



Americas Antitrust Review

2026

United States: government investigations

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United States: government investigations

Margaret T Segall

Cravath Swaine & Moore

Summary

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IN SUMMARY

This article provides recent examples of investigations by the Department of Justice (DOJ) and Federal Trade Commission (FTC), including litigated merger challenges (challenges to transactions by the DOJ or FTC that are adjudicated in federal courts and administrative proceedings), mergers abandoned due to enforcement challenges (transactions abandoned after the agency investigates or files a complaint), settled mergers (enforcement actions in which the agency negotiates a settlement with parties allowing the merger to proceed, but requiring the divestiture of assets or other remedies) and non-merger enforcement efforts (actions taken by the FTC or DOJ against anticompetitive behaviour unrelated to a transaction). Actions brought prior to 20 January 2025 were under the Biden administration, whereas actions brought after such date were under the Trump administration. While the US antitrust authorities have remained active in their enforcement efforts, there have been changes under the new administration, most notably a greater willingness by the agencies to negotiate remedies to resolve what they believe to be problematic mergers.

DISCUSSION POINTS

- Increased willingness of antitrust authorities to litigate
 - Enforcement actions in labour markets
 - Interlocking directorate enforcement
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REFERENCED IN THIS ARTICLE

- Department of Justice
 - Federal Trade Commission
 - Sherman Act
 - Clayton Act
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FEDERAL TRADE COMMISSION ACTIONS

Litigated Merger Challenges

Kroger Company/Albertsons Companies, Inc

On 14 October 2022, Kroger Company and Albertsons Companies announced a US\$24.6 billion merger.^[1] On 26 February 2024, the FTC issued an administrative complaint and sued in the US District Court for the District of Oregon for a preliminary injunction and temporary restraining order to block what it alleged was 'by far the largest supermarket merger in U.S. history'.^[2] The FTC alleged that Kroger and Albertsons were the two largest traditional supermarket chains in the country, and that each of the companies have grown to their sizes because of decades of consolidation.^[3] The FTC claimed the deal would threaten competition, leading consumers to deal with fewer choices, lower quality products, worse service and higher prices.^[4] The agency also alleged the deal would substantially lessen the competition for labour.^[5]

On 8 September 2023, before the FTC complaints were filed, the parties announced a divestiture package of 413 stores and other assets, including brands.^[6] However, in its complaint, the FTC asserted the divestiture would not be enough to mitigate the substantial harm to consumers and workers resulting from the merger.^[7] Subsequently, the two companies modified their divestiture package, increasing the number of stores sold to 579.^[8]

On 10 December 2024, Judge Adrienne Nelson found that it was 'unlikely that the proposed divestiture would sufficiently mitigate the anticompetitive effects of the merger' and granted the FTC's preliminary injunction to block the merger.^[9] Three days later, Kroger informed the FTC that it had terminated the merger^[10] and on 27 December 2024, the FTC dismissed its complaint.^[11]

IQVIA Holdings/Propel Media

On 17 July 2023, the FTC issued an administrative complaint and authorised FTC staff to seek a temporary restraining order and preliminary injunction in federal court to block IQVIA Holdings Inc (IQVIA) from acquiring Propel Media (PMI).^[12] The deal had not been disclosed to the public prior to the FTC's lawsuit.^[13] The FTC alleged that IQVIA was the largest healthcare data provider in the world and that PMI was a company that runs a top demand-side platform (DSP) that allows for advertising to healthcare professionals.^[14] The complaint further alleged that three healthcare DSP's 'dominat[e] the space', with IQVIA and PMI each owning one of the three, and that the proposed acquisition would eliminate competition and increase concentration in a highly concentrated market.^[15] On 29 December 2023, Judge Edgardo Ramos of the Southern District of New York granted the FTC's request for a preliminary injunction, blocking the deal.^[16] About a week later, IQVIA announced it was dropping its efforts to consummate the acquisition,^[17] and on 2 February 2024, the FTC dismissed its complaint.^[18]

Tapestry, Inc/Capri Holdings Limited

On 10 August 2023, Tapestry Inc, the company that owns brands including Coach, Kate Spade and Stuart Weitzman, announced that it had agreed to acquire Capri Holdings Limited, the company that owns brands including Versace, Jimmy Choo and Michael Kors.^[19] On 22 April 2024, the FTC issued an administrative complaint and sought a temporary restraining order and a preliminary injunction to block the US\$8.5 billion deal.^[20] The administrative complaint alleged that Michael Kors was the closest competitor of Coach and Kate Spade, and that if the deal were to be completed, Tapestry would 'dwarf[] every other competitor' and 'consumers [would] lose the benefit of head-to-head competition on price, discounts and promotions, innovation, design, marketing and employee wages and workplace benefits'.^[21] The FTC alleged harm to competition in the accessible luxury handbags market, in which the merging parties owned 'by far' the biggest two brands in the space.^[22]

On 24 October 2024, Judge Jennifer Rochon of the Southern District of New York granted the FTC's motion for preliminary injunction finding that the merger would result in 'the loss of head-to-head competition' due to the merging parties being 'close competitors', ultimately leading to consumer harm and higher prices.^[23] About two weeks later, Tapestry and Capri Holdings abandoned the proposed merger,^[24] and shortly thereafter, the FTC dismissed its complaint.^[25]

Novant Health/Community Health Systems

On 25 January 2024, the FTC issued an administrative complaint and sued to block Novant Health's US\$320 million merger with two hospitals that are part of Community Health Systems.^[26] According to the FTC, Novant Health was one of the largest hospital systems in the southeastern United States.^[27] The FTC alleged that the merger threatened to 'raise prices and reduce incentives to invest in quality and innovative care that would benefit patients' because it would result in Novant controlling 'nearly 65% of the market for inpatient general acute care services' in the Eastern Lake Norman Area of North Carolina.^[28] On 4 June 2024, the US District Court for the Western District of North Carolina denied the FTC's motion for preliminary injunction.^[29] Pending the FTC's appeal to the Fourth Circuit Court of Appeals, Novant abandoned the proposed merger^[30] and the FTC dismissed its complaint.^[31]

Tempur Sealy International/Mattress Firm Group

On 2 July 2024, the FTC issued an administrative complaint and authorised a federal lawsuit to block Tempur Sealy's acquisition of Mattress Firm.^[32] The FTC alleged that allowing Tempur Sealy, the world's largest mattress supplier, to merge with Mattress Firm, the nation's largest mattress retailer, would allow Tempur Sealy to 'suppress competition and raise prices for mattresses for millions of consumers'.^[33] The agency alleged that the combined company would harm competition in the market for mattress supply by giving Tempur Sealy 'extraordinary sway over the fate of its rivals'.^[34] The FTC alleged that Tempur Sealy's emails, presentations, and documents 'made it abundantly clear that its acquisition of Mattress Firm is intended to kneecap competitors and dominate the market'.^[35]

On 31 January 2025, Judge Charles Eskridge of the Southern District of Texas denied the FTC's motion for preliminary injunction, and on 5 February 2025, Tempur Sealy and Mattress Firm consummated the merger.^[36] Two weeks later, Tempur Sealy and Mattress Firm moved to withdraw the FTC's administrative complaint from adjudication.^[37] On 22 April 2025, the FTC dismissed its complaint.^[38]

GTCR BC Holdings, LLC/Surmodics, Inc

On 6 March 2025, the FTC filed an administrative complaint and sought a temporary restraining order and preliminary injunction to block private equity firm GTCR's acquisition of Surmodics.^[39] The agency alleged that Surmodics is 'the largest provider of outsourced hydrophilic coatings',^[40] which help medical providers perform neurological and cardiovascular procedures.^[41] The FTC alleged that because GTCR owns a majority stake in Biocoat, the second largest provider of outsourced hydrophilic coatings, the merger would 'lead to a highly concentrated market for outsourced hydrophilic coatings and eliminate significant head-to-head competition between Biocoat and Surmodics', ultimately discouraging 'lower prices, higher quality coatings, and product innovation'.^[42] The case is in discovery and an evidentiary hearing is scheduled for August 2025.^[43]

Settled Mergers

ExxonMobil And Chevron/Hess

On 2 May 2024 and 30 September 2024, the FTC entered two separate consent orders in connection with Exxon's proposed acquisition of Pioneer Natural Resources for US\$64.5 billion, announced on 11 October 2023,^[44] and Chevron's proposed acquisition of Hess for US\$53 billion, announced on 23 October 2023,^[45] respectively. Each consent order prohibited the target company's CEO from serving on the Board of the acquiring company post-acquisition.

In **Exxon**, the FTC alleged that Pioneer's CEO, Mr Sheffield, had attempted to collude with the Organization of Petroleum Exporting Countries (OPEC) to reduce output of oil and gas.^[46] The FTC also alleged that Mr Sheffield's appointment to Exxon's board would be anticompetitive because he served on the board of another natural gas company.^[47] On 2 May 2024, the parties agreed to the FTC's consent order whereby Mr Sheffield would be unable to advise or sit on Exxon's board.^[48] Additionally, the consent order prohibits Exxon from nominating a Pioneer employee or director to its board for five years.^[49] One day after signing the consent order, Exxon announced it had completed the acquisition.^[50]

In **Chevron**, the FTC alleged that allowing Hess CEO, Mr Hess, onto Chevron's board would 'heighten the risk of harm to competition' and 'increase[] the risk of industry coordination'.^[51] The FTC alleged that Mr Hess had spoken publicly about how decreasing oil inventory increases prices and serving on Chevron's board would provide him a larger platform for this messaging.^[52] On 25 January 2025, the FTC finalised a consent order that prohibits Chevron from appointing Mr Hess to its board.^[53]

On 14 March 2025, Pioneer's CEO petitioned for the FTC's consent order to be set aside, arguing that the order does not rest on sound antitrust law and is contrary to the public interest.^[54] Chevron and Hess filed a similar petition on 27 March 2025.^[55] On 11 April 2025, the FTC opened a public comment period on both consent orders.^[56]

Synopsys/ANSYS

On 16 January 2024 Synopsys, a semiconductor design software maker, announced that it would acquire Ansys, a company that makes software to test semiconductors, for US\$35 billion.^[57] On 28 May 2025, the FTC proposed a consent order after alleging that Synopsys and Ansys compete against one another in three markets: optical software tools, photonic software tools, and RTL power consumption analysis tools.^[58] The consent order required Synopsys to divest its optical software tools and photonic software tools, and requires Ansys to divest a power consumption analysis tool, both to Keysight Technologies.^[59] The proposed divestiture is in a 30-day public comment period.^[60]

Non-merger Enforcement Efforts

Noncompete Agreements

On 4 January 2023, by a vote of 3:1, the FTC issued complaints and approved consent decrees with three companies that it alleged imposed overly broad and burdensome noncompete restrictions on their employees.^[61] Under the consent order, Prudential Security, Inc, O-I Glass, Inc and Ardagh Group SA agreed to neither enforce, threaten to enforce or impose noncompete restrictions against any relevant employees.^[62] They were additionally required to notify all affected employees that they are no longer bound by noncompete restrictions.^[63]

On 5 January 2023, the FTC proposed a rule that would 'ban employers from imposing noncompetes on their workers, a widespread and often exploitative practice that suppresses wages, hampers innovation, and blocks entrepreneurs from starting new businesses'.^[64] Under the rule, 'existing noncompetes for the vast majority of workers' will not be enforceable either.^[65] After a public comment period, the noncompete rule was finalised on 23 April 2024.^[66]

The rule was set to be effective on 4 September 2024, but on 20 August 2024, Judge Ada Brown of the Northern District of Texas issued an order blocking enforcement of the FTC's

noncompete rule nationwide, citing that the FTC exceeded its statutory authority in enacting the rule.^[67] The FTC appealed the order to the US Court of Appeals for the Fifth Circuit. On 7 March 2025, following the change in administration, the FTC successfully moved to stay further proceedings for 120 days.^[68] It is unclear whether the Commission will enforce this rule, given that current Chair Andrew Ferguson dissented from the promulgation of the rule^[69] and has publicly stated that the Commission should reconsider 'whether it's a good idea' and 'in the public interest' to continue defending the rule.^[70]

US Anesthesia Partners

On 21 September 2023, the FTC sued US Anesthesia Partners (USAP) and its private equity owner Welsh, Carson, Anderson & Stowe (Welsh Carson) in the US District Court for the Southern District of Texas 'to redress and prevent violations of Section 7 of the Clayton Act' and 'Section 5(a) of the FTC Act'.^[71] The complaint alleged a 'multi-year anticompetitive scheme to consolidate anesthesia practices in Texas, drive up the price of anesthesia services . . . and increase their own profits'.^[72] The FTC argued that both Welsh Carson and USAP were at the time violating and about to violate antitrust laws.^[73] The agency contended that the defendants had a three-part anticompetitive practice. First, they allegedly rolled up 'nearly every large anesthesia practice in Texas'.^[74] Second, they 'supported [their] 'roll up' strategy by entering or maintaining price-setting arrangements' with other groups.^[75] Last, they 'entered a market allocation' with another provider.^[76] On 13 May 2024, Judge Kenneth M Hoyt dismissed the FTC's complaint against Welsh Carson, but not USAP.^[77] The case is currently in discovery.

On 17 January 2025, the FTC and Welsh Carson entered a settlement the FTC claimed would prevent a 'potential, second, administrative complaint'.^[78] Under the settlement, Welsh Carson is required to 'limit its involvement with USAP and to notify the FTC of specified future acquisitions and investments in anesthesia and other hospital-based practices'.^[79]

Caremark Rx, Zinc Health Services, Et Al.

On 20 September 2024, the FTC issued an administrative complaint against three pharmacy benefit managers (PBMs), Caremark, ESI and Optum, which the FTC alleged administer nearly 80 per cent of all prescriptions in the United States.^[80] The FTC alleged that the PBMs were 'engaging in anticompetitive and unfair rebating practices that have artificially inflated the list price of insulin drugs, impaired patients' access to lower list price products, and shifted the cost of high insulin list prices to vulnerable patients',^[81] that the PBMs 'systematically excluded' lower list price insulins in favour of higher list price insulins, and that this practice forces patients to pay more and increases the PBM's revenues through higher rebates and fees.^[82] The case is pending in administrative proceedings.

Southern Glazer's Wine And Spirits

On 12 December 2024, the FTC sued Southern Glazer, the largest distributor of wine and spirits in the United States, alleging violations of the Robinson-Patman Act.^[83] The FTC alleged that Southern Glazer harmed small independent businesses by selling them wine and spirits at prices drastically higher than what Southern Glazer charged larger chains, and therefore 'engaged in anticompetitive and unlawful price discrimination'.^[84] The FTC argued that this 'loss of competition ultimately harms consumers on choice and price'.^[85] Most recently, the court denied Southern Glazer's motion to dismiss.^[86]

No-hire Agreements

On 4 December 2024, the FTC issued an administrative complaint to Guardian Service Industries to cease enforcement of its no-hire agreements.^[87] 'These agreements prohibit building owners and competing building service contractors from hiring Guardian's employees', even after any given building's contract with Guardian had been terminated.^[88] The FTC alleged that enforcement of no-hire agreements limits the ability of employees to 'negotiate for higher wages, better benefits, and improved working conditions'.^[89] On 17 January 2025, the FTC finalised a consent order that requires Guardian to stop enforcing no-hire agreements, directly or indirectly.^[90]

On 6 January 2025, the FTC issued an administrative complaint ordering Planned Building Services to stop enforcement of its no-hire agreements.^[91] The FTC alleged that these agreements 'limit the ability of residential and commercial building owners from hiring building service workers employed by Planned' and therefore 'limited workers' ability to negotiate for higher wages, better benefits, and improved working conditions'.^[92] On 26 February 2025, the FTC finalised a consent order requiring Planned Building Services to cease enforcement of no-hire agreements.^[93]

Deere & Company

On 15 January 2025, the FTC sued Deere, a leading manufacturer of agricultural equipment, alleging that it created a monopoly by limiting methods by which customers can get Deere equipment repaired.^[94] The FTC alleged that in order to repair equipment purchased from Deere, farmers must rely on Deere's software tool for repairs, which Deere makes available only to limited authorised dealers.^[95] The FTC reasoned that through this limited distribution of repair tools, 'Deere has been able to control and limit who can repair its agricultural equipment, allowing Deere to maintain a 100% market share and charge higher prices, via its network of authorized dealers'.^[96] The case is pending in the US District Court for the Northern District of Illinois.

DEPARTMENT OF JUSTICE ACTIONS

Litigated Merger Challenges

JetBlue/Spirit

On 28 July 2022, JetBlue Airways and Spirit Airlines announced that they had entered an agreement to merge in a transaction valued at US\$3.8 billion.^[97] On 7 March 2023, the DOJ along with the Attorneys General of Massachusetts, New York and the District of Columbia filed a civil antitrust suit in the US District Court for the District of Massachusetts to enjoin the merger alleging that it would end head-to-head competition between the two airlines and make it easier for remaining airlines to coordinate to charge travellers higher fees or limit capacity.^[98] The DOJ specifically noted that Spirit's existence as a disruptive, low-cost option for air travel had forced larger airlines to lower their own fares and that this 'Spirit Effect' would be lost with the merger.^[99] On 1 June 2023, JetBlue and Frontier announced that they had entered an agreement to divest Spirit's holdings at LaGuardia Airport to Frontier in connection with JetBlue's planned merger with Spirit.^[100] On 16 January 2024, Judge William G Young found that while the airlines had provided evidence of new entries into the market and pro-competitive effects of the acquisition, consumers who rely on Spirit's low prices to be able to travel would be harmed, and the merger violated the Clayton Act.^[101] Judge Young enjoined the merger as it had been planned, but did not enjoin potential future mergers between the airlines.^[102] The defendant's appeal to the First Circuit Court of Appeals was dismissed,^[103] and JetBlue terminated the merger on 4 March 2024.^[104]

UnitedHealth Group/Amedisys

On 5 June 2023, UnitedHealth Group agreed to acquire Amedisys, a rival home health and hospice care firm for US\$3.3 billion.^[105] On 12 November 2024, the DOJ sued to block the proposed merger, alleging that the acquisition would diminish competition between 'two of the largest home health and hospice providers in the United States'.^[106] In a press release, the DOJ stated that its lawsuit aims to ensure that 'consolidation does not threaten quality, affordability, or wages in these vital healthcare markets'.^[107] The complaint stated that the proposed merger would 'eliminate a competing employer' and thereby deprive employees of 'valuable competition for pay and other employment terms'.^[108] The case is pending in the US District Court for the District of Maryland.

Mergers Abandoned Due To Enforcement Actions

Fresh Express/Dole Fresh Vegetables Division

On 31 January 2023, Dole announced the sale of its Fresh Vegetable Division for US\$293 million to Chiquita subsidiary Fresh Express, a maker of packaged salads.^[109] The companies terminated the acquisition on 28 March 2024 after the DOJ announced it would challenge the merger in court,^[110] expressing concern that the merger would reduce the number of competitors in the packaged salad market from three to two.^[111]

TopBuild/Specialty Products & Insulation

On 27 July 2023, insulation distributor TopBuild announced its intent to acquire competitor Specialty Products & Insulation (SPI) for US\$960 million.^[112] The DOJ expressed concern over loss of competition in the market for building products,^[113] and after months of attempting to settle the issue with antitrust authorities, TopBuild announced on 22 April 2024 that it would abandon the merger, citing low likelihood of regulatory approval.^[114]

Settled Mergers

Keysight Technologies/Spirent

On 28 March 2024, Keysight agreed to acquire Spirent, a company that makes communication testing equipment, for US\$1.5 billion.^[115] On 2 June 2025, the DOJ filed a complaint to block the merger along with a proposed settlement.^[116] The DOJ alleged that Keysight and Spirent are 'two of the largest global providers' of communications testing equipment and 'direct competitors' in the United States, and alleged that their acquisition would 'substantially lessen competition and harm customers in Violation of Section 7 of the Clayton Act'.^[117] The DOJ's proposed settlement requires Keysight to divest three of Spirent's products, including high-speed ethernet testing, network security testing, and RF channel emulation businesses, to Viavi, another rival company.^[118] Keysight has agreed to the settlement and expects to close the deal with Spirent by the end of July 2025.^[119]

Non-merger Enforcement Efforts

Poultry Industry Enforcement

On 28 September 2023, the DOJ filed a civil antitrust lawsuit against Agri Stats in the US District Court for the District of Minnesota,^[120] and four states subsequently joined the action.^[121] The DOJ alleged that the company facilitated an anticompetitive information exchange among poultry processors accounting for more than 90 per cent of all American broiler chicken and turkey sales.^[122] Agri Stats allegedly shared weekly and monthly data that

the processors subsequently used to set prices and output.^[123] In its press release, the DOJ noted that this was ‘the latest action by the Antitrust Division to combat unlawful information exchanges’, following a prior enforcement action against four poultry processors as well as two facilitators for participating in a long-running conspiracy to suppress workers’ compensation in the poultry industry.^[124] The case against Agri Stats is pending in the District of Minnesota.

On 9 November 2023, the DOJ brought antitrust claims against Koch Foods in the US District Court for the Northern District of Illinois, alleging that the company engaged in anticompetitive behaviour by requiring chicken farmers to pay termination penalties when switching to competing processors.^[125] The Department argued that these penalties function as unlawful noncompete clauses and filed a proposed consent decree requiring Koch to end its penalty practice and give refunds to all chicken farmers it has penalised so far.^[126] On 12 February 2024, Judge John Kness ordered entered final judgment on the DOJ’s proposed consent decree.^[127]

Apple

On 21 March 2024, the DOJ and sixteen states filed a civil antitrust lawsuit against Apple in the US District Court for the District of New Jersey,^[128] alleging the company has monopoly power and engages in anticompetitive conduct by preventing compatibility between Apple and other platforms for otherwise broadly compatible cloud streaming services, messaging apps, smartwatches, digital wallets and other apps and third-party software.^[129] The complaint alleged that Apple violated the Sherman Act as well as New Jersey and Wisconsin state antitrust statutes and seeks to enjoin the company from blocking cross-platform compatibility.^[130] The case is currently in discovery.

Live Nation-Ticketmaster

On 23 May 2024, the DOJ, 29 states and the District of Columbia filed a civil antitrust lawsuit against Live Nation and its subsidiary Ticketmaster in the US District Court for the Southern District of New York,^[131] alleging the companies have exercised monopoly power in the concert promotion and ticketing markets.^[132] The complaint seeks, at minimum, to break up Live Nation and Ticketmaster.^[133] Live Nation has asserted that the suit is improper in light of a 2010 consent decree with the DOJ that allowed Live Nation and Ticketmaster to merge in 2010 and was subsequently updated in 2020.^[134] The case is scheduled to go to trial in March 2026.

Visa

On 24 September 2024, the DOJ sued Visa for violation of sections 1 and 2 of the Sherman Act.^[135] According to the DOJ complaint, 60 per cent of debit transactions in the United States run through Visa’s networks, and Visa maintains this monopoly power illegally by ‘using its dominance to thwart the growth of existing competitors and prevent others from developing new and innovative alternatives’.^[136] The DOJ alleged that Visa does this systematically by buying off ‘would-be rivals’ and other ‘exclusionary practices’.^[137] The case is pending in the US District Court for the Southern District of New York.

RealPage

On 23 August 2024, the DOJ and the Attorneys General of North Carolina, California, Colorado, Connecticut, Minnesota, Oregon, Tennessee and Washington brought antitrust claims against RealPage, a company that licenses revenue management software to real

estate owners and managers.^[138] On 7 January 2025, the DOJ and state AG plaintiffs amended the complaint to add several landlord users of RealPage's revenue management software as defendants, and the DOJ simultaneously announced a proposed consent decree with one of those defendants.^[139] Plaintiffs allege that through, and in connection with, their use of RealPage's revenue management software, landlord defendants and RealPage participated in an 'unlawful scheme to decrease competition among landlords'.^[140] The complaint also alleges that RealPage unlawfully monopolised the market for commercial revenue management software for conventional multifamily housing rentals.^[141] The case is pending in the Middle District of North Carolina.

NCAA

On 18 January 2024, the DOJ sued the NCAA, alleging that its Transfer Eligibility Rule, which prohibits athletes from transferring between schools for one year, 'limited competition for college athletes' by restricting their ability to transfer to schools that 'provided better educational and athletic opportunities for them'.^[142] The DOJ's consent decree, which went into effect on 30 August 2024, prohibited the NCAA from enforcing the Transfer Eligibility Rule and required the NCAA to issue an extra year of eligibility to certain athletes who were previously deemed ineligible to participate in activities due to the rule.^[143]

Google I

On 20 October 2020, the DOJ filed suit against Google alleging unlawful maintenance of monopoly power over search and search advertising markets through anticompetitive and exclusionary practices.^[144] The DOJ alleged that 'Google has accounted for almost 90 percent of all search queries in the United States' by: (1) '[e]ntering into exclusivity agreements to bar installation of other search engines'; (2) entering into tying arrangements; (3) default agreements with Apple that require Google to be the de facto search engine; and (4) using monopoly power to buy preferential treatment.^[145] The DOJ argued that this ultimately hurts consumers by 'reducing the quality of search', 'lessening choice' and 'impeding innovation'.^[146] On 5 August 2024, Judge Mehta of the District of Columbia held that Google had illegally maintained monopoly power in violation of section 2 of the Sherman Act.^[147] The remedy has not yet been decided.

Google II

On 23 January 2023, the DOJ sued Google, alleging that Google monopolised digital advertising technologies that advertisers and websites rely on to buy ads and reach consumers.^[148] The complaint alleged that Google illegally maintained its monopoly through 'anticompetitive and exclusionary conduct' including acquiring competitors, forcing adoption of Google's tools, distorting auction competition by limiting real time bidding and manipulating auction mechanics.^[149] The DOJ alleged that, because of this conduct, 'Google now controls the digital tool that nearly every major website publisher uses to sell ads'.^[150] On 17 April 2025, Judge Leonie Brinkema of the US District Court of the Eastern District of Virginia held Google liable under the Sherman Act because it had 'willfully engaged in a series of anticompetitive acts to acquire and maintain monopoly power'.^[151] The remedy has not yet been decided.

Criminal Enforcement

In recent months, the DOJ has brought criminal prosecutions against wrongdoers in the medical industry, announcing, for example, deferred prosecution agreements resolving price-fixing charges against Teva Pharmaceuticals and Glenmark Pharmaceuticals and

requiring the companies to divest from generic cholesterol medicine lines and pay US\$305 million.^[152] The Justice Department also secured a guilty plea against an oncologist for conspiracy to allocate pricing for cancer treatment, and an agreement from his company to pay US\$100 million in criminal penalties.^[153]

The DOJ has also brought several criminal prosecutions alleging that no-hire agreements—agreements between employers not to hire each other’s employees—violate section 1 of the Sherman Act because these contracts diminish competition in labour markets. These prosecutions have been largely unsuccessful with juries returning not guilty verdicts or judges granting acquittals.^[154] The DOJ had its first success in a labour market criminal trial in *United States v Lopez* on 14 April 2025, where the jury returned a guilty verdict against the owner of a home healthcare company for fixing nurses’ wages.^[155] The DOJ has also prosecuted bid-rigging in service contracts made with public schools and in the land development industry,^[156] and price fixing in the steel and land development industries,^[157] with many of these cases resulting in plea agreements.

Interlocking Directorate Enforcement

During the Biden administration, the DOJ increased its enforcement of section 8 of the Clayton Act, which prohibits directors and officers from serving simultaneously on the boards of competitors, subject to limited exceptions. On 19 October 2022, the DOJ announced that seven directors had resigned from corporate board positions on firms in various industries in response to concerns that their roles violated the Clayton Act’s prohibition on interlocking directorates.^[158] On 9 March 2023, the DOJ announced that a further five directors had resigned from the corporate boards of four companies in a variety of industries and that one company declined to appoint a board member in response to ongoing Clayton Act enforcement efforts.^[159] On 16 August 2023, the DOJ announced that two directors of a social media company had resigned from another social media company’s board,^[160] and on 1 April 2024, the Department announced that two media company directors had resigned from the board of a video distribution company.^[161] Most recently the DOJ announced on 18 December 2024 that two directors of the parent of a gaming company had resigned from the board of another gaming company after the DOJ raised concerns.^[162]

Endnotes

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- 2 Press Release, FTC, ‘FTC Challenges Kroger’s Acquisition of Albertsons’ (26 February 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons>. ^ [Back to section](#)
- 3 Complaint ¶¶ 3, 15, 17, The Kroger Company and Albertsons Companies, Inc, FTC Docket No. D-9428 (26 February 2024). ^ [Back to section](#)
- 4 id. at ¶ 40. ^ [Back to section](#)

- 5 id. at ¶¶ 57-82. [^ Back to section](#)
- 6 Press Release, Kroger Company, 'Kroger and Albertsons Companies Announce Comprehensive Divestiture Plan with C&S Wholesale Grocers, LLC in Connection with Proposed Merger' (8 September 2023), <https://www.prnewswire.com/news-releases/kroger-and-albertsons-companies-announce-comprehensive-divestiture-plan-with-cs-wholesale-grocers-llc-in-connection-with-proposed-merger-301921933.html>. [^ Back to section](#)
- 7 Complaint ¶¶ 86-98, The Kroger Company and Albertsons Companies, Inc., FTC Docket No. D-9428 (25 February 2024). [^ Back to section](#)
- 8 Press Release, Kroger Company, 'Kroger, Albertsons Companies and C&S Wholesale Grocers, LLC Announce an Updated and Expanded Divestiture Plan (22 April 2024), <https://ir.kroger.com/news/news-details/2024/Kroger-Albertsons-Companies-and-CS-Wholesale-Grocers-LLC-Announce-an-Updated-and-Expanded-Divestiture-Plan/default.aspx>. [^ Back to section](#)
- 9 *Fed. Trade Comm'n v Kroger Co*, No. 3:24-cv-00347-AN, at *30 (D. Or. 10 December 2024). [^ Back to section](#)
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- 152** Press Release, DOJ, 'Major Generic Drug Companies to Pay Over Quarter of a Billion Dollars to Resolve Price-Fixing Charges and Divest Key Drug at the Center of Their Conspiracy' (21 August 2023), <https://www.justice.gov/opa/pr/major-generic-drug-companies-pay-over-quarter-billion-dollars-resolve-price-fixing-charges>. ^ [Back to section](#)
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- 155** *United States v Lopez*, No. 2:23-cr-00055 (D. Nev 14 April 2025) [^ Back to section](#)
- 156** See, eg, *United States v Garrido*, No. 1:25-cr-00113-JLR (S.D.N.Y. 19 March 2025); *United States v Willcutt*, No. 3:24-cr-00084-HTW-ASH (S.D. Miss. 4 August 2024); *United States v BG Dale Biscoe*, No. 5:24-cr-00314-J (W.D. Okla. 7 August 2024). [^ Back to section](#)
- 157** See, eg, *United States v Colon*, No. 3:24-cr-00331-GMM (D.P.R. 30 August 2024); *United States v Smith*, No. 5:24-cr-00066-J (W.D. Okla 15 February 2024). [^ Back to section](#)
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Margaret T Segall

msegall@cravath.com

<http://www.cravath.com>

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