

In US FTC's GTCR case, focus on PE rollups replaced by traditional M&A review

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The Biden administration's focus on private equity firms appears to have been replaced by textbook merger analysis at the US Federal Trade Commission, as highlighted by an FTC complaint against GTCR's proposed acquisition of Surmodics. In the redacted complaint posted by the agency, the term "private equity" is mentioned just twice in a neutral non-pejorative fashion, simply to specify what type of company GTCR is. A concurring statement by Democratic Commissioners Rebecca Kelly Slaughter and Alvaro M. Bedoya was the lone venue for pushback against private equity firms in healthcare.

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"We write separately to note that this case is a particularly valuable use of Commission resources because it challenges a transaction that is part of a widespread and problematic playbook in our economy: a private equity giant establishes a position in a market then acquires competing businesses as part of a consolidation strategy," FTC Democrats Slaughter and Bedoya said in their statement. "In general, this strategy can be extraordinarily profitable for a private equity firm, but can also come at substantial cost to the market and to consumers. This type of consolidation playbook is prevalent and is particularly concerning when it is executed in healthcare markets, where not just money but lives are on the line."

The FTC sued to block GTCR's acquisition of Surmodics on March 6 in the US Northern District of Illinois, saying the combined company would control more than 50 percent of outsourced hydrophilic coatings due to GTCR's prior acquisition of BioCoat. This traditional structural argument against the merger avoids development of prior angles against private equity involvement or wading close to the new 30 percent threshold under the 2023 Merger Guidelines.

The Biden-era FTC frequently took aim at private equity rollups, particularly in healthcare, most notably in its monopolization suit against US Anesthesia Partners and Welsh, Carson, Anderson & Stowe (See [here](#)). The agency, which was fighting the anticompetitive effects of rollups, expanded that fight beyond healthcare and into other markets, such as housing, defense and cybersecurity, in 2024 (see [here](#)).

Former FTC Chair Lina Khan and other Biden administration FTC political appointees frequently bemoaned the dangers of serial acquisitions that allow a company to gradually acquire more market power within an industry – a business strategy that these government leaders claimed was especially popular at PE companies (see [here](#)). During the FTC's Biden era, the agency's Democrats warned repeatedly that small serial acquisitions could be used to create a monopoly while staying under the radar of competition law enforcers.

However, new Republican Chairman Andrew Ferguson and Commissioner Melissa Holyoak have forcefully pushed back against the argument that private equity firms are more worthy of antitrust scrutiny than other types of companies or that those firms should be held to a higher standard in comparison to others. In a statement (see [here](#)) written by Ferguson and signed-off on by Holyoak about the agency's settlement with Welsh Carson, Ferguson argued that there is "no reason for the Commission to single out private equity for special treatment."

Ferguson's steadfast refusal to "single out" PE companies may explain why the GTCR complaint doesn't use the pejorative language about PE that was present in the USAP complaint, which repeatedly used the phrase "rollup scheme" to describe the activities of USAP and Welsh Carson.

"That seems to be a break from FTC enforcement during the Biden administration," said White & Case law firm partner and antitrust lawyer Anna Kertesz, a former FTC attorney. "The GTCR complaint does not use negative language around private equity – the complaint simply describes GTCR as a private equity firm in neutral terms."

The agency simply relied on the fact that the market share of the two companies would be over 50 percent if combined.

"I do think that's notable because the prior administration leadership, Lina Khan and the Democratic commissioners, had a firm and repeatedly stated and emphasized view that private equity involvement in M&A activity can be particularly harmful," said* James Hunsberger, partner at Axinn, Veltrop & Harkrider. "Independent of the actual competitive effects on the market from a traditional sense, just the involvement of private equity was viewed with a certain degree of skepticism, and some might say even hostility, by the prior administration. We don't see that here in the complaint that was voted out 4-0."

A 4-0 vote by commissioners to seek a temporary restraining order and preliminary injunction demonstrates that the complaint's nonjudgmental framing of GTCR's status as a PE company wasn't a dealbreaker for FTC Democrats who voted out the complaint, though they did make a point of expressing their reservations about PE activity in the healthcare space via their concurrence.

"It will be interesting to see — if and when the case is litigated — whether those concerns are brought into the trial, or whether they are limited to the concurring statement," Crowell & Moring antitrust partner Alexis Gilman said.

"Obviously the Biden FTC had a lot of concerns about, and arguably hostility towards, private equity acquisitions," Gilman added. "I think we're all watching to see whether the Ferguson FTC continues to have that same concern about PE."

**Corrected on March 18, 2025 at 21:45 GMT: A previous version of this article incorrectly quoted Hunsberger.*

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