

# Antitrust Enforcement in Energy M&A in the Trump Era — 4 Issues to Watch

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

4 MIN READ

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As CERAWeek begins in Houston, dealmakers in the energy sector will surely be asking how the second Trump Administration antitrust enforcers will treat energy deals.

As a prelude, no industry has a longer history with antitrust — the Sherman Antitrust Act was created as a legislative means to break up the monopolistic oil, steel, and railroad trusts of the late 19th Century. John D. Rockefeller's Standard Oil was target #1 of Teddy Roosevelt's Justice Department. And in *US v. Standard Oil*, the Supreme Court ordered Standard Oil broken up (as compellingly recounted in Daniel Yergin's *The Prize*).

Here are four things on our minds as we watch the FTC and DOJ at the outset of the Trump Administration:

## **#1: Will FTC and DOJ Job Cuts Lead to Faster or Slower Deal Clearances?**

The FTC and DOJ have not been spared the wrath of DOGE. Some next-generation DOJ antitrust lawyers have seen accepted job offers withdrawn, and several FTC lawyers have been fired. What's more, there is a voluntary exodus of career lawyers underway and an expectation that the firings are not over yet.

*What will this do to the pace of oil and gas merger reviews?* On the one hand, fewer staff means that the agencies may be forced to investigate fewer mergers because of resource constraints. This would suggest that some mergers that would otherwise have received Second Requests may instead be cleared after 30 or 60 days. These resource constraints may have been at play during the Biden administration, which faced a significantly higher average number of reported mergers per year than under the Obama or first Trump administrations and issued Second Requests at a lower rate.

But with the continued political sensitivities around energy prices, it could be a difficult choice for an agency to grant a quick clearance if there are any substantive issues. If a Second Request is issued, agency manpower shortages can lead to slower and therefore longer investigations of those deals. *Will we see requests by the agencies for extended review periods so that they can complete their investigations with fewer people?*

## **#2: Will the Trump FTC Withdraw the Exxon/Pioneer and Chevron/Hess Consent Decrees?**

The famously (or infamously) aggressive Biden FTC (under Chair Lina Khan) had two shots last year at significant oil and gas deals: Exxon/Pioneer and Chevron/Hess. There was intense opposition to the deals in some quarters but, in the end, the FTC allowed the deals to proceed.

But in an unusual turn of events, the FTC extracted from the acquirers remedies that barred the CEOs of Hess and Pioneer from joining the Boards of Chevron and Exxon, respectively — ostensibly because the two men had a history of encouraging collusion in the industry through past contacts with OPEC executives.

The two Republican FTC commissioners, Andrew Ferguson and Melissa Holyoak, voted against these remedies, arguing that the bans were political grandstanding and virtue-signaling that had no relation to the actual competitive effect of the mergers. The Republicans did acknowledge that some of the allegations about coordination were possibly legitimate areas of concern, but not under Section 7 (the antitrust law that applies to mergers).

Pioneer's former CEO has sued to vacate the consent decree on the grounds that it violates his constitutional rights. With Ferguson now Trump's FTC Chairman, will the FTC reverse course on these consent decrees, despite having signaled some concern with the alleged conduct?

## **#3: Will the Trump FTC's Hostility to ESG Extend to Merger Review?**

Texas Attorney General Ken Paxton and 10 other Republican-led states sued BlackRock, State Street Corporation, and Vanguard Group in November 2024 for allegedly using their stockholdings to pressure coal companies to accommodate “green energy” goals in order to reduce coal output and increase prices. The Trump FTC has since joined the chorus attacking joint efforts by investors to push companies towards alternatives to fossil fuels.

Despite this, investments in renewable energy sources will continue, and M&A activity can be expected to be high. *Will the Trump enforcers use the HSR merger review regime to slow or stop investments in renewables? And how will they view merger rationales that revolve around advancing renewable energy technology or production?*

#### #4: Will Antitrust Merger Review Become a Trade Weapon?

Now that we are at the advent of a global trade war, will we see the US use the HSR regime to block or discourage efforts by foreign companies to acquire US energy companies? Or will CFIUS remain the principal tool for the federal government to block disfavored investments (such as with Nippon Steel/US Steel)?

Similarly, will US buyers see resistance from European and Chinese (and Canadian and Mexican) antitrust agencies? There certainly is a history of deals becoming delayed in China for reasons that appear to have been political rather than competition-related.

For global deals that require approvals around the world to close, are we entering a period where such deals get stuck in a merger review quagmire of protectionism?

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We expect developments that will help shed light on many of these questions in the coming months. We will provide updates as events unfold.



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