

Taboola the Latest Target of DOJ's Aggressive Antitrust Scrutiny of Hiring Practices

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The Department of Justice, Antitrust Division (“DOJ”) continues to investigate hiring practices in a number of industries for potential antitrust violations as part of its effort to scrutinize, and in some instances, criminally prosecute, companies and individuals who enter into agreements with their competitors regarding hiring, wages, and solicitation of employees.

Online advertising company Taboola recently revealed in a Securities and Exchange Commission ([“SEC”](#)) [filing](#) that the DOJ is conducting a criminal antitrust investigation into its hiring practices. Taboola submitted the filing with the SEC ahead of its merger with Ion Asset Management, a deal that will take the company public. Taboola explained that it became aware of the investigation in April of this year and has been cooperating with the investigation fully.

Details of the probe are scarce, but it does appear that the latest action is part of a broader DOJ investigation of the advertising industry. Taboola has not commented on the nature of the hiring practices that caught the attention of the DOJ, nor on the other potential subjects of the probe. The company did state, however, that it “does not believe that its conduct violated applicable law.”

The Taboola criminal antitrust probe is the latest example of the DOJ’s recent focus on labor markets. The DOJ has warned that anticompetitive agreements in labor markets could be met with criminal prosecution since late 2016, when it issued [guidance](#) in conjunction with the Federal Trade Commission (“FTC”) to that effect. While the agency had been fairly active in bringing enforcement actions against companies for allegedly entering into no-poach agreements—unlawful agreements not to hire a competitor’s employees—those suits were resolved via civil settlements as opposed to criminal plea agreements.

The antitrust enforcement landscape in this area shifted dramatically after the issuance of the 2016 guidance. DOJ officials publicly remarked on several occasions since then that criminal enforcement of no-poach and wage-fixing agreements was one of their highest priorities. In recent months, the DOJ has brought its first ever criminal indictments targeting such conduct, including several in late

2020 and the beginning of this year. For instance, the DOJ has [indicted the owner of a therapist staffing company](#) for participating in a wage-fixing conspiracy, [a medical facility operator](#) for its no-poach agreement, and [a health care staffing company](#) for agreeing with another contractor not to raise wages or hire nurses from one another. In addition, a financial services technology provider revealed in February that it is under antitrust investigation by the DOJ for its hiring practices, as well.

The DOJ's Taboola investigation and broader investigation into the advertising industry reflects the DOJ's commitment to criminally prosecute anticompetitive conduct affecting labor markets. In fact, in a recent filing in a Texas federal court, the DOJ made clear it considers even non-solicitation agreements to be criminal violations of the antitrust laws, stating, "Under long-standing precedent, conspiracies between competitors that fall within certain established categories, including agreements to allocate markets, are per se unlawful without further inquiry...Non-solicitation agreements are a type of per se unlawful market allocation." Given this enforcement environment, companies and individuals should be mindful of their potentially significant antitrust exposure in considering potential arrangements with others regarding compensation or other employment-related issues.

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National Law Review, Volume XI, Number 130

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