Trump's 2nd Term Puts Merger Remedies Back On The Table

By **Jeremy Morrison, Nicollette Kirby and Megan Browdie** (August 1, 2025, 3:17 PM EDT)

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More than six months into the second Trump administration, the federal antitrust agencies have signaled and executed a shift in merger enforcement by embracing negotiated remedies to address competitive overlaps or other alleged antitrust issues between the merging parties.

Under the Biden administration, the U.S. Department of Justice and the Federal Trade Commission took a far more skeptical view toward remedies, typically favoring litigation to attempt to block deals they viewed as problematic.

During Assistant Attorney General Jonathan Kanter's tenure, the DOJ entered into only a single public merger settlement, on May 5, 2023, in U.S. v. Assa Abloy AB in the U.S. District Court for the District of Columbia, ending the DOJ's challenge to the Assa Abloy-Spectrum Brands Inc. merger.

While the FTC approved more consent agreements, the negotiation process was often contentious and entered into as a matter of last resort for the commission.

In response, merging parties increasingly took steps to unilaterally implement remedies addressing perceived competitive harms and where the agencies still sought to prevent closing, defended their deals in court on this basis.

By contrast, the Trump administration signaled a willingness to resolve concerns through remedies from the outset.

In a May 28 statement accompanying the filing of an administrative complaint in In re: Synopsys Inc.-Ansys Inc., FTC Chairman Andrew Ferguson explained in that settlements "may be the best way to protect competition in some cases."

Ferguson said this was because settlements "can temper the potentially over-inclusive effects of an injunction blocking an entire merger," maximize "the Commission's finite enforcement resources," and protect competition "without the expense and risk of litigation."[1]

And in her Feb. 12 confirmation hearing to become assistant attorney general for the DOJ's Antitrust Division, Gail Slater pointed to remedies as an area where the current DOJ would diverge from the Biden administration.

Slater stated that she expected "we may take a different approach than the prior Antitrust Division on settlements in merger cases where effective and robust structural remedies can be implemented without excessively burdening the Antitrust Division's resources."[2]

Recent settlements demonstrate that the agencies are making good on their rhetoric. This article briefly traces the historic role of consent decrees in merger enforcement and consent decrees under President Joe Biden, before turning to recent settlements, agency commentary and key learnings for parties considering transactions that may face scrutiny.

Consent decrees hold a historical role in merger enforcement.

Consent decrees have long served as a common tool to resolve relatively narrow and discrete antitrust concerns while still allowing mergers to proceed. Consent decrees are legally binding agreements, negotiated between the merging parties and antitrust authorities, that set forth tailored remedies designed to preserve competition.

Provisions may be structural — such as mandatory divestitures to prevent an increase in market concentration — or behavioral, imposing conduct-based obligations like firewalls to protect sensitive information, licensing requirements to maintain access, reporting mandates for oversight or continued access to sources of supply.

While the FTC was slightly more open to public remedies than the DOJ during the Biden administration, the FTC sought to impose more burdensome conditions, including reintroducing its long-abandoned prior approval requirement.[3]

This meant that buyers entering an FTC consent decree were often required to agree to notify the FTC prior to closing certain future transactions and provide the FTC authority to reject the planned transaction at its sole determination, even if a Hart-Scott-Rodino Act filing was not otherwise required.

While the FTC typically limited prior approval to the product and geographic markets at issue, the requirement added another burden to the calculus of whether to accept a consent.

Agency hostility toward remedies created deal uncertainty. The agencies often expressed skepticism that any remedy short of blocking a transaction would fail to protect competition.

Limiting remedy options also was, in part, a component of the agencies' desire to discourage dealmaking and increase the risk and costs of pursuing transactions that presented even a small amount of competitive risk.

Courts, however, continued to view settlements as viable options to resolve potential competitive harm. In Assa Abloy-Spectrum, for example, the court strongly encouraged the DOJ to accept the parties' proposed divestiture before the conclusion of trial, leading to a settlement permitting the deal to proceed on Sept. 13, 2023.

In other proposed transactions facing agency scrutiny, the parties unilaterally adopted measures — both structural and behavioral — to address perceived competition harms and then litigated the fix.

This strategy was frequently successful. For example, on Sept. 21, 2022, in U.S. v. UnitedHealth Group Inc., the buyer agreed to divest an overlapping business line, which the U.S. District Court for the District of Columbia **concluded** remedied the DOJ's alleged horizontal harm.[4]

Meanwhile, in FTC v. Tempur Sealy International Inc., the U.S. District Court for the Southern District of Texas, in its Feb. 4, opinion, **credited** the parties' commitment both to divesting certain stores and abiding by various post-close supply commitments with mattress suppliers as sufficient to address the FTC's alleged vertical harms.[5]

Trump DOJ and FTC embrace merger fixes.

Early statements from Trump-era enforcers reflect a renewed openness to remedy-based resolutions, where viable, to resolve competition concerns in deals that otherwise are not objectionable, and the last few months have made clear that the administration intends to make good on those promises. The DOJ and FTC have already entered into at least six merger remedies to resolve alleged competitive harm.

Many of these divestitures have involved the sale of a business line, which is consistent with the agencies' long-standing preference for structural fixes that constitute a stand-alone business. Others, however, have included behavioral remedies or divestitures of assets that do not appear to amount to a full business line.

Synopsys-Ansys

On May 28, the FTC announced that Synopsys and Ansys agreed to divest certain assets to proceed with their proposed $35 billion merger.

To address the FTC's concerns that the merger may lead to higher prices and reduced service in optical software tools, photonic software tools for designing and simulating photonic devices, and register transfer level power consumption analysis tools,[6] the parties entered into a consent.

The consent required Synopsys to divest its optical software tools and photonic software tools and Ansys to divest its power consumption analysis tool to Keysight Technologies.[7]

The FTC emphasized that Keysight held "existing relationships with many customers" of the divestiture products, likely in part because the divested assets did not appear to constitute a full business.

Keysight-Sprient

On June 2, the DOJ **reached a divestiture settlement** with Keysight and Spirent Communications.[8]

The settlement requires the parties to divest "all property and assets … related to or used in connection with (i) Spirent's high-speed ethernet testing business, (ii) Spirent's network security testing business, and (iii) Spirent's RF channel emulation business" to resolve antitrust concerns surrounding their $1.5 billion merger.[9]

In describing the settlement, DOJ Antitrust Deputy Assistant Attorney General Bill Rinner stated that the division prefers "structural relief and the nuanced protections [it] will impose to ensure their success," such as "a 'clean' divestiture to a ready buyer with strong incentives and the ability to compete."[10]

Safran-RTX Aerospace

On June 17, the DOJ **reached** another divestiture settlement, allowing Safran USA Inc. to proceed with its purchase of Collins Aerospace Inc.'s actuation and flight control business, subject to a "substantial divestiture commitment," to resolve concerns "in the worldwide market for trimmable horizontal stabilizer actuators ("THSAs") for large aircraft."[11]

The proposed consent requires Safran to divest its North American actuation business to Woodward, an American company with significant experience in the aerospace industry, including THSAs, secondary flight control actuators and electronic control units.[12]

The DOJ's press release emphasized that the "settlement is a structural solution" that "is another example of our commitment to transparency."[13]

Omnicom-Interpublic

On June 23, the FTC **required a behavioral remedy** to address concerns that Omnicom Group Inc.'s $13.5 billion acquisition of the Interpublic Group of Cos. Inc. would make the market for media buying services more concentrated, and increase "the risk of coordination among the remaining firms."[14]

To address concerns about future collusion, the proposed decision and order[15] prohibits Omnicom and IPG from entering into or maintaining any agreement or practice with any third party that directs advertisers' spend based on political or ideological viewpoints, refuses advertisers' request to spend based on political or ideological viewpoints, and declines to deal with an advertiser based on political or ideological viewpoints.

Couche-Tard-Giant Eagle

In the fifth consent announced under the Trump administration, the FTC on June 26, **secured a divestiture** settlement[16] in connection with Alimentation Couche-Tard's proposed $1.57 billion acquisition of 270 retail fuel outlets from grocery store chain Giant Eagle,[17] in which Alimentation Couche-Tard is required to divest 35 gas stations in Indiana, Ohio and Pennsylvania to Majors Management, a buyer the FTC described as "an experienced operator of retail fuel outlets"[18] — again, likely because the divestiture did not constitute a full business line.

HPE-Juniper

Most recently, on June 29, shortly before the DOJ was set to go to trial in the U.S. District Court for the Northern District of California to block Hewlett Packard Enterprise Co.'s $14 billion acquisition of Juniper

Networks Inc. based on concerns that the transaction was likely to lessen competition in enterprise-grade wireless local area network solutions,[19] the parties entered into[20] what the DOJ termed a novel settlement.[21]

Under the settlement, HPE is required to divest its global Instant On business as well as hold an auction to license Juniper's AI Ops for Mist source code. Although framed as a structural remedy, some observers have noted that the licensing component resembles a behavioral remedy.

Key Takeaways for Dealmakers

Companies considering transactions that have narrow overlaps or issues that may raise significant antitrust risk within a larger transaction, can once again build into their risk assessment that the DOJ and FTC are likely to be open to a reasonable remedy. In thinking through a possible fix, companies should keep the following in mind.

Agencies favor structural remedies, like divestitures.

As Ferguson explained in announcing the FTC's first settlement, the commission has a "strong preference … for structural remedies over conduct remedies."[22] He further explained that:

The structural remedy [should] involve the sale of a stand-alone or discrete business, or something very close to it, along with all tangible and intangible assets necessary (1) to make that line of business viable, (2) to give the divestiture buyer the incentive and ability to compete vigorously against the merged firm, and (3) to eliminate to the extent possible any ongoing entanglements between the divested business and the merged firm.

This preference for structural fixes has been evident in most of the recent consent agreements. And, while the agencies prefer a divestiture of a stand-alone business, the recent consents show that if the agencies are confident a buyer can fold assets into their existing business, even more surgical divestitures can be accepted.

In assessing potential remedies in pharmaceutical transactions, we expect the FTC will continue to preference the divestiture of marketed products over pipeline candidates, at least for complex pharmaceuticals, such as injectables and inhalants.

This policy — initially announced by FTC leadership during the first Trump administration — was based on FTC findings that the rate of failure for divested complex pharmaceutical pipeline candidates was startlingly high.

Conduct or behavioral remedies will face headwinds, but remain viable.

At least rhetorically, the agencies have signaled more reticence toward behavioral or nonstructural remedies. Ferguson stated that, "behavioral remedies should be treated with substantial caution" because they are "often difficult or impossible for the Commission to enforce effectively."[23]

The agencies under the Trump administration have nevertheless demonstrated some willingness to accept behavioral remedies in select cases, as reflected in In re: Omnicom-Interpublic and U.S. v. HPE, summarized above.

In Omnicom-Interpublic, Ferguson acknowledged that behavioral remedies may be appropriate in rare instances.[24] In practice, we expect behavioral remedies to be most attractive where the agencies believe they do not have a strong case and a behavioral remedy effectively addresses the alleged competitive harm without imposing undue monitor burdens.

Even where the agencies remain hostile to a behavioral remedy, merging parties may continue to consider unilaterally implementing measures to address perceived competitive harms and, if the agencies bring suit to attempt to enjoin closing, argue that courts should take these commitments into account in assessing competitive impacts.

Prior approval may no longer be an FTC requirement in consent decrees.

Although the Biden-era policy statement on prior approvals has not been formally withdrawn, the Trump administration's recent actions suggest it is moving away from this requirement.

For example, in a July 7 order reopening and modifying the EnCap Investments LP,-EP Energy Corp. settlement, the FTC replaced the prior approval clause with a prior notice clause, requiring only that the parties provide notice and observe a 30-day waiting period before consummating the transaction.

In its order, the FTC stated that while prior approval may be appropriate in certain cases, a "prior-approval requirement is an extraordinary remedy because it reverses the ordinary operation of the antitrust laws."[25]

Merging parties should consider potential for remedies in deal analysis.

The Trump-era FTC and DOJ have demonstrated an openness to considering remedies in lieu of litigation to outright block transactions — particularly when the proposed fix is structural, clearly addresses the harm and does not require burdensome oversight.

In assessing antitrust risks in potential transactions that may face antitrust scrutiny over certain products or businesses within a larger transaction, parties should discuss early in the process whether remedies may provide a viable path to obtaining antitrust clearance and align on the obligations to pursue remedies with the agencies in the deal documents.

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[1] Federal Trade Commission, Statement of Chairman Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak and Commissioner Mark R. Meador, In the Matter of Synopsys, Inc./Ansys, Inc. (Matter Number 2410059), May 28, 2025.

[2] Senator Grassley, Chairman, Questions for the Record, Ms. Abigail Slater, Nominee to be the Assistant Attorney General for the Antitrust Division of the DOJ, February 12, 2025.

[3] Federal Trade Commission, Statement of the Commission on the Use of Prior Approval Provisions in Merger Orders, October 25, 2021.

[4] Memorandum Opinion, United States v. UnitedHealth Group Inc. and Change Healthcare, Inc., Case 1:22-cv-0481, US District Court for the District of Columbia, September 21, 2022.

[5] Opinion and Order, FTC v. Tempur Sealy International Inc. and Mattress Firm Group Inc., Case 4:24-cv-02508, US District Court for the Southern District of Texas, January 31, 2025.

[6] Federal Trade Commission Complaint, In the Matter of Synopsys, Inc./Ansys, Inc. (2410059, C-4820).

[7] Federal Trade Commission Decision and Order, In the Matter of Synopsys, Inc./Ansys, Inc. (2410059, C-4820).

[8] Proposed Final Judgment, United States of America vs. Keysight Technologies, Inc. and Spirent Communications PLC, Case 1:25-cv-01734, US District Court for the District of Columbia, June 2, 2025.

[9] Complaint, United States of America vs. Keysight Technologies, Inc. and Spirent Communications PLC, Case 1:25-cv-01734, US District Court for the District of Columbia, June 2, 2025.

[10] US Department of Justice, Office of Public Affairs, DAAG Bill Rinner Delivers Remarks to the George Washington University Competition and Innovation Lab Conference Regarding Merger Review and Enforcement, June 4, 2025.

[11] Complaint, United States of America vs. Safran S.A., Safran USA, Inc. and RTX Corporation, Case 1:25-cv-01897, US District Court for the District of Columbia, June 17, 2025.

[12] Proposed Final Judgment, United States of America vs. Safran S.A., Safran USA, Inc. and RTX Corporation, Case 1:25-cv-01897, US District Court for the District of Columbia, June 17, 2025.

[13] US Department of Justice, Office of Public Affairs, Justice Department Requires Safran to Divest Assets to Proceed with Acquisition of Raytheon Assets, June 17, 2025.

[14] Federal Trade Commission Complaint, In the Matter of Omnicom Group Inc. and The Interpublic Group of Companies, Inc.

[15] Federal Trade Commission Decision and Order, In the Matter of Omnicom Group Inc. and The Interpublic Group of Companies, Inc.

[16] Federal Trade Commission Decision and Order, In the Matter of Alimentation Couche-Tard Inc., Circle K Stores Inc. and Giant Eagle Inc. (2410111, C-4821).

[17] Federal Trade Commission Complaint, In the Matter of Alimentation Couche-Tard Inc., Circle K Stores Inc. and Giant Eagle Inc. (2410111, C-4821), June 25, 2025.

[18] Federal Trade Commission, FTC Takes Action to Prevent Anticompetitive Effects of Retail Gas Station Deal, June 26, 2025.

[19] Complaint, United States Of America v. Hewlett Packard Enterprise Co. and Juniper Networks, Inc., Case 3:25-cv-00951, US District Court for the Northern District of California, January 30, 2025.

[20] Proposed Final Judgment, United States Of America, et al. v. Hewlett Packard Enterprise Co. and Juniper Networks, Inc., Case: 5:25-CV-00951-PCP, US District Court for the Northern District of California, June 27, 2025.

[21] US Department of Justice, Office of Public Affairs, Justice Department Requires Divestitures and Licensing Commitments in HPE's Acquisition of Juniper Networks, June 28, 2025.

[22] Federal Trade Commission, Statement of Chairman Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak and Commissioner Mark R. Meador, In the Matter of Synopsys, Inc./Ansys, Inc., Matter Number 2410059, May 28, 2025.

[23] Ibid.

[24] Federal Trade Commission, Statement of Chairman Andrew N. Ferguson, In the Matter of Omnicom Group/The Interpublic Group of Cos., Matter Number 2510049, June 23, 2025.

[25] Federal Trade Commission Order Reopening and Modifying Decision and Order, In the Matter of EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC, XCL Resources Holdings, LLC, EP Energy Corporation, and EP Energy LLC, C-4760, July 7, 2025.