

Trends in Domestic M&A

Marriages, Dividing the Assets and Privilege Issues

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I. Discussion Points

A. Three areas of continued focus in domestic M&A:

1. Privilege
2. Joint Ventures/Competitor Collaborations
3. Carve-out Transactions

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II. Joint Ventures/Competitor Collaborations

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II. Competitor Collaborations

A. Experiences from the trenches

1. When an outright acquisition of a competitor is not feasible, a JV may provide a way for competitors to collaborate
2. Joint ventures can allow parties to:
 - Gain access to new markets and customers
 - Share risks and resources
 - Gain efficiencies and lower costs
 - Share expertise

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II. Competitor Collaborations (cont'd)

- A. Joint ventures among competitors may allow parties to achieve procompetitive benefits jointly that they could not achieve alone
- B. Joint activity remains subject to scrutiny under antitrust laws, could be challenged by federal and state authorities as well as private litigants
- C. Antitrust Guidelines for Collaborations Among Competitors issued by the FTC and DOJ provide guidance on how competitors may collaborate without running afoul of the federal antitrust laws

Source: https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf

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II. Collaborations Distinguished from Mergers

- A. Most mergers completely end competition between the parties, but collaborations often only restrict certain business activities while preserving competition between the participants in other respects
- B. Mergers are designed to be permanent, while collaborations may be of limited duration
- C. If, however, a collaboration has competitive effects identical to those that would arise if the participants merged in whole or in part, the antitrust agencies will treat the collaboration as a merger and analyze it pursuant to the Horizontal Merger Guidelines

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