

DOJ Continues to Emphasize Antitrust Merger Enforcement

Article By:

E. John Steren

Patricia M. Wagner

The Deputy Assistant Attorney General of the Antitrust Division of the U.S. Department of Justice (DOJ), Andrew Forman, recently spoke to the American Bar Association's Mergers and Acquisitions Committee at the Business Law Section annual meeting.

Mr. Forman's [prepared remarks](#) provide several insights into current DOJ thinking on mergers and acquisitions.

Echoing prior comments from the Federal Trade Commission, Mr. Forman emphasized that the number of filings in 2021 and 2022 pursuant to the Hart-Scott-Rodino Antitrust Improvements Act continues to exceed levels of the previous decade. Nevertheless, he reiterated that DOJ will continue to be ready to "investigate and, as necessary, litigate" those transactions that the agency believes violate the antitrust laws. In that vein, Mr. Forman indicates that DOJ will evaluate the parties' divestiture settlement offers with "a healthy skepticism" that weighs multiple factors, all of which are focused on the likelihood of continued business success for the divested assets. Similarly, he noted that DOJ's bar for structural remedies (for example, the creation of firewalls) "will continue to be high."

Mr. Forman also raised the issue of gun-jumping, noting that deal documents often contain a standard clause to prevent the seller from entering into material contracts without notice or approval from the buyer. These agreements are often intended to preserve the assets of the seller. Mr. Forman points out that such provisions could, in certain circumstances, give the buyer undue control over the seller and, rather than be treated as standard contractual verbiage, should be evaluated on a fact-specific basis to determine their legality.

©2025 Epstein Becker & Green, P.C. All rights reserved.

National Law Review, Volume XII, Number 342

Source URL: <https://natlawreview.com/article/doj-continues-to-emphasize-antitrust-merger-enforcement>

