

DOJ Secures a \$1.1 Million Fine From Amedisys for Deficient Second Request Compliance

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Executive Summary

- **What is new:** The DOJ settled with Amedisys and UnitedHealth, imposing a \$1.1 million fine on Amedisys for failing to “truthfully, correctly, and completely” comply with Second Request document production requirements during antitrust review, marking a rare case of civil penalties for Second Request violations.
- **Why it matters:** The case highlights the importance of thorough compliance with HSR Act requirements and the potential consequences of deficiencies in document production, serving as a reminder to practitioners and companies in front of the antitrust agencies.
- **What to do next:** Companies should ensure thorough and timely responses to HSR Act subpoenas to avoid potential penalties and delays requiring significant labor and expense, including civil penalties.

On August 7, 2025, the Antitrust Division of the U.S. Department of Justice (DOJ) — together with co-plaintiff attorneys general of Maryland, Illinois, New Jersey and New York (Plaintiff States) — filed a proposed settlement with the U.S. District Court of Maryland to resolve their lawsuit challenging the proposed acquisition of Amedisys Inc. (Amedisys) by UnitedHealth Group Inc. (UnitedHealth). The DOJ and Plaintiff States had filed the lawsuit in November 2024, seeking to block the combination on the alleged basis that the merger would substantially lessen competition throughout the U.S. in the provision of both home and health hospice services and in nurse labor markets. To settle this charge, UnitedHealth and Amedisys agreed to divest 164 home health and hospice locations across 19 states.

This settlement provided another example of the antitrust agencies’ renewed openness under President Trump to settle merger cases with negotiated remedies, resuming a traditional agency practice that had been disfavored by the DOJ and the Federal Trade Commission (FTC) under the Biden administration (which had originally brought this case).

This proposed settlement is unique among other recent merger cases, however, because the settlement also resolved a separate, DOJ-only claim against Amedisys “for falsely certifying that the company had truthfully, correctly and completely responded” to the DOJ’s requests for documents in connection with the agency’s review of the merger. This type of claim is rarely litigated, and the proposed settlement (if approved by the district court following its Tunney Act review) will represent the first time that the government has assessed fines for an alleged HSR Act violation of this nature.

HSR Act and Second Request Background

The Hart-Scott-Rodino Act (HSR Act, also referred to as Section 7A of the Clayton Act) requires that mergers and acquisitions of a certain size involving U.S. commerce be pre-notified to both the DOJ and the FTC, unless an exemption applies. Notifying an HSR-reportable transaction entitles these antitrust agencies thirty days (in most cases) to review a pending transaction before the transaction can legally close. This is typically referred to as the “waiting period.” When the DOJ or FTC determine they need more time to investigate whether a notified transaction raises competition concerns, they may issue to the merging parties subpoenas that are commonly known as “Second Requests.”

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Second Requests extend the merging parties' waiting period until thirty days (for most types of deals) after both parties have substantially complied with their respective requests.

Second Requests require each merging party to provide significant volumes of documents and data to the DOJ or FTC — often millions of documents measuring hundreds of gigabytes. Standard Second Request instructions require that these document productions capture any type of writing or media that contains content that is both responsive to the subpoena and not legally privileged. In today's world, this means that “documents” required to be produced for Second Requests will normally include emails, attachments, desktop and shared site files, hard copy documents, text messages and communications through other messaging applications, among other file types.

Once a merging party completes its response to a Second Request, the party must certify to the reviewing agency the company's substantial compliance with the Second Request's production requirements. For Second Requests that are not complied with, the certification needs to include the reasons for such noncompliance. The investigating agency reviews the merging parties' produced documents (among other information) to evaluate (i) their compliance with the subpoena and (ii) whether the proposed transaction, if consummated, would substantially lessen competition in violation of Section 7 of the Clayton Act.

Parties that fail to substantially comply with the requirements of the HSR Act can be subject to fines for each day of their violation. The DOJ or FTC may also petition a court to (i) see that the merging parties have their waiting period tolled until substantial compliance is reached, (ii) order compliance or (iii) impose other equitable relief that a court deems necessary or appropriate.

Historically, the vast majority of prosecuted HSR Act violations have pertained to aspects of the statute that are unrelated to Second Request compliance (e.g., failure to file a reportable transaction, deficient notification forms, failure to observe the waiting period/“gun jumping,” etc.). Prior to *UnitedHealth/Amedisys*, the agencies had only twice before pursued judicial relief for an allegedly incomplete Second Request response. In both of those cases, the FTC only sought to delay the parties' pending transactions until the parties completed compliance with their Second Requests, and in neither case did a court opine on the merits since the merging parties either settled with the FTC or abandoned their transaction.

Amedisys's Alleged Deficiency

UnitedHealth and Amedisys filed their respective HSR forms for their proposed merger on July 5, 2023, and received Second Requests from the DOJ on August 4, 2023. Over the next several months, Amedisys produced approximately 2.3 million documents to the DOJ and certified substantial compliance with the Second Request on December 18, 2023.

In November 2024, the DOJ filed a lawsuit seeking to enjoin the proposed UnitedHealth-Amedisys merger. In addition, the complaint also sought civil penalties against Amedisys, stating that Amedisys violated the HSR Act when the company certified its Second Request compliance back in December 2023 and alleging that Amedisys's Second Request productions had not been true, correct and complete, nor had Amedisys provided the required explanations for noncompliance.

Specifically, the complaint alleged that Amedisys, prior to certifying compliance, had become aware of an issue with the email archiving system run by a third-party vendor Amedisys relied upon to maintain its documents. This issue persisted for a ~30 day period from May-June 2023 — coinciding with UnitedHealth and Amedisys's negotiation of their proposed merger — and the missing emails from that system had not been recovered by the time Amedisys certified its compliance with the Second Request.

Further, the DOJ alleged that, at the time of this certification, Amedisys had not produced any hard copy documents to the government or text messages from over half of its document custodians, despite knowing such types of documents existed. As evidence of such knowledge, the DOJ pointed to Amedisys's board chairman, who had recently published a book that discussed the importance of his handwritten notes. The DOJ's complaint also claimed Amedisys did not acknowledge any such deficiencies until the DOJ presented evidence of them, and that subsequent document submissions made by Amedisys after its December certification produced documents that were “clearly relevant” to the investigation (including, e.g., a text message about UnitedHealth “locking up” home health and hospice markets).

The DOJ's complaint took the position that Amedisys was in violation of the HSR Act from the time the company first certified compliance with its Second Request (December 18, 2023) until it recertified its compliance on August 26, 2024. During this eight-month period, Amedisys produced an additional ~2.5 million documents to the DOJ — including emails, hard copy documents and text messages — more than the ~2.3 million the company had originally produced for its Second

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Request response. A maximum fine for a HSR violation covering this eight-month time frame would have amounted to over \$13 million (the then-statutory maximum for HSR violations was \$51,744 per day).

Unsurprisingly, Amedisys disputed DOJ's allegations. In its answer to the complaint, Amedisys stated it had made its December 18 certification of substantial compliance in good faith. The company also described the government's characterizations of the alleged facts as "misleading," including because many of the 2.5 million documents Amedisys produced after the December certification responded to additional DOJ questions — not the Second Request itself.

Amedisys later requested (and received) a stay of the HSR Act claim pending a trial on the Section 7 claim, which had been set for a bench trial in October 2025. When the DOJ announced the settlement with the merging parties on August 7, 2025, clearing the transaction to close with divestitures, the agency also included a settlement of the HSR claim in the proposed final judgment filed with the court. Specifically, the proposed final judgment stipulated that Amedisys would pay a \$1.1 million fine to satisfy the HSR claim, in addition to conducting DOJ-approved antitrust compliance training for Amedisys's corporate and field leadership. Given that the HSR claim was resolved in a broader settlement of the substantive merger litigation, it is unclear what this claim's resolution would have been had it proceeded on a stand-alone basis.

Takeaways

While the DOJ's settlement with UnitedHealth and Amedisys will, once adopted, forego judicial opinion on the merits of the DOJ's HSR Act claim and therefore will not provide clear precedent on parties' Second Request compliance obligations, the case still provides meaningful insights for practitioners and companies in front of the antitrust agencies. The DOJ's prosecution of Second Request deficiencies serves as a reminder to practitioners and companies about the importance of thoroughness when complying with the HSR Act and Second Requests. Even though the Second Request legal standard of "substantial compliance" is plainly something short of "full compliance," the antitrust agencies regularly scrutinize parties' productions in Second Requests for any potential compliance deficiencies — including, *e.g.*, missing file types and document volumes. Such deficiencies, if found, can give the agencies a lever for extracting more documents, information and time from the merging parties. Indeed, in the case of Amedisys, the DOJ was able to not only extract more than 2 million additional documents from the company following its identified deficiencies, but also delay the bringing of the lawsuit nearly eleven months after Amedisys originally certified substantial compliance with the Second Request.

Ultimately, the harmful effects of Second Request compliance issues can be multipronged. They can require significant labor and expense to remedy, and their distractive value can divert both company and agency resources away from engaging on the substantive merits of the transaction. And now, the DOJ has shown that it can obtain civil penalties for these issues as well.