



Beware: New MOU Between Four U.S. Agencies Impacts M&A Activities

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A Memorandum of Understanding (MOU) has been struck between the Federal Trade Commission (FTC), the Department of Justice (DOJ), the Department of Labor (DOL) and the National Labor Relations Board (NLRB) which will significantly strengthen the four agencies' ability to investigate and evaluate the potential impact of proposed mergers and acquisitions on labor markets and jobs.

Key Elements of the MOU

- **Enhanced Labor Information Sharing** – The August 2024 agreement between the four governmental agencies outlines new measures which ensure that the *antitrust agencies* (FTC and DOJ) have access to all relevant and appropriate information from the *labor agencies* (DOL and NLRB). This includes data on labor markets, job trends, wages and benefits levels and historical enforcement actions.
- **Increased Intra-Agency Collaboration** – This MOU expands on previous agreements between the four agencies to further strengthen their partnerships through greater coordination and integration in the sharing of information and data, coordinated investigations, training, education and outreach.
- **Strengthened Worker Protections** – The ultimate objective of the arrangement between the agencies is to enable more rigorous scrutiny and oversight of proposed mergers that could harm workers' rights and security, resulting in job cuts, wage and benefits reductions or poor working conditions.

What Does the MOU Mean for Businesses Planning M&A Activities?

- **Increased Regulatory Scrutiny** – Companies involved in or planning M&A initiatives can expect a more thorough review process, especially regarding the transaction's potential impact on labor markets, jobs and workers.

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- **More Challenges, Hurdles for Potential Mergers** – Mergers that may have been approved earlier in an uncomplicated process may now face a much more intense investigation. Parties to the deal will be required to provide detailed, labor-related information, including plans for workforce size, salary and benefits data and post-merger working conditions.
- **Intense Scrutiny of Migration Strategy** – Businesses planning a merger will also be expected to provide full disclosure regarding any strategy to migrate facilities or outsource production which may impact workers or working conditions.
- **Potential for Delays and Deal Abandonment** – The increased level of scrutiny and requests for large amounts of data could also result in delays to deal-closings and, in some cases, lead companies to abandon deals entirely -- particularly if the costs of compliance or the risk of regulatory challenges outweigh the potential benefits of the transaction.

Industries Most Likely Impacted by the MOU

It's generally felt that the new MOU will have a more profound effect on M&A activities in certain industry segments, including:

- **Healthcare** – Historically, a target of intense agency oversight the healthcare sector can expect even further scrutiny of proposed deals, including those involving hospitals or groups of hospitals, health insurance providers and pharmaceutical concerns.
- **Technology** – In recent years, the tech industry has seen a surge of M&A initiatives. Deals that involve tech companies with large employee bases will draw increased levels of oversight and require more time to transact.
- **Retail** – The retail industry has recently undergone major disruptions related to mergers, some with significant implications for labor markets and workers. Retailers planning M&A initiatives can expect more oversight, especially those involving large retailers with expansive store networks and employee populations.

Overall, this MOU takes another step towards ensuring that merger and acquisition transactions do not reduce competition or harm workers. It's another clear signal that there is a commitment to protecting the interests of consumers and working Americans by ensuring that post-merger markets for goods, services and labor are free, fair and competitive as possible.

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