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Hot Documents in Merger Review



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Dechert's Antitrust/Competition practice presented "Hot Documents in Merger Review," a bite-size episode of the firm's Committed Capital Sidecar Podcast Series. Antitrust partners Mike Cowie, James Fishkin and Rani Habash discuss Dechert's Boiling Points collection of documents, which tracks the government's use of hot documents in merger investigations and trials – and how senior executives and deal makers can reduce antitrust risk in their communications when analyzing a deal and evaluating synergies.

HIGHLIGHTS FROM THE EPISODE

Boiling Points collection of documents

Boiling Points is a collection of publicly available documents that government agencies have used to support enforcement decisions against merging companies. How a management or deal team communicates about its deal – both internally and publicly – can significantly impact merger review and the likelihood of obtaining antitrust clearance. Hot documents often lead to deals being delayed and even blocked. Through Boiling Points, Dechert's antitrust lawyers offer attorneys and business teams practical guidance to help prevent unnecessary (but costly) deal delays or challenges that can stem from "hot documents" that government enforcers may view as problematic.

Counseling to minimize antitrust risk

Antitrust counsel should be included early in the deal process to provide guidance and review key deal documents that must be included in HSR filings, including confidential information memoranda ("CIMs"), management presentations, industry assessments and synergies analyses. These types of documents should be reviewed by antitrust counsel before they are finalized, since many common terms used by bankers and business leaders may be taken out of context by government attorneys reviewing a proposed merger.

Buyers and sellers need to be aware that certain terms may have one meaning for the business community, but may be misinterpreted as having a different meaning to the antitrust agencies. Other terms and statements may overstate or oversimplify market conditions. Proper guidance, including discussing and more clearly articulating the procompetitive benefits resulting from a merger, can reduce antitrust risk while achieving the commercial objective of completing a merger without unnecessary delays resulting from a government investigation or enforcement action.

To hear the episode in full, click [here](#). For all episodes in our series, click [here](#).

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