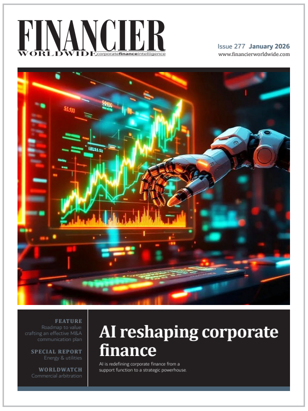

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Private equity and the new era of antitrust enforcement: strategic opportunities

BY JOHN R. INGRASSIA

Private equity (PE) firms are seeing a moment of opportunity in the evolution of antitrust enforcement. Current enforcement priorities and policy remain assertive, but more transparent, and focused on true anticompetitive harm. Following a period of unpredictable and sometimes erratic enforcement, the new environment offers welcome clarity. This article explores how PE sponsors can leverage this to their advantage, focusing on new merger guidelines, expanded Hart-Scott-Rodino (HSR) reporting, evolving enforcement priorities, and the practical influence of policy engagement.

Against this backdrop, sponsors that invest in integrating antitrust review into deal rationale, diligence and portfolio governance can see faster clearances and fewer surprises. However, clarity does not mean leniency. It means the agencies are signalling what matters: durable market power and concentration levels that influence pricing or output or permit coordination among competing firms. For sophisticated buyers, this clarity enables measured risk taking – designing transactions and governance that advance investment objectives while staying within bounds.

Merger guidelines: implications for serial and minority investments

For fund sponsors, the 2023 joint Merger Guidelines from the Department of Justice (DOJ) and Federal Trade Commission (FTC) marked a setback. Under the guidelines, regulators evaluate whether multiple smaller acquisitions by a single sponsor could collectively reduce competition, rather than viewing each transaction in isolation. For sponsors pursuing roll-up strategies in healthcare or technology sectors, this cumulative-effects analysis can present challenges. Minority positions that are the core model of many fund sponsors historically, with some exceptions, were treated as passive holdings. The revised merger guidelines change that and ask whether investors can exert influence, directly or indirectly, over competitive behaviour, such as through soft influence, board rights, data access or coordination clauses. Andrew Ferguson, chair of the FTC, noted in early 2025, "Stability is good for the enforcement agencies. The wholesale rescission and reworking of guidelines is time consuming and expensive."

For serial acquirers, the practical question is how to demonstrate that a roll-up strategy yields efficiencies without foreclosing rivals. Sponsors should be prepared to quantify benefits, including expanded access, faster innovation cycles and improved service quality, and to document why those gains are merger-specific. On minority stakes, agencies now scrutinise indicators of influence beyond voting power: observer rights that convey competitively sensitive information, most favoured nation style covenants that converge incentives, and side letters that influence market behaviour. Proactive guardrails, including clean teams, information use protocols and recusal policies, can materially reduce regulatory friction while preserving deal value. Well drafted governance language that limits operational control and sets data-access boundaries can mean the difference between a second request and an early termination. Sponsors should also map their historical acquisition footprints to anticipate cumulative-effects claims and, where appropriate, offer narrow behavioural commitments tailored to the competitive concern.

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Case selection is key

While the revised guidelines are here to stay for the foreseeable future, early indications are that they are not leading to aggressive or selective enforcement focused on investment firms. Enforcement has become more strategic, prioritising high-impact sectors such as healthcare, digital infrastructure and media. Bill Rinner, former deputy attorney general at the DOJ, summarised this approach: "There is no per se rule against mergers or transactions. Our primary mission is civil merger enforcement against the handful of mergers that are problematic, not civil merger deterrence generally."

In practice, this means resources are aimed at transactions that reshape competitive dynamics gateways in healthcare services, critical inputs for cloud and artificial intelligence (AI), and distribution bottlenecks in media and sports rights. Transactions with credible, data-backed efficiency narratives and robust remedy architecture will resolve more quickly. Conversely, transactions that hinge on unsubstantiated synergy claims or rely on extensive post-closing conduct commitments face longer reviews.

America First antitrust

The Trump administration's 'America First' orientation has extended into competition policy, linking antitrust to national economic strategy. Gail Slater, assistant attorney general, explained: "Antitrust in the United States is law enforcement. It is not regulation." This positions antitrust as a targeted, case-specific mechanism, focused on protecting competition while promoting domestic innovation. For global PE investors, aligning deal narratives with national priorities, such as technology leadership, renewable energy or manufacturing resilience, can be a significant advantage. Transaction planning should therefore include a stakeholder assessment – customers, workforce and local economic development – so sponsors can credibly address how the combination benefits US competitiveness.

A more predictable enforcement climate – negotiation over prohibition

Recent enforcement outcomes also suggest a more pragmatic stance. In 2025, both the DOJ and the FTC showed preference for negotiated remedies over outright blocks. The DOJ's Keysight/Spirent consent decree and the FTC's structural remedies in the Synopsys/Ansys merger reflect this trend. Mr Ferguson captured this philosophy: "Settlements… must be on the table if the FTC is to protect competition efficiently and as fully as its resources allow."

These outcomes indicate that well-structured remedies, supported by credible data and early communication, can get deals done. For PE sponsors, the path to approval now lies in preparation – anticipating potential remedies and framing them as aligned with long-term competitive benefits and political objectives for the economy.

The practical lesson for sponsors is to arrive with remedies that are specific, monitorable and minimally distortionary: targeted divestitures with committed buyers, data-firewall commitments with audit rights and supply assurances backed by objective metrics. Presenting a remedy term sheet alongside the initial filing can frame the dialogue around solutions rather than positions. Sponsors that engage customers early to validate remedy sufficiency often find that credible third-party support accelerates settlement discussions. Finally, aligning proposed remedies with broader policy priorities – access, affordability and innovation – helps agencies justify resolution without litigation.

The new HSR reporting regime: expanded obligations, practical realities

The revised HSR reporting regime represents the most robust procedural overhaul of the process in decades. Sponsors must now provide expanded prior acquisition data, vertical relationships, interlocking directorates and certain draft transaction documents. The latter requirement, submission of non-final materials, marks a significant shift. Regulators can now review a firm's evolving strategy, not just the finished product. This new transparency demands heightened document discipline. Statements in certain early drafts could be read as evidence of true intent. Internal alignment among deal, compliance and legal teams is essential, and considerations of antitrust analysis in early deal documentation will ensure consistency and credibility across submissions.

Expanded ownership and vertical reporting obligations require firms to disclose the full scope of their corporate ecosystems more than ever. Structure charts and fund relationships are now central to how regulators perceive control. Sophisticated sponsors now use this process to their advantage: mapping relationships, and answering the questions they raise up front, not only mitigates risk but also demonstrates integrity and transparency.

Practically, this elevates the importance of document hygiene: training deal teams on drafting discipline, using consistent market definitions across investment committee materials, and maintaining a contemporaneous rationale for pricing and synergies. Sponsors should also be building centralised registries of board seats, observer roles and information-sharing arrangements across the portfolio to streamline interlock and influence assessments. On vertical disclosures, mapping input and customer relationships down to the product-line level can reduce agency friction and limit second-request scope.

Conclusion – navigating opportunity in a more predictable environment

The current enforcement era is not defined by hostility to PE, it is defined by clear enforcement priorities and objectives such as throttling big tech, ensuring content platforms are playing fairly and lowering drug costs for Americans. The framework is demanding but knowable, and firms that master the rules will find opportunities where others see obstacles. As the administration continues to refine its policies, the most successful sponsors will be those that build compliance and engagement into their investment process.

Antitrust enforcement today operates within a political economy that values transparency, data and public accountability. Lobbying, when conducted strategically, has evolved from private persuasion to demonstration of alignment with the administration's priorities. PE firms can differentiate themselves by articulating how investments enhance competition, create jobs or improve innovation. Engagement should align with the economic and political narrative of competitive markets and positioning industry for economic superiority on the world stage.

For sponsors that internalise these lessons, antitrust risk becomes a manageable workstream rather than a closing wildcard. The winning playbook is straightforward: build repeatable processes for HSR readiness, maintain governance frameworks that contain influence risk on minority stakes, and engage substantively with agency staff on remedies that solve real problems. In a regime that values clarity, preparedness is strategic advantage. ■

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