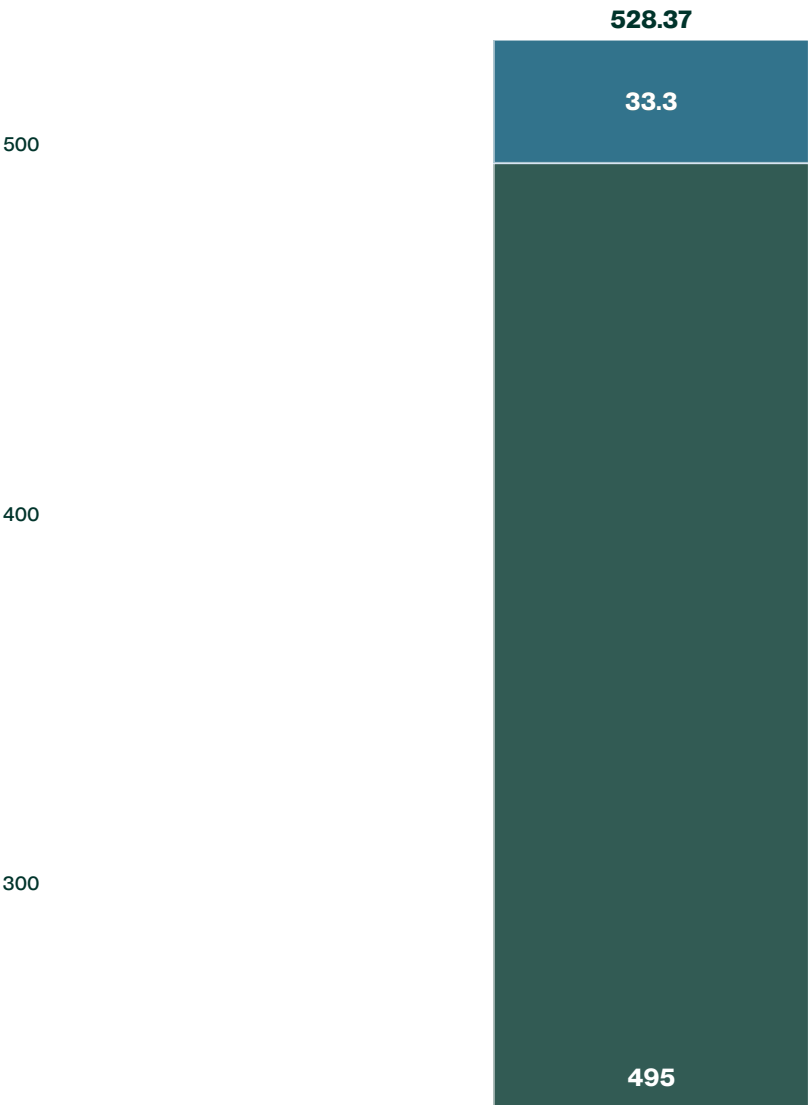
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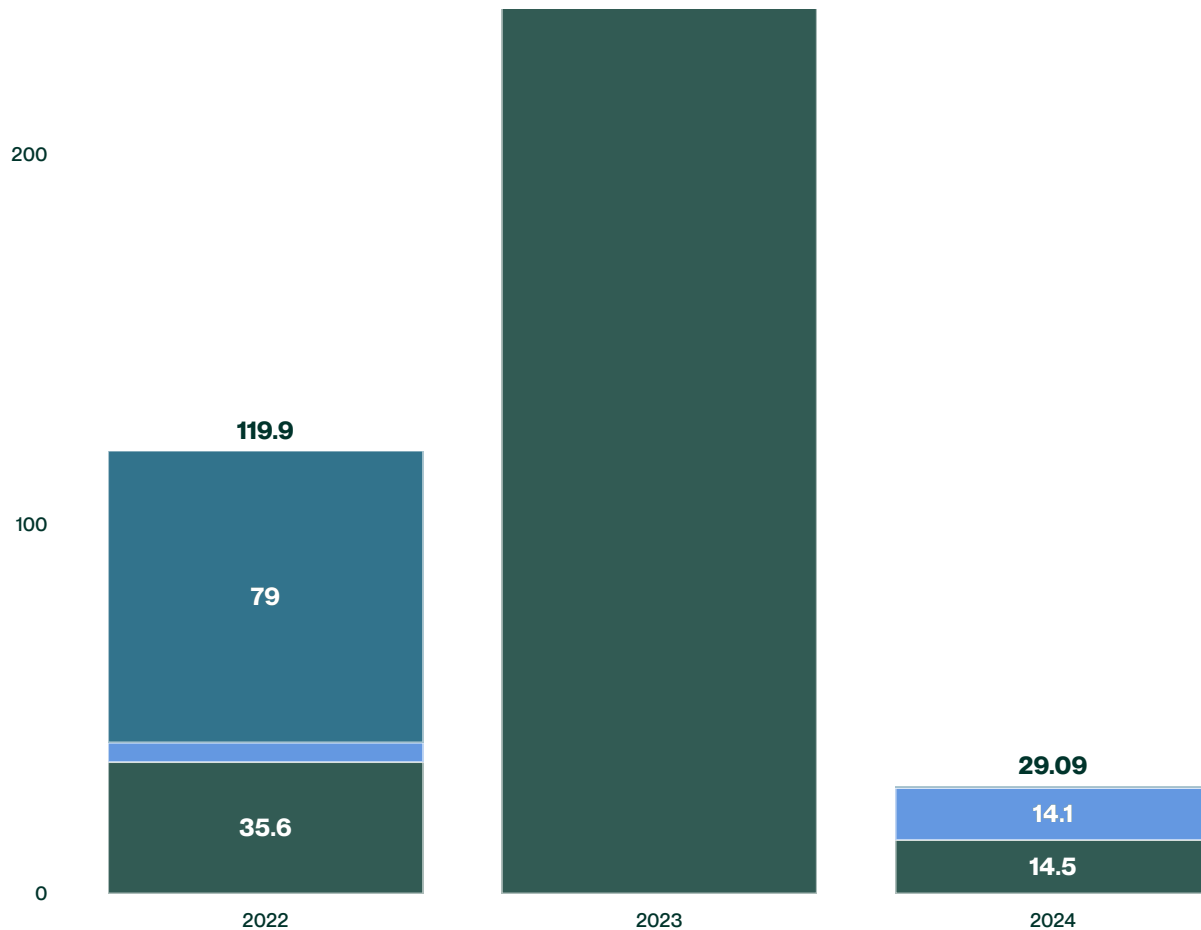
Sanctions for procedural merger control infringements in 2024 did not meet the lofty heights of previous years. But merging parties should not be complacent. The number of infringement decisions increased. The U.S. and China stepped up enforcement action. Individuals faced sanctions. And maximum penalty levels rose in key jurisdictions.

Total fines split by fine type

USDm

Failure to file/gun-jumping Incorrect/misleading information Breach of commitments





Antitrust authorities imposed a total of USD29.1 million fines across the jurisdictions surveyed.

This is significantly lower than 2023 penalty levels, even excluding the European Commission (EC)'s USD467m gun-jumping fine in Illumina/GRAIL, which was withdrawn in 2024 after the EU's top court struck down the EC's decision to take jurisdiction over the merger.

However, it is not a sign that authorities lack the appetite to pursue procedural breaches. The number of infringement decisions rose by over 40% to 41. So far in 2025, we have seen groundbreaking actions and record fines.

A surge in U.S. enforcement

The U.S. antitrust agencies have been relatively quiet on procedural enforcement in recent years. 2024 was different:

- The Department of Justice Antitrust Division (DOJ) filed a suit against Legends Hospitality for obtaining beneficial ownership of ASM's business

before the Hart-Scott-Rodino (HSR) waiting period had expired—[the first U.S. gun-jumping action since 2017](#). Legends agreed to pay a USD3.5m penalty and to comply with other measures, including appointing a compliance officer

- The Federal Trade Commission secured a [penalty of nearly USD1m from GameStop CEO](#) Ryan Cohen to settle charges that he failed to file an HSR form and abide by the relevant waiting period before closing an acquisition of shares
- As part of a suit to block UnitedHealth Group's acquisition of Amedisys, the DOJ is seeking penalties against Amedisys for allegedly failing to produce millions of documents and not disclosing the deletion of materials

The agencies have started 2025 with a bang. They announced a complaint against three oil companies, alleging that the acquirer and its sister company assumed operational and decision-making control over a target prior to closing, in violation of the HSR waiting period. The proposed penalty is USD5.68m, the [highest-ever U.S. fine for gun-jumping](#).

A week later, the DOJ filed a suit against KKR for what it alleges are “serial” and “systemic” violations of the premerger review process. It claims the PE firm altered documents in HSR filings, omitted required materials and failed to make filings. The DOJ cites internal documents that it says “reveal a pervasive culture of noncompliance with the HSR Act.” It notes that the maximum possible penalty exceeds USD650m.

The key takeaway: the U.S. agencies are on high alert for HSR Act violations, regardless of whether a deal raises antitrust concerns.

China takes advantage of new fining powers

There are signs the State Administration for Market Regulation (SAMR) is once again ramping up gun-jumping enforcement (or at least the action that it makes public). In 2024 it notched up total fines of over RMB6m (approx.

USD0.9m) for failure to file transactions in the manufacturing, construction and energy sectors.

Like the U.S., SAMR has continued this trend into 2025. It has already imposed two fines of RMB1.75m (approx. USD245,000) each. In one of these, the parties made a filing but closed the deal during the public comment stage of the review.

The tally of public infringement decisions is now five since mid-2022, showing SAMR's willingness to use recently beefed-up powers to impose higher fines.

Separately, SAMR announced in late 2024 that it was investigating Nvidia over suspected antitrust violations, including failures to comply with behavioral commitments in relation to its 2020 acquisition of Mellanox. This is an unusual move, likely triggered by trade tensions with the U.S. The outcome of the investigation will be eagerly awaited, as will any signs that the authority plans to take similar action against other non-Chinese firms.

Individuals face sanctions

The U.S. GameStop case is an important reminder that individual investors can fall foul of merger control rules. Significant penalties can follow.

Acquirers are not the only enforcement targets. In Brazil, six individual sellers were fined alongside the purchaser for completing a deal before receiving merger control approval.

Admitting a breach can win you a discount

Last year, we saw a number of cases where merging parties came forward to report a breach, voluntarily made a missed filing and/or reached a settlement with the relevant authority. Brazil, the Czech Republic, Italy and Spain each had examples.

Parties often received a sizeable reduction in fines as a result—as large as 60% in some instances.

While it is generally better to stay on the right side of merger control rules in the first place, if parties become aware of a breach, these decisions show that dealing with it head-on can be the best strategy.

Looking ahead to 2025

Merging parties should keep compliance with procedural merger control rules in sharp focus over the coming year. Here are three reasons why:

1. As information requirements in merger filings and subsequent reviews become more onerous, we expect authorities to zone in on suspected failures to submit documents or the provision of false or misleading information. This could lead to notifications being declared invalid and/or to heavy fines. Parties must commit appropriate resources to collecting required materials and to responding carefully and fully to questions. This includes the provision of ephemeral messages—strategies should be put in place so that these can be preserved if needed.
2. Failures to file will continue to face strict enforcement. This could include serial acquisitions or novel transaction structures such as AI partnerships (e.g., in Brazil, the authority is already investigating possible filing infringements for a number of these arrangements—see our [article *Stormy skies for tech deals as antitrust scrutiny intensifies*](#)). Keeping on top of authorities' evolving thinking around which types of arrangements are caught by merger control rules is crucial.
3. Jurisdictions that have recently obtained tougher fining powers are likely to make full use of these. This includes China, which is already making its mark, and the U.K., where maximum penalties for certain procedural breaches increased to 1% or 5% of global turnover from January 1, 2025. In the EU, the EC is unlikely to be deterred from imposing heavy fines, despite the withdrawal of its Illumina/GRAIL decision. In the U.S., the agencies could well continue to break penalty records.

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