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# DOJ and FTC Continue to Focus on Serial Acquisitions and Roll-Ups

- The U.S. federal antitrust agencies are seeking public comment from consumers, workers, suppliers, businesses, advocacy organizations, trade and professional associations, and others on “serial acquisitions and roll-up strategies” and may use information received to inform “enforcement priorities and future actions.” Comments are due by July 22, 2024.
- The request for information is the latest in a series of agency policy and enforcement actions reflecting the agencies’ attention to serial acquisitions, which often fall below pre-merger reporting thresholds.

On May 23, 2024, the Antitrust Division of the United States Department of Justice (DOJ) and Federal Trade Commission (FTC) announced that they are launching an inquiry “to identify sectors of the economy being impacted by serial acquisitions” and issued a [Request for Information](#) for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies (RFI). According to the RFI, “serial acquisitions involve the same firm consolidating a fragmented market through a number of acquisitions, typically of many relatively small companies.” Put another way, “when serial acquisitions occur, a company becomes larger, and potentially dominant, by buying several smaller firms in the same or related business sectors or industries.”

The agencies issued the RFI “to identify serial acquisitions and roll-up strategies throughout the economy that have led to consolidation that has harmed competition” by impacting “quality, prices, and working conditions.” The agencies say that “once these serial acquisition strategies are identified,” the agencies “are committed to using the full scope of their statutory authorities to protect free and fair competition and prevent undue consolidation.”

In connection with the issuance of the RFIs, the FTC held an [open meeting](#) at which FTC staff gave a presentation. According to the presentation, there is concern about companies expanding through “successive” small acquisitions which have the cumulative effect of harming competition. Though the RFI is broad, staff are particularly interested in roll-up acquisitions in the health care industry, in the use of roll-up strategies by private equity funds, and in how roll-up acquisitions affect rural markets. As FTC staff explained, part of the motivation for the RFI is that quite often the acquisitions in a roll-up strategy fall below the HSR thresholds and are not reported. Yet, according to one FTC official, a “series of relatively small acquisitions can have the same impact on competition as one large one, allowing one firm to eliminate competition and amass significant control over products and services without review by the antitrust agencies.”

The RFI calls for information regarding the following topics “in any sector or industry in the U.S. economy, including, but not limited, to housing, agriculture, defense, cybersecurity, distribution, construction, aftermarket/repair, and professional services markets”:

- Examples of serial acquisitions;
- Effects of serial acquisitions, on competition within an industry, including “any actual or attempted coordination or collusion between competitors” after the serial acquisitions;

- Effects of serial acquisitions on customers, workers, actual or potential competitors, and suppliers;
- Identification of “serial acquisition business practices,” where acquirers have engaged in conduct such as predatory pricing, exclusive dealing, conditional dealing, tying, price discrimination, raising rivals’ costs, “using actual or threatened litigation to drive parties to agree to mergers and/or to drive down acquisition costs,” or “any other conduct that has the intent or effect of lessening competition”;
- The claimed business goals and objectives of the serial acquisition strategy and whether these goals and objectives have been realized post-transaction; and
- If the serial acquisitions were executed by a private equity firm, the role the private equity investor(s) played in evaluating or executing potential acquisitions and in managing the businesses afterwards.

The RFI invites submissions from “consumers, workers, businesses, advocacy organizations, professional and trade associations, local, state, and federal elected officials, and others.” The agencies also invite “comments from academics and other experts with knowledge of the operation of specific industries and business sectors as well as the effects of serial acquisitions more generally.” Comments are due by July 22, 2024.

In addition to the RFI, several recent policy actions by the agencies relate to serial acquisitions and roll-ups.

- The new FTC-DOJ [Merger Guidelines](#), released in December 2023, discuss “multiple acquisitions in the same or related business lines,” which the agencies may examine “as part of an industry trend” or as part of an “overall pattern or strategy of serial acquisitions by the acquiring firm.” The guidelines state that the agencies will pay particular attention to historical evidence of the firm’s acquisition patterns (“consummated or not”) and implications for the acquiring firm’s incentives, as revealed by documents and testimony.
- Shortly after the final merger guidelines were released, the White House [announced](#) that the DOJ, FTC and Department of Health and Human Services will examine the role of private equity in competitive conditions in the health care sector and will work together to identify potentially anticompetitive roll-up transactions involving health care entities. In March 2024, these agencies together launched a cross-government inquiry similar in scope to the RFI on “[Impact of Corporate Greed in Health Care](#)” requesting public comment on deals by health systems, private payers, private equity funds, and other alternative asset managers that involve health care providers, facilities, or ancillary products or services.
- In November 2022, the FTC [issued](#) a Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act which asserted that “a series of mergers, acquisitions, or joint ventures that tend to bring about the harms that the antitrust laws were designed to prevent, but individually may not have violated the antitrust laws” could constitute an unfair method of competition under Section 5 of the FTC Act.

Several recent enforcement actions involve alleged serial acquisitions and roll-ups.

- The recent DOJ and state attorney general [complaint](#) against Live Nation alleges that “In its own words: ‘Live Nation is a company founded on acquisition. At its inception, Live Nation began rolling up the regional world of promoters and venues and has not stopped since.’” The complaint goes on to cite Live Nation’s acquisitions of amphitheaters, promotion companies and large music festivals as examples of exclusionary conduct in support of a claim that Live Nation allegedly monopolized a purported market for the “provision of the use of large amphitheaters and ancillary services to artists for large amphitheater tours in the United States.”
- Last month, the FTC [challenged](#) Tapestry’s proposed acquisition of Capri Holdings, the FTC argues, among other things, that Tapestry has engaged in an “anticompetitive pattern and strategy of acquisition in the accessible luxury market” with plans

to continue this strategy as part of its proposed acquisition of Capri. The FTC alleges that over the last decade, Tapestry has already consolidated Coach, Kate Spade and Stuart Weitzman and that Capri has consolidated Michael Kors, Versace and Jimmy Choo. As a result, the FTC argues that Tapestry will become an “accessible luxury handbag powerhouse” that will enable it to continue to acquire rivals and entrench its position.

- In September 2023, the FTC sued entities affiliated with private equity firm Welsh, Carson, Anderson & Stowe along with its partially owned portfolio company U.S. Anesthesiology Partners, Inc. (USAP), for, among other things, allegedly pursuing an illegal “roll up strategy” to consolidate anesthesia practices in Houston, Dallas and other parts of Texas. This is the Biden Administration’s first litigated case challenging so-called “roll ups” or “serial acquisitions” by a private equity firm. Indeed, during their presentation at the opening meeting, staff noted that the FTC survived a motion to dismiss filed by USAP. (By contrast, the sponsor, Welsh Carson, was dismissed.)
- In June 2022, the FTC settled a matter involving private equity sponsored acquisitions of veterinary clinics. Here, in addition to divestitures, the FTC imposed “robust” provisions for prior approval and prior notice of the firm’s future veterinary clinic acquisitions depending on the location of the clinic to be acquired. According to the FTC, the provisions were included out of a concern that private equity firms “increasingly engage in roll up strategies that allow them to accrue market power off the Commission’s radar” (i.e., that are not reportable under the HSR Act) and the consent order “will ensure the Commission has full visibility into future consolidation and the ability to address it.”

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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