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DOJ Antitrust Division Launches ‘Comply with Care’ Task Force to Combat Gamesmanship in Investigations

Client Advisories

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Sept. 9, 2025 – On Aug. 29, Assistant Attorney General (AAG) Gail Slater of the U.S. Department of Justice Antitrust Division announced the formation of a new “Comply with Care” task force. The initiative will target what the DOJ describes as “gamesmanship” and “problematic tactics” used by companies and their counsel to obstruct mergers and conduct investigations.

AAG Slater made the announcement during a speech at Ohio State University law school, where specifically she called out “a few actors—many of them at big law firms,” who she says have undermined the integrity of antitrust enforcement. The creation of the new task force signals a more aggressive and uniform approach by the Antitrust Division toward discovery disputes and compliance failures.

Background: What Triggered the Task Force?

AAG Slater cited several examples of alleged obstruction, suggesting they represent just “the tip of the iceberg” of broader compliance issues. Her examples included:

- Discovery abuses: Intentional failure to produce key documents and information
- Abuse of privilege: Improper and overbroad assertions of attorney-client privilege
- Circumvention of legal processes: Tactics designed to hinder or delay investigations

Specific examples highlighted in the speech included:

- A federal court’s finding that Apple engaged in an “obvious cover-up” to evade an injunction resulting from a successful lawsuit against Apple by Epic Games
- Repeated instances of Google using corporate policies like “communicate with care” to delete internal chats and improperly assert privilege
- A recent settlement in which the government fined home health company Amedisys for falsely certifying compliance with its merger filing obligations

The name “Comply with Care” is a direct reference to Google’s previous practice, and it demonstrates the DOJ’s intent to crack down on similar obstructive conduct.

Key Takeaways for Clients

AAG Slater’s speech and the creation of the task force underscore the Antitrust Division’s commitment to holding companies and their counsel accountable for inadequate compliance with the DOJ’s compulsory processes. Here are several important considerations for clients involved in M&A transactions or subject to antitrust investigations:

- **Heightened Scrutiny on Compliance:** The Antitrust Division will be particularly focused on compliance with Hart-Scott-Rodino (HSR) Act merger notification requirements and Second Request document productions. All filings and certifications of compliance are now under the microscope.
- **Increased Risk of Penalties and Litigation:** The DOJ has vowed to use its “full range of available penalties” against parties found to be engaging in obstructive behavior. This includes monetary fines for HSR violations, litigation over discovery disputes, and sanctions.
- **Careful Management of Legal Privilege:** Companies must ensure that claims of attorney-client privilege are well founded and clearly documented. The DOJ will likely challenge overly broad or unsubstantiated privilege logs. The DOJ has specifically noted it will not accept blanket assertions of privilege based solely on a document being copied to a company’s “legal department.”
- **Preservation of Ephemeral Communications:** The DOJ continues to focus on the preservation and production of messages from platforms that feature ephemeral or automatically deleting communications. Company policies should reflect the need to preserve these communications when relevant to an investigation.
- **Importance of Credibility:** The importance of maintaining credibility with the antitrust agencies cannot be overstated. Bad-faith dealing by a company or its counsel can permanently damage a relationship with the DOJ, potentially impacting future interactions.

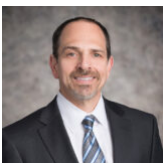
Steps Clients Can Take

To mitigate risk and ensure compliance with the DOJ’s new directive, we recommend the following actions:

- **Review and Update Compliance Programs:** Companies should review and update their antitrust compliance programs, focusing specifically on merger notification processes and internal investigation protocols.
- **Refine Document Retention Policies:** Update document and communication retention policies, particularly for ephemeral messaging apps, to ensure the preservation of all potentially relevant documents in the event of an investigation or litigation.
- **Train Employees and Legal Teams:** Educate employees and in-house legal teams on the risks associated with improper communication and potential obstruction during investigations. This includes providing specific guidance on asserting legal privilege.
- **Proactive Engagement with Outside Counsel:** Prior to any HSR filing or agency investigation, consult with outside counsel to ensure that compliance is handled meticulously and in good faith from the outset.

For further guidance or to discuss these new developments, please contact us at Hughes Hubbard & Reed LLP.

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