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The State Antitrust Risk You Are Not Pricing Into Your Deal

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There are more than 50 attorneys general in the United States and any one of them could impact your next deal. Each has the authority to file antitrust suits under federal law, and most states and territories have their own antitrust or consumer protection laws as well.

Historically, these enforcers often deferred to—or worked with—the federal government producing a single settlement or judgment at the end of a case. But that leadership model has splintered, exposing businesses to challenges from unexpected directions.

Although a conduct case, and not a merger challenge, the Live Nation prosecution is instructive. When a federal jury found Live Nation and Ticketmaster liable on every antitrust count submitted earlier this year, 33 state attorneys general and the District of Columbia had already refused the U.S. Justice Department's (DOJ) earlier settlement and carried the case to that result on their own. The part of the story that corporate counsel and deal teams should be studying is not the verdict itself, but what it tells you about the next transaction sitting on your desk.

Federal Easing Does Not Mean Lower Risk

Last month, the DOJ Antitrust Division announced it will streamline second request investigations, introducing an "Expedited Consideration" option and a revised model timing agreement designed to cut the burden and scope of merger reviews. But this change doesn't signal a reduced antitrust risk. Indeed, the FTC has announced nothing comparable. And neither development touches what has become the most consequential and least-modeled variable in recent major transaction risk assessments: state-level antitrust enforcement. Federal merger review may be easing, but state merger scrutiny is moving in the opposite direction.

Companies can no longer evaluate antitrust risk solely or primarily through a federal enforcement lens because federal clearance, while still necessary, is no longer sufficient on its own for a growing number of deals.

Paramount and Warner Bros.: A $110 Billion Cautionary Tale

The Paramount–Warner Bros. Discovery merger is clear proof. The DOJ's approval of the $111 billion deal in June reportedly surprised many DOJ staff lawyers who were leaning toward recommending a lawsuit to block it. A month later, a coalition of 12 states, led by California, filed suit anyway (*California v. Skydance Media*), the court granted a temporary restraining order (TRO), and the deal was "paused" until the scheduled March trial.

The financial exposure is staggering. Paramount owes Warner Bros. shareholders a $0.25-per-share-per-day ticking fee if the deal does not close by the end of next month: roughly $7 million per day, plus a $7 billion termination fee if the deal collapses on regulatory grounds. Paramount's $6 billion in projected synergies is being consumed by the cost of delay.

States Are Building the Infrastructure to Win

This is not an episodic response to the current administration. It is a structural expansion of state antitrust capacity that will outlast any federal enforcement posture. State AGs have already initiated seven antitrust actions this year, surpassing total filings in each of the prior two years, including a coalition of states that sued in early 2026 to block Nexstar›s acquisition of Tegna, where a federal judge froze the merger in advance of trial. New Jersey has created its own dedicated Antitrust Litigation and Competition Enforcement Section. Oregon›s Attorney General recently secured emergency legislative funding to triple his Antitrust Division, paid for by enforcement recoveries, not tax dollars. And a coalition of AGs from Washington, California, Nevada, New York, and Oregon have publicly announced that reduced federal oversight creates gaps they intend to fill.

States are also building legal architecture for earlier intervention—and overcoming a historic obstacle: the lack of sufficient information about the merging parties. Not anymore. California, Washington, and Colorado have each enacted "mini-HSR" premerger notification regimes requiring state-level filings alongside or immediately following federal HSR submissions. Indiana's regime was drafted to take effect in July, and similar legislation is advancing in the District of Columbia, Hawaii, and New York. California›s law enables reciprocal information sharing among participating states, meaning a filing in one state can seed the investigative record of every state that has adopted a comparable regime. The compliance patchwork is growing faster than most deal teams recognize.

What Deal Teams Must Do Differently

In-house counsel must build state AG engagement into deal planning from the start of the merger evaluation and planning process, not as an afterthought once federal review concludes or states decide to act. That means mapping state exposure early, identifying which AG offices are most active in the relevant sector, tracking mini-HSR filing obligations across jurisdictions, and thinking about proactive outreach to relevant state AGs as part of the deal communication strategy. Waiting until a TRO application has been filed is not engagement. It is crisis management.

It also means being honest with clients about state remedies. A federal consent decree that preserves the core corporate structure offers no protection against a state coalition pushing for full structural separation, as Live Nation's counsel knows all too well. Indeed, without a holistic approach, dealmakers run the risk of getting *whipsawed*. The term comes from labor negotiations, where a union targets one employer at a time, wins a strong contract, then uses it as leverage to extract the same or better terms from the others. Live Nation is the cautionary example: the defendant reached a deal with federal regulators only to find that agreement was the *floor*—not the ceiling—for what it would have to give up to the states after losing at trial.

For any company with a significant consumer-facing transaction on the horizon, the question is no longer whether state antitrust risk is real. The question is whether your deal team has built a strategy to manage it before a state coalition files, before a TRO issues and before the ticking fee starts running.

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