

2024 ABA ANTITRUST SPRING MEETING – KEY TAKEAWAYS

From April 9-12, 2024, antitrust enforcers and practitioners from around the world gathered at the American Bar Association's annual Antitrust Law Spring Meeting in Washington, DC, to discuss the latest developments in the world of antitrust. Panelists shared various perspectives on multiple topics involving healthcare and life sciences, technology, artificial intelligence, private equity, labor markets, energy, and more. Common to all industries is continued aggressive enforcement and increased coordination between federal, state, and global enforcers. Key industry takeaways for practitioners are:

MERGER NOTIFICATION

Senior officials from the U.S. Department of Justice ("**DOJ**") confirmed that the revised HSR form for notifying mergers to the agencies will be finalized and released in a matter of weeks. Expect the new form to include extensive requests for additional information, including on labor and supplier-customer relationships, adding considerable time and cost to the notification process.

HEALTHCARE AND LIFE SCIENCES

Enforcers are focused on a wide array of markets within healthcare and life sciences, from hospitals and physicians to healthcare payers to pharmaceutical manufacturers and pharmacies. Key areas of scrutiny include M&A activity in the healthcare provider space, including acquisitions by private equity firms of healthcare providers and physician networks, and complex relationships among pharmaceuticals, insurers, and intermediaries. Expect increased exploration of conglomerate effects, as well as effects related to early-stage pipeline products.

TECH

Enforcers continued to express their commitment to address potential anticompetitive activity in the tech space, highlighting the numerous ongoing actions across the country against "Big Tech" players. In addition to AI and machine learning, key topics included competition within and among platforms and the competitive effects of companies protecting their "ecosystems" of products. Expect increased efforts in right-to-repair legislation at the federal and state level.

AI

The implications of AI and machine learning on antitrust and competition remain hotly discussed. Key focuses for enforcers include issues related to competition within AI-related markets—including the potential for leveraging of cloud computing services to gain control over generative AI—as well as the potential for AI- or machine learning-based products to facilitate

anticompetitive information exchanges or "algorithmic collusion" among competitors. Panelists questioned the sufficiency of current legislation to deal with these issues.

PRIVATE EQUITY

Private equity ownership and related acquisitions continue to receive heightened scrutiny from antitrust authorities. Enforcers have expressed concern over the use of "roll-up" strategies, involving acquisitions of multiple targets in the same industry and area, and are investigating non-reportable as well as reportable transactions. The DOJ is also looking into whether some private equity firms intentionally withheld documents and information from antitrust enforcers during merger investigations. Richard Mosier, former special counsel for private equity in the DOJ's Antitrust Division, said that companies that "try to game the system ... run the risk of having that HSR and perhaps prior HSRs scrutinized. The person who signs the form opens themselves up to liability."

LABOR

Concern for labor remains a key focus of antitrust and competition enforcement. Merger control authorities are reviewing mergers for their effects on jobs and labor compensation, while a proposed federal rule by the Federal Trade Commission ("**FTC**") to invalidate many employer-employee non-competes remains pending. All eyes are on the Kroger-Albertsons merger litigation and the FTC's novel theory of harm involving union grocery labor.

NEXT STEPS

For further discussion on developments in antitrust, including these topics and others from this year's Antitrust Law Spring Meeting, listen to our podcast, with specialized episodes coming soon on:

- **Energy**, hosted by Milena Robotham and Michael Van Arsdall
- **Finance and Private Equity**, hosted by Brian Concklin and Caroline Scholke
- **Healthcare and Life Sciences**, hosted by Sue Hinchliffe, Leigh Oliver, and Elyssa Wenzel

Scan the QR code below for Clifford Chance's podcast to listen and learn more about these topics.



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