

## Conor Reidy Discusses State Uniform Antitrust Pre-Merger Notification Laws with *Private Funds CFO*

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Winston & Strawn partner Conor Reidy was quoted in a *Private Funds CFO* article discussing new antitrust pre-merger notification laws enacted by the states of Colorado and Washington. Under these laws, any company required to file for Federal Trade Commission or Department of Justice antitrust division merger review under the *Hart-Scott-Rodino Act* that does sizable business in a given state must file with the state's antitrust enforcers for review. The pre-merger notification laws aren't oppressive on their own, but Conor noted that they remain a latent threat, especially if state attorneys general begin to feel that the federal antitrust enforcers aren't doing enough to protect competition.

"The good thing is, for a lot of these uniform laws, the reporting is fairly straightforward because you're basically just forwarding the filing that you already made to the federal government, to the state attorney general as well," he says. "But it certainly introduces additional filing, and parties never want to make more filings than they have to as part of these transactions."

How much of a threat these emerging state bills become will depend on whether states think the FTC and DOJ are doing enough to stop consolidation, Conor noted.

"I think what will drive this is whether the states believe that the federal enforcers are vigorously enforcing the antitrust laws," he says. "If the federal enforcers continue to diligently and vigorously enforce the antitrust laws, there's not as much space for the state enforcers to go their own way. The more you see states feeling like the federal government is either not acting in their interest or not as enforcing the laws as vigorously as they would want them to, I think you'll see more desire to pass these kinds of laws. I think that's going to be the biggest driver over the next few years."

Similar measures are pending in California, Hawaii, Nevada, Utah, West Virginia and the District of Columbia. It's probably wise for fund managers to be aware of local conditions, Conor added.

"When you're preparing your federal filing, if you know that you're going to be submitting it to Washington and Colorado, you'll also want to know whether there's any particular local impact on those states that you may need to explain to those states and be prepared to do so in case you get any questions from them after you file," he says.

As always, it may also help if you can reassure antitrust enforcers that your proposed merger will promote competition, or help makes things substantially better for those you’re hoping to serve, or both, Conor says.

“If you can show that your business is in fact more efficient and allows – I’ll take an example from the healthcare context – if your proposed merger allows physicians more time to spend with patients, things like that, you’ll probably want to emphasize that,” he says.

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