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Antitrust Insights for Private Equity Navigating the New Administration's Policies

PE Pathways

SPEAKERS

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In this episode of *PE Pathways*, Brandon Raphael, a partner from the firm's Private Equity practice, is joined by fellow Partners Barbara Sicalides and Joe Farside from the firm's Antitrust practice group to discuss antitrust issues impacting private equity firms and M&A in general. Key points discussed include antitrust priorities under the new administration, noncompete and restrictive covenants, the antitrust enforcement environment, private equity and antitrust scrutiny, and state-level antitrust enforcement, among other topics.

Since the recording of this podcast, there have been some additional developments related to the direction of the new administration worthy of mention. On March 12, 2025, Abigail Slater was confirmed as assistant attorney general for the Antitrust Division. In addition to her confirmation hearing commitment to the pro-enforcement 2023 Merger Guidelines, Slater, in a March 17, 2025, memo to staff, noted that the agency will prioritize consumer markets: "In an era of rising prices, pocketbook issues are front of mind." In addition to consumer markets, she has identified 5G, artificial intelligence, quantum computing technology, and agriculture as important areas for Department of Justice attention because those markets could harm small business and farmers. In what could be a hopeful sign for private equity, Slater has also appointed counsel for a large U.S. asset management firm to lead the agency's merger enforcement.

With respect to the Federal Trade Commission (FTC), for the first time in history, the president has terminated the two remaining Democratic commissioners, and the president's nominee, Mark Maedor, awaits Senate confirmation. The FTC has asked the Fifth and Eleventh Circuits to stay the two challenges to the worker noncompete ban rule for 120 days in order for the FTC to "reconsider its defense of the challenged rule." The FTC has also announced the formation of a Labor Task Force that will "prioritize rooting out and prosecuting deceptive, unfair, and anticompetitive labor-market practices that harm American workers," including by bringing enforcement actions against inappropriate employee noncompetes. On the merger front, the FTC staff again urged the Indiana Department of Health to deny the pending application to merge two health systems, in part, based on the merger's potentially negative impact on the relevant labor market. The FTC vote to submit the staff comment to the Indiana Department of Health was 4-0, suggesting that the new administration will not simply abandon its concerns regarding U.S. workers.

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