

U.S. Federal Antitrust Agencies Announce Cooperation Initiative with Labor Agencies in Merger Review

Article By:

John D. Carroll

Ann M. O'Brien

Yesterday, August 28th, the Federal Trade Commission (the “FTC”) and the Department of Justice Antitrust Division (the “DOJ”) (the “Antitrust Agencies”), together with the Department of Labor (the “DOL”) and National Labor Relations Board (the “NLRB”), signed a [new agreement](#) (the Memorandum of Understanding or “MOU”) that seeks to enhance the ability of the FTC and DOJ to investigate the impact of mergers and acquisitions on labor markets.

The MOU provides that the DOL and NLRB will provide the Antitrust Agencies with technical assistance, training, information, and data, to assist with their review of mergers and acquisitions. Specifically, and as highlighted in the [FTC’s press release](#):

- The DOL will train appropriate personnel from the Antitrust Agencies on the issues under their jurisdiction.
- The NLRB will train appropriate personnel from Antitrust Agencies on the duty to bargain in good faith, successor bargaining obligations, and unfair labor practices, among other topics.
- The Antitrust Agencies and the DOL and NLRB plan to meet biannually to discuss implementation and coordination of the activities described in the MOU.

In addition, the MOU makes clear that it supplements, and does not supersede, the previously identified bilateral agreements between the DOL, NLRB, and the Antitrust Agencies. For example, the FTC and DOL entered into a [Memorandum of Understanding](#) in September 2023 regarding coordination on investigations.

Inter-agency cooperation, while not new, has been a hallmark of the Biden Administration’s “Whole of Government Approach” outlined in the [2021 Executive Order on Promoting Competition in the American Economy](#). For instance, the Antitrust Agencies have announced initiatives with other federal agencies in the [healthcare industry](#). Moreover, Antitrust Agencies focus on labor, including the DOJ’s [aggressive criminal prosecution of alleged no-poach and wage-fixing agreements](#) and [FTC’s attempted noncompete ban](#), is not new.

All that said, this MOU further expands the Antitrust Agencies’ focus on labor markets, because it

makes clear that the Antitrust Agencies have committed to using not just their resources, but also leveraging the resources and expertise of other federal agencies in closely examining the impact of mergers under their review on labor markets.

The agency cooperation and information sharing contemplated under these MOUs likely will put more government eyes on employers and potentially more documents in the hands of the Antitrust Agencies, which could slow merger review and lead to additional civil and criminal antitrust investigations. Merging parties before the Antitrust Agencies and those engaging with the NLRB should be aware of this inter-agency cooperation and beware that their documents and information could spawn antitrust investigations.

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