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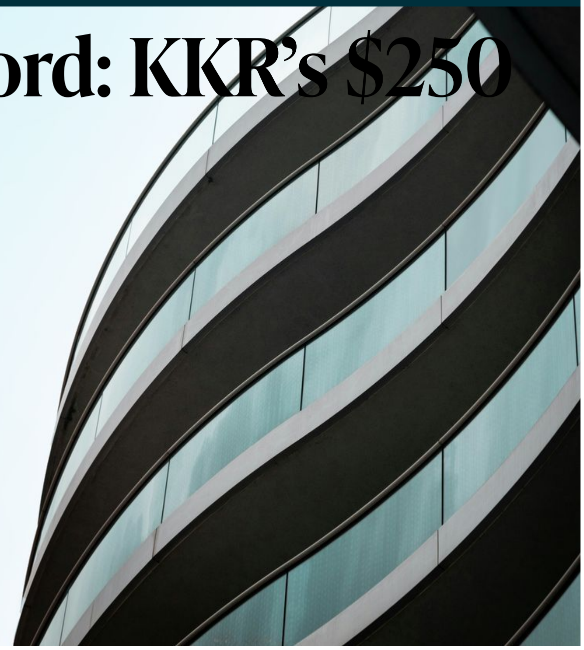
Another HSR Penalty Record: KKR's $250 Million Settlement



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The previous HSR penalty record lasted just over six weeks.

On August 26, 2026, continuing its focus on Hart-Scott-Rodino (HSR) Act filing violations, the Department of Justice filed a proposed settlement in the Southern District of New York that would require KKR & Co. Inc., a leading global investment firm, to pay $250 million to resolve a civil HSR Act case filed in January 2025. If approved, the penalty would be more than twenty times the $12 million settlement that the FTC announced in July with Edwards Lifesciences and Genesis MedTech.

According to the complaint, KKR and affiliated funds violated the HSR Act in connection with at least 16 transactions during 2021 and 2022. DOJ alleges that KKR omitted required documents from filings for at least ten transactions, altered responsive documents before submitting them in at least eight, and completed at least two reportable acquisitions without filing at all.

DOJ further alleges that KKR repeatedly certified deficient filings as complete and, in some instances, removed or revised material discussing competitive effects after the documents had circulated internally. In one instance, according to the complaint, KKR did not correct an omission even after outside counsel relayed the DOJ's questions about missing documents.

DOJ portrays these events not as isolated errors, but as the result of weak compliance controls and a broader "less is more" approach that impaired the agencies' premerger review. The complaint sought civil penalties and injunctive relief.

KKR disputes DOJ's account. It maintains that it acted in good faith under a process consistent with industry practice and agreed to settle to avoid the cost and distraction of continued litigation.

The settlement also highlights potential collateral consequences. It provides that entry of the judgment will not trigger certain securities-law disqualifications or proceedings under laws governing investment companies, broker-dealers, and investment advisers – a reminder that, for a regulated investment firm, an HSR enforcement action can have consequences beyond the filing process and the civil penalty.

The proposed judgment contains no admission of liability and remains subject to the Tunney Act public comment and court approval process.

A record penalty, but limited precedent

The breadth of DOJ's allegations is critical to understanding the penalty. The government did not allege a single threshold miscalculation or one document omitted from an otherwise complete filing. It alleged a recurring process that it says resulted in omissions, alterations, and failures to file across numerous transactions.

The historical progression is nevertheless remarkable. Before 2026, the high-water mark was DOJ's $11 million ValueAct settlement in 2016. Other, much smaller HSR-process penalties followed, including a $1.1 million penalty against Amedisys in 2025 for an alleged false certification of full compliance with a Second Request. The Edwards settlement raised the record to $12 million in July 2026, again for a violation involving a single transaction. The KKR settlement now resets the record at $250 million.

Still, the settlement does not resolve the parties' factual or legal disagreements. Nor would it impose the kind of continuing operational restraints seen in some earlier cases. ValueAct included a ten-year injunction and compliance program, while the proposed Edwards judgment includes five-year compliance and prior-notice obligations. The KKR judgment would expire upon payment and imposes no comparable continuing restrictions.

The $250 million figure is best understood as a powerful benchmark for the government's treatment of an alleged pattern of filing failures, not necessarily as reliable guidance on what an isolated and promptly corrected HSR error should cost. Subject to court approval, however, the settlement provides DOJ with a striking deterrent effect and gives KKR finality without an adjudication on the merits or ongoing operational restrictions.

Key takeaways for filing parties

- **Build (and document) a process that can withstand scrutiny.** The answer is not reflexive overproduction. It is a disciplined process with clearly assigned responsibilities, reliable document collection and version control, thoughtful escalation of close calls, and a final check to ensure the submission is complete. When a potential problem surfaces, it should be investigated and corrected promptly. The Item 4 collection and review methodology should also be memorialized.

- **Industry practice is not a safe harbor.** A filing convention may be widespread and still pose a risk if the agencies believe it results in incomplete submissions. Parties should test their practices against the statute and the agencies' requirements, not simply against what others in the market are believed to do.

- **Assume one issue may prompt a broader lookback.** Once the government identifies a potential problem in one filing, it may examine earlier transactions to determine whether the same issue arose elsewhere. Frequent acquirers should be able to reconstruct how filing decisions were made, including who made the call, what information was considered, how close questions were escalated, and whether the same approach was applied consistently across transactions.

- **Process quality may shape the enforcement response.** The KKR settlement does not suggest that every HSR mistake carries nine-figure exposure. It does reinforce the distinction between an isolated issue that is promptly identified, investigated, and corrected, and an alleged pattern of deficiencies.

The KKR case was filed in January 2025 and settled in August 2026, spanning presidential administrations. The settlement also follows DOJ's August 2025 launch of its "Comply with Care" task force, which identified HSR violations as an enforcement concern. Whatever changes may occur in broader merger policy, enforcement directed at the integrity of the HSR process appears likely to remain a durable priority.

> **"This historic $250 million civil penalty – more than 20 times any prior HSR penalty obtained by the DOJ – sends a powerful message: the Department is committed to vigorous enforcement of the Act."**
>
> **– Associate Attorney General Stanley E. Woodward Jr.**

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For a closer look at the Edwards settlement, Axinn Managing Partner Jeny Maier recently co-hosted an episode of the ABA Antitrust Law Section's Our Curious Amalgam podcast examining HSR avoidance and what deal teams should consider when a transaction falls close to the filing threshold.

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