

20 Enforcement, 26 Compliance, and Litigation Landscape

Antitrust Law in 2026: What You Need to Watch

About Us



Megan Bellshaw

meagan.bellshaw@weil.com



Megan Granger

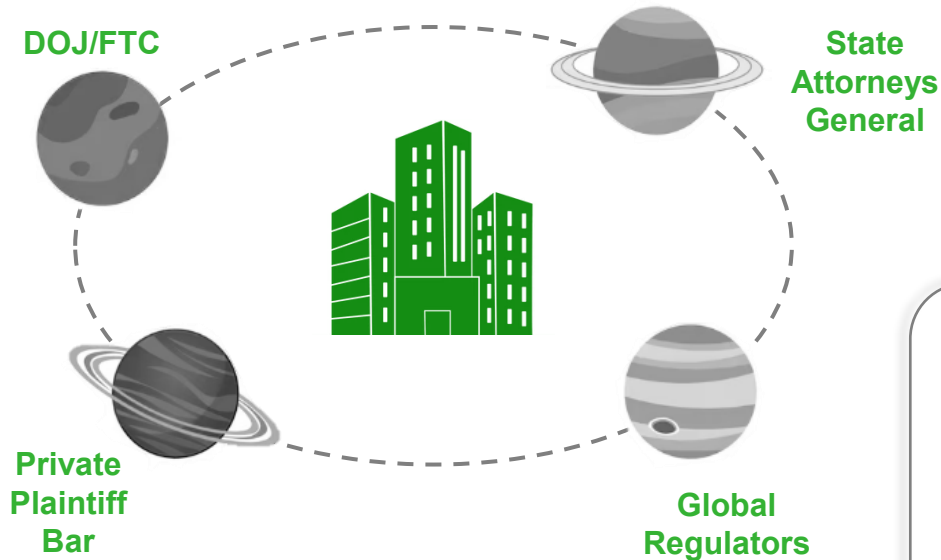
megan.granger@weil.com



Jeff White

jeff.white@weil.com

Antitrust Remains a Key Priority



“Robust antitrust enforcement has a key role to play in defending our free-enterprise system from monopoly and collusion that can stifle competition, making it harder for consumers, workers, and small businesses to survive and thrive. Stated differently, antitrust enforcers protect competition for all Americans and their American Dream. We are quite literally the free market cop on the beat.”

- AAG Gail Slater, Remarks at Drake University Law School, Nov. 19, 2025

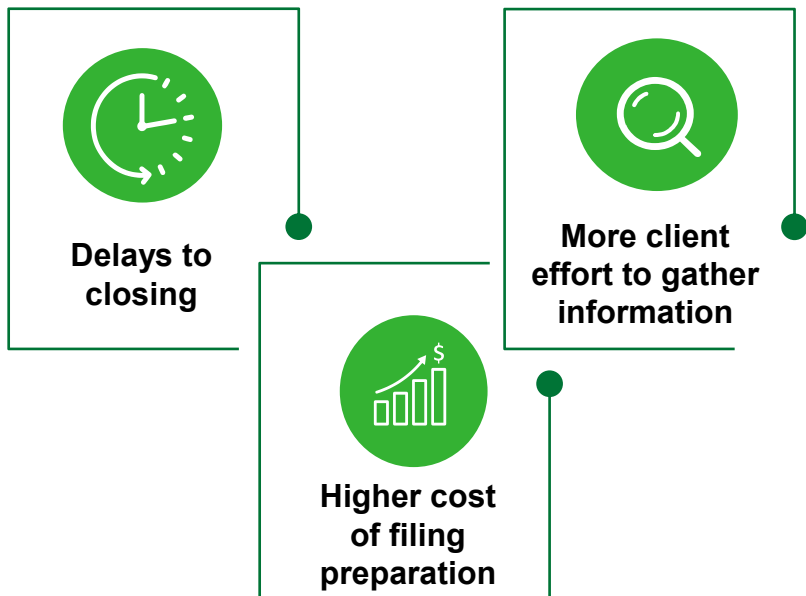
“I think all of Big Tech is going to remain under the microscope. I can at least speak for the Federal Trade Commission. We've got cases involving Amazon and Meta, I care deeply about these cases. They're very important. **I intend to continue prosecuting them to continue holding Big Tech's feet to the fire.”**

- FTC Chairman, Andrew Ferguson, Fox Business Interview, Feb. 20, 2025

20 Enforcement, 26 Compliance, and Litigation Landscape

Shifting Sands in Merger Review

New HSR Rules – Our Takeaways So Far



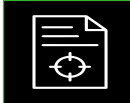
Avg. length of time needed to complete filing 5-10 BDs ➔ ~15-20 BDs

Avg. cost \$50,000 - \$100,000 ➔ \$100,000 - \$200,000

Source: Weil and public data



Descriptions of overlaps submitted upfront



Expanded scope of internal documents

New State Filing Requirements

WA and CO recently enacted pre-merger notification laws

WHO is required to file?

- A notification requirement is triggered in WA or CO where:
 - The filer has a **principal place of business** in WA or CO; or
 - The filer has **annual net sales in the state “of the goods or services involved in the transaction of at least” 20% of the current HSR threshold (~\$26.8M)**
- In WA, a filing is also triggered where the “Person” is a healthcare “provider” or “provider organization” conducting business in the state

WHAT must be submitted?




- Copy of the HSR filing
- HSR attachments if the filer’s principal place of business is in the state
- Filing to be made “contemporaneously” with the HSR filing

Implications of filing

- No filing fee
- No waiting period / not suspensory
- Civil penalties of up to \$10,000 per day for non-compliance

*Similar bills have been introduced in other states
(CA, DC, HI, NV, UT, and WV)*

New Mandatory & Suspensory Global Regimes

	 COMESA	 Australia	 Argentina
Effective Date	December 4, 2025	January 1, 2026	November 17, 2026
Old Merger Control Regime	Notification required before closing, but not approval	Voluntary and informal notification process	Notification required within one week <i>after</i> closing
New Review Period	120 calendar days , with ability to “stop-the-clock” if notification is incomplete	Phase 1 – Up to 30 business days (no earlier than 15 business days after notification) Phase 2 – Additional 90 business days	Yet to be determined – Review timelines expected to significantly shorten under the NCA (previous authority took between 9-18 months to clear non-problematic transactions and several years to issue decisions on problematic transactions requiring remedies)
Agency	COMESA Competition and Consumer Commission (“CCCC”)	Australia Competition and Consumer Commission (“ACCC”)	National Competition Authority (“NCA”)

20 26 Enforcement, Compliance, and Litigation Landscape

Global Merger Enforcement at All-Time Low, but for How Long?

Key Trends for Complex Global Deals

1



Global enforcement is at an overall low, with major jurisdictions opening fewer in-depth investigations and clearing more deals, often unconditionally, than in prior years.

2



Clearance remains slow for complex, cross border transactions, which continue to take 1-2 years on average, and can stretch even longer where multi-jurisdictional Phase II or Second Request reviews occur.

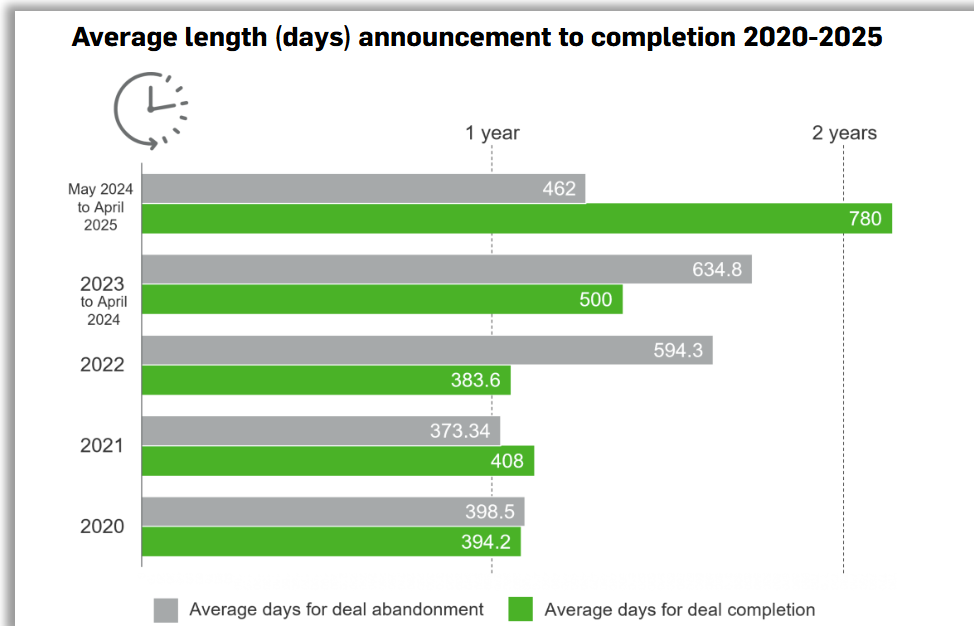
3



Remedies are back

US agencies accepted remedies in 5 out of 11 significant merger investigations YTD 2025, CMA flexibility is increasing, with more open remedy discussions aligned with its “4 Ps” (pace, predictability, proportionality, process).

No Slowdown in Review Times



*

Source: WorthWeil Antitrust, "WorthWeil By The Numbers: Closing Your Complex Global Deal in 2025" (May 6, 2025)

Remedies Back in Vogue



Structural Remedies

- **ACT/Giant Eagle (FTC):** Up-front divestiture of retail fuel sites with vetted buyer and transition plan
- **Synopsys/Ansys (FTC):** Divestiture of Synopsys's optical & photonic simulation tools and Ansys's power-analysis tool to Keysight
- **Keysight/Spirent (DOJ):** Divestiture of Ethernet, network-security, and RF-emulation tools
- **Safran/Collins Aerospace (DOJ):** Divestiture of overlapping actuation & flight-control component lines



Behavioral Remedies

- **Omnicom/IPG (FTC):** Ban on collusive advertisement placement. Ads cannot be steered based on political or ideological content
- “A rare instance where the imposition of a behavioral remedy is appropriate” given the “history of collusion in the market for media-buying services, and the increased potential for collusion post-merger” *[Statement of Chairman Ferguson, June 23, 2025]*



Structural + Behavioral Remedies

- **SLB/ChampionX (DOJ):**
Structural: Divestiture of CHX's diamond bearings and cutter business (USS). Divestiture of SLB's production chemicals business in Norway
Behavioral: Continuity-of-supply commitments for quartz sensors (Quartzdyne)
Quasi-Structural/Behavioral: Global IP licensing for sensor technology (Quartzdyne)



When Politics Meets Antitrust: Advocacy, Influence & Scrutiny

HPE JUNIPER
networking

An Amex GBT solution
CWT

AMERICAN
EXPRESS
GLOBAL
BUSINESS
TRAVEL

- **DOJ sued** to block the transaction
- Later, and **shortly before trial**, DOJ reaches settlement with the parties **or dismisses case**
- **Reports of lobbying of senior DOJ officials** resulting in clearance

Although I am limited in what I can say, it is my opinion that in the HPE/Juniper merger scandal Chad Mizelle and Stanley Woodward perverted justice and acted inconsistent with the rule of law. I am not given to hyperbole, and I do not say that lightly. As part of the forthcoming Tunney Act proceedings, it would be helpful for the court to clarify the substance and the process by which the settlement was reached. Although the Tunney Act has rarely served its intended purpose, this time the court may demand extensive discovery and examine the surprising truth of what happened. I hope the court blocks the HPE/Juniper merger. If you knew what I knew, you would hope so too. Someday I may have the opportunity to say more.”



Roger Alford, Former DOJ Official (fired following HPE/Juniper)

Speech at Tech Policy Institute Aspen Forum: “The Rule of Law Versus the Rule of Lobbyists”



Lobbying has led to reversal and clearance in recent DOJ Merger Challenges

Recent FTC Litigation Approach May Signal Shift Toward Alignment with DOJ

Aspect	Standard FTC Approach	FTC Approach in <i>FTC v. Henkel AG & Co. KGaA, et al. (2025)</i>
Litigation Path	Preliminary Injunction + Part III	Permanent Injunction in Federal Court
Burden of Proof	Lower at PI Stage	Full Merits upfront
Timeline	Shorter, bifurcated	Longer, single comprehensive trial

Recent due process + separation-of-powers challenges may reduce the FTC's reliance on internal tribunals

“The FTC will act as prosecutor, judge, and jury”
- Complaint at 26, *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023) (No. 2:20-cv-00014)

It remains an open question as to whether *Henkel* reflects a broader policy shift by FTC or simply a case-specific departure from past practice

20 26 Enforcement, Compliance, and Litigation Landscape

Cases to Watch in 2026 & Recent Litigation Updates

Busy Year Ahead

Agency Conduct Litigation



Allegations of deceptive pricing, coordination with brokers to raise costs, and use of market power in primary and secondary ticketing to entrench dominance



Trial – March 2026



Case is part of a broader push by the DOJ and FTC to continue asserting Section 2 enforcement in markets involving digital platforms, dynamic pricing, and two-sided ecosystems



DOJ seeking May 2026 trial



Allegations of organizing and managing anticompetitive information exchanges among meat processors



Google Litigation

Search: Google filed appeal on Jan. 16, 2026

AdTech: Oral arguments in the remedies trial ended Nov. 2025; final ruling pending



Pricing Algorithms Under Scrutiny – Recent Examples

United States v. RealPage



Aug. 2024: DOJ and several state AGs sue RealPage for allegedly using rivals' competitively sensitive information to train and run its pricing algorithm



Nov. 2025: DOJ files a proposed settlement prohibiting the use of:

- ✦ Competitors' nonpublic, competitively sensitive data in runtime pricing decisions
- ✦ Active or historical lease data that is less than 12 months old in model training
- ✦ Models using geographies narrower than the state level

Duffy v. Yardi Systems



Sep. 2023: Private plaintiffs sue Yardi for allegedly using its RENTmaximizer tool to enable property managers and owners to coordinate prices on multi-family properties



Dec. 2024: Court denies defendants' motion to dismiss and holds that plaintiffs adequately alleged a *per se* violation of the Sherman Act Section 1

Why is this important?

- ✦ Computerized pricing algorithm equated to a classic horizontal agreement to restrain trade
- ✦ Plaintiffs will not need to prove harm to competition under *per se* liability standard

Recent Local Legislation



Bans use of algorithmic software that performs a “coordinating function” between property owners and managers for setting rent or other lease terms



Requires disclosure when an algorithm uses consumers' personal data to set individualized prices

Bans use or distribution of common pricing algorithms to restrain trade and coercion of users to adopt algorithmic pricing recommendations

NTE v. Duke Energy “Monopoly Both” Case – When $0 + 0 = 1$



Fourth Circuit revived NTE’s monopolization suit, endorsing the “monopoly broth” theory (lawful acts + lawful acts = potentially unlawful scheme). Duke argued this contradicts precedent requiring at least one independently anticompetitive act



20+ amicus briefs (Microsoft, CCIA, TechNet, others) warned the theory could chill procompetitive conduct



SCOTUS denied certiorari, leaving the Fourth Circuit’s expansion of §2 liability in place



Effects:

- ❖ Strengthens plaintiffs’ ability to plead multi-act “schemes”
- ❖ Lowers the bar to survive Summary Judgment
- ❖ Invites lower courts to experiment with broader Section 2 approaches
- ❖ Potential increase in plaintiffs’ filings based on nebulous theories of “anticompetitive schemes” rather than traditional antitrust violations



Increased State AG Litigation Activity, Especially in ESG

Texas v. BlackRock, Inc., et al.



Dec. 2024: Texas and 10 other states allege that BlackRock, Vanguard, and State Street used coordinated climate-initiative commitments—such as Climate Action 100+ and NZAM—to pressure coal companies into reducing output, contributing to higher energy costs. The lawsuit claims the asset managers' conduct violates Section 7 of the Clayton Act, Section 1 of the Sherman Act, and related state antitrust and consumer protection laws.



Aug. 2025: Federal court denies most of the Defendants' motion to dismiss, allowing the federal and state antitrust claims to proceed.

"[the state claims] are not vague and conclusory but include dozens of specific examples of Defendants' conduct supporting their theory." – U.S. District Judge Jeremy Kernodle

"President Donald Trump understands the importance of coal for our energy security and has vowed to fight left-wing ideologues who seek to make us weaker and poorer under the guise of ESG. Today, the Federal Trade Commission carries out this administration's mission to unleash American energy dominance, protect coal, and stop the left's attempt to corrupt financial markets with political and social objectives. . . . These companies allegedly blocked the production of American coal in the name of climate change scaremongering, all so they could take money out of the pockets of American consumers and put it in theirs."



*FTC Chairman, Andrew Ferguson
DOJ and FTC Joint Texas v. Blackrock
Statement of Interest*

DOJ and FTC Signal Support in Their Joint Statement of Interest