Antitrust Law Update

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FTC and DOJ Launch Inquiry Regarding Serial Acquisitions and Roll-Up Strategies

On May 23, the FTC announced a joint inquiry with the DOJ concerning serial acquisitions by private equity firms. The antitrust agencies have been promising more scrutiny on private equity “roll-ups,” and so far they have focused almost exclusively on markets related to health care (e.g., physician practices). This announcement reflects a broader inquiry and specific request for information from the public, and it is difficult to tell where the agencies will take it (or where it will take them). The inquiry is not limited to any particular industry, but the press release specifically identifies “housing, defense, cybersecurity, distribution businesses, agriculture, construction, aftermarket/repair, and professional services markets.”

This inquiry is consistent with the agencies’ recent condemnations of certain private equity practices, including specific language in the new Merger Guidelines, which states that “an anticompetitive pattern or strategy of multiple acquisitions in the same or related business lines may violate” the antitrust laws and in a formal policy statement issued by the FTC in 2022 asserting that a series of multiple acquisitions or minority investments could be unlawful if, taken together, they substantially lessen competition, even if none violated the antitrust laws individually. The agencies also have brought enforcement actions for board interlocks involving different individuals, both affiliated with the same private equity firm, sitting on the boards of competing portfolio companies.

Private equity firms should be aware of this current regulatory/enforcement effort and consider the potential antitrust risk associated with their acquisition strategies, particularly if they believe any customers, businesses, local governments, consumers, or advocacy groups may complain in response to this inquiry.

FOR MORE INFORMATION

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