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# HSR Act and Private Equity Roll-Ups: Antitrust Basics

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Published by Docket · 2026-10-29 · hsr act private equity · hsr filing threshold · serial acquisitions antitrust · roll up antitrust ftc

Original article: https://docket.capital/articles/hsr-antitrust-serial-acquisitions-roll-ups



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## Two separate questions: must we file, and could the deal still be challenged?

A buy-and-build program raises two antitrust questions that are often merged into one. The first is procedural: does a given acquisition have to be reported to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) before closing under the Hart-Scott-Rodino (HSR) Act? The second is substantive: could the acquisition, alone or together with the platform's earlier deals, be investigated or challenged as a violation of Section 7 of the Clayton Act?

The answers are independent. HSR is a pre-closing notice and waiting-period regime. Section 7A of the Clayton Act says that, except as exempted, no person shall acquire voting securities or assets above the statutory thresholds unless both parties file notification and the waiting period has expired; the standard waiting period ends on the thirtieth day after the agencies receive the completed filings (15 U.S.C. § 18a(a) and (b)(1)). The same section also says that agency action or inaction under it "shall not bar any proceeding or any action with respect to such acquisition at any time" under other antitrust provisions (15 U.S.C. § 18a(i)(1)). A deal that is too small to report is still subject to the substantive law.

For a roll-up, that distinction matters more than usual. Individual add-on acquisitions are often far below the reporting thresholds, while the program as a whole may change a local market's structure.

This is general information, not legal advice; filing and exemption questions belong to antitrust counsel.

## 2026 HSR thresholds at a glance

The FTC revises the HSR thresholds every year based on the change in gross national product (Federal Register, January 16, 2026). The current figures took effect on February 17, 2026 (FTC, Current Thresholds).

| Test (Section 7A subsection) | Statutory figure | 2026 adjusted figure |
|---|---|---|
| Size of transaction, reportable without a size-of-person test, 7A(a)(2)(A) | $200 million | $535.5 million |
| Size of transaction, lower bound, 7A(a)(2)(B)(i) | $50 million | $133.9 million |
| Size of person, smaller party, 7A(a)(2)(B)(ii) | $10 million | $26.8 million |
| Size of person, larger party, 7A(a)(2)(B)(ii) | $100 million | $267.8 million |

Sources: Federal Register notice and FTC thresholds page, both read October 28, 2026.

How the tiers fit together, in outline:

- **Above $535.5 million** in voting securities or assets held as a result of the acquisition, the transaction meets the size-of-transaction test without regard to the size of the parties (exemptions can still apply).
- **Above $133.9 million and up to $535.5 million**, the transaction is reportable only if the size-of-person test is also met. In the statute, that test looks at annual net sales or total assets of the acquiring and acquired persons, with variants for manufacturing targets, non-manufacturing targets, and the case

where the target is the larger party (15 U.S.C. § 18a(a)(2)(B)(ii)). In 2026 dollars, the two size-of-person figures are $26.8 million and $267.8 million.
- **At or below $133.9 million**, the size-of-transaction test is not met.

The "held as a result of the acquisition" wording is where many program-level questions sit. The HSR rules contain an aggregation provision, 16 CFR § 801.13, "Aggregation of voting securities, assets and non-corporate interests", that governs what is counted alongside the interest being acquired. Whether earlier holdings or related purchases from the same seller are aggregated is a question to hand to counsel, not one to settle from a summary.

### Filing fees

The same January 2026 notice adjusted the filing fee schedule (Federal Register). The FTC's fee page lists the following tiers, displayed under the date February 17, 2026 (FTC, Filing Fee Information):

| 2026 adjusted size of transaction | 2026 filing fee |
|---|---|
| Less than $189.6 million | $35,000 |
| $189.6 million to less than $586.9 million | $110,000 |
| $586.9 million to less than $1.174 billion | $275,000 |
| $1.174 billion to less than $2.347 billion | $440,000 |
| $2.347 billion to less than $5.869 billion | $875,000 |
| $5.869 billion or more | $2,460,000 |

Both tables change annually (the 2026 notice was published in January), so check the FTC thresholds page on the day a filing analysis is done.

## The HSR form: where things stand

The content of an HSR filing changed in 2025 and then changed back. As of October 28, 2026, the FTC's forms page (marked "Updated: 03/23/26") states:

- On February 12, 2026, a federal district court vacated the new HSR form that took effect on February 10, 2025.
- On March 19, 2026, the U.S. Court of Appeals denied the Commission's motion for a stay pending appeal.
- The Commission is accepting HSR filings using the form and instructions in place before February 10, 2025, and will continue to accept filings on the February 2025 form if filers voluntarily choose to use it.

(FTC, HSR Notification Forms, Instructions and Guidance)

On March 25, 2026, the FTC and DOJ requested public comment on the effectiveness of the updated form, with comments due no later than May 26, 2026. The FTC's release says it "is considering engaging in a new rulemaking process" regardless of the outcome of the litigation (FTC press release, March 25, 2026).

The district court decision is a memorandum opinion and order signed February 12, 2026 in *Chamber of Commerce v. FTC*, No. 6:25-cv-00009 (E.D. Tex.); the appeal is No. 26-40094 in the Fifth Circuit (CourtListener, Fifth Circuit docket).

Evidence status as of October 28, 2026:

| Item | Status |
|---|---|
| Pre-2025 form accepted | Verified on FTC forms page |
| Comment period closed May 26, 2026 | Verified deadline on FTC release |
| A new proposed form or rule | None published: no FTC premerger rule or proposed rule in the Federal Register in 2026 through October 28 |
| Further steps in the appeal | On May 18, 2026 the FTC filed an unopposed motion to stay the appeal, citing an "ongoing agency process to consider revisions to the rule" (5th Cir. No. 26-40094) |

For an origination team the practical effect is limited: the form changes filing preparation and closing timelines on larger platform deals, not whether a small add-on can be challenged.

## Why small add-ons are not invisible

The 2023 Merger Guidelines, issued jointly by the FTC and DOJ, contain a guideline aimed squarely at serial acquirers. Guideline 8 is titled "When a Merger Is Part of a Series of Multiple Acquisitions, the Agencies May Examine the Whole Series." Its first sentence reads: "A firm that engages in an anticompetitive pattern or strategy of multiple acquisitions in the same or related business lines may violate Section 7." (DOJ, Guideline 8)

The guideline then describes how the agencies would look at such a pattern:

- They may evaluate the series "as part of an industry trend" or evaluate "the overall pattern or strategy of serial acquisitions by the acquiring firm collectively."
- They may examine "both the firm's history and current or future strategic incentives," including acquisitions "consummated or not," in the market at issue and in other markets.
- Evidence of current incentives includes "documents and testimony reflecting its plans and strategic incentives," both for the individual deal and for the firm's position in the industry.

(DOJ, Guideline 8)

The guidelines are an agency statement, not a statute, but they tell a sponsor what the agencies will ask for: the plan, not only the deal.

That last point has a practical consequence for origination files. Investment memos, thesis notes and target lists describe a strategy. A note that says a platform aims to "own the metro" or "take out the remaining independents" is the kind of planning document the guideline says the agencies may weigh. Plain, factual descriptions of market position are better practice than aspirational language about dominance.

**Illustrative example (fictional).** Northgate Partners builds a commercial landscaping platform, Greenline Services, in a single metro area. Over three years it buys eight local companies, each for between $5 million and $15 million. No single deal comes close to the $133.9 million size-of-transaction figure, so (subject to counsel's view on aggregation and exemptions) none is reportable under HSR. Before the program, the metro had about 30 commercial landscaping firms of meaningful size. After it, Greenline is the largest provider, and its two nearest rivals are much smaller. Nothing in this example is a finding that the program is unlawful. The point is that the reporting analysis says nothing about the substantive question, and the deal team's own files are where the agencies would look first if the question were asked.

## What the agencies have said and done on PE roll-ups

The most prominent recent example involves U.S. Anesthesia Partners (USAP) and the private equity firm Welsh Carson. It should be read with care: much of it is allegation, not finding.

**The complaint (allegations).** On September 21, 2023, the FTC sued USAP and Welsh Carson in federal court in Texas. The FTC's release alleges they were "systematically buying up nearly every large anesthesia practice in Texas," that USAP acquired "more than a dozen anesthesiology practices in Texas," and that the firms entered into pricing arrangements and a market-allocation agreement. The release notes that the Commission files a complaint when it has "reason to believe" the law has been violated and that "the case will be decided by the court" (FTC press release, September 21, 2023). USAP denied the allegations (joint motion to stay, April 23, 2026).

**The Welsh Carson order (resolved).** On May 20, 2025, the FTC announced a final consent order with Welsh Carson, approved 3-0. It requires Welsh Carson to limit its involvement with USAP and to notify the FTC of specified future acquisitions and investments in anesthesia and other hospital-based physician practices (FTC press release, May 20, 2025). A notice obligation of this kind reaches deals regardless of whether they meet the HSR thresholds, which is why it matters for a sponsor's future pipeline.

**The case against USAP (pending).** On April 23, 2026, the FTC announced "an agreement in principle" with USAP to settle the litigation and said "the substance of the agreement is confidential at present" (FTC press release, April 23, 2026). The parties' joint motion says they "have entered into a binding term sheet that will take 180 days to implement," asks the court to stay proceedings for 180 days, and states that if USAP cannot implement certain specified relief, the FTC may terminate the settlement and resume litigation (joint motion to stay). On May 26, 2026, the court granted the motion: "All proceedings and deadlines in this matter are stayed or suspended for 180 days through November 18, 2026," and the parties must file a status update ten days before the stay expires if they have not filed a proposed final order (Order, Dkt. 339). On October 28, 2026, the FTC's case page still listed the matter as "Pending" (FTC case page), and the public court docket showed no proposed final order; its latest entry was a counsel withdrawal notice of August 7, 2026 (CourtListener docket). Any final order needs a Commission vote and court approval, so the terms remain unknown until one is filed.

What can fairly be taken from the matter, without overstating it:

1. The FTC has brought a case framed around a private-equity-backed series of acquisitions in one state.
2. A sponsor accepted an order that includes prior notice of future deals in defined practice areas.
3. No court finding on the roll-up allegations is reported on the FTC pages or the court docket cited.

## Is the 2023 Merger Guidelines framework still in force?

On February 18, 2025, FTC Chairman Andrew Ferguson announced that the joint 2023 Merger Guidelines "are in effect" and "will serve as the framework for the FTC's merger-review analysis," while also saying wholesale rework of guidelines should be undertaken "sparingly" (FTC press release, February 18, 2025). The same day, the DOJ Antitrust Division's acting head told staff that "the Antitrust Division will continue to use the 2023 Merger Guidelines until further notice," adding that they "are not necessarily perfect" and future revisions were possible (DOJ memorandum, February 18, 2025).

On October 28, 2026, the DOJ's merger guidelines page still showed the 2023 guidelines with "Issued: December 18, 2023" and no notice of withdrawal or revision (DOJ, Merger Guidelines). No FTC or DOJ announcement replacing them was found that day, so the 2023 Guidelines remain the agencies' stated framework. Recheck the DOJ page before relying on Guideline 8 in a memo.

## What origination teams should record about market position

Origination teams produce much of the factual record counsel will later need. Capturing a few fields per thesis and per add-on, with sources and dates, saves time and keeps the record accurate. The market mapping work a team already does is the natural place to hold them. Public counts of firms and establishments by geography, such as County Business Patterns, can anchor the competitor count; see CBP vs QCEW vs SUSB for market sizing for the differences between those datasets.

Suggested fields, each with a source and an evidence status (verified, unverified, open):

| Field | What to record | Typical evidence |
|---|---|---|
| Service and product lines | What the platform and target each sell, in customers' terms | Company websites, price lists |
| Geographic area | Where customers buy from (drive time, service radius, metro) and why | Service-area pages, dispatch radius, customer locations |
| Competitor count | Firms of meaningful size in that area, with names | Public business counts, directories, licensing lists |
| Share estimate | Platform plus target share, with method stated | Revenue estimates; mark as estimate and record the basis |
| Prior acquisitions in the area | All sponsor and platform deals in the same or related lines, closed or abandoned | Deal log |
| Customer concentration | Whether a few large buyers dominate | Diligence materials |

| Field | What to record | Typical evidence |
|---|---|---|
| Notice obligations | Any order or agreement requiring prior notice | Counsel |
| Planning language | Where strategy is described in memos and decks | Internal documents |

**Illustrative worksheet entry (fictional).**

| Field | Entry | Status |
|---|---|---|
| Target | Riverbend Lawn Care LLC | Verified (state registry) |
| Lines | Commercial grounds maintenance; snow removal | Verified (company website) |
| Area | Metro core plus 40-minute drive ring | Unverified (management estimate) |
| Competitors of meaningful size | 22 named firms | Verified list; completeness open |
| Combined share | Not estimated | Open: no defensible revenue basis yet |
| Prior platform deals in area | 5 closed, 1 abandoned | Verified (deal log) |

An invented share figure in a deal file is worse than a visible gap.

## Questions to take to antitrust counsel

- Given the 2026 thresholds, is this acquisition reportable, and how does 16 CFR § 801.13 aggregation apply to our prior holdings and related purchases?
- Which form and instructions apply on the expected filing date, and has anything changed since the FTC forms page update of March 23, 2026?
- Does any exemption apply, and how should we document the analysis?
- Viewed as a series under Guideline 8, how does this program look in each local market we operate in?
- Do any orders, consent agreements or contract terms require prior notice of deals in this sector?
- How should deal memos and thesis documents describe market position?

Every agency page and court docket cited here was read on October 28, 2026.

Docket's research agents record answers to a client's own screening questions with a quoted source for each, and leave unanswerable fields visibly open, which suits the market-position fields above.

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## Source links

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