

Vinson & Elkins

2025

Energy & Chemicals Antitrust Report





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Antitrust Enforcement in the Second Trump Administration

The President influences antitrust enforcement in a variety of ways, including by appointing the leaders of Antitrust Division of the Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”). Since assuming office, President Donald Trump’s agency heads, Assistant Attorney General Gail Slater and FTC Chairman Andrew Ferguson, have signaled a return to more traditional antitrust enforcement and a greater receptivity to M&A activity, including in the energy and chemicals sectors. Despite these differences with the Biden administration, the antitrust agencies have reaffirmed their commitment to the Biden-era 2023 [Merger Guidelines](#) and renewed their focus on protecting consumers and workers, particularly on everyday pocketbook concerns.



DOJ Antitrust Division Leadership

A former economic advisor to Vice President JD Vance and longtime FTC attorney, Assistant Attorney General Gail Slater is positioning the Antitrust Division as a disciplined, litigation-driven enforcer. In her first major policy [address](#) at the University of Notre Dame Law School in April 2025, she declared that “antitrust is law enforcement, not regulation,” signaling a return to a more traditional interpretation of the Sherman and Clayton Acts and a de-emphasis on administrative policymaking.

Consistent with that approach, Slater has helped oversee some of the Trump administration’s deregulatory efforts, including the Antitrust Division’s Anticompetitive Regulations Task Force, which seeks to “to identify and eliminate laws and regulations that undermine the operation of the free market and harm consumers, workers, and businesses.”

Under her direction, the DOJ has also [launched](#) what it describes as an “America First Antitrust” agenda, which emphasizes protecting small businesses, domestic innovators, and core industrial sectors from exclusionary conduct and “ill-gotten monopolies.” While this policy represents a rhetorical departure from the prior administration’s progressive framing, Slater has made clear that vigorous enforcement remains a central priority, particularly in Big Tech monopolization cases and in traditional cartel and bid-rigging investigations.

At the same time, Slater has expressed support for settlements to resolve DOJ investigations when they are likely to be effective and resource-efficient. In her February 2025 [responses](#) to the Senate Judiciary Committee, she confirmed that the DOJ will be open to consent decrees and negotiated remedies in merger cases when those remedies offer clear, enforceable relief without straining agency resources.

Federal Trade Commission Leadership

The second Trump administration’s FTC is led by Chairman Andrew Ferguson, joined by Republican Commissioner Mark Meador. Ferguson, who previously served as Solicitor General of Virginia and Chief Counsel to Senator Mitch McConnell, assumed the chairmanship in early 2025 after serving as a commissioner under former President Joe Biden. Under his leadership, Ferguson has [emphasized](#) what he calls a “realistic approach to remedies,” endorsing settlements when agencies can be “confident that they will work.” Ferguson has also criticized the Biden-era “ideological predisposition against M&A” as unnecessarily stifling legitimate transactions.

Chairman Ferguson’s general openness to M&A does not, however, indicate a laissez-faire approach to enforcement. He and his fellow Republican commissioners, Melissa Holyoak and Mark Meador, have repeatedly [stressed](#) the need to enforce laws “vigorously” across the economy, especially in “Big Tech,” reaffirming the Biden administration’s focus on digital-market oversight. Likely nominee Ryan Baasch, who has focused much of his career on the intersection of antitrust, technology, the First Amendment, and data privacy enforcement, has also often advocated against what he calls “Big Tech censorship.”

Three FTC Commissioner seats are currently vacant. On March 18, 2025, President Trump removed Democratic Commissioners Alvaro Bedoya and Rebecca Kelly Slaughter without cause. The dismissals broke with decades of precedent under which commissioners could be removed only for cause, pursuant to the Supreme Court’s landmark *Humphrey’s Executor v. United States* decision. Bedoya and Slaughter subsequently filed suit challenging their removal as unlawful. In July 2025, the United States District Court for the District of Columbia ordered the Trump administration to allow Slaughter to return to her post while

the lawsuit continued. The Supreme Court then stayed that order and agreed to hear the case on the merits. Oral argument took place on December 8, 2025. The outcome could have significant implications for the independence of multimember agencies and the President's removal power.

Former FTC Commissioner Melissa Holyoak left the FTC in November 2025 to become the interim U.S. Attorney for the District of Utah. She previously served as the solicitor general of Utah from 2020 to 2024. There are reports that the Trump administration plans to [nominate](#) Ryan Baasch to replace Holyoak.

Further shaking up the FTC, Chairman Ferguson has advanced an [initiative](#) to shrink the FTC's workforce to roughly 1,100 employees, largely through attrition, voluntary retirement offers, and the deferred resignation program. While intended to streamline agency operations, these reductions may introduce timing risks for merger review and enforcement matters, particularly as the Commission pursues an ambitious litigation agenda with fewer personnel.

Greater Openness to M&A Activity

While maintaining their commitment to vigorous antitrust enforcement, both the FTC and DOJ have signaled a more open and business-friendly approach to M&A activity since the new agency leaders took office. In Chairman Ferguson's [view](#), "the Commission must not reflexively oppose mergers and acquisitions" and "must get out of the way quickly" when a merger would not violate antitrust laws.

Accordingly, the current FTC and DOJ have accelerated the merger review process for non-controversial deals by reinstating Early Termination ("ET") of the Hart-Scott-Rodino ("HSR") waiting period, a practice the FTC suspended during the Biden administration. The agencies have granted ET more than 200 times since February 2025, far exceeding the 11 ET requests granted during the entire Biden administration.

Receptivity to Energy Mergers

As predicted in last year's [Report](#), the second Trump administration has scaled back the novel and aggressive Biden-era approach to energy mergers. With the administration's return to more traditional antitrust theories and remedies, the DOJ and FTC have withdrawn several consent decrees with large energy companies in an effort to align existing orders with current enforcement principles.

For example, in July 2025, the FTC reopened and set aside the final consent orders involving Chevron Corporation's [proposed acquisition](#) of Pioneer Natural Resources Company and Chevron Corporation's [proposed acquisition](#) of Hess Corporation. In both cases, the FTC found that (1) the costs of maintaining the orders outweighed their "trivial or nonexistent" benefits to consumers and (2) maintaining the orders would damage the rule of law and undermine the FTC's credibility.

The agency has also reassessed several other prior orders, signaling a broader reassessment of the Biden administration's unusual scrutiny of M&A activity in the oil and gas sectors. The FTC and DOJ have sought relief for only two transactions in the energy industry in 2025, a significant reduction from recent years. Similarly, the agencies did not seek relief for any chemical industry mergers in 2025.

Consumer Centric Enforcement

Just as Assistant Attorney General Slater emphasized standing up for "America's forgotten consumers" in her "America First Antitrust" agenda, the FTC has also made clear that consumer welfare lies at the heart of the administration's enforcement priorities.

In May, Commissioner Mark Meador released a lengthy [paper](#) on conservative antitrust policy, critiquing what he sees as the prevailing view of the consumer welfare standard — the legal doctrine by which antitrust agencies assess whether mergers harm competition — "which prioritizes economic efficiency," often to the detriment of actual consumers. He argues that the historical record "yield[s] almost no evidence that the drafters or supporters

of the Sherman Act were concerned with the efficient allocation of resources across the national economy.” In his view, *consumers* must be the focus of the analysis rather than *efficiencies* as a proxy for consumer welfare. Specifically, Commissioner Meador argues that economic efficiency serves as a poor indicator for actual consumer welfare because it accounts for both consumer and producer surplus in its modern definition.

Accordingly, Commissioner Meador favors adopting only consumer surplus — i.e., “the net benefits to real consumers” — as the definition of consumer welfare. He believes that this definition “offers the benefit of avoiding the need for political judgments or weighing benefits between two competing constituencies,” while actually better serving the law’s focus on concentrated economic power rather than on efficiency.

To the extent that Meador’s vision is shared by other commissioners, we may see enforcement in energy markets focus on transactions that present a risk of higher prices for consumers. Indeed, the FTC recently entered into a consent decree with Alimentation Couche-Tard Inc. (“ACT”), its wholly-owned subsidiary Circle K Stores Inc. (“Circle K”), and Giant Eagle, Inc. (“Giant Eagle”) because the Commission [believed](#) that the proposed acquisition threatened everyday Americans. Explicitly focusing on consumers, Daniel Guarnera, Director of the FTC’s Bureau of Competition, stated that the “FTC will keep a watchful eye on retail fuel markets to make sure American consumers can spend less on gas and keep more money in their pockets.”

Continuing Some Biden-era Policies and Priorities

The DOJ and FTC have made clear that key components of antitrust enforcement should remain stable across administrations. The 2023 [Merger Guidelines](#) provide one of the best examples. In a February 2025 [memorandum](#) to FTC staff, Chairman Ferguson reaffirmed his commitment to the guidelines, declaring that “the clear lesson of history is that we should prize stability.” Should revision become necessary, Ferguson favors an “iterative and transparent revision process” as opposed to “wholesale recission.”

Agency leaders in the Trump administration have also emphasized that they will continue to focus on labor markets, contrary to what some predicted of the Republican

administration. In his first month as Chairman, Ferguson established the Joint Labor Task Force to help eliminate “widespread” deceptive, unfair, and anticompetitive labor practices. For both agencies, protecting labor market competition remains a priority.

Re-embracing Negotiated Remedies

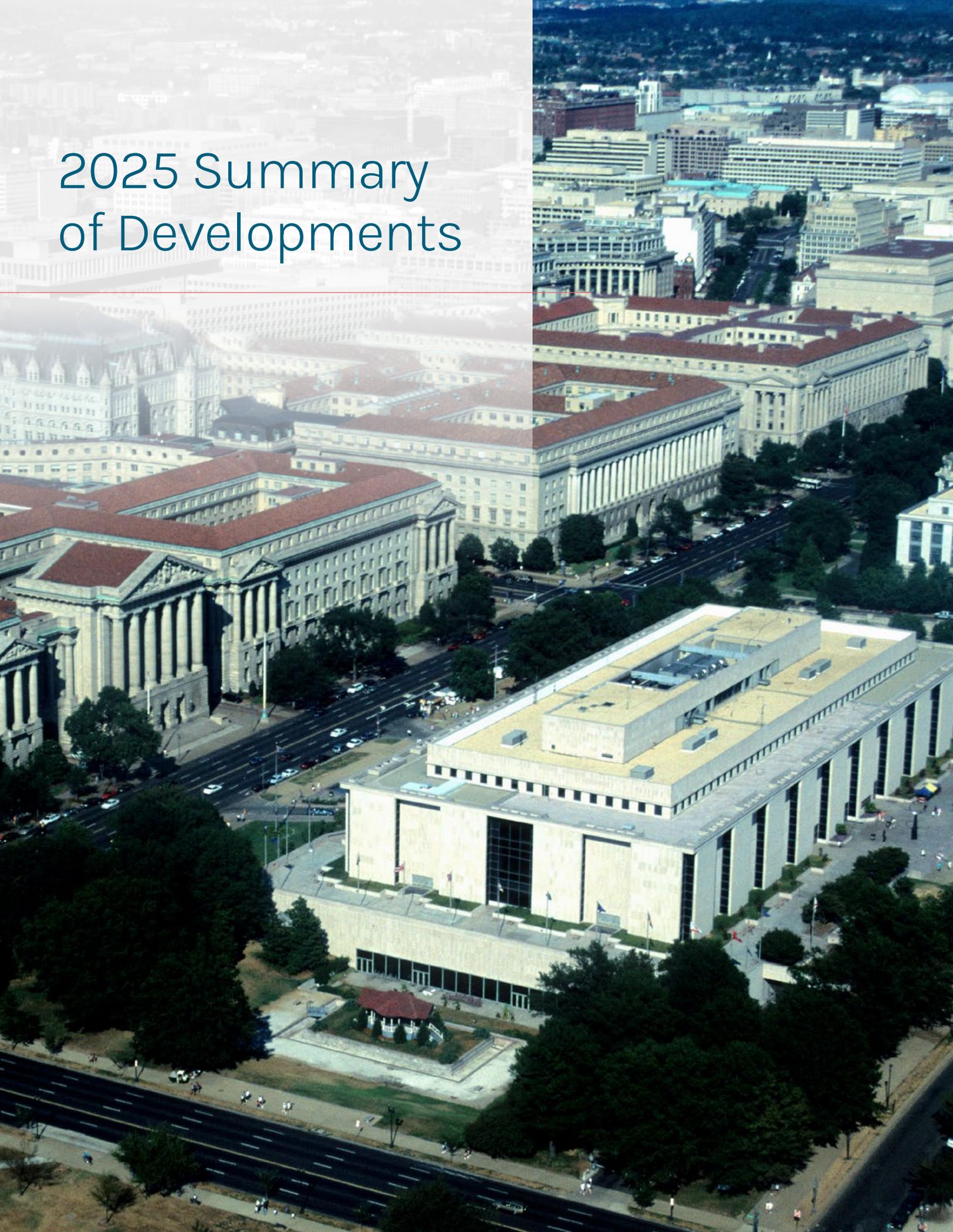
Both the Trump FTC and DOJ have embraced settlements as a viable tool for resolving merger concerns. By contrast, the Biden administration favored blocking mergers outright rather than entering into consent decrees that would address the agency’s concerns with the transaction.

DOJ leadership has indicated that the Division will be “more open to consent decrees in particular cases.” Chairman Ferguson similarly reaffirmed in recent congressional [testimony](#) that the Commission “is open to settlement offers that eliminate the possibility that the proposed acquisition could cause harm to market participants.”

In practice, the agencies have shown a strong preference for structural remedies. Seven of the nine remedies approved during President Trump’s second term were structural. As mentioned, the FTC [required](#) a divestiture in ACT’s recent transaction with Giant Eagle. There, the FTC alleged that ACT’s acquisition of Giant Eagle’s retail fuel outlets would eliminate head-to-head competition across 35 local markets in Indiana, Ohio, and Pennsylvania. Under the [proposed consent order](#), the FTC required ACT to divest 35 gas stations to settle the FTC’s charges. Both the FTC and DOJ have entered into several other consent decrees requiring structural remedies, including one involving quick-lube oil change shops (see Chapter 3 - Merger Enforcement Policy Developments).

The agencies’ openness to settlement through structural remedies reflects a more pragmatic orientation than the prior administration’s, emphasizing transparency and enforceability. Still, the agencies have emphasized their willingness to litigate when proposed remedies are “inadequate or unworkable.” Indeed, Chairman Ferguson has explicitly [stated](#) that the FTC will not “ordinarily accept a structural remedy unless it involves the sale of a standalone or discrete business” and the divestiture buyer can reasonably make that standalone business competitive.

2025 Summary of Developments



Agency Leadership Shifts

- Department of Justice (“DOJ”) and Federal Trade Commission (“FTC”) leadership under the second Trump administration have emphasized a pragmatic return to traditional antitrust enforcement, describing antitrust as “law enforcement, not regulation,” while reaffirming the 2023 Merger Guidelines as the framework for merger review and analysis.
- Assistant Attorney General Gail Slater has advanced an “America First Antitrust” agenda focused on protecting consumers, workers, small businesses, and core industries through disciplined, litigation-driven enforcement, while signaling openness to consent decrees that deliver clear, enforceable relief.
- FTC Chairman Andrew Ferguson has promoted a “realistic approach to remedies,” criticizing a reflexive opposition to M&A and endorsing timely, workable settlements — particularly structural remedies — while maintaining a commitment to vigorous enforcement in Big Tech and other sectors.
- Significant institutional dynamics at the FTC include presidential removal of two Democratic commissioners, pending Supreme Court review of the removals’ legality, and workforce reductions designed to streamline the agency’s operations.

Merger Policy and Enforcement

- Enforcement in energy and chemicals cooled in 2025 relative to 2024: the FTC brought two energy-related matters; the DOJ brought one. Reduced activity reflects the wind-down of Biden-era E&P investigations, a reversion to traditional theories, and fewer reportable transactions.
- The DOJ’s settlement consent decree in Constellation-Calpine was the first in an electricity merger in 14 years. The settlement requires divestiture of six power plants in Delaware, Pennsylvania, and Texas to resolve antitrust concerns that the combined firm — which would be the largest wholesale power generator in the United States — could have withheld power from its plants and increased electricity costs to consumers.
- The FTC’s 2025 consent orders in retail fuel (Alimentation Couche-Tard/Giant Eagle) and quick lube outlets (Valvoline/Oil Changers) required divestitures in localized markets and, in a marked shift from 2021 policy, used prior notice rather than prior approval provisions — reducing burden and uncertainty for future transactions.

- The FTC challenged one chemicals merger — Loctite-Liquid Nails — which it alleged would reduce competition for construction adhesives sold at retail.
- Agencies have explicitly signaled greater flexibility to resolve concerns via structural remedies, while acknowledging limited roles for behavioral conditions to buttress structural relief when necessary.
- The FTC reopened and set aside or modified multiple legacy energy consent orders to align with current principles or changed circumstances, including in Exxon/Pioneer, Chevron/Hess Enbridge/Spectra, and EnCap/EP Energy.
- The FTC imposed a record \$5.6 million civil penalty for HSR “gun jumping” in a crude oil deal, underscoring continued focus on unlawful pre-closing control and coordination. The FTC also obtained a divestiture as well as a record \$4.5 million civil penalty against the parent company of 7-11 for violating a prior consent decree without providing prior notice to the FTC of its acquisition of a retail fuel location.
- The FTC’s October 2024 Final Rule overhauling the HSR form took effect February 10, 2025, materially increasing time, cost, and complexity for filers— especially buyers, private equity firms, and deals with layered ownership structures.
- The Agencies reinstated early termination of the HSR waiting period in February 2025, with hundreds of grants to date.
- States accelerated merger oversight via “Mini-HSR” regimes. Washington and Colorado enacted laws requiring parties to share HSR filings with their Attorneys General when nexus thresholds are met, with daily penalties for noncompliance but no separate filing fees or suspensory periods. Other states are likely to adopt similar legislation in the coming years.

Non-Merger Enforcement

- The FTC abandoned its nationwide non-compete rule in September 2025 but reiterated a case-by-case enforcement approach against overbroad restraints, pairing enforcement actions with an RFI, warning letters, and a public workshop to guide future policy.
- The agencies issued joint antitrust guidelines for worker-related activities, clarifying application to independent contractors and emphasizing scrutiny of no-poach, non-solicit, wage-fixing, and restrictive covenants; the FTC launched a Joint Labor Task Force to coordinate cross-bureau enforcement.
- The DOJ secured its first jury conviction for wage-fixing, signaling renewed momentum in criminal labor-market cases and continued focus from the Procurement Collusion Strike Force on bid-rigging and market allocation affecting public programs.
- The DOJ refined corporate enforcement and voluntary self-disclosure policies, expanded whistleblower incentives across priority areas, and signaled disciplined use of monitorships and resolution caps—potentially shifting the calculus for self-reporting and remediation.
- ESG-related coordination by institutional investors drew increased antitrust scrutiny. In litigation led by conservative state AGs against major asset managers, the FTC and DOJ supported claims that common ownership and public climate commitments can facilitate coordinated output restrictions.

State & Private Litigation

- The Sixth Circuit found that a Michigan rule requiring power providers to obtain much of their generating capacity from in-state sources discriminated against interstate commerce, setting up a fight over whether the rule should be held unconstitutional under the Dormant Commerce Clause.
- Courts continued to struggle with the application of antitrust law to financial trading activity and other index manipulation claims. The Seventh Circuit vacated class certification in a case alleging natural gas traders engaged in wash trades to manipulate the published price indices that drive futures contracts, but a federal district court in Illinois granted certification in a case alleging oil traders caused a 2020 crash to boost their short positions. Both cases turned on whether class members' claims could be adjudicated in a common, class-wide setting. Another Seventh Circuit case involving ethanol index manipulation resulted in the dismissal of certain predatory pricing claims as being outside the ambit of antitrust law, but certain state law business-tort claims over the same events could still survive.
- An Illinois district court dismissed claims that a Chicago-area distribution pipeline's refusal to interconnect with a new barge terminal presented a monopolization claim, when the terminal developer failed to allege the distribution pipeline was essential to serving refinery customers.
- Class action plaintiffs continue to question how market participants use information about pricing, with new and early-stage lawsuits including claims over benchmarking activities (for nuclear power employees), price publications (for PVC pipe), and regulatory reporting tools (for California refiners' emissions control costs).



Merger Enforcement Data & Trends

The FTC and DOJ received 2,031 Hart-Scott-Rodino Act (HSR) filings in fiscal year 2024, the last full year of the Biden Administration. This marked a slight increase from 2023 but still below the trailing 10-year average of 2,200 annual filings. The energy sector remained busy, representing 8% of all reported transactions, up from 7% in 2023. Chemical transactions represented 3% of total reported transactions, a decline from 2023 and the lowest seen in the last ten years.



Agency enforcement across all industries presented mixed results. The FTC and DOJ opened preliminary investigations in 9% of reported transactions and issued second requests in 3% of reported transactions, slightly below average.

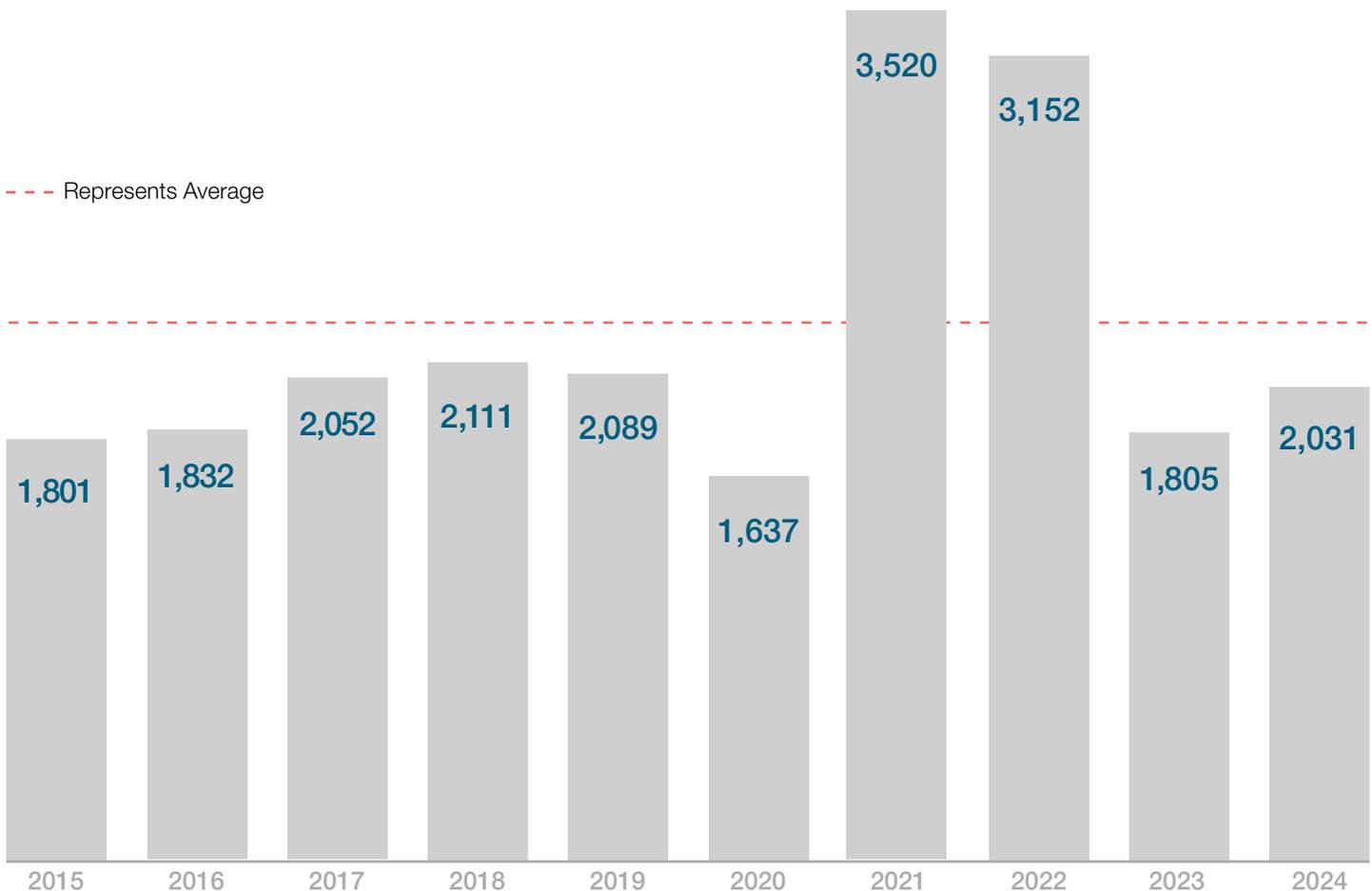
The rate at which agencies issued a second request after opening a preliminary investigation, however, grew to 32% in 2024 (significantly above the trailing ten-year average of 22%) meaning that initial investigations are more likely to lead to second requests than in recent years. However, second requests themselves were less fruitful in 2024; the agencies brought an enforcement action securing some kind of remedy in just 32% of second request investigations in 2024, well under the ten-year average of 72%.

Enforcers were active in the energy industry, with 16% (twenty-five) of reported deals leading to an initial investigation. Seven of these twenty-five investigations, or 28%, led to second requests, a rate just below the industrywide average.

On the chemicals side, enforcers investigated 12% (seven) of reported deals. Just two of those investigations led to a second request, and one of those second requests led to an enforcement action, in Sanofi/Maze Therapeutics (a pharma deal).

Total Number of Reported Transactions

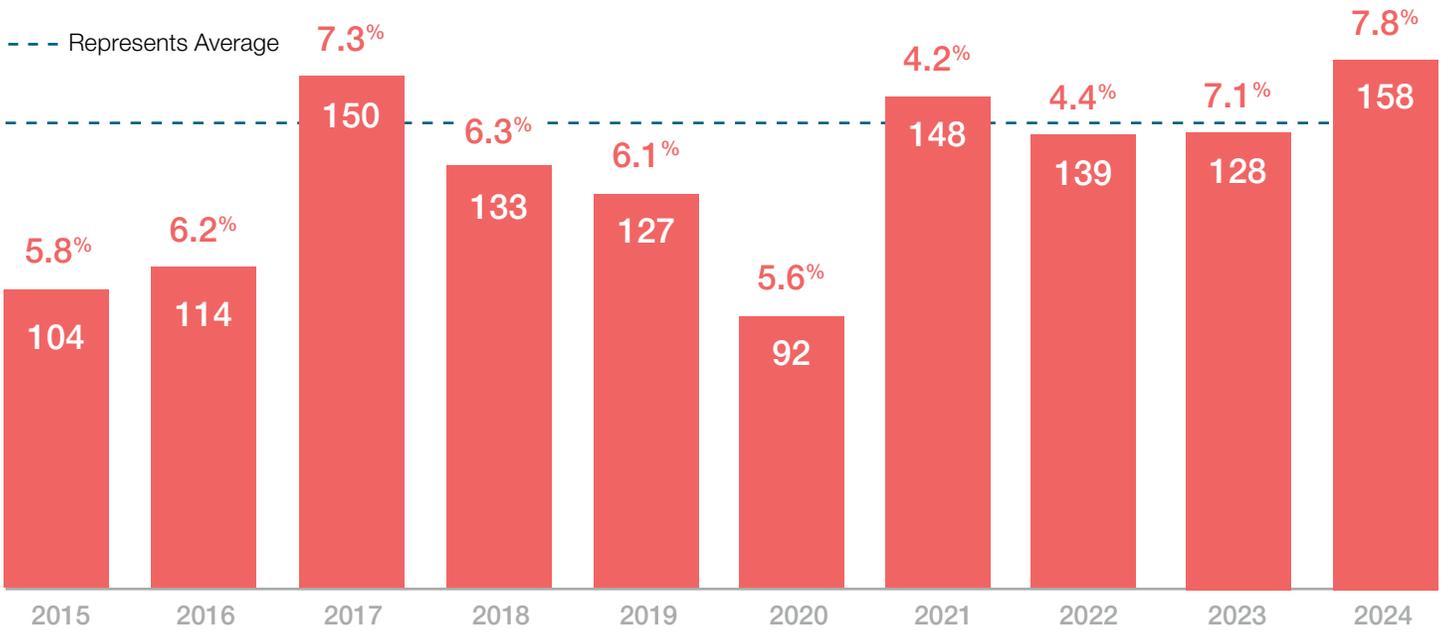
From 2015 to 2024, there were a total of **22,030** transactions reported to the FTC and DOJ under the Hart-Scott-Rodino Act. There were **2,031** transactions reported in 2024, slightly below the ten-year average of **2,203** filings per year.¹



¹ All annual data is reported by the U.S. government's fiscal year, which runs from October 1 through September 30.

Energy Transactions

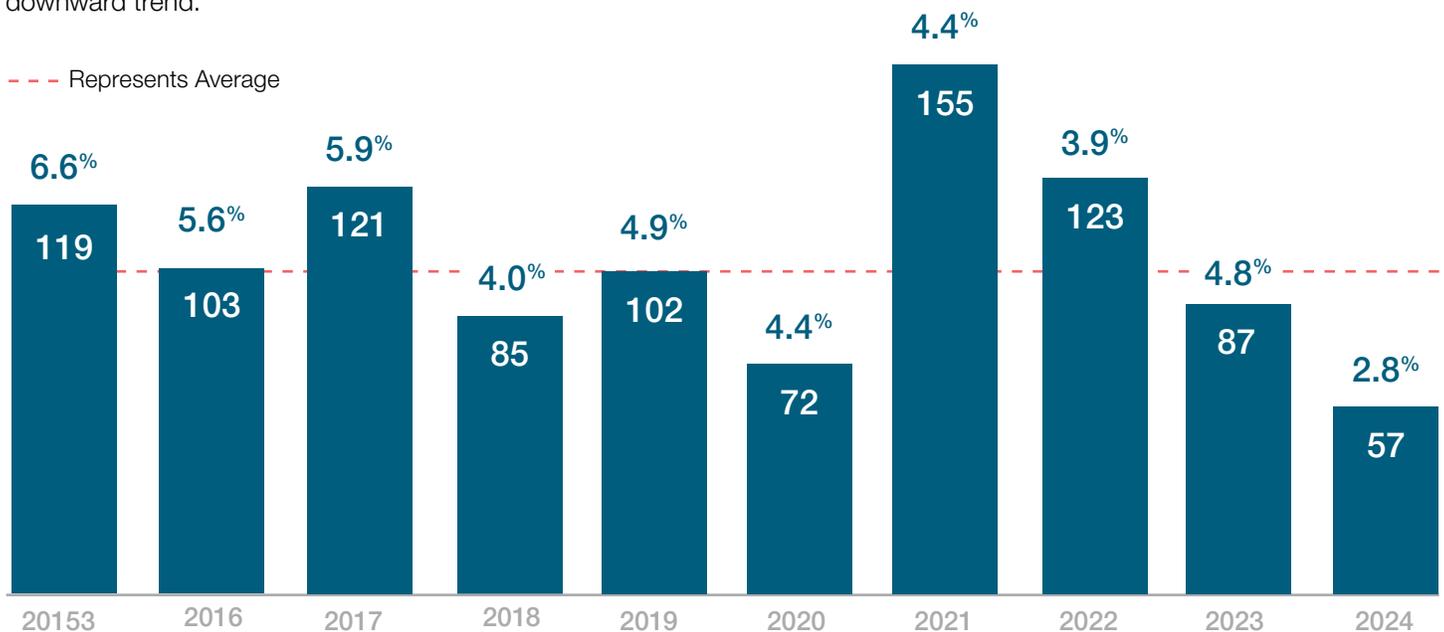
From 2015 to 2024, there were a total of **1,293** reported energy and natural resources transactions, representing on average just under **6%** of total transactions reported during that time period. The number of reported transactions in this industry sector reached trailing ten year high of **7.8%** in 2024, up from **7.1%** in 2023.



"Total Energy Transactions" comes from the pie chart percentage of "Energy & Natural Resources" in the HSR Report x total transactions.

Chemical Transactions

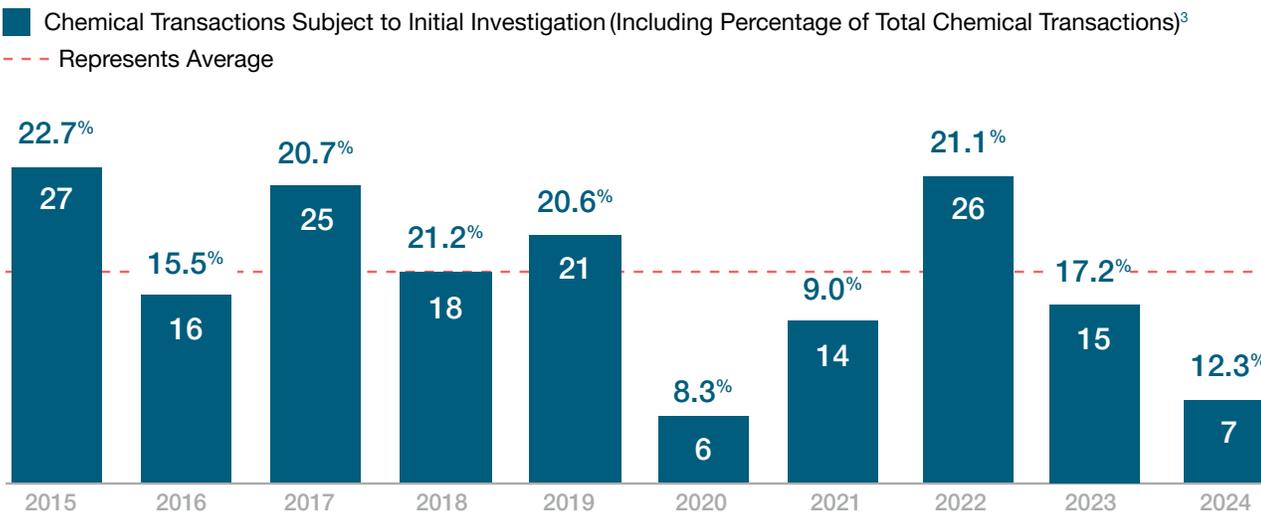
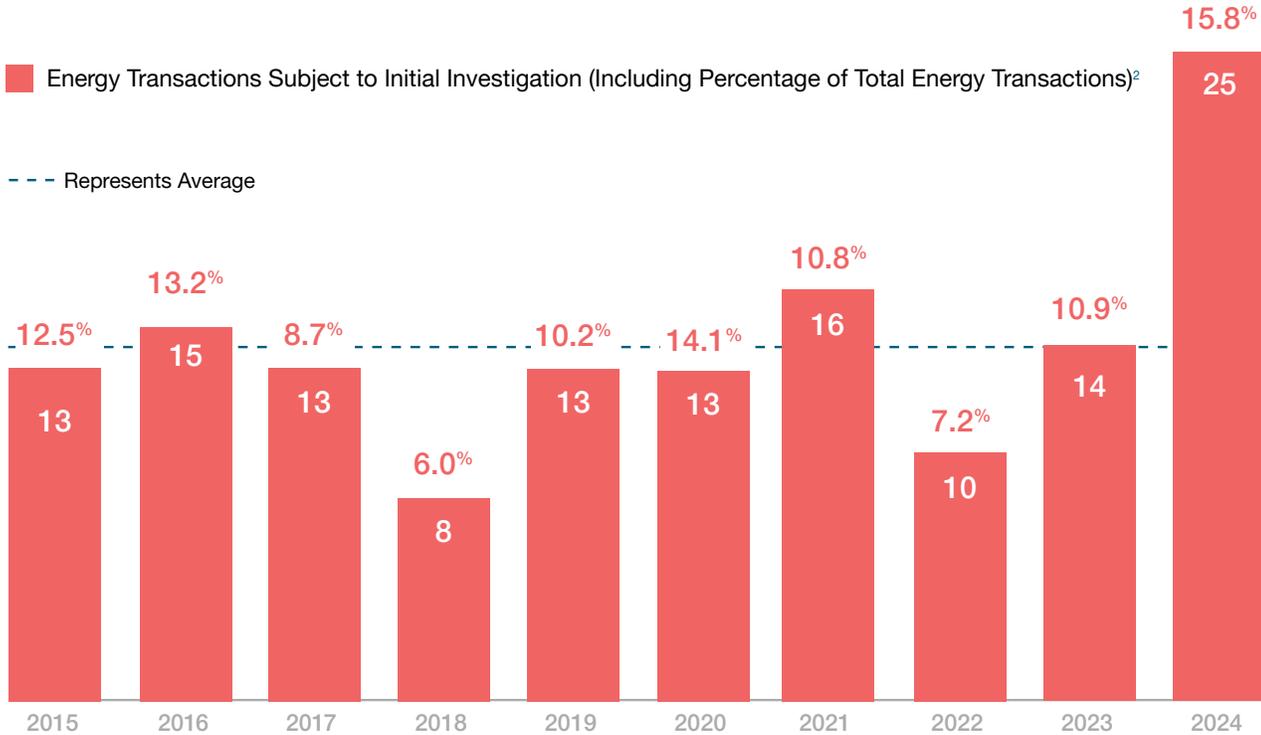
From 2015 to 2024 there were a total of **1,023** reported chemical and pharmaceutical transactions, representing on average **5%** of total transactions reported during that time period. The number of reported transactions in this industry as a percentage of total transactions was just **2.8%** in 2024, the lowest rate in at least ten years and continuing a downward trend.



"Total Chemical Transactions" comes from the pie chart percentage of "Chemicals & Pharmaceuticals" in the HSR Report.

Initial Investigations

On average, from 2015 to 2024, the FTC and DOJ opened an initial investigation in **16%** of reported energy transactions and **12%** of reported chemical transactions, while the average across all industries during this time period was **9%**. Initial investigation rates in 2024 were above historical averages in the energy sector but below historical averages in the chemical sector.



² Unless otherwise noted, whether a transaction or investigation is Energy- or Chemical- related is determined based on the industry group of the target entity. Specifically, the 3-digit NAICS codes for the acquired person. The 3-digit industry NAICS codes for the energy transactions reported are: 211 - Oil and Gas Extraction; 213 - Support Activities for Mining; 221 - Utilities; 324 - Petroleum and Coal Products Manufacturing; 425 - Wholesale Electric Markets and Agent and Brokers; 447 - Gasoline Stations; 486 - Pipeline Transportation; 493: Warehousing and Storage (including petroleum stations and terminals).

³ Unless otherwise noted, whether a transaction or investigation is Energy- or Chemical- related is determined based on the industry group of the target entity. Specifically, the 3-digit NAICS codes for the acquired person. The 3-digit industry NAICS codes for the chemical transactions reported is: 325 - Chemical Manufacturing.

Second Requests

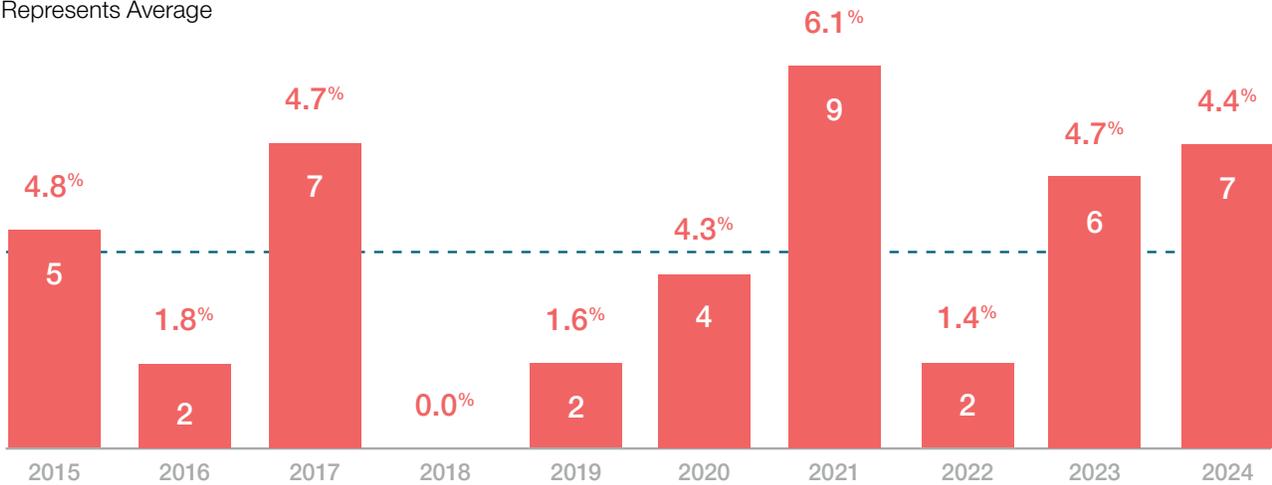
The FTC and DOJ issued second requests in **2.9%** of reported transactions across all industries in 2024. Nine second requests were issued to energy (7) and chemical (2) transactions in 2024, accounting for **15%** of all second requests for the year.

In 2024, **4.4%** of reported energy transactions led to a second request, above the ten-year historical average of **3%**. Just **3.5%** of reported chemical industry transactions led to a second request in 2024, below the trailing ten year average of **4.4%**.

An important metric when evaluating the FTC and DOJ’s enforcement tendencies is the “yield” rate of initial investigations that lead to second requests. In 2024, **32%** of initial investigations led to second requests across all industries. The energy industry’s yield in 2024 was **28%**, meaning that once an investigation is opened, the agencies were slightly less likely to issue a second request than they were on average across all industries. The chemical industry’s yield in 2024 was **29%**, a return to normalcy from last year’s ten-year low of **7%**. The agencies’ average yield rate in the energy industry has increased over the last ten years, whereas yield rates in the chemical industry have decreased.

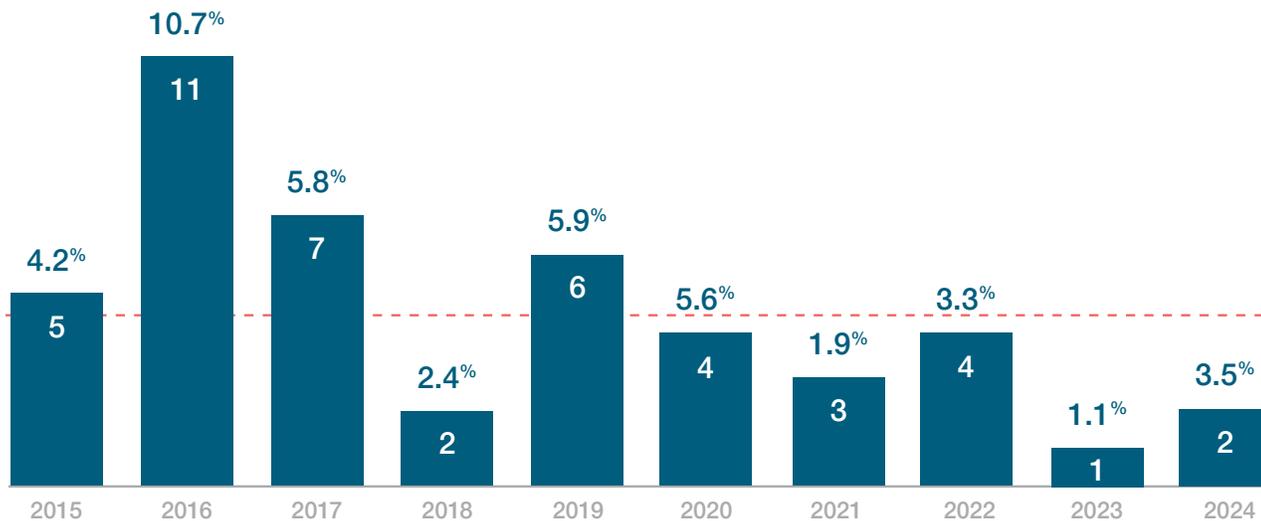
Energy Industry Second Requests (Including Percentage of Total Energy Transactions)

--- Represents Average



Chemical Industry Second Requests (Including Percentage of Total Chemical Transactions)

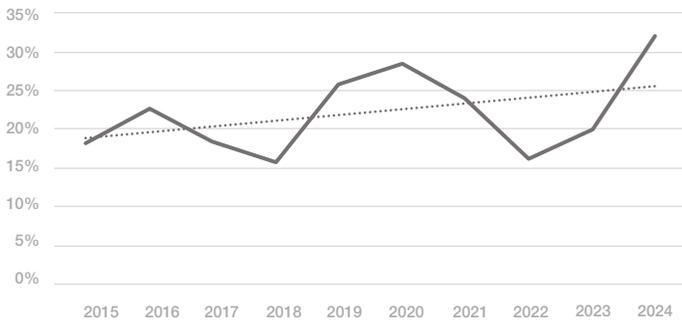
--- Represents Average



⁴ The second request data in this section is tallied from the data provided in all HSR Annual Reports at Exhibit A, Table XI, titled: “Industry Group of Acquired Person.”

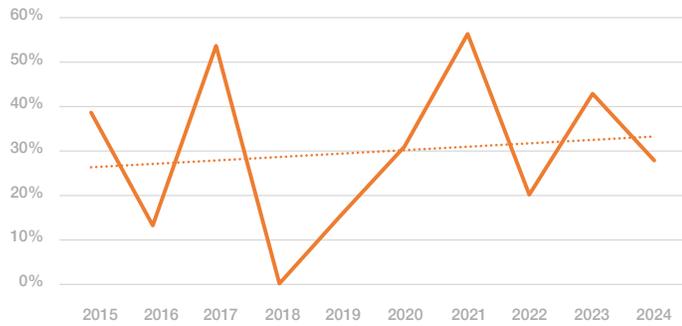
Initial Investigation to Second Request Yield Rate - All

--- Represents Average



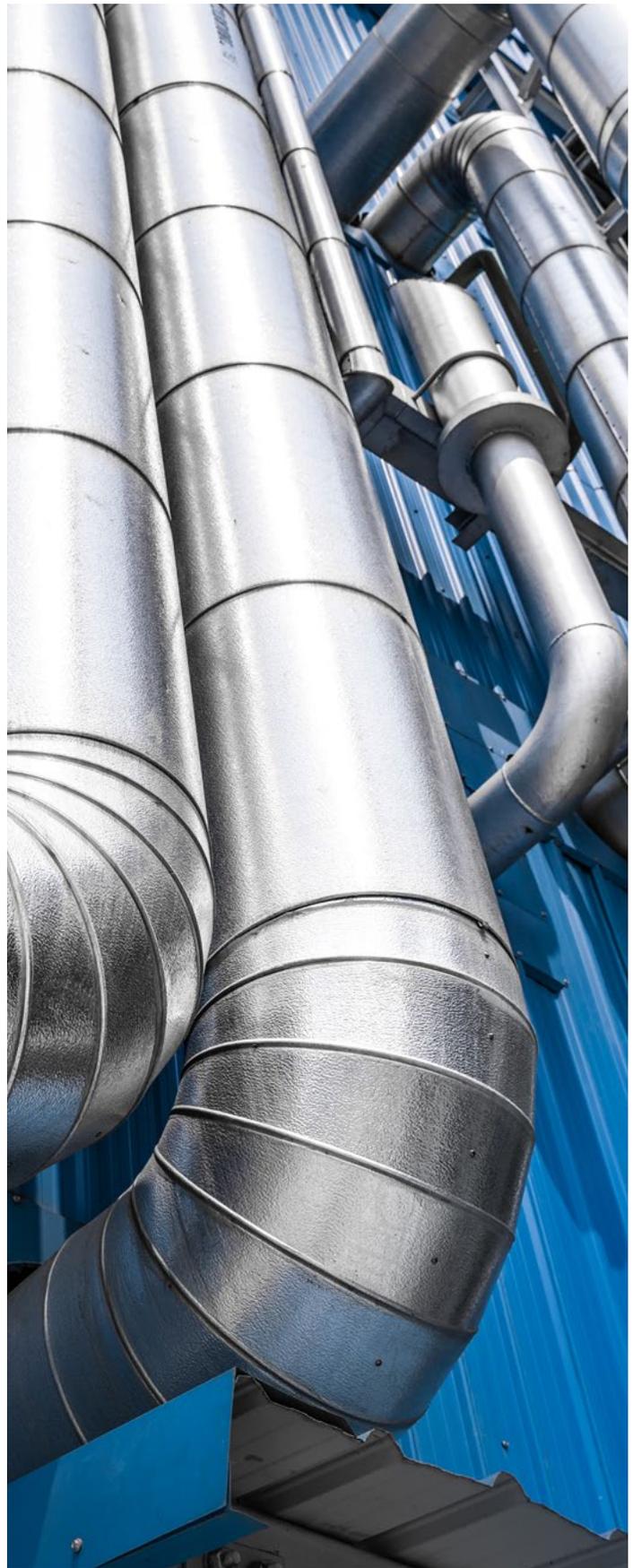
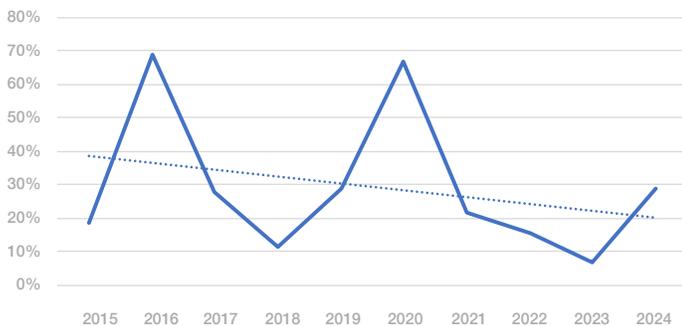
Initial Investigation to Second Request Yield Rate - Energy

--- Represents Average



Initial Investigation to Second Request Yield Rate - Chemical

--- Represents Average



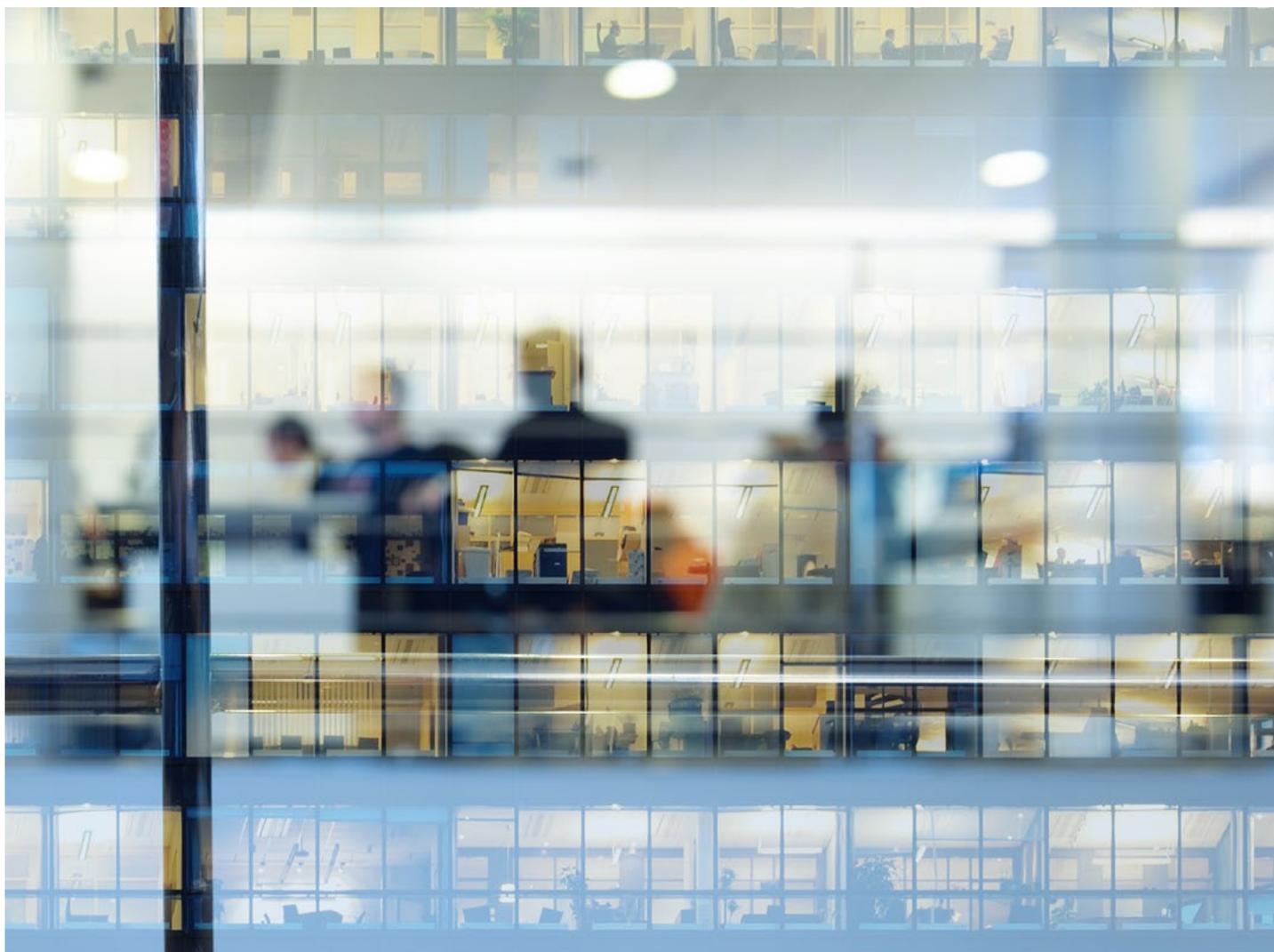
Enforcement Actions

From 2015 to 2024 (the latest year for which agency enforcement data is available at the time of this publication), the FTC and DOJ brought a total of **361** merger enforcement actions across industries, an average of **36** per year. Of this total, the FTC brought **208** and DOJ brought **153**. These figures include consent decrees, abandoned transactions, and court challenges. During this period, the agencies brought a total of **26** actions involving energy mergers (**7%** of all actions), and **23** actions involving chemical mergers (**6%** of all actions). The agencies brought enforcement actions against **2%** of energy and chemical transactions on average since 2015, although figures vary significantly year-to-year.

In 2024, the agencies' two energy enforcement actions and one chemical industry enforcement action constituted just **1.3%** and **1.8%**, respectively, of total industry transactions, well below the historical levels mentioned above.

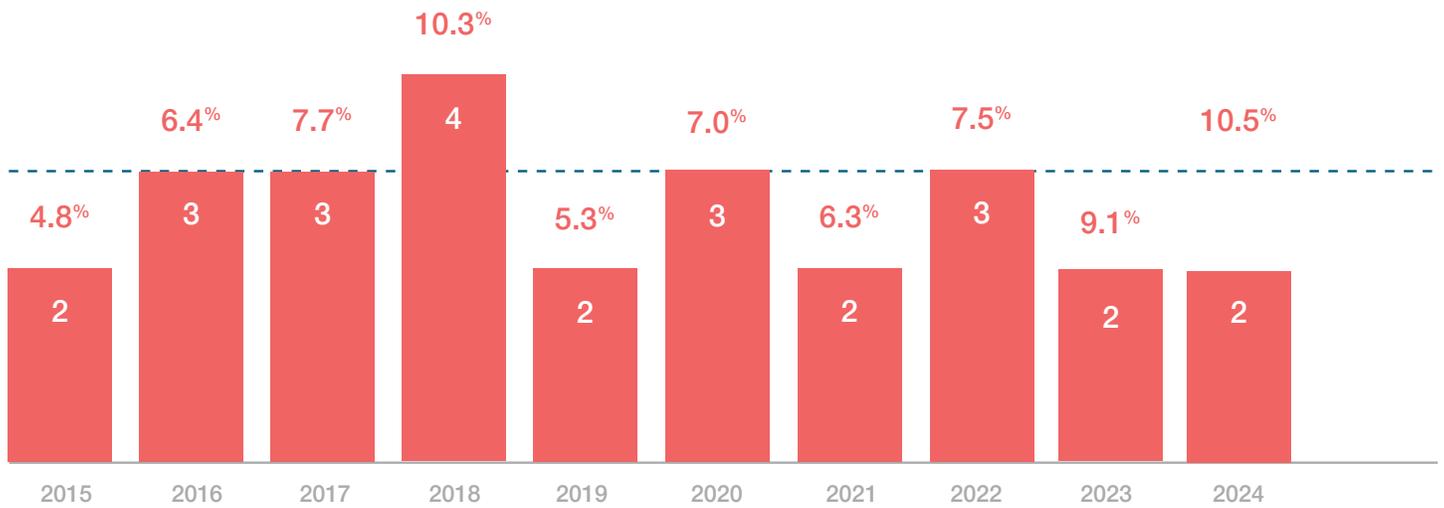
The FTC and DOJ brought nineteen enforcement actions in 2024. Two deals closed subject to divestitures or other remedies, thirteen deals were abandoned by the parties, three deals were blocked after a trial on the merits, and one deal closed after the FTC lost in court (*Novant Health/Community Health Systems*).

The FTC oversaw both energy industry enforcement actions in 2024: Chevron/Hess and Exxon/Pioneer. Both transactions closed subject to consent decrees that were subsequently set aside in 2025. The FTC also oversaw the one chemical enforcement action in *Sanofi/Maze Therapeutics*, which the parties ultimately abandoned.



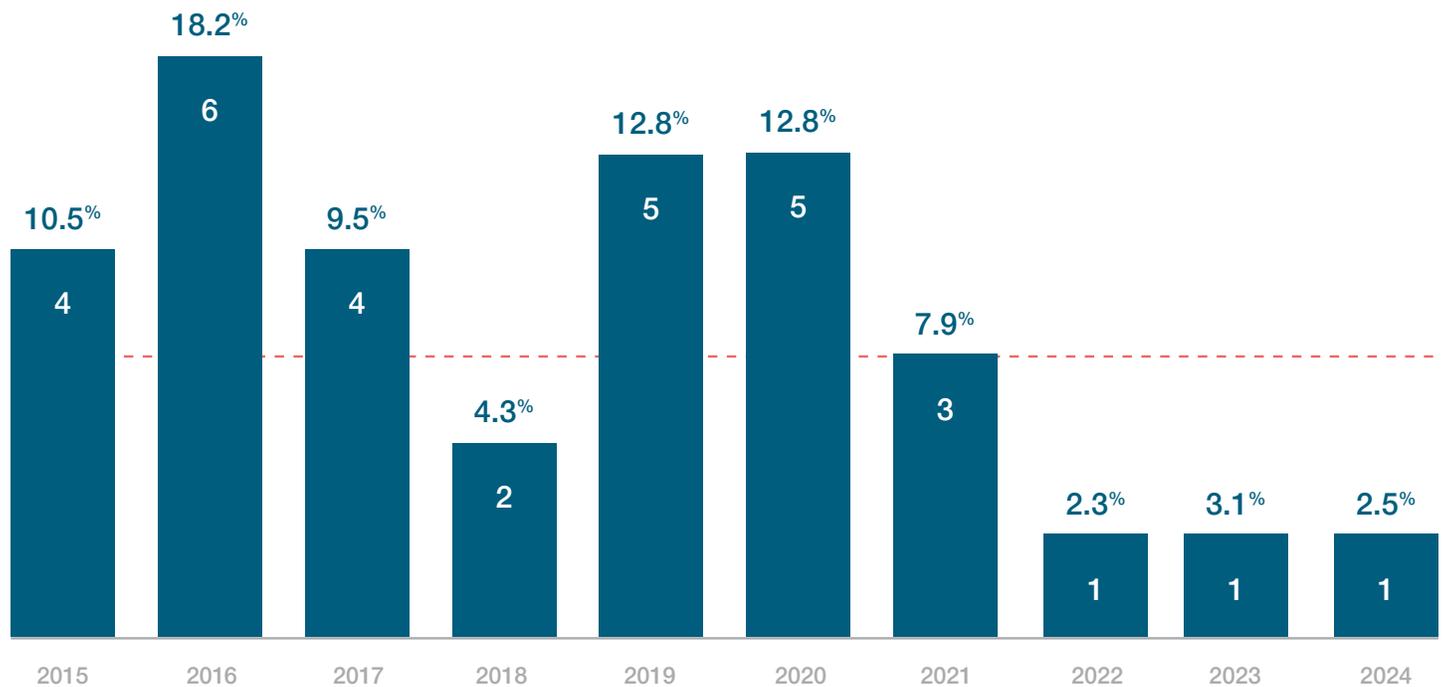
■ Actions Involving Energy Mergers (Including Percentage of Total Enforcement Actions)

--- Represents Average



■ Actions Involving Chemical Mergers (Including Percentage of Total Enforcement Actions)

--- Represents Average



Merger Enforcement Policy Developments

U.S. merger policy in 2025 presented a mixed bag of developments, with some favorable and others less favorable to merging parties. At the federal level, the Federal Trade Commission (“FTC”) and the U.S. Department of Justice’s Antitrust Division (“DOJ”) finalized new, more burdensome Hart-Scott-Rodino (“HSR”) reporting requirements, implemented a “labor market task force” focused on ensuring competition in labor markets, and remained committed to the Biden-era 2023 Merger Guidelines. At the same time, the Agencies set aside several merger-related consent decrees entered in connection with prior energy merger cases and appear willing to accept more flexible merger settlements.

At the state level, proposed new merger control laws are winding their way through numerous legislatures. Colorado and Washington enacted the first “Mini HSR-Acts” requiring HSR filers to provide a copy of their HSR filing with the relevant state attorney general. Other states, including California and New York, are moving similar laws through their respective legislatures, as is the District of Columbia.



Federal Merger Enforcement

Agencies Adopt More Burdensome HSR Form

In October 2024, the FTC, with the [concurrence](#) of the DOJ, issued a [Final Rule](#) containing the most significant overhaul of the HSR Notification Form since the HSR Act was passed in 1976. The new rules became effective on February 10, 2025 and have imposed substantially more burdensome requirements on filing parties, particularly for buyers and for transactions involving complex financial structures or private equity-related entities.

The new HSR Form has significantly increased the scope of required information. Filers must now submit additional information regarding competitive overlaps, buy-side structures, transaction rationales, and prior acquisitions. Although certain new requirements apply only to filers that report horizontal competitive overlaps or vertical supply relationships, other requirements apply to all reportable transactions, including a significantly expanded Business Document framework (these documents were previously known as “Item 4” documents). All private equity filers must now provide information regarding intermediate-level and minority ownership in the buy-side structure. Filers must also identify any pending or active defense or intelligence agency contracts, and identify or describe subsidies received from a “foreign entity or government of concern” (as [identified](#) by the Department of Energy).



Key Changes to the HSR Form

The revised HSR Form and rules have increased the scope of certain existing information requests, as well as creating entirely new reporting requirements.

- **Business Documents.** The Final Rule increases the scope of strategic documents that filers must submit. Filers must now identify and collect documents from not only officers and directors, but also from a Supervisory Deal Team Lead (“SDTL”). The SDTL is defined as the individual who has primary responsibility for supervising the strategic assessment of the deal and who may not otherwise qualify as a director or officer. Although the form does not require filers to identify their SDTL, filers must determine an appropriate SDTL and collect the individual's documents. In transactions with overlapping products or services, filers must also now submit certain “Plans and Reports,” which are ordinary course documents discussing market shares, competition, competitors, or markets that were provided to the company's CEO or Board of Directors. Filers without a board, such as limited liability companies or partnerships, must instead provide documents prepared by or for individuals exercising similar functions as officers and directors, as well as the SDTL.
- **Ultimate Parent Entity (“UPE”) Information.** Buyers are now required to identify minority interest holders throughout the entire chain of control above and below the acquiring entity, as well as any entity within the acquiring person created in connection with the transaction. (Previously, filers only needed to report minority interest holders at the UPE and transaction-level entities; not the intermediate entities where co-investors may be relevant.) In addition, private equity funds and other investment firms must now disclose the name and headquarters mailing address of any limited partners of 5 percent or more that have certain board appointment rights. Buyers are also required to identify certain officers and directors who serve as an officer or director of another entity that derives revenue in the same NAICS codes reported by the target.
- **Competition Descriptions.** Filers must now provide a narrative description of (a) any overlapping products or services (current or planned) and (b) any supply or customer relationships between the acquiring person and target or relevant third parties. Filers must provide sales figures and top customer information for any such products or services. Under the old rules, the agencies would only have had access to this information through a voluntary request letter or Second Request.
- **Transaction Rationale.** The revised form includes a new section that requires filers to draft a transaction rationale and cite to each Business Document that confirms or discusses that transaction rationale.
- **Revenue and Overlaps.** Filers must now provide their revenue by NAICS code breakdown for each operating business under its control (the prior form allowed for aggregate revenues by NAICS code across all entities). Filers are also required to provide more detailed geographic overlap information for certain NAICS codes, although codes commonly reported in energy and chemical transactions largely remain unchanged.
- **Prior Acquisitions.** The new form requires the seller to report prior acquisitions of certain entities or assets within the last five years. The old rules required only the buyer to report prior acquisitions.

In sum, the revised HSR Form requires a large amount of new information and, as a result, greatly increases the time and effort required to complete even no-issues filings. A [survey](#) by the U.S. Chamber of Commerce indicates that the typical form under the revised rules takes approximately 20 business days to complete, compared to just 10 business days under the prior form. The survey results also indicate that the financial burden of filing has almost doubled, with the average filing cost rising to \$155,000 from \$79,569. Filers are adapting to the new form with new practices to help manage the increased time and cost of filing such as structured document protocols, forensic document collection, and other e-discovery tools to account for the expanded scope of Business Documents and the new SDTL concept. Many filers are also designating an SDTL early in the process and ensuring collection from “ephemeral messaging” platforms such as Microsoft Teams and Slack.

HSR Early Termination Reinstated

As part of the HSR form revisions, the FTC restarted its practice of granting early termination for transactions that present no competition risk. Early termination is a discretionary practice where the agencies may terminate the 30-day HSR waiting period early, after which the parties are free to close from an antitrust perspective. Since resuming the process in early February 2025, the FTC has granted early termination hundreds of times. The FTC is most likely to grant early termination in filings without overlaps, but has also granted early termination in filings with technical (but not substantive) overlaps as well as filings with overlaps in unconcentrated industries. If the FTC decides to grant early termination, it typically does so towards the end of the second or third week of the waiting period.

Agencies Continue to Follow 2023 Merger Guidelines

On February 18, 2025, FTC Chairman Andrew Ferguson and the DOJ's then-Acting Assistant Attorney General Omeed Assefi each issued memoranda to [FTC](#) and [DOJ](#) staff, respectively, that stated that the 2023 Merger Guidelines would continue to provide the overarching framework for merger reviews under the new administration. FTC Chairman Ferguson's [memorandum](#) highlighted the importance of consistent and comprehensive guidelines for the enforcement agencies and market participants. The 2023 Guidelines, issued under the Biden administration, signaled a move away from the consumer welfare standard, with revisions related to consolidation trends, labor competition, and competition within and among platforms. Please see our [prior article](#) for further information on the 2023 Merger Guidelines.

Agencies Signal Flexibility on Remedies

FTC and DOJ enforcement actions in the second Trump administration suggest increased openness to divestitures and other negotiated remedies than under the Biden administration, during which the agencies had publicly disavowed negotiated remedies in favor of litigation. In 2025, both the FTC and DOJ have allowed several transactions to proceed with remedies but have emphasized a continued preference for structural remedies (e.g., divestitures) over behavioral remedies. For example:

- In May 2025, the FTC [announced](#) a divestiture that would allow the \$35 billion merger of Synopsys, Inc., a semiconductor software developer, and Ansys, Inc., a provider of complementary software, to proceed. The decree requires both Synopsys and Ansys to divest various software tools. FTC Chairman Andrew Ferguson and FTC Commissioners Holyoak and Meador issued a [joint statement](#) presenting the Synopsys/Ansys remedy as a model for future remedies and highlighting a collective preference for structural remedies (i.e., divestitures) over behavioral remedies.
- In June 2025, DOJ [announced](#) a consent decree in the \$1.5 billion merger of Keysight Technologies Inc., which manufactures diagnostic equipment and software for electronics, and Spirent Communications plc. The decree requires Spirent to divest its high-speed ethernet testing, network security testing, and RF channel emulation businesses. In a June [statement](#), DOJ Deputy Assistant Attorney General Bill Rinner not only emphasized that the Keysight/Spirent divestiture aligned with DOJ's "longstanding preference for structural remedies," but also acknowledged that there may be times where behavioral remedies "buttress genuine structural relief."
- Also in June 2025, the FTC [proposed](#) a consent order requiring Alimentation Couche-Tard ("ACT") to divest 35 retail fuel outlets in connection with ACT's planned acquisition of 270 retail fuel outlets from grocery store chain Giant Eagle, Inc. FTC Commissioner Meador [issued](#) a statement clarifying his views on merger remedy packages and stating that "[t]he FTC should, in all but extremely rare cases, insist on clean divestitures of standalone business lines." In November, the FTC [finalized](#) its consent order, requiring ACT to divest 35 retail gasoline and diesel fuel stations to Majors Management, LLC.
- In November 2025, the FTC [proposed](#) a consent order requiring Valvoline Inc. and private equity firm Greenbriar Equity Fund V, L.P. to divest 45 quick lube oil change shops in connection with a \$625 million transaction. Main Street Auto, LLC would acquire the divested outlines from Greenbriar under the proposed order. The FTC's [complaint](#) alleged that, but for the proposed divestiture, the transaction would eliminate substantial head-to-head competition for quick lube oil change services.



State-Level Legislation and Enforcement

Colorado and Washington Enact Merger Reporting Requirements, with Others on the Horizon

Colorado and Washington have passed new laws, each modeled on the Uniform Antitrust Pre-Merger Notification Act (“UAPNA”) that require filers to submit notice copies of their HSR filing to each respective state’s attorney general, provided certain nexus thresholds are met. The state statutes differ from the HSR Act in several important respects: parties are not required to (i) provide additional information, (ii) pay a filing fee, or (iii) comply with a suspensory waiting period prior to closing. Filers should, however, take note that both states may issue penalties of up to \$10,000 per day for failure to file.

Washington state’s merger review framework, [SB 5122](#), took effect on July 27, 2025. It requires parties to an HSR-reportable transaction to share their HSR filing with the Washington attorney general if the party:

- has a principal place of business in Washington;
- had (or controls an entity that had) annual net sales in Washington of goods or services involved in the transaction of 20 percent or more of the current HSR filing threshold (for 2025, \$25.28 million); or
- is a provider or provider organization (this involves health care, as defined by state law) active in Washington state.

Colorado’s state-level merger review framework, [SB25-126](#), also modeled on the UAPNA, went into effect on August 6, 2025. It requires HSR-reportable transaction parties to submit their HSR filing to the Colorado attorney general if the party:

- has a principal place of business in Colorado; or
- had (or controls an entity that had) annual net sales in Colorado of goods or services involved in the transaction of 20 percent or more of the current HSR filing threshold (for 2025, \$25.28 million).

Several other jurisdictions, including Hawaii, Nevada, Utah, West Virginia, and the District of Columbia, are working towards their own enactments of the UAPNA-based state merger control laws.

State Enforcers Weigh In on Federal Enforcement

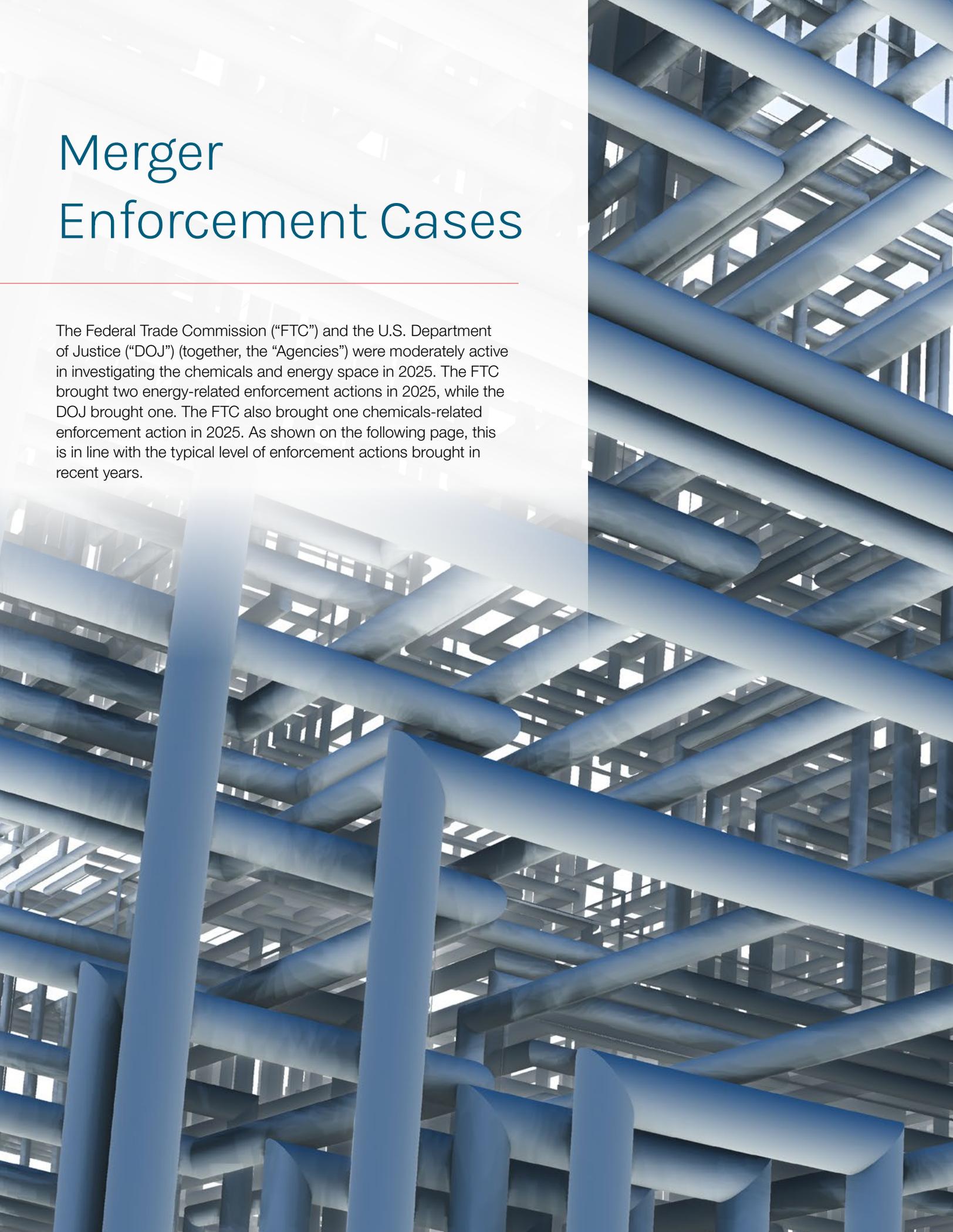
The federal antitrust agencies have long been the prime mover of enforcement actions and remedies in the merger context, and state attorneys general and the agencies have historically collaborated on enforcement and avoided criticism of each other's remedies. In 2025, state attorneys general have sought increased input on federal enforcement actions with which they disagree, indicating that they may resist any perceived lessening in federal antitrust enforcement under the second Trump administration. In October, attorneys general from twelve states and the District of Columbia filed a [motion to intervene](#) in a federal court's review of DOJ's controversial June [settlement](#) allowing Hewlett Packard Enterprise's \$14 billion acquisition of Juniper Networks to proceed. The motion argues that the DOJ settlement failed to resolve the

anticompetitive effects of the merger (the DOJ had itself alleged various anticompetitive effects in its January [suit](#) to prevent the merger). The motion further claims that that DOJ's settlement was politically motivated and calls for an evidentiary hearing under the [Tunney Act](#). Public statements made by state attorneys general regarding this motion indicate that the trend of state oversight may continue. California Attorney General Rob Bonta, quoted in a [press release](#), stated that California's action in HPE/Juniper "is about more than one merger; this case raises serious questions about the integrity of government processes." In a [letter](#) to DOJ, Colorado Attorney General Phil Weiser noted that the states are "co-equal enforcers of the federal antitrust laws with the DOJ and the FTC."



Merger Enforcement Cases

The Federal Trade Commission (“FTC”) and the U.S. Department of Justice (“DOJ”) (together, the “Agencies”) were moderately active in investigating the chemicals and energy space in 2025. The FTC brought two energy-related enforcement actions in 2025, while the DOJ brought one. The FTC also brought one chemicals-related enforcement action in 2025. As shown on the following page, this is in line with the typical level of enforcement actions brought in recent years.



Year	Energy-Related Enforcement Actions	Chemicals-Related Enforcement Actions
2016	3	2
2017	3	5
2018	4	5
2019	2	3
2020	3	1
2021	2	1
2022	3	1
2023	2	0
2024	3	0
2025	3	1

2025 saw the end of Biden-era investigations into U.S. petroleum exploration and production companies, a return to traditional enforcement principles under the second Trump administration, and fewer overall reported transactions. The Agencies were not dormant, however. The FTC filed an action to enjoin a transaction involving construction adhesive manufacturers, entered into consent orders requiring divestment of assets in transactions involving retail fuel and oil change outlets, imposed a record \$5.6 million civil penalty against certain crude oil producers for illegal premerger coordination, or “gun jumping,” and imposed a record \$4.5 million penalty for a violation of a prior notice provision in a consent order. The FTC also reopened and set aside merger-related consent orders entered in energy transactions going back several years. The DOJ entered into a consent decree requiring divestment of power plants in a merger of power generation companies.

FTC Sues to Block Acquisition of Construction Adhesives Manufacturer

The FTC filed an [w](#) on December 11, 2025, seeking to block chemicals and consumer goods manufacturer Henkel AG's ("Henkel") \$725 million acquisition of the Liquid Nails brand of construction adhesives from private equity firm American Industrial Partners. The FTC [asserted](#) that Henkel's Loctite brand and Liquid Nails are "the two biggest brands—by far—of construction adhesives sold at retailers like The Home Depot, Lowe's, and Ace Hardware." The FTC further alleged that Loctite and Liquid Nails have each "long viewed the other as its top competitor," and that the loss of direct competition would drive up the cost of building and maintaining homes. This enforcement action indicates that the FTC is focused on preserving competition in areas such as housing construction that have a direct connection to consumers' cost of living.

FTC Obtains Consent Order in Retail Fuel Acquisition

The first energy-related enforcement action brought by the FTC in 2025 was its [challenge](#) to convenience store operator Alimentation Couche-Tard Inc.'s ("ACT") \$1.57 billion acquisition of 270 retail fuel outlets from grocery store chain Giant Eagle, Inc. ("Giant Eagle"). The FTC alleged in its [complaint](#) that the acquisition would eliminate head-to-head competition for retail gasoline and diesel fuel in 35 local markets across Indiana, Ohio, and Pennsylvania. As with most retail fuel investigations, the FTC looked at "highly localized" (the FTC's words) geographic markets ranging from "a few blocks to a few miles" and ordered divestitures of certain outlets in problematic localities. The FTC separately alleged, as it often does in retail fuel investigations, that the transaction would increase the likelihood of coordinated effects between ACT and Giant

Eagle in these markets, pointing to the fact that ACT and Giant Eagle "routinely monitor[ed] each other's prices and used that information when setting their own prices" in the identified local markets.

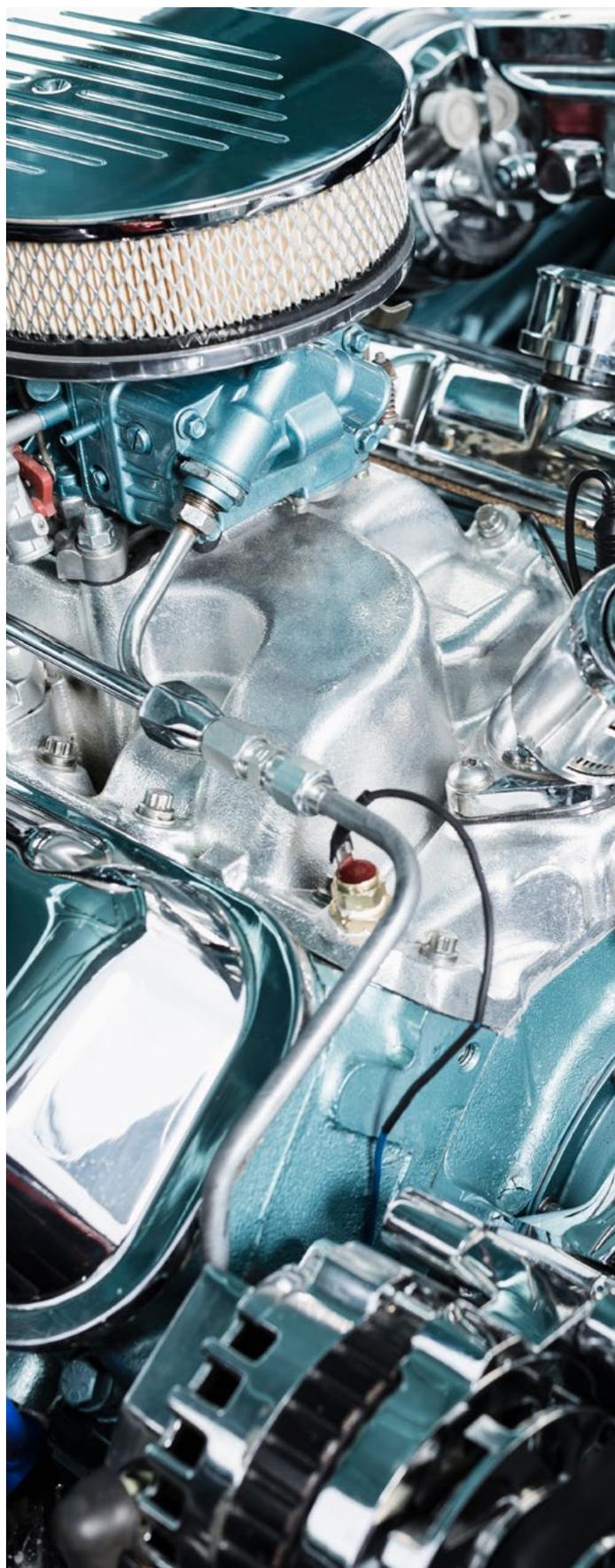
On June 26, 2025, the FTC announced a [proposed consent order](#), subsequently [approved](#) on November 19, 2025, that requires ACT to divest 35 retail fuel outlets, all of which will be acquired by Majors Management, LLC. The FTC allowed ACT to complete the divestitures no later than twenty days after the transaction closed, an unusual result given the FTC's historical preference for the parties to effectuate any remedies pre-closing. Another noteworthy aspect of the consent order is its inclusion of a prior notice provision. This provision requires ACT to provide advance written notification to the FTC before acquiring retail fuel outlets in specified locations for a period of ten years. The prior notice provision marks a significant departure from the FTC's 2021 [policy](#) of mandating prior approval provisions in consent orders. Prior approval provisions, which require the merging parties to obtain the FTC's affirmative approval before closing a subsequent transaction that affects a relevant market, are significantly more burdensome than prior notice provisions. In addition, obtaining prior approval does not follow a predictable timeline and can take up to several months. Although the FTC has not officially reversed its Biden-era policy on prior approval provisions, its willingness to accept a prior notice provision in the ACT consent order suggests a shift in approach.

Republican Commissioner Mark Meador issued a [statement](#) in support of the proposed consent order that may shed light on the current FTC leadership's views on divestiture remedies. Meador argued that "[t]he FTC should, in all but extremely rare cases, insist on clean divestitures of standalone business lines when negotiating merger remedy packages." Further, Meador directed merging parties to "propose straightforward, autonomous, and viable divestitures that do not require material post-divestiture [FTC] day-to-day oversight or intervention."

FTC Obtains Consent Order in Retail Quick Lube Oil Change Transaction

The FTC also brought an enforcement action challenging automotive services company Valvoline Inc.'s ("Valvoline") \$625 million acquisition of approximately 200 quick lube oil change outlets, operated under the name "Oil Changers," from private equity firm Greenbriar Equity Fund V, L.P. The FTC alleged in its [complaint](#) that the transaction would "substantially lessen competition for quick lube oil change services" in 25 local markets across eight states. First, the FTC defined a relevant service market for "quick lube oil change services" that excluded "other forms of oil changes" because quick lube services are faster, more convenient, offer fewer ancillary services, and command higher prices. Next, the FTC examined local geographic markets "within a three- to five-mile radius around each outlet," because customers "generally receive quick lube services within three to five miles of where they live, work, or regularly shop." The FTC alleged that the transaction would give Valvoline a "greater than 30%" market share and allow it to "unilaterally exercise market power" in each of the 25 identified local markets.

On November 14, 2025, the FTC announced a [proposed consent order](#) that requires Valvoline to divest 45 quick lube oil change outlets, all of which will be acquired by Main Street Auto, LLC. The FTC allowed Valvoline to complete the divestitures no later than ten days after the transaction closes, which again departs from the FTC's historical preference for parties to effectuate any remedies before closing. The proposed consent order also departs from the FTC's policy of requiring prior approval provisions by instead including a prior notice provision. This provision requires Valvoline to provide advance written notification to the FTC for a period of ten years before acquiring a quick lube oil change services outlet within five miles of a divested outlet. However, consistent with ACT/Giant Eagle, the proposed consent order does not require Valvoline to obtain the FTC's affirmative approval before closing a subsequent transaction.



DOJ Obtains Consent Decree in Power Generator Acquisition

The DOJ's sole energy-related enforcement action brought in 2025 challenged Constellation Energy Corporation, Inc.'s ("Constellation") \$26.6 billion acquisition of Calpine Corporation ("Calpine"), which will create the largest wholesale electricity generating company in the United States. Wholesale electricity is generated for utilities or retail electricity providers, who in turn resell the electricity to end customers. Both Constellation and Calpine sell wholesale electricity to two of the nation's largest electric grids: The Electric Reliability Council of Texas ("ERCOT"), which serves most of Texas, and PJM Interconnection LLC ("PJM"), which serves parts of the Midwest and Mid-Atlantic regions. The DOJ explained in its [complaint](#) that grid operators conduct "daily and intra-day auctions" among electricity generators, which set a single "market-clearing price" for all units of electricity offered by the generators. The DOJ alleged that the acquisition could allow the combined firm to profitably withhold electricity generation output from a lower-cost plant, thereby "forcing the grid operator to call on a higher-cost plant to set the market price," which would benefit "all other active plants in the market." The DOJ argued that a "successful withholding strategy could result in increased retail electricity prices paid by tens of millions" of end customers.

On December 5, 2025, the DOJ, together with the Attorney General of Texas, announced a [proposed final judgment](#), which represents the first consent decree that the DOJ has obtained in an electricity merger in fourteen years. The proposed consent decree requires Constellation to divest six power plants in Delaware, Pennsylvania, and Texas. Four of these plants service PJM, while the other two service ERCOT. This settlement marks a change from the DOJ's preference under the Biden administration for pursuing litigation to block mergers over securing structural remedies. Further, the proposed consent decree provides Constellation with 240 days after closing, plus two 30-day extensions at the DOJ's discretion, to complete the divestitures.

FTC Imposes Record Civil Penalty for Gun Jumping

One issue on which the Agencies remain focused is unlawful pre-merger coordination, commonly known as "gun jumping." The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") prohibits acquiring entities from exercising operational control over target companies or assets prior to the end of a mandatory waiting period, which provides the Agencies time to review transactions before closing. Although parties to a transaction may plan integration of the future business, the parties may not begin to actually integrate prior to closing.

On January 7, 2025, the FTC [announced](#) a record \$5.6 million civil penalty for gun jumping against crude oil producers XCL Resources Holdings, LLC ("XCL"), Verdun Oil Company II LLC ("Verdun"), and EP Energy LLC ("EP"). In July 2021, Verdun and XCL (which were then under common management) agreed to acquire EP in a \$1.4 billion transaction subject to premerger notification under the HSR Act. The transaction closed in 2022, after a months-long merger investigation culminating in an FTC consent order that required select divestitures.

Nearly three years after the transaction closed, the DOJ, at the request of the FTC, filed a [complaint](#) alleging that, between July 26, 2021 and October 27, 2021 (during the HSR waiting period and the FTC's initial investigation), EP unlawfully "transferred significant control over [its] ordinary-course business to XCL and Verdun." Specifically, Verdun and XCL ordered a stoppage to EP's well-drilling and development activities; sought to manage EP's customer contracts, relationships, and deliveries; and coordinated on prices. The FTC alleged that the parties "anticipated" that EP would have potential supply shortages during this period and agreed to allow XCL and Verdun to supply EP's customers. The gun jumping conduct allegedly ended when the parties executed an amendment to the purchase agreement which returned independent operational control to EP.

The FTC voted 4–0 to approve the \$5.6 million civil penalty in the final days of the Biden administration, with Commissioner Melissa Holyoak recused. Although control of the FTC has since changed, now-Chair Andrew N. Ferguson joined the prior Democratic FTC leadership in voting to approve the penalty.

FTC Imposes Record Civil Penalty for Prior Notice Violation

On December 8, 2025, the FTC [announced](#) a record \$4.5 million civil penalty against 7-Eleven, Inc. and its parent company, Seven & i Holdings Co., Ltd. (collectively, “7-Eleven”), for acquiring a retail fuel outlet without providing prior notice to the FTC as required by a [consent order](#) entered in 2018. This is not only the largest civil penalty ever imposed by the FTC for a prior notice violation but is also the largest negotiated settlement of any order violation in the history of the FTC’s Bureau of Competition.

The 2018 consent order addressed the FTC’s [antitrust claims](#) related to 7-Eleven’s \$3.3 billion acquisition of 1,100

retail fuel outlets from Sunoco LP (“Sunoco”). The consent order required 7-Eleven to divest 26 retail fuel outlets to Sunoco and required Sunoco to retain 33 outlets that 7-Eleven otherwise would have acquired. Further, the consent order required 7-Eleven to provide prior notice to the FTC before acquiring specified retail fuel outlets within ten years from the date of the order. On December 4, 2023, the FTC filed a [complaint](#) alleging that, in December 2018, 7-Eleven acquired a retail fuel outlet in St. Petersburg, Florida that was specifically listed in the consent order without providing prior notice to the FTC. The FTC also alleged that 7-Eleven made regular reports to the FTC falsely certifying that it was in compliance with the consent order. According to the FTC, 7-Eleven first notified the agency that it had acquired the St. Petersburg outlet over three years later, on March 25, 2022. In addition to imposing the \$4.5 million civil penalty, the FTC’s [stipulated final judgment](#) requires 7-Eleven to divest the St. Petersburg outlet.



FTC Modifies and Sets Aside Prior Consent Orders

Some of the FTC's highest profile activities in 2025 were the dismantling of merger settlement agreements entered under prior administrations, almost all of which relate to exploration and production deals. Settlements between the Agencies and merging parties are known as "consent orders" when issued by the FTC and "consent decrees" when issued by the DOJ. A party to such an agreement can later petition the issuing Agency to reopen and modify or set aside the consent order or decree. If the Agency grants the petition, the petitioner will be relieved from some or all of its obligations under the consent order or decree.

Some of the FTC's 2025 set-asides, including those related to Exxon and Chevron, reflect a return to more traditional theories of harm. Others, including those related to Enbridge and EnCap, evidence the FTC's willingness to consider changes in facts and circumstances.

Exxon / Pioneer

On July 17, 2025, the FTC [reopened and set aside](#) a [consent order](#) first announced on May 2, 2024 involving Exxon Mobil Corporation's ("Exxon") acquisition of Pioneer Natural Resources Company ("Pioneer"). The FTC, under the Biden administration, [alleged](#) that Pioneer founder and former CEO Scott Sheffield ("Mr. Sheffield") had attempted to coordinate output reductions among U.S. crude oil producers, the Organization of Petroleum Exporting Countries ("OPEC"), and a related group of other oil-producing countries known as OPEC+. Under the consent order, Exxon agreed to prohibit Mr. Sheffield from serving on its board of directors or in any other advisory capacity for Exxon to resolve the FTC's concerns over providing Mr. Sheffield a "larger platform" from which to pursue anticompetitive behavior. Republican Commissioners Ferguson and Holyoak [dissented](#) from the issuance of the consent order, arguing it was a novel and "troubling" use of the FTC's enforcement authority because it was focused on an individual's past conduct, not whether the transaction itself violated the antitrust laws.

In March 2025, following the change in FTC leadership, Mr. Sheffield petitioned the FTC to reopen and set aside the consent order. After initially [denying](#) the petition on procedural grounds, the FTC then reopened and set aside the consent order. In setting aside the consent order, the FTC found that the order lacked factual support, did not remedy any alleged violation of the antitrust laws, disregarded the Agencies' [Merger Guidelines](#), and was legally "indefensible." Setting aside this consent order suggests that current FTC leadership is resistant to novel merger remedies and instead favors stability and predictability in merger enforcement.

Chevron / Hess

On July 17, 2025, the FTC [reopened and set aside](#) a [consent order](#) first announced on September 30, 2024 involving Chevron Corporation's ("Chevron") acquisition of Hess Corporation ("Hess"). In 2024, the FTC [alleged](#) that Hess CEO John B. Hess ("Mr. Hess") had publicly and privately encouraged OPEC representatives to stabilize oil production and raise prices, and that appointment to Chevron's board of directors would "amplify" his support for OPEC and increase the risk of industry coordination. Chevron and Mr. Hess entered into a consent order with the FTC that prohibited Mr. Hess from serving on Chevron's board of directors or in any other advisory capacity to Chevron. Again, Commissioners [Ferguson](#) and [Holyoak](#) vigorously dissented.

In March 2025, Chevron and Hess [petitioned](#) the FTC to reopen and modify the consent order. The FTC granted the petition, reasoning that "a merger enforcement matter is not an opportunity to target individuals for their public and private statements" and that the consent order was "not based on any cognizable violation of the antitrust laws." This decision is in line with the FTC's setting aside of the Exxon / Pioneer consent order and is further evidence of the agency's renewed focus on traditional antitrust principles and predictability.



Enbridge / Spectra

On April 8, 2025, the FTC [reopened and set aside](#) a [consent order](#) entered in 2017 involving a merger between Enbridge Inc. (“Enbridge”) and Spectra Energy Corp. (“Spectra”), based on a willingness to consider changed facts and circumstances rather than rolling back novel legal theories. Through the merger with Spectra, Enbridge gained an indirect ownership interest in a natural gas pipeline that competed with a pipeline that Enbridge owns and operates. The consent order required Enbridge to establish firewalls to limit its access to non-public information about the competing pipeline and required board members of Spectra-affiliated companies to recuse themselves from any vote involving the pipeline. In granting Enbridge’s [petition](#) to reopen and set aside the consent order, the FTC explained that Enbridge had sold all of its interests in the competing pipeline, and therefore the remedial provisions of the consent order were no longer necessary to address competitive concerns. The FTC also noted that Enbridge would have continued to incur costs to comply with the consent order if not set aside.

EnCap / EP Energy

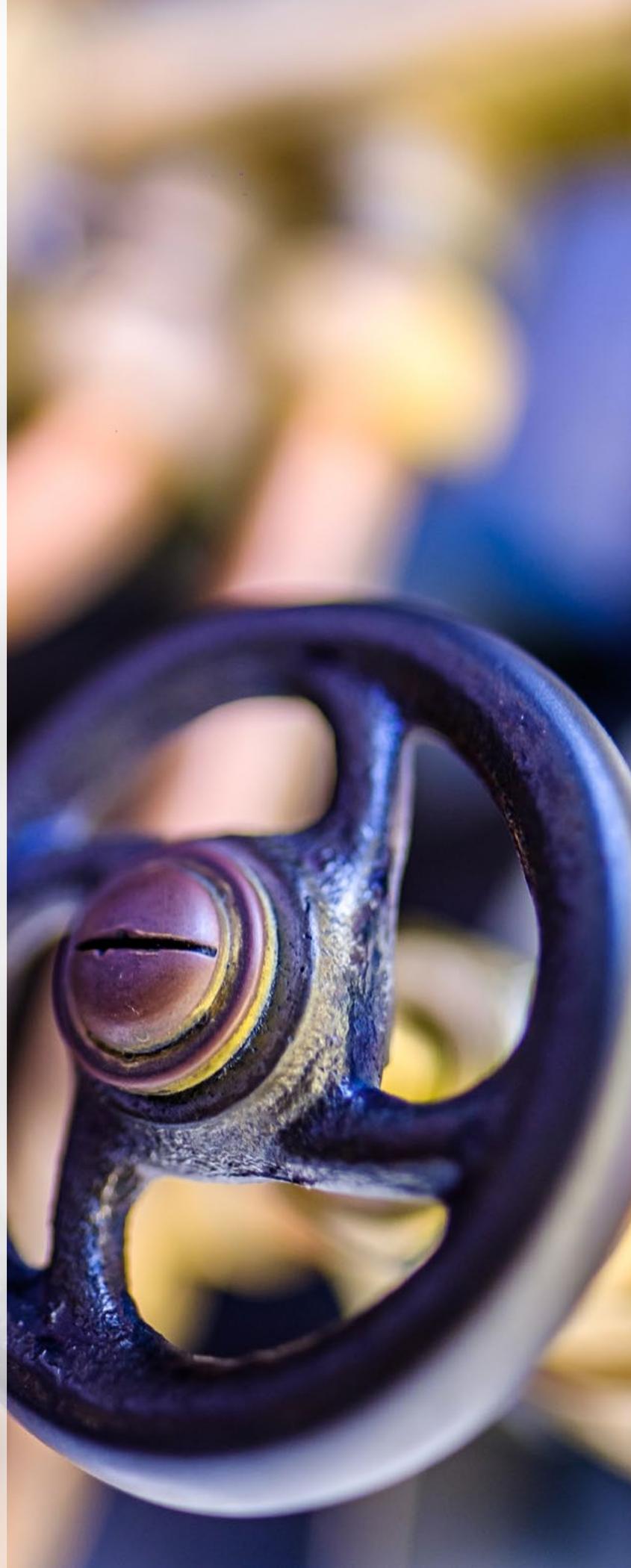
On July 7, 2025, the FTC [reopened and modified](#) a [consent order](#) entered in 2022 involving the acquisition of EP Energy LLC (“EP”) by a subsidiary of EnCap Energy Capital Fund XI, L.P. and EnCap Investments L.P. (“EnCap”). The consent order settled charges that the acquisition would harm competition for the sale of Uinta Basin waxy crude oil and required the divestiture of EP’s entire business and assets in the Uinta Basin. The consent order also required EnCap and certain subsidiaries to obtain prior approval from the FTC before engaging in acquisitions in the Uinta Basin. In granting the [petition](#), the FTC explained that EnCap had sold all its interests in the Uinta Basin and no longer competed in the market. The FTC vacated the prior approval requirement in favor of a less-burdensome prior notice requirement for any subsequent transaction involving oil- or gas-producing assets in the Uinta Basin. The FTC explained that prior notice “strikes an appropriate balance between the burdens of compliance and the need for the [FTC] to monitor [the petitioners’] acquisitions.”

Non-Merger Enforcement Developments

In 2025, non-merger antitrust enforcement blended continuity with recalibration. The Federal Trade Commission (“FTC”) abandoned its proposed nationwide non-compete ban but did not end all scrutiny of these provisions; the FTC signaled it plans to pursue case by case enforcement targeting overbroad employment restraints. In addition, the FTC and the Department of Justice (“DOJ”) issued joint guidance regarding labor market antitrust concerns, the FTC launched a Joint Labor Task Force to coordinate labor market enforcement efforts, and the DOJ obtained its first jury conviction in a wage fixing case.

The DOJ’s Procurement Collusion Strike Force secured new guilty pleas in bid rigging and market allocation matters. In addition, the DOJ issued policy updates expanding whistleblower incentives; refined its voluntary self disclosure policy; and refocused criminal enforcement on fraud affecting federal programs, defense spending, trade and customs compliance, and market manipulation.

Environmental, Social, and Governance (“ESG”) related coordination among investors and portfolio companies drew heightened scrutiny, with the DOJ and FTC supporting state attorneys general pursuing claims that common ownership and public climate commitments facilitated output coordination in coal markets.



FTC Abandons Non-Compete Rulemaking

A pivotal development for employers came when the FTC [abandoned](#) its efforts to implement a nationwide ban on non-compete agreements in September 2025. The now-abandoned rule was expansive in scope — reaching most employers and most worker categories, with limited exceptions — and would have required rescission notices and changes to employment agreements on a nationwide basis. Its demise relieved companies of substantial implementation burdens and litigation risk but did not end federal scrutiny of restrictive employment practices. To the contrary, the FTC emphasized that it would pursue a case-by-case approach.

Consistent with that claim, the day before it acceded to vacatur, the FTC filed an [enforcement action](#) against Gateway Services, Inc. (“Gateway”), [alleging](#) that the company’s blanket, one-year, nationwide non-competes for nearly all employees were an unfair method of competition. Under a [proposed consent order](#), Gateway would cease entering into, maintaining, or enforcing most employee non-competes, notify workers they are no longer bound by them, and limit customer non-solicitation to accounts with which an employee had direct contact in the prior 12 months, with narrow exceptions. In December the FTC similarly ordered a building services contractor to cease its enforcement of no-hire agreements that restricted building owners and management companies in New Jersey and New York City from hiring its workers without a significant penalty.

Also, on September 4, 2025, the FTC issued a [Request for Information](#) on employer non-competes to inform future enforcement, and on September 10, 2025, the agency sent [warning letters](#) to large healthcare employers and staffing firms. The FTC also announced a [public workshop](#) for October 8, 2025, intended to “highlight the negative impact of noncompete agreements on American workers and put business on notice of its enforcement priorities.” Together, these actions confirm that, notwithstanding the end of the rulemaking, the agency will seek to challenge specific overbroad non-competes.

Other Labor Market Enforcement Developments

In January 2025, the agencies issued joint [“Antitrust Guidelines for Business Activities Affecting Workers”](#) (the “Guidelines”). The guidance consolidates principles around information exchanges, wage discussions, benchmarking, restrictive covenants, and no-poach arrangements. New to the Guidelines, the agencies make explicit that the antitrust laws apply to agreements with independent contractors, including platform or “gig” arrangements that match workers to consumers.

In February 2025, the FTC launched a [Joint Labor Task Force](#) to coordinate cross-bureau enforcement against unfair methods of competition affecting workers. The FTC identified specific enforcement targets, including no-poach, non-solicitation, and no-hire agreements, wage-fixing, noncompete agreements, and potential collusion on DEI (diversity, equity, and inclusion) metrics.

In April 2025, the DOJ secured its first [jury conviction](#) in a wage-fixing case, reflecting momentum in criminal labor market enforcement after [less successful results](#) in prior years. A federal jury convicted a former executive of participating in a conspiracy to fix the wages of home health care nurses. The executive was sentenced to 40 months incarceration, and ordered to pay over \$13 million in criminal fines, restitution, and forfeiture. For energy and chemicals firms — where contractors and staffing vendors may span multiple competing sites — policies governing hiring, poaching, contractor rate-setting, and information exchanges may warrant renewed attention.

DOJ White Collar Updates

In May 2025, the DOJ [issued](#) a series of significant policy changes outlining the Trump administration's new approach to white-collar enforcement. These changes indicate that the administration is prioritizing select areas that constitute a "significant threat to U.S. interests," such as fraud affecting federal programs, defense spending, trade and customs compliance, and market manipulation. For example, the DOJ significantly expanded the Whistleblower Awards Pilot Program to offer greater incentives for reporting about priority subject areas, including anti-money laundering, fraud, corruption, federal contracting violations, trade, tariff, and customs fraud.

The DOJ also updated its longstanding Corporate Enforcement and Voluntary Self-Disclosure Policy, promising declinations or significant fine reductions for timely disclosure, cooperation, and remediation — while signaling caps on resolution terms and limiting monitorships. These updates could change the calculus for companies considering self-reporting potential violations to the DOJ.

In March 2025, the DOJ's Procurement Collusion Strike Force [secured a guilty plea](#) from the owner of a fuel truck supply company for his role in bid rigging, allocating territories, and committing wire fraud over an eight-year period in connection with providing fuel trucks that assist the U.S. Forest Service's efforts to battle wildfires in Idaho and the Mountain West.

Also in March, the DOJ [announced](#) that eight defendants had pleaded guilty to charges related to their participation in "a long-running and violent conspiracy" to monopolize the transgrante forwarding agency industry. These U.S.-based intermediaries help "transgrantes" — individuals transporting used vehicles and other goods from the United States through Mexico for resale in Central America — complete required export/customs paperwork. The defendants [allegedly](#) created a centralized entity known as a "Pool" to collect and divide revenues, fixed prices, and used threats and violence to enforce compliance. While this case sits outside core energy and chemicals markets, it underscores DOJ's renewed use of criminal Section 2 charges and the continued focus on procurement, logistics, and cross border trade intermediaries that often intersect with energy supply chains.

One significant development that could complicate DOJ's efforts to prosecute price-fixing and bid-rigging offenses is the Fourth Circuit's opinion in *United States v. Brewbaker*, 87 F.4th 563 (4th Cir. 2023). In this case, the Fourth Circuit rejected the application of the per se rule to the indictment's alleged "hybrid" arrangement — one with both horizontal and vertical elements — and concluded the restraint should be analyzed under the rule of reason. On November 12, 2024, the Supreme Court denied DOJ's petition for certiorari, letting the Fourth Circuit's decision stand.

The denial of certiorari leaves *Brewbaker* as controlling precedent in the Fourth Circuit and calls into question whether DOJ will be able to prosecute criminal antitrust violations in situations where competing defendants also have vertical supplier and customer relationships. Defendants in future prosecutions may attempt to raise *Brewbaker* to require a court to examine the full extent of their business dealings. For the moment, DOJ has not indicated that it intends to depart from its policy of only prosecuting per se unlawful conduct. However, this does not preclude companies and individuals from facing civil liability in actions analyzed under the rule of reason.

ESG-Related Updates

ESG commitments and investor activism drew significant antitrust scrutiny in 2025, including in energy markets. On May 22, 2025, the FTC and DOJ filed a statement of interest in *State of Texas*, Case No. 6:24-cv-00437 (E.D. Tex.), supporting conservative state attorneys general in a suit against three leading asset managers. In the 2024-filed suit, the attorneys general allege that asset managers used their equity holdings in coal companies for environmental purposes, purportedly causing those companies to suppress coal production. The states also assert a novel claim under Clayton Act Section 7, which prohibits stock or asset acquisitions that substantially lessen competition. Plaintiffs' Section 7 claim is premised on an untested "horizontal shareholding" theory, positing that the asset managers' collective ownership of coal producers would dampen competition among those coal producers.

In their statement of interest, the FTC and DOJ take the position that whether or not defendants' conduct furthered climate objectives is irrelevant to any valid defense under the

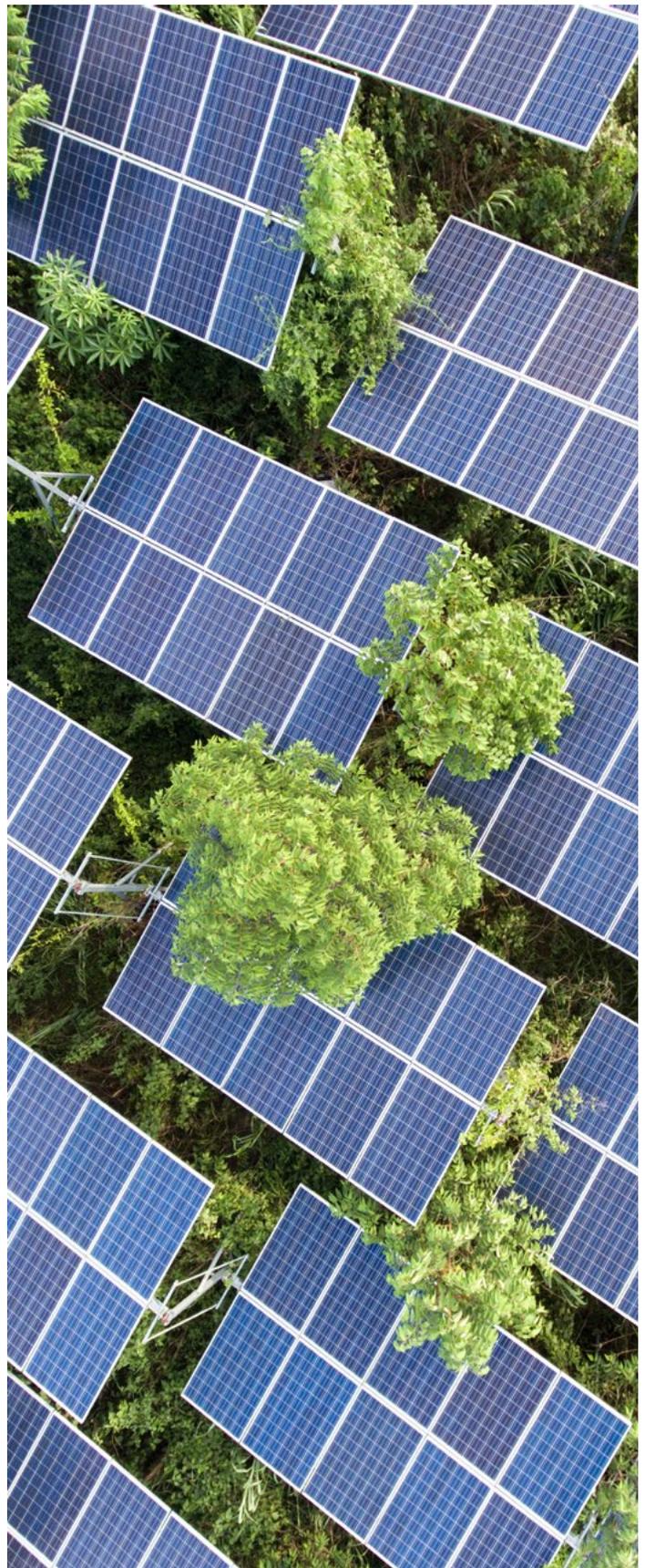
antitrust laws. They argue that the states properly pleaded a claim under Section 7 of the Clayton Act, because (1) the Clayton Act's passive investor exception does not prohibit courts from examining the anticompetitive conduct of ostensibly passive, minority investors; and (2) a plaintiff may plead a Section 7 claim by showing that horizontal shareholdings purchased solely for investment were in fact affirmatively used to cause a substantial lessening of competition in a relevant market. FTC and DOJ also argue that the states have pleaded concerted action establishing an agreement under Section 1 of the Sherman Act. In particular, they highlight plaintiffs' allegations that the institutional investors agreed to a common strategy for influencing corporate behavior in the energy industry, and that defendants' agreement was memorialized in public commitments to join various climate-change initiatives.

On August 1, 2025, the federal district court [denied](#) defendants' motion to dismiss — ruling in favor of the states and the DOJ and FTC. This and similar cases may portend greater scrutiny of investor influence on output, capital allocation, and pricing strategies and heightened sensitivity to benchmarking or information-sharing among investors and portfolio firms.

Targeting Anticompetitive Regulations

Both antitrust agencies launched initiatives targeting regulations perceived to impede competition. In March 2025, the Antitrust Division announced an [Anticompetitive Regulations Task Force](#) to recommend rollbacks to what it views as anticompetitive state and federal laws and regulations that undermine free market competition. The task force is focused on industries that most directly impact American households, including energy and transportation markets.

Similar to the DOJ, in September 2025, FTC Chairman Ferguson [submitted recommendations](#) for the removal of regulations across the federal government that “create anticompetitive barriers to the free American economy.” For example, he identified Department of Transportation regulations that preference “socially and economically disadvantaged individuals” when considering highway, transit, and aviation/airport projects.



State & Private Litigation

Over the last several years, the antitrust plaintiffs' bar has focused intensely on pricing services as a potential source of antitrust liability, whether those services are informational (e.g., industry publications and posted-price systems) or advisory (e.g., consulting services and algorithmic pricing tools). Naturally, the energy and chemicals industries, being among the world's most data-intensive and carefully studied industries, could hardly avoid the attention of plaintiffs' lawyers seeking out new price coordination claims. Some of the cases plaintiffs have brought challenge tools the industry has long relied on to plan operations and set competitive strategies. As these long-life-cycle cases proceed, the question for the industry is whether courts will lower the threshold for putting cases to trial in the age of analytics, based on some theory that more granular and real-time pricing data necessarily makes an industry more prone to collusion. The results thus far are sometimes encouraging and sometimes cautionary, as courts work to assess whether new informational systems are different in kind from those under which traditional antitrust doctrines developed, or merely updated versions of well-understood and long-accepted tools.



OIL & GAS

Supreme Court declines to take up claims shale producers lobbied White House

D'Augusta v. American Petroleum Institute, 117 F.4th 1094 (9th Cir. 2024), cert. denied, 145 S.Ct. 1478 (2025)

On March 31, 2025, the Supreme Court denied certiorari to review the Ninth Circuit's decision dismissing claims that independent shale oil producers coordinated with the White House to limit shale oil production and stabilize prices in 2020. The Court did not issue an opinion on the petition, from which Justice Samuel Alito recused himself.

The plaintiffs consumers sought review of a September 2024 decision by a Ninth Circuit panel, affirming the dismissal of claims that oil producers worked with the White House to restrict production during the 2020 Russia–Saudi Arabia price war. Plaintiffs alleged that independent oil and gas producers urged President Donald Trump to broker a deal with Russia and Saudi Arabia to end their price war in exchange for U.S. production cuts. Plaintiffs claimed President Trump brokered such a deal and that defendants agreed to reduce production as part of the arrangement. Defendants moved to dismiss, arguing that even if the lobbying allegations had been true, the First Amendment would afford them the right to lobby the government regarding the Russia–Saudi Arabia price war, insulating any coordinated lobbying from antitrust liability under the Noerr-Pennington doctrine. The district court agreed and dismissed the case.

The Ninth Circuit held that it lacked subject-matter jurisdiction to second-guess the President's foreign policy decisions, explaining that such judgments are committed to the Executive and present nonjusticiable political questions. The Ninth Circuit also rejected plaintiffs' fallback argument that defendants privately conspired to restrict supply apart from any governmental conduct, holding that plaintiffs had, at best, alleged parallel conduct among defendants. The court concluded that such allegations were too bare to plausibly allege a Section 1 violation.

Seventh Circuit vacates class certification in long-running natural gas market manipulation case

Arandell Corp. v. Xcel Energy Inc., 149 F.4th 883 (7th Cir. 2025)

In August 2025, the U.S. Court of Appeals for the Seventh Circuit vacated and remanded a class certification order in an antitrust action brought by industrial and commercial purchasers of natural gas in Wisconsin. The purchasers allege that, in the early 2000s, the defendant natural gas traders conspired to manipulate published price indices used in purchase contracts, on which buyers routinely relied in making purchasing decisions. Specifically, the plaintiffs claim that the defendants engaged in “churning” (making offsetting purchases and sales of gas during the same trading periods) and “wash trades” (trading between the same parties without economic risk or net changes in beneficial ownership) and submitted these illusory trades to benchmark publishers, thereby inflating both index-informed and negotiated fixed-price contracts across the country.

After nearly 20 years of litigation, the courts are still considering the threshold issue of class certification. Class certification was initially denied in multidistrict litigation proceedings in the District of Nevada in 2017, in a ruling subsequently vacated by the Ninth Circuit in 2018. After remand, the case returned to the Western District of Wisconsin, and in 2022, the district court certified a class of Wisconsin purchasers. The defendants appealed the certification.

The Seventh Circuit held that the district court erred by certifying a class without resolving discrepancies in expert testimony about whether common issues predominated over individual ones, specifically as to the existence of a national natural gas market and whether antitrust impact could be established on a class-wide basis. The appellate court reasoned that when an expert's testimony determines

whether individual questions predominate over common questions, the district court must determine the “realism” of the expert’s evidence before certifying a class. Although the Seventh Circuit left the predominance question to the district court on remand, the panel offered “guidelines and guardrails” to aid the district court’s inquiry. The appeals court reminded the parties and the district court that predominance depends upon the “existence of a national market” for natural gas and indicated that making the extensive findings necessary on the national market impact question will likely be time-consuming. But the appeals court expressed skepticism about the defendants’ arguments that occasional declines in gas prices disprove the existence of a national market or a conspiracy; that plaintiffs must show uniformity of antitrust impact in terms of damages and timing; that plaintiffs must demonstrate harm and impact as to each plaintiff and purchase prior to certification; and that non-defendant co-conspirators’ transactions are a barrier to predominance, rather than simply serving as evidence affecting the magnitude of impact and damages.



Puerto Rico municipalities’ climate impact claims dismissed as time-barred

Municipality of Bayamon v. Exxon Mobil Corp., No. CV 22-1550 (SCC) (D.P.R. Sept. 11, 2025)

In September 2025, the U.S. District Court for the District of Puerto Rico dismissed claims that oil companies’ marketing tactics led to climate impacts and worsened natural disasters, finding that the antitrust claims in the suit were barred by limitations.

In 2022, Puerto Rico municipalities, suing on behalf of a proposed class of all 78 municipalities in the territory, alleged that oil companies including Exxon Mobil, Shell, Chevron, and BP misrepresented environmental and climate risks posed by their carbon-based and fossil-fuel products, and colluded with other fossil fuel companies to create “denial marketing campaigns.” Plaintiffs alleged that defendants’ conduct led to or worsened Hurricanes Maria and Irma in 2017, which resulted in damage throughout Puerto Rico including an island-wide loss of electricity. Plaintiffs further alleged that defendants engaged in a coordinated effort to increase fossil fuel production, fix prices, and create doubt about the role of fossil fuels in causing climate change, purportedly preventing potential competition from renewable energy companies. Plaintiffs asserted 14 causes of action, including consumer fraud, misleading practices and advertisements, RICO violations, and antitrust violations.

Departing in part from a magistrate judge’s February report and recommendation, the district court found plaintiffs failed to bring their action within the four-year statute of limitations for RICO and antitrust claims, and the one-year statute for Puerto Rico state law claims. Given that plaintiffs suffered their injuries during the September 2017 hurricanes, the statutes of limitations for all claims expired by September 2021. The district court disagreed with plaintiffs’ continuous-injury and fraudulent-concealment arguments. The court found that there was no continuous injury because the alleged wrongful racketeering activity preceded the 2017 storms at issue, and that plaintiffs had not pleaded fraudulent concealment with particularity as required by Rule 9(b). The court also found that, even if there were fraudulent conduct, the tolling exception would not apply because by 2021 plaintiffs should have been on notice of potential claims based on other pending lawsuits and published environmental studies. The district court also dismissed certain parties for insufficient service and lack of personal jurisdiction.

The district court found that further amendment of the pleadings would be futile and thus dismissed the claims with prejudice for the parties within its jurisdiction and dismissed the rest as moot or without prejudice. Plaintiffs filed a notice of appeal on October 7, 2025.

Class certified to pursue market manipulation claims over 2020 “negative oil price” crisis

Mish International Monetary Inc. v. Vega Capital London Ltd. et al., No. 1:20-cv-04577 (N.D. Ill. June 24, 2025)

On June 24, 2025, the U.S. District Court for the Northern District of Illinois certified a class of futures traders to pursue claims Vega Capital London Ltd. and affiliated traders caused a historic oil crash by executing a price-manipulation scheme to drive down the prices of May 2020 NYMEX contracts.

The certified class comprises all persons and entities that sold a May 2020 light sweet crude oil futures contract on the New York Mercantile Exchange between 9:00 a.m. and 1:30 p.m. Central Time on April 20, 2020, to liquidate a “long” position. Plaintiffs allege that defendants engaged in concerted trading activity to artificially depress prices and injure traders who liquidated long positions during the class period, purportedly violating Section 1 of the Sherman Act and the Commodity Exchange Act.

The court found the plaintiffs’ proposed methodologies to show impact and damages on a class-wide basis were sufficiently cohesive to satisfy Rule 23(b)(3). Although some class members’ claims could be pursued individually, the court found that a class action was still a superior device to resolve the claims for efficiency’s sake. While some factual differences in class members’ specific transactions might affect potential recovery, the court concluded those differences would not preclude class certification.

Defendants argued that the class representative was inadequate because he would “lack the incentive to vigorously litigate the circumstances of the last six minutes of the class period.” Defendants argued that 97 percent of total May contract sales losses were on trades in the last six minutes of the class period, and liability for those losses depended on plaintiffs’ expert’s “flash crash” opinion establishing “price artificiality” for sales occurring between 1:24 and 1:30 p.m. that day—a theory that the proposed representative would need to rely on, not having made sales during those crucial six minutes. But the court held that any potential conflict between the representative and the class is not yet concrete and does not bar certification. The court also rejected arguments that the class representative lacked knowledge of the alleged manipulation and that portions of the class were subject to arbitration.

The case is now proceeding to class notice and merits discovery.

Shale producers seek dismissal of OPEC cooperation claims

In Re Shale Oil Antitrust Litigation, 1:24-md-03119-MLG-LF (D.N.M.)

In February 2025, U.S. shale oil producers jointly moved to dismiss claims that they had conspired with the Organization of Petroleum Exporting Countries (“OPEC”) and the 10 additional oil producing nations comprising OPEC+ to restrict shale oil production and artificially inflate prices of crude oil products.

The joint motion to dismiss, responding to a consolidated complaint filed by plaintiffs in January, argued lack of subject matter jurisdiction, failure to state a claim, and lack of standing. Defendants argued that an alleged conspiracy involving the conduct of OPEC and OPEC+ nations would present a non-justiciable political question that is an issue of foreign policy better suited for the legislative and executive branches to resolve. Defendants further argued plaintiffs alleged no direct evidence of a conspiracy and failed to allege either parallel conduct or plus factors indicative of a conspiracy among producers. Defendants argued that plaintiffs’ complaint demonstrated widely divergent behaviors in defendants’ shale oil production during the period at issue, including significant production increases by some defendants. Defendants also filed separate individual motions presenting additional grounds for dismissal.

Plaintiffs opposed the motions to dismiss in April, contending their claims focus solely on the agreements and conduct of U.S. shale oil producers, not the conduct of OPEC or OPEC+ nations, and can be resolved by the courts. Plaintiffs argue public statements concerning output plans support their conspiracy claims, and contended that even if Defendants did not make precisely parallel production cuts, the court could still infer Defendants throttled their post-COVID growth to delay production returning to pre-COVID levels.

The court heard oral argument on the motions in May. As of this writing, the court’s decision remains pending.

Power

Sixth Circuit holds Michigan’s in-state electricity procurement mandate violates Dormant Commerce Clause

***Energy Michigan, Inc. v. Michigan Public Service Commission*, 126 F.4th 476 (6th Cir. 2025)**

On January 16, 2025, the U.S. Court of Appeals for the Sixth Circuit held that Michigan’s Individual Local Clearing Requirement (“ILCR”) is facially discriminatory under the Dormant Commerce Clause because it favors in-state over out-of-state capacity resources, thereby triggering strict scrutiny and requiring the state to prove that no non-discriminatory alternatives could achieve its goals as effectively.

Michigan’s ILCR obligates all entities that provide electricity to end users (known as Load Serving Entities, or LSEs) within MISO Zone 7 (the Midcontinent Independent System Operator zone covering the lower peninsula of Michigan) to gradually increase the amount of its electrical capacity generated locally in the zone and guarantee that capacity for four years. Effectively, the ILCR requires LSEs operating in MISO Zone 7 to procure some amount of its total capacity from Michigan’s lower peninsula. Plaintiff-Appellees Energy Michigan and the Association of Businesses Advocating Tariff Equity challenged a district court finding that the ILCR did not violate the Dormant Commerce Clause.

The Sixth Circuit reversed and remanded the district court’s decision, holding the ILCR facially discriminatory because compliance turns on the geographic location of capacity—favoring in-zone (effectively, in-state) resources over out-of-state capacity—which therefore triggers strict scrutiny. The Sixth Circuit rejected the argument that the Federal Power Act (“FPA”) authorizes or immunizes such discrimination, concluding the FPA’s reservation of state authority over local generation does not clearly and unambiguously permit discriminatory measures. The court held that, on remand, defendants bear the burden of showing that “the ILCR is superior in achieving its goals relative to all other alternatives that do not expressly discriminate based on geography.”

The court analogized to cases like *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978), and *Wyoming v. Oklahoma*, 502 U.S. 437 (1992), emphasizing that laws reserving market segments for local resources are per se suspect regardless of asserted reliability goals. The court disagreed with contentions that Supreme Court precedent

establishes a broad public-utility exception for discriminatory rules governing wholesale capacity procurement. On strict scrutiny, the court faulted the district court for treating “equitable” local procurement as a legitimate interest and for misallocating the burden of proof on superiority to plaintiffs.

Judge Danny Boggs dissented, arguing utilities and alternative electric suppliers are not similarly situated given the captive residential market, utilities’ obligation to serve, and Zone 7’s engineering constraints. He viewed the zone boundaries as technically driven rules that support grid reliability in a vital, largely captive market, rather than the sort of protectionism addressed in prior cases.

On remand, the district court ordered additional, non-expert factual development directed to whether “the ILCR is superior in achieving its goals relative to all other alternatives that do not expressly discriminate based on geography.” Subsequently, the district court set a new trial date in January 2026.

Biomass power generators’ monopolization claim strikes out

***Hu Honua Bioenergy, LLC v. Hawaiian Elec. Indus., Inc.*, Civ. No. 16-00634-JMS-KJM (D. Haw. Apr. 17, 2025)**

In April 2025, the U.S. District Court for the District of Hawaii once again dismissed a Hawaiian generator’s claims that it was excluded from the local power market by a public utility seeking to establish and maintain a monopoly.

Since 2016, Hu Honua Bioenergy, LLC has attempted and failed multiple times to argue that the Hawaiian Electric Company, Inc. (“HELCO”), the sole public utility on the Big Island of Hawai’i, used various means to exclude it from the local power. The district court found that Hu Honua had failed once more to plausibly allege an antitrust injury in its third amended complaint. It dismissed Hu Honua’s federal claims with prejudice and dismissed its state claims without prejudice after declining to exercise supplemental jurisdiction.

Hu Honua’s original theory of the case centered on HELCO’s decision to terminate a 2012 power purchase agreement (“PPA”) between the two companies, which concerned the generation and sale of electricity from a planned biomass power plant. HELCO said it made its decision based on development delays, but Hu Honua alleged the delays were pretext, and that HELCO had instead terminated the agreement because it wished to

supply itself with electricity from a plant it planned to acquire in Hamakua.

The court first dismissed these claims in 2018 for two main reasons. First, the court found Hu Honua’s plant was a Qualifying Facility under the federal Public Utility Regulatory Policies Act and therefore did not “compete” or suffer anticompetitive injuries under the law. Second, the court held the alleged anticompetitive behavior occurred in a market heavily regulated by the Hawaii Public Utility Commission and Hu Honua had not alleged facts suggesting a claim that would overcome the antitrust laws’ tolerance for natural and regulated monopolies.

Around the same time Hu Honua’s first round of antitrust claims were dismissed, the company entered a second PPA with HELCO, which the PUC rejected for environmental reasons. The two companies appealed the PUC decision to the Supreme Court of Hawai’i, and the court affirmed it in 2023, leaving Hu Honua once again without market access.

Later that year, Hu Honua sought leave to amend its complaint against HELCO to refocus its antitrust claims on HELCO’s acquisition of the Hamakua plant and a purported effort by HELCO to “frustrate” the two companies’ challenge to the PUC decision. A magistrate judge found Hu Honua’s new theory of antitrust injury speculative and implausible and denied its request. In 2024, the district federal court affirmed.

Hu Honua eventually filed its third amended complaint—but the court found it was “functionally identical” to the one dismissed in 2018, despite Hu Honua’s insistence that it had added “extensive supporting facts” about antitrust harms. These, the court said, did nothing to overcome the speculative nature of their allegations, “because of the highly regulated nature of the market for power on the Big Island.”

Employees allege nuclear power generators’ information sharing depresses wages and benefits

***Dorrell v. Constellation Energy Corp.*, No. 1:25-cv-2251 (D. Md.)**

In July 2025, three former nuclear power plant employees filed a putative class action in the U.S. District Court for the District of Maryland alleging that U.S. nuclear-power operators engaged in a two-decade-long conspiracy to fix and suppress wages for employees at commercial nuclear facilities. The original complaint, naming as defendants 26

operators and two consulting firms, asserted an agreement to fix compensation and an unlawful conspiracy to exchange information, both allegedly in violation of Sherman Act Section 1.

According to the complaint, defendants regularly exchanged nonpublic wage and benefits information, including the amount and timing of planned future wage increases, through several channels. These included a shared database of collective bargaining agreements, semiannual compensation reports posted to a password-protected website, in-person exchanges at annual conferences and industry meetings, and direct email and phone communications. Plaintiffs allege that this dissemination of future wage information enabled operators to stabilize and suppress compensation across the industry, pointing to parallel wage increases over the class period as evidence. Plaintiffs seek damages based on alleged wage suppression along with injunctive and declaratory relief.

After filing the initial complaint, plaintiffs voluntarily dismissed claims against one consulting firm and three operators. The remaining defendants moved to dismiss, contesting the plausibility of the alleged conspiracy and arguing that plaintiffs’ claims are time-barred, as well as asserting individualized defenses such as sovereign immunity, lack of personal jurisdiction, and bankruptcy discharge.

Instead of responding to the motions, plaintiffs filed an amended complaint on November 5, 2025, expanding the factual allegations and adding several operator affiliates of the original defendants. The amendment moots the pending motions to dismiss. As of this writing, a new briefing schedule had not been set.



Refined Products

Alleged ethanol market manipulation was not predatory pricing, says Seventh Circuit

***United Wis. Grain Producers LLC v. Archer Daniels Midland Co.*, 144 F.4th 976 (7th Cir. 2025); *Green Plains Trade Grp., LLC v. Archer Daniels Midland Co.*, 90 F.4th 919 (7th Cir. 2024)**

In July 2025, the U.S. Court of Appeals for the Seventh Circuit affirmed the dismissal of an antitrust action brought by seven ethanol producers against Archer Daniels Midland Company (ADM), finding plaintiffs did not satisfy pleading standards for predatory pricing claims.

In the *United Wisconsin Grain Producers* case, plaintiffs alleged that ADM sold ethanol below cost at the Argo Terminal, a central hub whose transactions determine benchmark indexes. According to plaintiffs, these below-cost sales pushed down the benchmark prices used in their sales contracts. They further alleged that ADM held short positions in ethanol derivatives that increased in value as benchmark prices fell, enabling ADM to profit even as its competitors' revenues declined. Plaintiffs claimed this amounted to monopolization, attempted monopolization, and unlawful market manipulation under Section 2 of the Sherman Act and parallel state-law provisions. The district court dismissed the antitrust claims with prejudice, holding

that any challenge to below-cost pricing must satisfy the traditional predatory-pricing framework, which requires allegations of the exit of rivals, which plaintiffs did not allege.

On appeal, the Seventh Circuit affirmed on different grounds. The court found that plaintiffs failed to plead a different necessary element of predatory pricing: the ability to recoup losses through subsequent monopoly pricing. The court held that ADM's alleged gains from derivatives trading could not constitute "recoupment" because recoupment must come from charging consumers supra-competitive prices, not from gains generated through financial trading strategies. The court also found that plaintiffs waived their attempted-monopolization claim.

Lastly, the court rejected plaintiffs' standalone "market manipulation" claim, which alleged that ADM's index manipulation was a distinct form of monopolization apart from predatory pricing. The court held the theory failed for two reasons: (i) because precedent bars Section 2 liability based on generalized claims that a defendant's actions hurt the entire market, and (ii) because plaintiffs cannot challenge a single firm's below-cost prices outside the predatory-pricing framework.

At the same time, related allegations regarding ADM's conduct have proceeded under a different legal theory in *Green Plains Trade Group*. Green Plains, another large ethanol producer, alleges that the same conduct interfered with its ethanol sales contracts. Rather than pursuing antitrust claims, Green Plains initially brought a Commodity



Exchange Act (“CEA”) claim and, under Nebraska law, a tortious interference claim that relied on section 766A of the *Restatement (Second) of Torts*. The district court dismissed the CEA claim on the ground that traders of physical commodities lack a private right of action under the CEA. It also dismissed the tortious interference claim because (i) the complaint did not identify specific contracts that had been interfered with, and (ii) the court, sitting in diversity, concluded it would not be the first court to recognize a section 766A claim under Nebraska law absent explicit guidance from the Nebraska Supreme Court.

Green Plains appealed the dismissal of its tortious interference claim, and in January 2024, the Seventh Circuit vacated the dismissal. The panel agreed that the complaint failed to plead specific contracts but rejected the district court’s view of Nebraska law, concluding that Nebraska might recognize a section 766A tortious-interference theory. Because the district court denied amendment solely due to its section 766A ruling, the Seventh Circuit remanded to permit amendment on specificity and directed the court to reconsider its view of Nebraska law. On remand, Green Plains amended its complaint to identify specific contracts. In December 2024, the district court denied ADM’s renewed motion to dismiss, finding the amended allegations sufficiently specific, and certified the section 766A question to the Nebraska Supreme Court. The Nebraska Supreme Court accepted the certified question in March 2025 and heard oral argument on August 28, 2025. As of this writing, the Nebraska Supreme Court has not yet ruled. Discovery is proceeding in the meantime.



California consumers allege carbon-credit compliance costs used to fix gasoline prices

***Herold v. Chevron Corp.*, No. 3:25-cv-10282 (N.D. Cal.)**

In November 2025, a group of California consumers filed a putative class action alleging California refiners’ coordinated their reporting to regulators on the cost of complying with California environmental regulations and boosted gasoline prices in early 2025.

The suit springs from California’s Low Carbon Fuel Standard (“LCFS”) program, a system that sets targets for carbon intensity and rewards low-carbon fuel producers with credits transferable to higher-carbon fuel producers. California requires refiners to report to regulators on the cost of complying with the LCFS program, and plaintiffs allege that when the California Air Resources Board (“CARB”) adopted new, lower targets for 2025, California refiners’ reports reflected higher compliance costs associated with the stricter limits, followed by higher gasoline prices at the pump. Plaintiffs contend, however, that refiners ought not to have suffered higher costs until mid-2025, because CARB’s proposed regulations—having been held up at the Office of Administrative Law—did not go into effect until July 1. Plaintiffs assert any reported increase in compliance costs must therefore have been part of a coordinated effort to artificially raise prices. Responses to the suit are not yet due at this writing.

Chemicals

Concrete additives manufacturers turn back price-fixing claims

In re Concrete and Cement Additives Antitrust Litigation, 1:24-md-03097 (S.D.N.Y. June 25, 2025)

On June 25, 2025, the U.S. District Court for the Southern District of New York dismissed claims that chemicals manufacturers fixed prices of additives used in concrete and cement products but allowed plaintiffs a chance to amend their complaint.

Plaintiffs, seeking to represent nationwide classes of direct and indirect purchasers of concrete and cement additives (CCA), filed suit in 2023 against affiliates of Sika, Saint-Gobain, Cinven, BASF, RPM, and Mapei. The cases were consolidated for pretrial purposes in New York in April 2024. Plaintiffs alleged the manufacturers engaged in a series of unusual price increases beginning January 1, 2017, purportedly coordinated among them in violation of Sherman Act Section 1, state antitrust law, and other laws.

The court found insufficient plaintiffs' allegations of parallel conduct, concluding plaintiffs alleged no plausible pattern among price increases that differed in "timing, amount, geography, and product line." The court noted that although plaintiffs claimed harm pertaining to a 100-month relevant period starting in 2017, plaintiffs identified only a 10-month window in which all six defendants raised prices. The court observed that even within that narrower 10-month period—still "a long time," said the court—plaintiffs "do nothing to establish how a price increase in the last month or two of that period has any relation to a price increase at the beginning of the period." The court also remarked that the manufacturers' price increases varied widely, ranging from 1.9 percent to 20 percent, and covered different products sold in different locations.

In addition to determining that parallel conduct had not been plausibly alleged, the court addressed and rejected the alleged "plus factors," or circumstantial indicia that any parallel conduct was coordinated. The court concluded that, although plaintiffs alleged that at least some of the manufacturers' input costs had fallen, the plaintiffs still failed to rule out the possibility that defendants' price increases were related to "overall" cost increases. The court also found insufficient plaintiffs' discussion of investigations into the industry by the U.S. Department of Justice and foreign authorities (including the United Kingdom, European Union,

and Turkey) because the investigations concerned overseas conduct or, as to the U.S. investigation, had not concluded or resulted in any probable cause determinations. In November 2025, after the court's ruling, the Justice Department closed its investigation.

In September, the direct and indirect purchaser plaintiffs filed an amended complaint that cut the relevant time period by four years. At the time of publication, motions practice on the amended complaint was not concluded.

Court trims suit challenging pesticide manufacturers' loyalty discounts

In re Crop Protection Products Loyalty Program Antitrust Litigation, MDL No. 3062 (M.D.N.C.)

In January 2025, the U.S. District Court for the Middle District of North Carolina dismissed farmers' indirect purchaser damages claims against pesticide manufacturers Syngenta Crop Protection AG and Corteva, Inc. but permitted a multi-district putative class action to proceed on state antitrust and consumer protection law claims.

Plaintiffs allege that defendants' marketing practices hindered competition and inflated pesticide prices by as much as 40 percent. Specifically, plaintiffs contend defendants agreed to not produce generic versions of each other's patented pesticide ingredients and operated "loyalty programs" that discouraged market entry by generic pesticide manufacturers. Under these programs, dealers received discounts based not on the volume of product they purchased, but rather, based on the proportion of their overall purchases they made from the defendants as opposed to other manufacturers. Dealers would receive discounts if they purchased at least 85 percent of their overall pesticide products from the defendants, allegedly limiting others to compete for only 15 percent of those dealers' business and forcing dealers to limit or avoid purchases from manufacturers of generic pesticides. Plaintiffs claim defendants' actions violated Sections 1 and 2 of the Sherman Act, Section 3 of the Clayton Act, and the antitrust laws of 38 states.

The court granted manufacturers' motion in part, dismissing antitrust damages claims under federal law and dismissing claims under nine states' consumer protection laws. The court reasoned that under the longstanding *Illinois Brick* doctrine, plaintiff farmers, who did not directly deal with or purchase from the defendant manufacturers, could not bring federal antitrust claims that properly belong to the



dealers who dealt with the manufacturers directly. The court also dismissed claims for violations of four states' consumer protection laws based on plaintiffs' failure to sufficiently allege deceptive acts or reliance. Defendants made similar, but ultimately unsuccessful, arguments against claims for violations of the laws of seven other states. Additionally, the court allowed several claims to survive despite defendants' arguments that that plaintiff failed to plead proximate causation, failed to plead sufficient intrastate conduct, and failed to comply with a notification requirement. Also surviving are claims alleging defendants violated 30 states' various laws, which defendants had requested the court dismiss for failure to allege in-jurisdiction purchases by named plaintiffs.

Discovery and class certification motions practice is proceeding.

Class certification denied for caustic soda buyers

***Miami Prods. & Chem. Co. v. Olin Corp.*, No. 1:19-CV-00385 EAW (W.D.N.Y. Dec. 16, 2024)**

On December 16, 2024, the U.S. District Court for the Western District of New York issued an order denying class certification to indirect purchasers of caustic soda alleging price-fixing by producers.

The dispute arises from allegations that several major U.S. producers of caustic soda, otherwise known as lye, conspired to fix prices from 2015 through 2019, causing both direct and indirect purchasers to pay supercompetitive prices. The indirect purchaser plaintiffs ("IPPs") assert

state-law antitrust and unjust enrichment claims, alleging that the defendant producers made parallel price-increase announcements that were not market-driven and resulted in widespread overcharges passed through to the IPPs.

The court held the proposed IPP class failed to meet the predominance requirement for class certification because the IPP's expert witness's economic models did not reliably account for the industry's complex, individualized contracting and, thus, could not demonstrate class-wide impact. The court was persuaded by evidence that caustic soda is primarily sold under contracts between producers and distributors employing varied pricing mechanisms, including fixed prices, index-based formulas, and market basket arrangements, with limited individualized negotiations and spot sales. The court reasoned that the diversity and complexity of contract pricing, individualized negotiations triggered by price-increase letters, and the absence of common proof that allegedly inflated prices were incorporated into governing price indices all suggested the necessity of impact evidence for individual class members. The court also questioned the accuracy of the IPP's expert's economic model, which was extrapolated from analysis of only three distributors among more than 155 in the caustic soda market, which the court concluded did not properly capture the market's supply chain complexity. The court previously denied the Direct Purchaser Plaintiffs' ("DPP") class certification in 2023 based upon similar arguments and reasoning.

In April 2025, the named plaintiff in the consolidated IPP action, Finch Paper LLC, voluntarily dismissed its action and withdrew from the case, leaving Tripp Plating Works, Inc. to serve as plaintiff. As of this writing, the named DPPs are moving forward on their individual claims.

Oil price publication settles with classes pursuing PVC pipe price-fixing claims

In re PVC Pipe Antitrust Litigation, Case No. 1:24-cv-07639 (N.D. Ill.)

In July 2025, the U.S. District Court for the Northern District of Illinois certified several settlement classes and granted preliminary approval of the plaintiffs' settlement agreements with Oil Price Information Service ("OPIS"), one of multiple defendants in a consolidated civil antitrust action alleging a price-fixing conspiracy involving plastic pipe made from polyvinyl chloride ("PVC"). The court certified three settlement classes, including one class of direct purchasers and two indirect purchaser classes. The agreements require OPIS to pay \$3 million to the direct purchaser class and \$3 million to the combined indirect purchaser classes and also to cooperate with ongoing litigation against the remaining defendants by, among other things, providing documents, attorney proffers, and employee depositions.

The action was originally filed in August 2024 by an electrical contractor on behalf of a class of individuals and entities who purchased PVC pipes from leading U.S. manufacturers (known in the industry as "converters") Atkore, Cantex, Diamond Plastics Corporation, IPEX USA, JM Eagle, National Pipe and Plastics, Otter Tail, Prime Conduit, Southern Pipe, and Westlake. Other direct and indirect purchaser suits followed. The plaintiffs allege that the converters conspired to fix, raise, and stabilize prices for municipal water and electrical conduit PVC pipes in violation of Section 1 of the Sherman Act and various state antitrust and consumer protection laws. Plaintiffs also alleged that OPIS's pricing and market analysis subscription service, *PVC & Pipe Weekly*, enabled converters to communicate price-fixing information with one another in furtherance of the alleged conspiracy.

In addition to the preliminary settlement agreements, the court has also granted the U.S. Department of Justice's motion to intervene and partially stay discovery. DOJ argued a federal grand jury in the Northern District of California is currently investigating the same alleged conduct, and broad civil discovery risked interfering with the criminal process.

Motion to dismiss briefing for the non-settling defendants is under way and will be completed in early 2026.

Midstream

Court dismisses suit challenging pipeline's refusal to connect to barge terminal

Ducere v. Enbridge (U.S.) Inc., No. 1:24-cv-01217 (N.D. Ill. Jan. 13, 2025)

In January 2025, the U.S. District Court for the Northern District of Illinois dismissed claims by Ducere, an energy infrastructure developer, that its competitor, Enbridge (U.S.) Inc., sought to monopolize the market for transportation of Canadian crude oil in Chicago.

Ducere's lawsuit concerned a deal it hoped to strike with Mustang Pipe Line LLC, a joint venture between subsidiaries of Enbridge and ExxonMobil. Ducere planned to build a facility south of Chicago that would draw Canadian crude oil from a Mustang pipeline and load it onto river barges to ship it south. Mustang originally showed interest in the venture but ultimately pulled out of negotiations. Ducere alleged Enbridge had vetoed the deal to protect its position in the market for Canadian crude oil transportation services in the Chicago area, where it allegedly owned 80 percent of pipeline capacity. Ducere contended this represented monopolization through an unlawful refusal to deal and a violation of the essential facilities doctrine. The court dismissed both claims, but only the first with prejudice.

The court dismissed Ducere's refusal to deal claim with prejudice based on two of three factors the Seventh Circuit articulated in *Viamedia, Incorporated v. Comcast Corporation*, 951 F.3d 429 (2020), distilling a landmark Supreme Court decision on refusals to deal, *Aspen Skiing Company v. Aspen Highlands Skiing Corporation*, 471 U.S. 585 (1985). First, because Ducere framed its terminal-and-barge proposal as a first-of-its-kind method to transport crude oil, it could not show that Enbridge had a prior, voluntary, and profitable course of dealing with Ducere, as the defendant in *Aspen Skiing* did. Second, Ducere could not show that Mustang had been willing to make similar deals in other, more competitive markets. Ducere argued Mustang made interconnection deals with other pipelines, but the court found that pipeline interconnections were fundamentally different from connections between pipelines and oil terminals.

The court also found Ducere failed to show that Mustang/Enbridge had monopoly control over an essential facility. The court concluded Ducere had not explained why

southern Midwest and Gulf Coast refineries were unable to substitute Canadian crude oil with non-Canadian oil, or oil transported through other means (e.g., competitor pipelines, rail, truck, etc.). But the court chose not to dismiss the essential-facility claim with prejudice, concluding that Ducere could theoretically allege additional facts in a new complaint. But the court warned that Ducere would need to address concerns over whether Enbridge could be held liable for Mustang's conduct, especially when Enbridge is not the sole owner of Mustang and when Ducere cannot advance a monopolization claim without the combination of Enbridge's market position and Mustang's actions. The court questioned whether a plaintiff could split the elements of its case between separate entities in this manner without conspiracy or alter ego allegations.

Ducere declined to submit a new complaint within the time allotted, and in April 2025, the court corrected its judgment to reflect the case was dismissed with prejudice.

Coal

States' case against asset managers over environmental groups' alleged impact on coal industry will continue

State of Texas, No. 6:24-CV-437 (E.D. Tex. Aug. 1, 2025)

On August 1, 2025, the U.S. District Court for the Eastern District of Texas denied in part motions to dismiss in an antitrust and consumer protection action filed by 13 Republican state attorneys general asserting that three large asset managers' participation in climate organizations affected coal output by publicly held coal producers. The court allowed claims alleging violations of Section 7 of the Clayton Act, Section 1 of the Sherman Act, and several parallel state antitrust and consumer protection laws to proceed but dismissed Louisiana Unfair Trade Practices Act ("LUTPA") and Nebraska Consumer Protection Act ("NCPA") claims.

In November 2024, state attorneys general from Alabama, Arkansas, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, Oklahoma, Texas, West Virginia, and Wyoming filed claims alleging that three institutional asset managers collectively held significant minority stakes across nine publicly traded coal producers and supposedly agreed to use those holdings—through actions such as climate initiative commitments, public stewardship statements, and proxy voting—to depress coal output and increase prices in the South Powder River Basin and thermal coal markets. Additionally, the plaintiffs brought claims that one of the asset managers violated state consumer protection laws by using investment funds to pursue an "Environmental, Social, and Governance (ESG)" agenda while advertising that those funds were not ESG-focused.

In his ruling on the motions to dismiss, Judge Jeremy Kernodle stated even if "Plaintiffs may ultimately be unable to prove that Defendants entered into an agreement to pressure the Coal Companies that led to anticompetitive effects in the relevant coal markets," motions to dismiss for failure to state a claim "are viewed with disfavor and are rarely granted." The court held that the States alleged a Clayton Act Section 7 claim because the defendants' combined holdings, initiative commitments, and other investor activity could plausibly "substantially lessen competition," and the statutory passive-investor safe harbor may not apply if stock were "used . . . by voting or otherwise" to bring about such effects. On the Sherman Act Section 1 claims, the court found that all three defendants' having joined certain climate initiatives and the allegation that they "shared [a] moral imperative to combat climate change" were sufficient to plausibly suggest a conspiracy to reduce coal output. The court also allowed a separate claim that asset managers pressured coal producers to disclose forward-looking output-related information to proceed as a Section 1 information-exchange claim.

Discovery is proceeding and trial is set for January 2028.

Overview of Antitrust Law and Enforcers

The antitrust laws exist to ensure that economic activity in the United States is characterized by a fair and open competitive process, including in the energy and chemical industries. Contrary to common misconceptions, antitrust law does not exist to guarantee that markets will see a certain level of competition, ensure the success of certain competitors, or reduce the size of large companies. Antitrust is about preserving the opportunity for competition; the rest is up to the market.



Merger Review Process

Over the past 40+ years, energy markets have featured two notable trends. First, the industry has undergone a major shift from traditional price regulation to competitive markets. Second, vast technological improvements have changed the competitive landscape, particularly for extraction and production. Up to and throughout the 1990s, the United States became increasingly dependent on foreign oil, whereas in the last decade, that trend has reversed and the United States has now become the largest oil producer in the world thanks to innovations and efficiencies in horizontal drilling and hydraulic fracturing. In 2019, U.S. total energy exports **exceeded imports** for the first time in 67 years. In 2024, the United States **exported** about 30 percent of its domestic primary energy **production**, a new record high. **Efficiency improvements** in natural gas and oil well drilling and production techniques and increases in natural gas production have contributed to generally declining U.S. natural gas prices and upticks in consumption by various sectors. U.S. natural gas exports **reached a record high** in 2024 and comprised about 26 percent of total U.S. energy exports. Each of these trends has affected the way that the U.S. antitrust agencies approach potential mergers and acquisitions in this industry.

Over the last decade, the chemical industry has undergone significant consolidation, a trend that is likely to continue in the future. This increased consolidation has led to greater scrutiny of, and more frequent challenges to, chemical mergers.

What Is Merger Review & Who Does It?

Antitrust enforcers scrutinize mergers and acquisitions to determine whether the market will remain competitive or whether the merger will allow the merged firm to exercise market power. Close scrutiny of a transaction by the antitrust agencies can add months of delay and uncertainty, as well as significant costs, to the transaction. U.S. merger review is a case-specific and fact-intensive inquiry that attempts to make predictions about how the market will behave if the proposed transaction is completed.

For mergers and acquisitions above certain annually adjusted **thresholds**, the merger review process begins when the merging parties file a notification of the transaction under the Hart-Scott-Rodino Antitrust Improvement Act (“HSR”) with the Federal Trade Commission (“FTC”) and U.S. Department of Justice (“DOJ”). The notification includes facts about the merger and the industry in which the merging parties operate. (For non-reportable transactions, the agencies can investigate either based on a complaint or on their own initiative.)

In December 2023, the DOJ and FTC jointly released revised Merger Guidelines (the “Guidelines”), which updated the factors and frameworks the agencies consider when deciding whether to attempt to block a merger. The revised Guidelines give the agencies more flexibility to intervene against mergers they believe will have anti-competitive effects. In February 2025, the agencies finalized new rules to govern the pre-merger notification process required by the HSR Act by making the **HSR Form** considerably more detailed and burdensome for merging entities.

HSR filings go through a “**clearance**” process where each is assigned to a particular agency. The FTC and DOJ typically allocate merger reviews by industry based on their historical experience. The FTC is primarily responsible for analyzing mergers in the chemical industry, as well as in oil and gas. The DOJ has primary responsibility for reviewing electricity and oilfield services mergers. Electricity mergers are subject to concurrent review by the Federal Energy Regulatory Commission (“FERC”) under the Federal Power Act.

Once they receive HSR notifications for a transaction, the agencies typically have 30 days to decide whether to allow the merger to close or to issue a “Second Request,” which initiates a significantly longer, more burdensome review. Parties can also “pull and refile” their notification, which resets the 30-day clock, in the hopes of avoiding a Second Request.

Second Request investigations typically last 6 to 18 months and involve the agency collecting and reviewing voluminous business documents, conducting interviews of competitors and customers, and deposing executives from the merging parties. Once the parties have “substantially complied” with the Second Request, the agency then has another 30 days to either close its investigation or initiate a suit to block the merger.

In conducting their reviews, the agencies try to determine whether the merger will result in the combined firm being able to exercise market power — that is, the ability to raise prices or reduce product output or quality to the detriment of consumers. The HSR process is a forward-looking inquiry that allows agencies to challenge mergers before

they are consummated, rather than trying to “unscramble the eggs” after a deal has closed.

This analytical process usually starts with market definition, a foundational tool for competition analysis. Market definition breaks down into a product dimension — what other products can consumers turn to? — and a geographic dimension — from where can they purchase those products? Market definition is critical to, and often outcome determinative for, merger review. A broader product or geographic market usually pulls in more competitors for the merged parties and blunts any potential exercise of market power, whereas narrower markets tend to make the exercise of market power more likely.

Once a product market is established, the agencies attempt to measure the competitive effects in that market from the proposed transaction. This requires identifying the actual and potential competitors in the market, what shares the merging parties and others in the market hold, the barriers to entry (by new firms) and expansion (by existing firms),

how closely the merging parties compete, the bargaining strength of customers, and any history of anticompetitive conduct in the industry. The key question is whether an attempt by the merged parties to increase their prices (or decrease quality or output) would be successful or whether it would be thwarted by competitive response from others actually or potentially in the market and consumers switching their purchasing behavior. The agencies also attempt to account for the consumer benefits from any countervailing efficiencies generated by the merger.

If an agency determines that a transaction would cause competitive harm, it can seek an injunction in federal district court prohibiting the transaction from closing. Because litigation can lead to lengthy delays and the potential for a deal to be blocked, merging parties frequently try to resolve competitive concerns through settlement, with the agencies typically insisting on divestitures of overlapping assets to a qualified buyer.



How The FTC Approaches Oil & Gas Mergers

The FTC's approach to oil and gas mergers largely has depended on where in the production and supply chain the merging firms operate. Oil and gas mergers frequently encompass a large number of relevant markets, such that the FTC has said they "may require an extraordinary amount of time to ascertain whether anticompetitive effects are likely."

The FTC typically has defined upstream exploration and production markets as global, encompassing large numbers of competitors, which has led to few challenges in this area. For example, in [Exxon/Pioneer](#), the FTC alleged a global market for the "development, production, and sale of crude oil." As the FTC noted in 2004, "[r]ecent large mergers among major oil companies have had little impact on concentration in world crude oil production and reserves." The same is true for natural gas. The few challenges have been limited to isolated geographic regions that limited the potential for competitive entry (e.g., the [BP/ARCO](#) merger, which involved both crude and natural gas production on the Alaskan North Slope and [EnCap/EP Energy](#), which involved waxy crude from the Uinta Basin).

The FTC has been more active in challenging midstream and downstream operations such as refineries, pipelines, terminals, and wholesale/retail operations.

Refineries. The FTC has generally focused on how refinery acquisitions affect the bulk supply of refined petroleum products, but has also identified narrower product markets for specialized types of fuels required in particular regions (like CARB-formulated gas for California) or for particular customers. The agency defines geographic markets based on practical alternative sources of supply in light of transportation costs and any capacity constraints. As a result, the FTC has sought and obtained divestitures in a number of refinery mergers, including [Exxon/Mobil](#), [Chevron/Texaco](#), and [Conoco/Phillips](#).

Pipelines. The FTC has required divestitures or behavioral remedies (usually contractual supply commitments) for transactions involving crude, refined product, or natural gas-related pipelines. Examples include [Valero/Kaneb](#), [Shell/Texaco](#), and [Exxon/Mobil](#). Similarly for natural gas, the FTC has sought remedies for gathering services as in [Conoco/Phillips](#), in producing areas as in [Enbridge/Spectra Energy](#), and in large-diameter pipelines as in [Energy Transfer/Williams](#) (which was subsequently abandoned). Markets in these cases are typically defined based on the origin or destination of the relevant pipelines. For example, in [DTE Energy Company/NEXUS Gas Transmission](#), the FTC alleged a market for natural gas transportation within a three-county area of Ohio.

Terminals. The FTC has sought remedies in several mergers of terminal operators, including [ArcLight/Gulf Oil](#), [Exxon/Mobil](#), and [Conoco/Phillips](#). Markets in these cases tend to vary by geography, based on which alternative terminals purchasers could turn to for supply, after factoring in transportation costs and capacity constraints. The FTC has also drawn distinctions between proprietary and independent terminals, with the latter forming a critical part of the market.

Wholesale/Resale. The FTC has considered whether a merger will allow brand owners to raise retail prices after the merger, considering the level of concentration in the local markets, the ability of station owners to switch to other brands or unbranded products, and likelihood of new entry. Retail gasoline markets tend to be very localized and may be limited to an area of just a few miles, with factors such as commuting patterns, traffic flows, and outlet characteristics playing roles in determining the scope of the geographic market. For example, in the [Circle K/Jet-Pep acquisition](#), the FTC required divestitures of several stations in three small towns in Alabama, and in [Tri Star Energy/Hollingsworth Oil](#), the agency required divestitures in two cities in Tennessee. Likewise, the FTC has sought divestitures in the case of mergers among one of a few gas local distribution companies in an area, as in [Equitable/Dominion](#).

How the DOJ & FERC Approach Electricity Mergers

The DOJ's review of electricity mergers largely focuses on generation, where competition among different types of generating assets (for example, baseload versus peak generation) and different locations can pose difficult and fact-specific market definition questions. Rather than competitive entities, downstream transmission and distribution operations are usually run by regulated entities.

Geographic markets generally are defined based on transmission constraints — that is, where wholesale or retail buyers can practically turn for additional supply given the design of the electrical grid. The DOJ also considers “shift factors,” that is, the effectiveness of a generating unit in responding to a supply constraint. The DOJ typically looks at the merged party's ability and incentive to raise prices by withholding generation supply after the merger, as it did in [Exelon/PSEG](#) and [Exelon/Constellation](#). When the DOJ finds competitive concerns, it typically requires divestitures of generating facilities to qualified buyers, as well as a “hold separate” agreement that seeks to preserve the facilities' competitive position pending a divestiture.

By contrast, FERC reviews mergers of electrical utilities subject to its jurisdiction under a broader “public interest” standard, which considers both the effect on competition and other effects on the public. FERC does not possess the same ability to compel production of information as the DOJ and typically relies on information provided by the merging parties to conduct its analysis. FERC also typically seeks conditions on approving mergers rather than prohibiting the transaction outright.

How The FTC Approaches Chemical Mergers

In general, enforcers tend to draw product markets in the chemical industry narrowly. For example, in its recent challenge to the merger of [Cristal and Tronox](#), the FTC alleged a market limited to “chloride process” titanium dioxide (TiO₂) that excludes “sulfate process,” on the theory that the primary customers—paint and coatings companies—rely on the brighter and more durable coatings produced from the chloride process, and therefore could not switch to sulfate process TiO₂ in response to a post-merger price increase. Other product markets defined in recent chemicals mergers have included “super phosphoric acid” and “65-67% concentration nitric acid” ([PotashCorp/Agrium](#)), the pesticides paraquat, abamectin, and chlorothalonil ([CNCC/Syngenta](#)), “hydrogen peroxide,” ([Evonik/PeroxyChem](#)), and “aluminum hot rolling oil” and “steel cold rolling oil” and associated technical services ([Quaker/Houghton](#)).

Geographic markets vary based on commercial realities of where customers are located and where they need and can feasibly obtain supply. In [Wilhelmsen/Drew](#), for example, the FTC alleged a global market to provide water treatment chemicals to shipping fleets, which by their nature operated globally and required global suppliers. In [Cristal/Tronox](#), the FTC alleged a geographic market for North America, as TiO₂ is largely shipped by truck or rail. That definition excludes the possibility of parties turning to supply from China and other overseas sources, a distinction the FTC drew based on evidence that overseas sources do not currently pose a competitive check in North America. Similarly, in [Quaker/Houghton](#), the FTC alleged a geographic market of North America, as the relevant products are typically shipped by tanker truck and shipping “from outside North America is cost- and supply-prohibitive.” In [Evonik/PeroxyChem](#), the FTC alleged narrower geographic markets—(1) the Pacific Northwest and (2) the Southern and Central United States—again noting the high transportation costs and that “hydrogen peroxide producers deliver from plants that are relatively nearer to customers.”

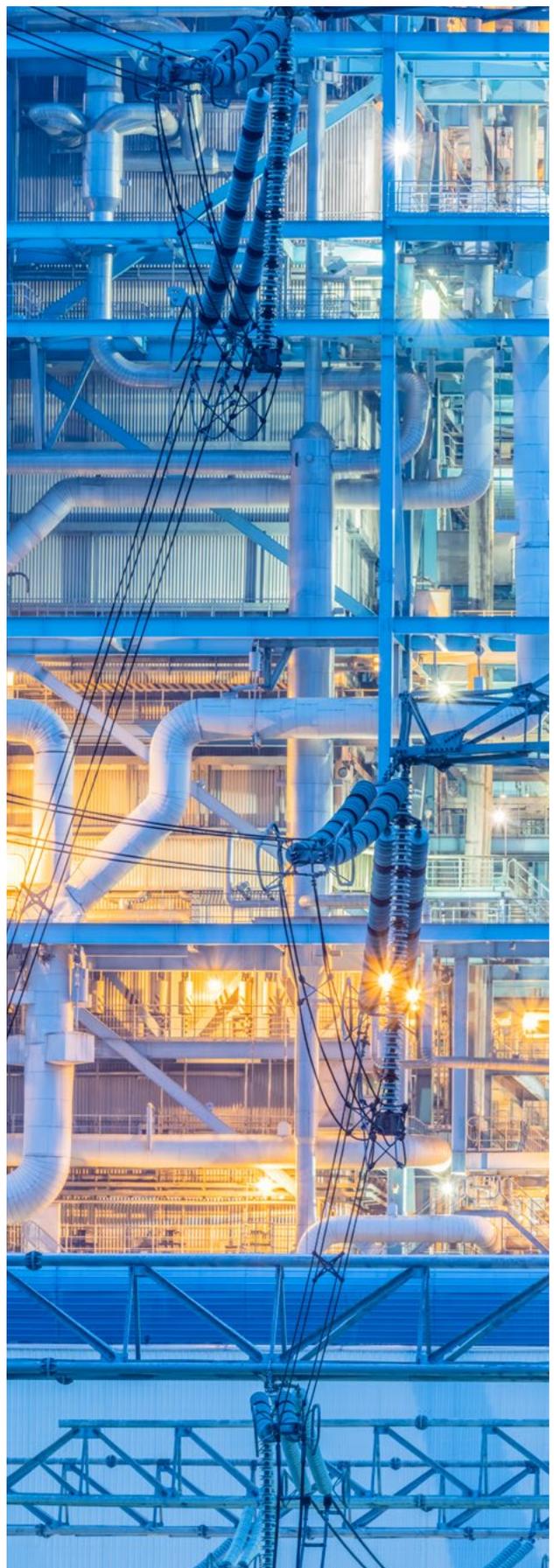
In [Cncc/Syngenta](#), the agency alleged a market limited to the United States because regulatory approvals required to sell pesticides in the United States would preclude turning to foreign sources. The FTC has also alleged narrower regional markets when shipping constraints or other factors limit customers' ability to switch to more distant suppliers, as was the case for certain bulk atmospheric gases in the [Linde/Praxair](#) transaction.

Non-Merger Antitrust Enforcement

The principal federal antitrust statute governing non-merger conduct is the Sherman Act (the “Act”). Section 1 of the Act prohibits anticompetitive agreements affecting interstate commerce. Section 2 of the Act prohibits monopolization, attempted monopolization, and conspiracy to monopolize. Violations of the Act can carry monetary fines of up to \$100 million for corporations (or more if there is a larger impact on U.S. commerce), up to \$1 million for individuals, and up to 10 years imprisonment for individuals. Furthermore, collusion among competitors can also result in violations of other federal statutes subject to prosecution by the DOJ including mail or wire fraud statutes and false statement statutes.

State attorneys general offices enforce state antitrust laws, and they may pursue federal antitrust claims to the extent they affect the state or its residents. States have occasionally taken the lead on major investigations and may coordinate with one another when bringing enforcement actions. Some state attorneys general actively investigate and enforce state antitrust laws. Many states have their own laws prohibiting anticompetitive conduct, such as California’s Cartwright Act and New York’s Donnelly Act, and some of these state statutes are broader than the federal antitrust laws in certain respects. State agencies may also monitor the energy or chemical industries for potential violations. For example, California maintains a Division of Petroleum Market Oversight within the California Energy Commission, which is charged with monitoring the petroleum industry to identify illegal behavior and referring violations to the California Attorney General for prosecution. In addition, many countries have comparable statutes and coordinate some of their investigations with U.S. antitrust authorities.

In addition to the risk of significant fines and prison time for criminal antitrust violations, follow-on civil suits can result in lengthy and expensive litigation for companies, even where a company has been cleared of liability for criminal violations. As the Supreme Court [noted](#), “the threat of discovery expense will push cost-conscious defendants to settle even anemic cases.” So long as they are able to meet certain standing requirements, private plaintiffs are allowed to bring civil suits for violations of federal antitrust laws. In order to bring suit, private plaintiffs must demonstrate that the anticompetitive behavior has resulted in an “antitrust injury,” the type of injury that antitrust laws were intended to prevent. The Sherman Act creates a significant incentive for private plaintiffs by providing for treble damages and the award of attorneys’ fees and costs to prevailing parties. Private plaintiffs can be either consumers or rival businesses harmed by anticompetitive arrangements.



Illegal Agreements

Certain types of agreements between competitors are considered *per se* violations of antitrust law and are deemed illegal once collusion has been established without any assessment as to whether the prices or behavior were reasonable or the conduct had valid business justifications. Price fixing, bid rigging, and market division or allocation are examples of antitrust violations that are typically viewed as *per se* violations.

Price Fixing. Price fixing is an agreement between competitors to raise, fix, hold firm, establish minimums, or any other activity to otherwise coordinate their prices. Price fixing agreements can include limits on supply, eliminating or reducing discounts, and fixing credit terms. Agreements to establish resale prices were considered *per se* illegal under the Act until the Supreme Court's 2007 [Leegin](#) decision, but resale price maintenance continues to be *per se* illegal under some state antitrust statutes.

Bid Rigging. Bid rigging occurs where an entity (such as federal, state, or local governments) solicits competing bids, but competitors have agreed in advance on who will win the bid or a means of predetermining who will win the bid.

Market Division or Allocation. Market division or allocation occurs where competitors divide markets among themselves, which can take the form of allocating geographic locations, customers, types of products, etc. In this type of scheme, competitors often agree on which company will serve which location, customer, or product and then will agree not to sell for certain others or quote artificially high prices on others.

Concerted action can be established either by direct evidence or circumstantial evidence. Mere parallel conduct is not sufficient for a finding of an unlawful conspiracy, even in a concentrated industry. Accordingly, as the Supreme Court explained in *Monsanto Co. v. Spray-Rite Services Corp.*, "there must be evidence that tends to exclude the possibility of independent action."

The Antitrust Division [has identified](#) industry conditions that are conducive to collusion, some of which are prevalent in certain energy and chemical markets, such as where there are fewer sellers, where products are fungible, where sellers are located in the same geographic area, where products cannot be easily substituted because of restrictive specifications, where there are economic or regulatory barriers to entry, and where sellers know each other

through social contexts, such as trade associations, normal business contacts, and where employees shift between the companies in the same industry. Private plaintiffs have also alleged that the public announcements of future price increases, which are common in the chemicals industry, provide a potential vehicle for collusion.

Agreements that do not fall under the *per se* rule are analyzed under the rule of reason. The rule of reason involves a factual inquiry into whether the challenged activity results in unreasonable anticompetitive effects. The factual inquiry evaluates things such as the nature of the agreement, market circumstances (such as market share and barriers to entry), and whether the agreement has procompetitive benefits. The Supreme Court [has applied](#) a three-step burden-shifting framework in evaluating the rule of reason:

1. First, the plaintiff must demonstrate "that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market;"
2. Second, "the burden shifts to the defendant to [demonstrate] a procompetitive rationale;"
3. Third, the burden shifts back to the plaintiff "to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means."

Monopolization

Distinct from Section 1 violations of the Act, which involve agreements between competitors, Section 2 violations occur where an individual company, or multiple companies acting in concert, harm competition through monopolization. In order for a violation to occur, a company must possess monopoly power in a relevant market and engage in exclusionary conduct. For decades, monopolization cases have only been pursued on a civil basis, but in March 2022, then-Deputy Assistant Attorney General Richard Powers signaled that the Antitrust Division intended to pursue criminal violations of Section 2. In late October 2022, the DOJ announced its [first Section 2 guilty plea](#) under the new policy, and in October 2023, the DOJ updated its [antitrust primer for law enforcement personnel](#), which includes references to criminal prosecution of "conspiracies to monopolize," as well as situations in which attempts or solicitations to fix prices or rig bids could be charged as "attempted monopolization" under Section 2.

Monopoly power can be established either through direct evidence, such as actual effect on prices, or indirect evidence, such as the company's market share, barriers to entry, and market concentration. Many courts have found that a market share of over 70 percent combined with significant barriers to entry establishes a prima facie case of monopoly power; courts rarely conclude that a company has monopoly power where its market share is less than 50 percent.

Examples of exclusionary conduct that the courts have found to violate Section 2 when combined with monopoly power include tying, exclusive dealing agreements, predatory pricing, and refusals to deal.

Tying occurs where a seller conditions the sale of one service or product on the purchase of another service or product. Tying can arise in cases of public utilities offering "all-or-none" services. Tying has also been prosecuted where a gas company required customers to purchase its meter installation system in addition to the company's gas-gathering system.

Exclusive Dealing agreements involve a buyer agreeing to exclusively obtain a product or service from a particular seller for a given amount of time. Not all exclusive dealing agreements are unlawful though, and the Supreme Court has instructed lower courts to look at not just how much of the market is foreclosed by the agreement, but also to conduct an inquiry into the state of the market and the competitive effects of the agreement.

Predatory Pricing occurs where a company attempts to drive competitors out of the marketplace by artificially lowering pricing below cost with an expectation of raising the prices again once other competitors have exited the market.

Refusals to Deal involve not doing business with a disloyal customer or supplier, or a rival, to the detriment of competition. Due to deregulation and the unbundling of the electric and natural gas industries, companies often rely on transmission services and infrastructure of other companies, which can lead to objections about refusals to allow competitors to use a facility.

Exemptions & Immunities

Congress and the courts have developed a number of exemptions and immunities to the antitrust laws. Two of these particularly relevant to the energy and chemical industries are the filed-rate doctrine and the state action doctrine.

First articulated by the Supreme Court in 1922, the judicially created filed-rate doctrine bars private antitrust damage claims for alleged overcharges if the rate charged was approved by a regulatory agency with exclusive jurisdiction over the reasonableness of the rate, such as FERC. The purpose of the filed-rate doctrine is to prevent private parties from second guessing rates approved by regulatory agencies with exclusive jurisdiction.

The filed-rate doctrine does not, however, provide complete immunity from liability in certain circumstances. For example, some regulatory agencies will sometimes approve an "up-to" rate. An "up-to" rate is one where a regulator sets an approved maximum price that a utility can charge rather than a fixed rate. Where a federal agency only sets a ceiling on prices, the company is left with ultimate decision-making authority over the rate it charges, thus leaving open the potential for antitrust liability where competitors reach an agreement on a rate to charge below or even at the "up-to" rate.

A number of courts have also recognized the filed-rate doctrine with respect to rates filed with state administrative agencies; however, there is significant debate around the circumstances in which it should apply, such as the level of agency approval or regulatory review required to trigger the doctrine. Some courts require meaningful regulatory review by the state agency before the doctrine can be invoked, whereas some only require that the rate be filed.

The state action immunity, established in the 1943 [Parker v. Brown](#) decision, applies to private parties acting under state authority. In order to receive state action immunity, the state must have a clearly articulated policy that demonstrates the intention of displacing competition in that particular field, and the state must actively supervise the conduct.

Even where energy companies have acted under state authorization, some have struggled to succeed when raising the state action immunity because of the lack of evidence of the state's intent to displace competition. For example, in [Kay Electric Cooperative v. City of Newkirk](#), the Tenth Circuit rejected state action immunity for a city electrical provider where Oklahoma's Electric Restructuring Act demonstrated "an unmistakable policy preference for competition in the provision of electricity."



Federal Antitrust Agencies

There are two federal agencies that enforce these laws: the DOJ's Antitrust Division and the FTC. While the federal agencies have extensive career staff, political appointees determine the enforcement priorities. Each agency has responsibility for particular industries and, as a result, has developed a sophisticated understanding of the businesses under their purview. The Antitrust Division handles all criminal enforcement, such as conduct involving price fixing and bid rigging, while the agencies share responsibility for merger investigations and civil non-merger investigations. The FTC typically handles civil enforcement involving oil and gas pipelines, terminals, and retailing, as well as chemicals, while the DOJ typically handles electricity and oilfield services.

FTC

The FTC has both a competition and a consumer protection mission. It is chiefly organized around three Bureaus: the Bureau of Competition, the Bureau of Consumer Protection, and the Bureau of Economics. Other offices also play key roles in supporting the FTC's mission, such as the Office of

the General Counsel, which typically prepares amicus briefs and position statements to other agencies, including on issues affecting the energy and chemical industries.

Five presidentially nominated Commissioners head the FTC and serve seven-year terms. By law, no more than three Commissioners can be members of the same political party.

In light of President Trump's firing of the two sitting Democratic Commissioners, and the recent resignation of Commissioner Melissa Holyoak, the FTC currently consists of the Republican Chairman [Andrew N. Ferguson](#) and Republican Commissioner [Mark Meador](#). Prior to joining the FTC, Chairman Ferguson served as Solicitor General of the Commonwealth of Virginia, and previously served as chief counsel to Senator Mitch McConnell of Kentucky, the Republican leader, and as a Republican counsel on the U.S. Senate Judiciary Committee. Meador, President Trump's first FTC appointee, was confirmed on April 16, 2025. Prior to joining the FTC, Commissioner Meador worked in private practice and was former antitrust counsel to Republican U.S. Senator Mike Lee.

The FTC's Mergers II Division oversees the coal and chemical industries, among others. The Mergers III Division handles the oil and gas industries, including pipelines, terminals and retailing, among others.

Mergers II



Peggy Bayer Femenella

Peggy Bayer Femenella Assistant Director

James Abell Deputy Assistant Director

Abby Dennis Deputy Assistant Director

The FTC's Mergers II group oversees a wide variety of industries, including coal mines, chemicals, entertainment, and computer hardware and software. A significant recent case Mergers II handled was the challenge to a proposed joint venture between Peabody Energy and Arch Coal, which would have combined the parties' Southern Powder River Basin coal mining and sales operations. The challenge resulted in the U.S. District Court for the Eastern District of Missouri granting the FTC's request for preliminary injunction, causing the parties to abandon the joint venture. Mergers II also was responsible for the FTC's investigation of the Cristal/Tronox merger, which resulted in a significant divestiture. The division has also reviewed and obtained consent orders in a number of high-profile mergers in the chemical industry, including Keystone/Compagnie de Saint-Gobain, Dow/Rohm & Haas, Owens/Corning, Occidental Petroleum/Vulcan, Bayer/Aventis, and Dow Chemical/Union Carbide.

There are approximately 35 individuals in Mergers II. Femenella became Assistant Director in 2022, after having served as Acting Director and deputy in the group. Prior to that, Femenella served as Counsel to the Director of the Anticompetitive Practices Division, following a long career in the agency, having joined the FTC in 2000. Femenella is joined by James Abell and Abby Dennis in Deputy Assistant Director roles.

Mergers III



Brian Telpner, Peter Richman and Jessica Drake

Peter Richman Assistant Director

Jessica Drake Deputy Assistant Director

Brian Telpner Deputy Assistant Director

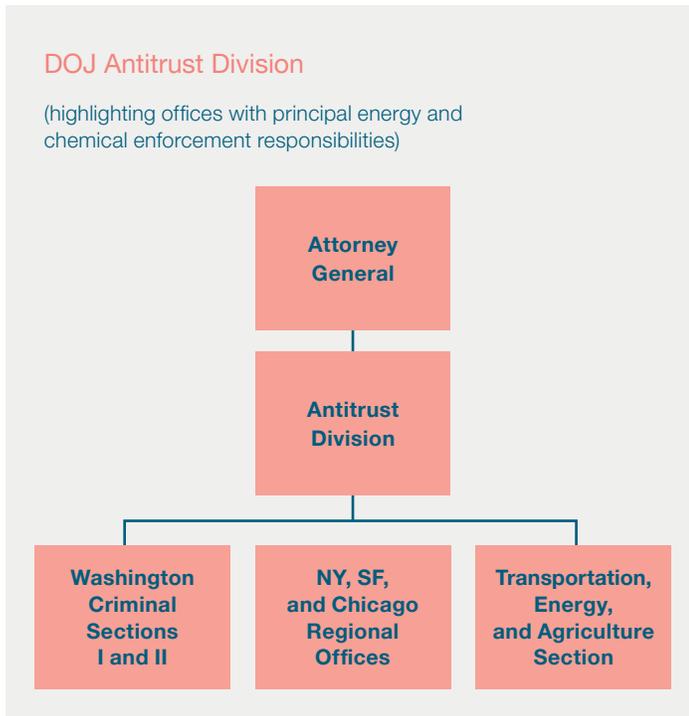
The FTC's Mergers III group focuses on enforcement across multiple levels of the oil and gas industry, including refining, pipeline transport, terminal operations, marketing, and retail sales. In addition to oil and gas, Mergers III focuses on real estate and property-related products and services, digital database and information services, industrial manufacturing and distribution, hotel franchising, and title insurance. Mergers III has reviewed hundreds of mergers in the energy industry, including Exxon/Pioneer and Chevron/Hess and secured divestitures in connection with some high-profile mergers including Irving Oil/ExxonMobil, Exxon/Mobil, BP/Amoco, Chevron/Texaco, Chevron/Unocal, Conoco/Phillips, and Shell/Texaco. Examples of Merger III activity in the natural gas industry include securing a divestiture in the KinderMorgan/El Paso transaction and entering into a consent agreement in the Enbridge/Spectra Energy merger.

There are approximately 25 individuals in the group. Richman has led Mergers III since 2016, following a long career at the FTC, having joined directly out of law school in 1990 and serving as a deputy for over a decade. Richman has been involved in numerous merger investigations in the energy industry, including Marathon/Ashland, Exxon/Mobil, BP/ARCO, Valero/UDS, Chevron/Texaco, Chevron/Unocal, and Valero/Kaneb. Richman also supervised several investigations into national and regional gasoline pricing practices. Jessica Drake and Brian Telpner joined the FTC in 2009 and 2004, respectively.

DOJ Antitrust Division

Gail Slater, President Trump’s nominee to serve as [Assistant Attorney General](#) (“AAG”) of the DOJ, was confirmed on March 12, 2025. Ms. Slater served during President Trump’s first term as tech policy adviser at the National Economic Council, and most recently worked as policy adviser for Vice President-elect JD Vance.

The Antitrust Division’s litigating components handle both criminal and civil enforcement. The Division’s criminal enforcement functions are not organized by industry — any of the criminal sections (including the two criminal sections located in Washington and the Chicago, New York, and San Francisco regional offices) can investigate criminal violations of the antitrust laws. The civil sections of the Antitrust Division are organized around specific sectors. The Transportation, Energy, and Agriculture Section (“TEA”) is predominantly responsible for civil enforcement in the energy industry, including electricity and oil field services, among others. The Defense, Industrials, and Aerospace Section also handles some energy-related industries, including metals and mining.



Transportation, Energy, & Agriculture



Patricia Corcoran

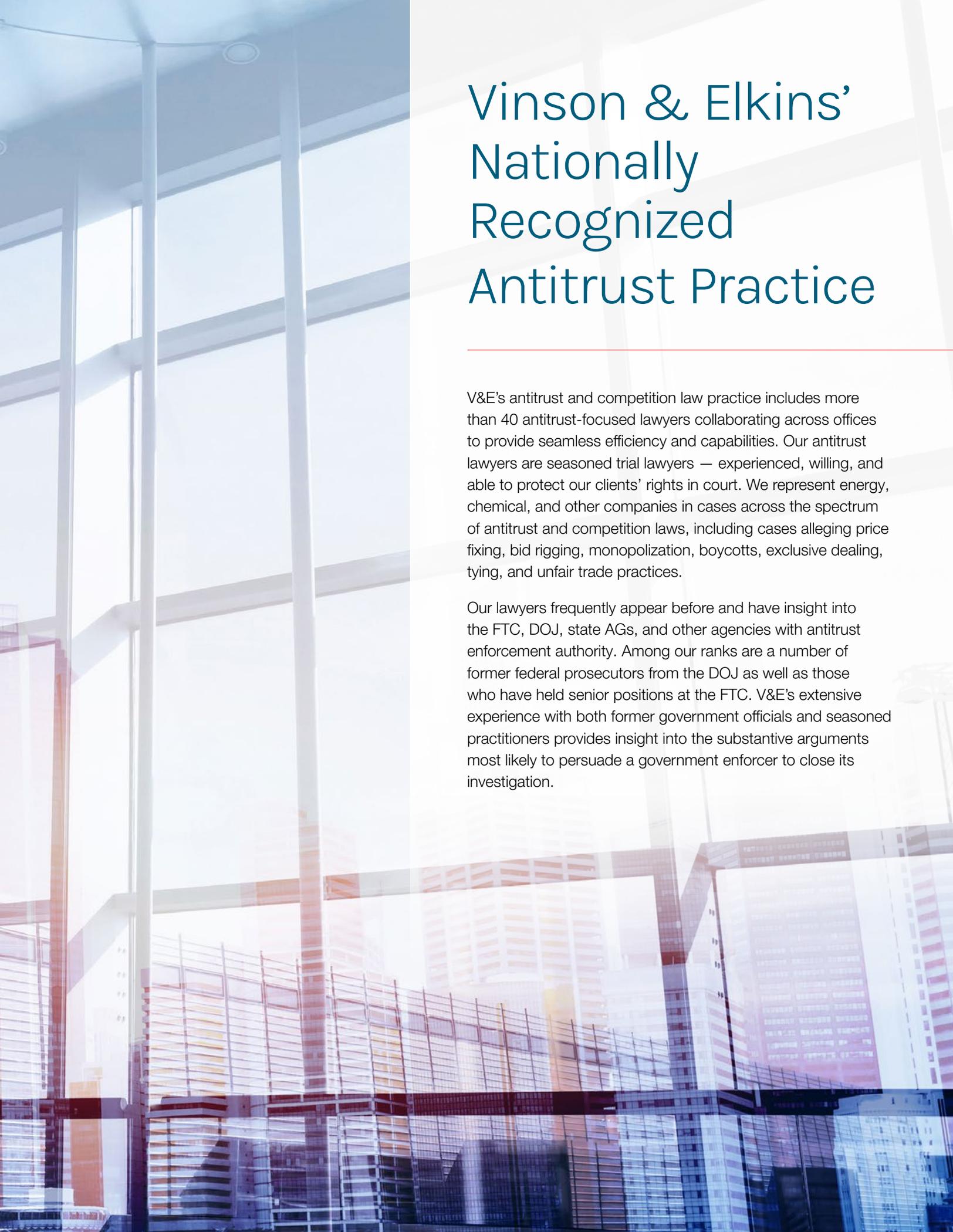
Patricia Corcoran Acting Section Chief

Katherine Speegle Assistant Chief

Catherine Reilly Acting Assistant Chief

TEA is responsible for civil antitrust enforcement, competition advocacy, and competition policy in the areas of: electricity; oil field services; domestic and international aviation; business and leisure travel; railroads, trucking, and ocean shipping; hotels, restaurants, and travel services; food products, crops, seeds, fish, and livestock; and agricultural biotech. TEA consults on policy issues with, and engages in formal proceedings before, various other federal agencies, including the Department of Energy and the FERC. Recent high-profile cases for the section include the review of Halliburton Company’s proposed acquisition of Baker Hughes Inc. (“Baker Hughes”), as well as General Electric Co.’s acquisition of Baker Hughes.

There are approximately 35 individuals in the TEA Section, which is currently led by Acting Section Chief & Assistant Chief Patricia Corcoran, Assistant Chief Katherine Speegle, and Acting Assistant Chief Catherine Reilly. Corcoran took on the Acting Section Chief role in December 2023. Corcoran has served as Assistant Chief in TEA since 2019, having previously held other positions at DOJ and a career in private practice.



Vinson & Elkins' Nationally Recognized Antitrust Practice

V&E's antitrust and competition law practice includes more than 40 antitrust-focused lawyers collaborating across offices to provide seamless efficiency and capabilities. Our antitrust lawyers are seasoned trial lawyers — experienced, willing, and able to protect our clients' rights in court. We represent energy, chemical, and other companies in cases across the spectrum of antitrust and competition laws, including cases alleging price fixing, bid rigging, monopolization, boycotts, exclusive dealing, tying, and unfair trade practices.

Our lawyers frequently appear before and have insight into the FTC, DOJ, state AGs, and other agencies with antitrust enforcement authority. Among our ranks are a number of former federal prosecutors from the DOJ as well as those who have held senior positions at the FTC. V&E's extensive experience with both former government officials and seasoned practitioners provides insight into the substantive arguments most likely to persuade a government enforcer to close its investigation.



World's Leading Energy Firm

Since 1995, Euromoney has ranked V&E the world's leading energy law firm based on the number of lawyers named in the *Guide to the World's Leading Energy & Natural Resources Lawyers*, a publication of Euromoney Institutional Investor PLC's Legal Media Group. Additionally, the team is ranked nationally, in Washington, D.C., and in Texas by *Chambers Global* (2019-present) and *Chambers USA* (2018-present) as well as by *Legal 500 U.S.* (2018-present) for our antitrust work. V&E's Antitrust practice is also recognized in the *GCR 100* as an outstanding antitrust practice in Washington, D.C. and in Texas by *Global Competition Review* (2015-present). V&E has worked with corporations and individuals in nearly every sector within the energy value chain, and we are particularly experienced in handling investigations and litigation in the energy sector around the world. The scope and depth of our antitrust practice, coupled with our rich knowledge and experience in the energy sector, particularly in petrochemicals, pipelines (natural gas, refined petroleum products and others), and gasoline marketing enables us to provide comprehensive representation to our clients, combining an ability to identify and understand the issues faced, to draw upon our firm's extensive experience in energy law, and to create solutions that are right for our clients.

We offer a multidisciplinary team that represents a mix of chemical manufacturers, suppliers, and investors on the unique technical and commercial issues affecting the industry. V&E's commitment to understanding the technology, manufacturing processes, and feedstock/off take markets involved in the chemical sector sets us apart from competitors. With regard to antitrust, chemical companies call on V&E when they experience allegations of monopolization and other anticompetitive behavior in order to defend against investigations by the DOJ and FTC, potential class action suits, and multi-district litigation.

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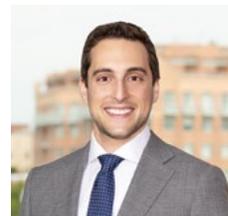
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