

Premerger Enforcement Actions Highlight Importance of HSR Compliance

Publications

April 2025

Cases involving premerger enforcements under the Hart-Scott-Rodino (HSR) Act are relatively rare. So far in 2025, however, we have seen two such cases involving potentially record-breaking penalties. The timing is notable, as these enforcement actions arrive along with the new and more comprehensive HSR filing rules, demonstrating the high stakes of HSR compliance.

On January 7, 2025, the FTC announced that it had reached a settlement with three crude oil producers, XCL Resource Holdings, LLC (XCL), Verdun Oil Company II LLC (Verdun), and EP Energy LLC (EP), regarding alleged “gun-jumping” violations. As experienced deal practitioners are aware, parties must observe a 30-day waiting period before closing an HSR reportable transaction to avoid such a “gun-jumping” violation. The FTC alleged that throughout the waiting period, EP allowed XCL and Verdun to assume operational and decision-making control over certain day-to-day business activities of EP. The FTC viewed this assumption of operational control as a violation of the HSR waiting period. The crude oil producers will pay a civil penalty of \$5.6 million, the highest penalty ever imposed for a “gun-jumping” violation in US history.

On January 14, 2025, the DOJ filed suit against KKR & Co. Inc. (KKR), one of the largest private equity firms in the country, alleging that KKR violated its premerger notification requirements under the HSR Act. The DOJ alleges that KKR failed to provide advance notice of certain transactions that meet reporting thresholds. Additionally, the DOJ accuses KKR of violating HSR rules by systematically omitting and altering material from multiple submissions that should have been disclosed, citing internal documents and exchanges between KKR employees that allegedly show a culture of noncompliance with the HSR Act.

In response, KKR filed a suit of its own against both the DOJ and the FTC, seeking declaratory relief that it did not violate the HSR Act. KKR argues that the penalties they face, which may exceed \$650 million, are unprecedented and unconstitutionally high. KKR notes this would be the highest penalty ever imposed in the history of the HSR Act.

Parties to an HSR reportable (or potentially reportable) transaction should seek US antitrust counsel early in the process, to determine whether a filing is needed and to help guide a compliant process. These enforcement actions highlight the significant risk of noncompliance with laws governing

premerger conduct and merger notification. This is especially true considering the new HSR form and rules, which create far more complexity and room for error.

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