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Expect Merger Enforcement To Roll Full Steam Ahead



At the American Bar Association's 2023 Antitrust Spring Meeting, held in March in Washington, D.C., representatives of the U.S. Department of Justice's Antitrust Division and Federal Trade Commission confirmed their agenda to reinvigorate and modernize antitrust merger enforcement.

Federal enforcers conveyed a consistent theme that the past four decades of antitrust enforcement have been plagued by fear of overenforcement and by overreliance on rigid economic models that fail to capture market realities.

The antitrust agencies have not been afraid to bring more difficult merger challenges, but they have had limited success in litigation. However, DOJ and FTC representatives projected confidence and optimism despite recent setbacks in court.

The DOJ has lost three of its last four merger challenges in federal court. Two challenges — *U.S. v. U.S. Sugar Corp.* in the U.S. District Court for the District of Delaware on Sept. 23 and *U.S. v. Booz Allen Hamilton Holdings Corp.* in the U.S. District Court for the District of Maryland on Oct. 11 — failed because the court found that the DOJ did not carry its burden to define a relevant antitrust market under the Clayton Act.

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