

Antitrust in the Financial Sector: Hot Issues & Global Perspectives

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PRESS REPORTS

Reports by Bloomberg Law©

DOJ to Apply Antitrust Law on ‘Interlocked’ Board Members to LLCs

by Victoria Graham

A federal antitrust law banning certain concurrent board memberships should apply to limited liability companies and other modern corporate entities, the Justice Department’s antitrust chief said.

Corporate board members can serve on other boards, known as interlocking directorate. But Section 8 of the Clayton Antitrust Act prohibits board members from serving on other competitor companies’ boards, lest the boards may coordinate business decisions or share proprietary information.

Section 8 currently only applies to traditional corporations, but modern entities, such as...
(...)

To read the full text, visit Bloomberg Law’s website.

Reports by PaRR©

DoJ's Delrahim exemplifies cross-ownership legal risk

By Jonathan Guilford and Yizhu Wang

Institutional investors with ownership interests in competing rms could hypothetically act in ways that potentially violate antitrust laws, Assistant Attorney General for Antitrust Makan Delrahim said.

Speaking at the Antitrust in the Financial Sector: Hot Issues & Global Perspectives conference in New York City today, Delrahim addressed the ongoing debate over whether institutional investors' cross-ownership of competing rms raises antitrust issues.

(...)

Speaking on the sidelines to this news service, Delrahim declined to say whether the Department of Justice (DoJ) had identified any actually existing examples of harm arising from common ownership. Instead, he said that the DoJ can see potential situations in which harm could arise.

The DoJ has reportedly pressed some institutional investors to explain themselves regarding how they address the issue of common ownership for their investment in the airline industry, but any investigation cases haven't "gone anywhere," Scott Hemphill, professor at NYU Law school, said on a panel at the conference.

In a Q&A session following his remarks, Delrahim responded to a question about a shareholder that owned various companies in an industry discouraging one of those companies competing against the others in a bidding war.

(...)

Speaking on the sidelines, Delrahim said that the DoJ was still investigating potential remedies for any antitrust violations resulting from common ownership. However, he added that potential changes to how the Department handles corporate compliance issues may be relevant emphasizing his prepared remarks on the matter. There, he said that the DoJ has "spent the past year considering" how to "credit effective compliance, particularly at the charging stage" of an investigation, Delrahim announced that "there are a range of options" that he is considering "to further encourage the adoption of robust compliance programs."

To read the full text, visit PaRR's website.

Reports by CTFN©

Sprint/T-Mobile Efficiencies Claims Weighed by DOJ

By Diane Alter

Speaking on the sidelines of the May 1 Concurrences antitrust event at Fordham University, assistant attorney general Makan Delrahim, head of the U.S. Department of Justice's antitrust division, responded to queries from CTFN whether efficiencies in one market could outweigh anticompetitive harms in another, by saying "that is one thing being investigated."

In asking the question, CTFN was seeking clarity from Delrahim on prior public comments in relation to the Sprint/T-Mobile merger review, wherein the AAG stated that the DOJ was evaluating efficiencies attributable to the merger in the home broadband market, notwithstanding that the merger is between wireless carriers not presently competing in home broadband.

A former deputy assistant attorney general, now in private practice, said as a matter of prosecutorial discretion the DOJ can consider efficiencies in one market when deciding whether to commence an action alleging anticompetitive effects in another market. Still, this attorney noted, "In horizontal transactions, the supreme court has ruled to the Contrary."

The former official suggested such "cross-market" efficiency measurements were likely appropriate when the anticompetitive harms were small and the efficiency gains correspondingly substantial. "Moreover," this person added, "since this is a question of the exercise of prosecutorial discretion, what the DOJ thinks will have little if any influence on the states."

(...)

To read the full text, visit CTFN's website.