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BRIEFING

Massachusetts settlement demonstrates continued state involvement in antitrust enforcement

August 27, 2026

On August 18, 2026, the Massachusetts Attorney General's Office ("AG's Office") announced a settlement with AvalonBay Communities, Inc. and Equity Residential resolving concerns their transaction was anticompetitive. The AG's Office alleged the transaction would harm competition in the mid-rise and high-rise multifamily rental housing market in downtown Boston. To address the AG's Office's concerns, among other commitments, the companies agreed to divest two adjacent buildings. Whether the transaction was exempt from the HSR Act filing requirements, or otherwise not investigated by the federal agencies, is not public.

KEY TAKEAWAYS

First, the settlement is an example of state attorneys general continuing to engage in merger enforcement independent of federal agencies. Unlike in other recent high-profile merger challenges, this transaction was investigated by a single state attorney general rather than a coalition of several states, highlighting how states continue to focus on potential anticompetitive harms impacting their citizens.

Second, federal and state antitrust enforcers can review and challenge transactions that are not reportable under federal or state pre-merger notification filing requirements. Because both parties in this transaction were real estate investment trusts (REITs), the deal may have qualified for an exemption to the filing requirements set forth under the HSR Act. The deal nonetheless caught the attention of the Massachusetts AG's Office. It is possible that the AG's Office's review was prompted by a competitor or customer complaint, or because the AG's Office became aware of it through a press release or securities filing.

Third, the settlement illustrates how antitrust enforcers are scrutinizing concentration in discrete local or regional markets, even where a transaction

may not raise concerns at the national level. Businesses operating in geographically concentrated markets, whether in real estate, healthcare, retail, or other sectors, should assess carefully whether a transaction could give rise to competition concerns in any local geographic area.

Fourth, the settlement reflects a continued focus by both federal and state antitrust enforcers on sectors that directly affect consumers' everyday lives, including groceries, healthcare, and housing.[1]

WHAT HAPPENED?

On August 17, 2026, AvalonBay Communities, Inc. and Equity Residential announced the completion of their merger transaction, following their announcement of the transaction in May 2026. The new combined company, Vivmark Residential, is one of the country's leading real estate companies.[2]

On August 18, the Massachusetts AG's Office announced a settlement with the companies resolving a preliminary investigation into the merger's effects on competition.[3] A court filing documented that the AG's Office alleged that the transaction "could substantially lessen competition in the market for mid-rise and high-rise multifamily rental housing in downtown Boston," in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Massachusetts Consumer Protection Act, G. L. c. 93A, § 2.

In the filing, the AG's Office alleged that "mid-rise and high-rise multifamily rental housing" comprised a relevant product market for antitrust purposes, because these buildings "frequently offer a bundle of amenities" that made them distinct from other forms of housing, such as lounges, pools, on-site staff, and other features. The AG's Office also alleged the relevant geographic market was "Downtown Boston," comprised of seven Boston zip codes encompassing several city neighborhoods, an area offering "easy walking access" to local attractions, major employers, and mass transit options.

The settlement filing alleged that the combined company would hold at least a 50% share of this market, with the increase in concentration rendering the transaction presumptively anticompetitive under both Supreme Court precedent and the Merger Guidelines used by the US Department of Justice (DOJ) and Federal Trade Commission (FTC). The filing stated that increased

1 Also related to housing, enforcers have recently focused on coordination among real estate brokerages and among landlords through pricing management software. In addition, on August 24, 2026, the FTC and five states announced a settlement resolving litigation against Zillow and Redfin alleging anticompetitive effects from the companies' agreement related to internet listing services for apartments.

2 "Vivmark Residential Launches as One of the Country's Leading Real Estate Companies" (Aug. 17, 2026), https://investors.vivmarkresidential.com/news-events/press-releases/detail/113/vivmark-residential-launches-as-one-of-the-countrys-leading-real-estate-companies.

3 "AG Campbell Secures Settlement With Merging Real Estate Investment Trusts To Protect Boston Renters" (Aug. 18, 2026), https://www.mass.gov/news/ag-campbell-secures-settlement-with-merging-real-estate-investment-trusts-to-protect-boston-renters.

concentration in the relevant market would cause renters and prospective renters to face "higher rents and fees, lessening of amenity offerings, worsening leasing terms, and decreasing quality."

To address the AG's Office's concerns, the settlement requires divestiture of two high-rise buildings in downtown Boston to an unrelated buyer, subject to review and approval by the AG's Office. In addition to the divestiture, the settlement requires: (i) the parties to institute safeguards against sharing competitively sensitive pricing and marketing information and to avoid coordinating pricing or leasing terms between the divested buildings and the company's other properties; and (ii) the purchaser of the divested buildings to assume preexisting affordable housing commitments. The companies also agreed to contribute $500,000 to the Affordable Housing Trust for the City of Quincy, where the companies collectively own and operate six apartment buildings.

WHAT DO BUSINESSES NEED TO KNOW?

The settlement serves as a reminder for transacting parties that: (i) it is not just federal authorities that review and challenge transactions under the antitrust laws, but also individual states; (ii) antitrust enforcers may examine narrow product markets and localized geographic markets; and (iii) the lack of a pre-merger notification filing or even closing does not make a transaction immune from scrutiny.

Businesses should account for the possibility of antitrust enforcement from state attorneys general in addition to federal authorities, particularly where both parties have a significant presence in discrete local markets. They should also be mindful that a transaction may invite heightened scrutiny if it could be perceived as concentrating market power or facilitating coordination in markets that directly affect consumers.

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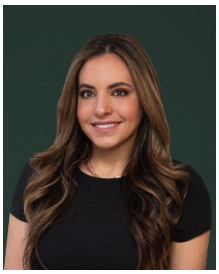

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