In the Know: Enforcement Trends for Private Equity M&A

A Practical Guidance® Article by Harry T. Robins, Qian (Susan) Zhu, Dr. Michael Masling and Alison D. Gargano, Morgan, Lewis & Bockius LLP

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The antitrust environment for private equity investors has entered a new phase marked by continued active enforcement, pragmatic settlements, and international expansion of merger-control regimes. For sponsors and portfolio companies, understanding the shifting expectations of US and global regulators is critical to maintaining deal certainty and avoiding costly surprises.

During a recent webinar in our In The Know: Private Equity series, Morgan Lewis antitrust lawyers discussed the major developments and practical takeaways for PE professionals navigating today's antitrust and merger-control landscape.

Key Antitrust Law Takeaways for Private Equity Dealmakers

Private Equity Is No Longer in the 'Penalty Box'

PE sponsors are no longer receiving disproportionate scrutiny from Washington. Enforcement leadership at both the Federal Trade Commission and Department of Justice has stabilized, with professionals emphasizing consistent application of the law. The result is a more predictable environment where sponsors are treated comparably to strategic buyers. While antitrust enforcement expectations remain high, the perception that PE is "on notice" has faded.

Early Termination Is Back, But Timing Is Key

Early termination of the HSR waiting period was reinstated in February 2025 after several years of suspension. Notwithstanding the federal government shutdown, early terminations are again being granted with increasing frequency, shortening closing timelines by several weeks.

That said, we note that requesting early termination triggers public disclosure on the FTC's website of the parties and transaction. Parties seeking early termination should be ready to go public on short notice.

Shifts in US Enforcement Priorities

The new administration's antitrust leadership has brought both continuity and change. While litigation levels remain low,

the agencies are pursuing enforcement through negotiated settlements featuring both structural and behavioral remedies. Section 8 (interlocking directorates) enforcement has largely receded.

However, new HSR rules requiring affirmative disclosure of overlaps and supply relationships have increased filing complexity, preparation time, and cost. Compliance with these expanded disclosure obligations is a clear agency focus.

States Are Expanding Merger Oversight

State attorneys general have become increasingly active in merger enforcement, both as co-plaintiffs with federal agencies and through independent actions. This enforcement activity includes multistate intervention efforts and healthcare-specific statutes in at least 13 states requiring premerger notifications, often with extended waiting periods. Washington and Colorado have enacted broad, generally applicable premerger notification laws.

For PE firms pursuing roll-up or healthcare investments, state-level filings can significantly affect deal timing and cost.

Enforcement Outcomes: More Settlements, Fewer Court Battles

The DOJ and FTC remain willing to litigate when necessary, but most merger resolutions are now achieved through settlement. Agencies are increasingly open to negotiated remedies, enabling parties to resolve issues without prolonged litigation. However, post-closing risk is rising under the Tunney Act as state AGs scrutinize federal settlements and consider separate state-law challenges. Deal teams should evaluate these follow-on risks early, particularly for high-profile transactions.

Smaller Deals Face Less Scrutiny

Due to resource constraints at both agencies, enforcement remains concentrated among large, high-value transactions. Deals under roughly $500 million are less likely to receive in-depth review, however, sponsors should not assume immunity, especially for competitively sensitive acquisitions or serial roll-ups. Even with limited resources, the agencies continue to issue second requests and open investigations where warranted.

Global Regulators Are Expanding Their Reach

In Europe, established jurisdictions are considering broadening substantive review frameworks to incorporate sustainability, resilience, and national security, with ongoing debate as to whether these concepts fit within traditional competition-law analysis. Saudi Arabia and the UAE have significantly strengthened merger-control regimes with broad "control" definitions. Australia will shift to mandatory preclosing merger review on January 1, 2026, increasing filing obligations for global sponsors.

Meanwhile, concerns over "killer acquisitions" have prompted several European member states to adopt discretionary call-in powers that enable review of below-threshold or serial acquisitions.

Managing Risk Allocation in Negotiated Deals

Customary deal terms continue to reflect the antitrust risk balance between buyers and sellers. Across all deal structures, parties should revisit antitrust covenants, representations, and break-fee provisions in light of longer timelines, state-level filings, and the potential for post-closing review.

Conclusion

The antitrust landscape for private equity is active but pragmatic. Federal agencies are enforcing the law vigorously yet favor negotiated resolutions over courtroom battles, while states and foreign jurisdictions are expanding their authority, adding layers of complexity for cross-border sponsors.

Early engagement with experienced antitrust counsel remains the most effective way to anticipate risks, align timing expectations, and preserve deal value in a rapidly evolving enforcement environment.

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