

# Publications

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## A Wait Until the Deal Closes: The Antitrust Agencies Send a Strong Message About the Dangers of Gun-Jumping

One of the most common questions clients have after a merger or acquisition has been signed is, “When can we start on combining the operations and doing business?” And one of the most challenging pieces of counseling is to help a client understand the antitrust compliance principle that until a deal closes, the parties must compete as separate and independent entities. While merging companies may plan the integration of their operations, they may not actually integrate their operations or otherwise coordinate their competitive behavior before the transaction has closed without risking a “gun jumping” violation.

Gun-jumping violations can be triggered under two laws: (1) §1 of the Sherman Act, which prohibits agreements in restraint of trade (such as price fixing and market allocation); and (2) the Hart-Scott-Rodino Act (HSR Act), which requires parties to certain transactions to submit a premerger notification form and observe the necessary waiting period(s) prior to closing their transaction and the transfer of beneficial ownership.

While there have been a number of gun-jumping enforcement actions over the years, the Federal Trade Commission (FTC) and the Antitrust Division of Department of Justice (DOJ) (collectively, the “Antitrust Agencies”) made it clear recently that these types of violations will be scrutinized and penalized. The Antitrust Agencies imposed a record \$5.6 million civil penalty on three crude oil suppliers for engaging in gun-jumping in violation of the HSR Act.<sup>1</sup>

According to the complaint, XCL Resources Holdings, LLC (XCL) and Verdun Oil Company II LLC (Verdun) filed an HSR for their \$1.4 billion acquisition of EP Energy LLC (EP).<sup>2</sup> However, prior to the expiration of the HSR waiting period, XCL and Verdun assumed control of a number of EP’s key operations including but not limited to managing EP’s customers and coordinating pricing strategies. These and other actions effectively transferred beneficial ownership to the buyers before the deal closed, in violation of the HSR Act.

The enforcement action is the largest civil penalty ever imposed for a gun-jumping violation in history. Moreover, the Antitrust Agencies imposed a number of antitrust

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compliance and monitoring obligations on the buyers.

Polsinelli employs best practices with its clients when it counsels them on all aspects of antitrust compliance for a deal—everything from clean team agreements during information exchange/due diligence to appropriate integration activities up through closing. The reason, quite simply, is to avoid unnecessary antitrust risk. This enforcement action reinforces the importance of those practices. The Polsinelli Antitrust Team is here to support your deal compliance efforts.

[1]<https://www.ftc.gov/news-events/news/press-releases/2025/01/oil-companies-pay-record-ftc-gun-jumping-fine-antitrust-law-violation> and <https://www.justice.gov/opa/pr/oil-companies-pay-record-civil-penalty-violating-antitrust-pre-transaction-notification>

[2][https://www.ftc.gov/system/files/ftc\\_gov/pdf/complaintforcivilpenaltiesandequitablerelieforviolationsofthehartscottrodinoact.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/complaintforcivilpenaltiesandequitablerelieforviolationsofthehartscottrodinoact.pdf)