

Antitrust/Competition

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Antitrust Agencies' Health Care RFI Signals Increased Scrutiny of PE Deals

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On March 5, the Federal Trade Commission (FTC), U.S. Department of Justice's Antitrust Division (DOJ), and Department of Health and Human Services (HHS) jointly issued a [Request for Information on Consolidation in Health Care Markets](#) (the RFI), with a particular focus on private equity (PE) buyouts. The RFI seeks "public comment regarding the effects of transactions involving health care providers . . . facilities, or ancillary products or services, conducted by private equity funds or other alternative asset managers, health systems, or private payers" during a 60-day public comment period, which closes on May 6.

The RFI seeks information from all health care industry "stakeholders" on the following topics:

- The effects of consolidation on patients, public and private payers, providers, health care workers, support staff, and employers that provide health insurance for their employees
- Claimed business objectives for health care transactions and whether or not those objectives were realized post-transaction
- Notable transactions and buyers that have been associated with adverse impacts in the past
- The need for government action

The RFI was issued pursuant to the [White House's December 2023 action plan](#) to "lower health care and prescription drug costs by promoting competition." It is also consistent with the FTC's and DOJ's [2023 Merger Guidelines](#) that target PE buyers.

Shortly after the RFI was issued, [FTC Chair Lena Khan spoke](#) at the FTC's March 5 virtual workshop on the impact of PE in health care. Khan's remarks echoed language previously used by the White House in expressing concerns over the "growing financialization" of the health care industry and the impact of "anticompetitive roll ups" and other transactions that are not reportable under the Hart-Scott-Rodino Antitrust Improvements Act. The DOJ has also articulated similar concerns.

The FTC, DOJ, and HHS are already sharing information with each other about non-reportable transactions to help crack down on any transactions they believe could potentially pose a risk to competition in health care. Going forward, it's important to remember that the agencies are following public statements made by market participants about health care deals. Also, it is plausible that nonpublic communications by market participants could be reported to the agencies by competitors or others in the industry.

If you have any questions about the FTC's, DOJ's, and HHS' latest actions or would like to provide comments on the RFI, please contact our Antitrust/Competition team or your usual Lowenstein Sandler contact.

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