

10 Notable M&A Antitrust Matters







1. **Sept '22** | FTC Investigating Amazon's Purchase of Roomba Maker, iRobot
2. **Sept '22** | Federal Judge Ruled Against a Feb '22 DOJ Antitrust Challenge to UnitedHealth's Acquisition of Change Healthcare
3. **Sept '22** | FTC Investigating Amazon's Purchase of One Medical
4. **July '22** | L3Harris Drops Bid for NSO Group Following White House Concerns
5. **July '22** | FTC Sues Meta for Antitrust in Within Unlimited Acquisition
6. **June '22** | DOJ Sues Booz Allen for Antitrust Violation in Ever-Watch Buy
7. **June '22** | Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System to Abandon Proposed Merger Following FTC Probe
8. **Jan '22** | FTC Sues Lockheed for Antitrust Violation in Aerojet Rocketdyne Acquisition
9. **May '20** | DOJ Requires CPI to Divest CPI's Subsidiary, CPI ASC Signal Division, to Proceed with Acquisition of GD Satcom Technologies
10. **Mar '20** | DOJ Requires RTX and UTC to Divest RTX's Military Airborne Radios Business and UTC's Military GPS and Space-Based Optical Systems Businesses to Proceed with Merger

Back to School: Sharpen Your GovCon M&A Antitrust Pencils

- 🐾 Get your school supplies in order before the first day of classes; companies should have antitrust considerations front of mind
- 🐾 Contractors should study up to adapt to stricter antitrust policies and regulatory watchdogs under the Biden Administration
- 🐾 Dodge DOJ and FTC inquiries on the playground by focusing on greater market power created via vertical and diagonal acquisitions
- 🐾 There is enough lunch to go around; regulators should stop taking contractors' lunch money with overreaching investigations
- 🐾 Assume the DOJ and FTC are eyeing deals closely for antitrust concerns; raise your hand early to understand potential issues
- 🐾 Expect investigations; conduct internal and external communications as though regulators are reviewing all of them, because they will

Embracing the New Curriculum

The new curriculum of heightened antitrust scrutiny was introduced in 2021 alongside new, progressive teachers in the form of appointees Jonathan Kanter (DoJ, Antitrust), Lina Khan (FTC), and Tim Wu (NEC) to name a few. With these choices, Principal Biden signaled an aggressive approach to antitrust enforcement in GovCon this school year. Additionally, creation of the PCSF to pursue antitrust violations within procurements and Biden's issuance of an EO on "Promoting Competition in the American Economy" increase the scope of investigations into possible anti-competitive behavior. Watch for new hurdles to the merger review process, major antitrust legislation moving through both chambers, and increased enforcement efforts at the DOJ and FTC as you navigate your new curriculum.

Oil and Gas  F <i>Refuses to share with classmates</i>	Healthcare  D <i>Routinely unkind to classmates, receives reports of bullying</i>
Big Tech  D <i>Fails to obey rules, gets away with acting out</i>	Transport  B <i>Usually stays out of trouble, but lately has needed more discipline</i>
Financial Services  D <i>Borrows other students' lunch money and rarely pays back</i>	GovCon  A <i>Pleasure to have in class, keep up the good work!</i>

Watch Out for Detention!

As most ne'er-do-wells would tell you, avoiding detention with a new teacher, updated rules of engagement, and a proactive administration will be more art than science. Niches within GovCon have gotten more scrutiny under the guise of institutional concerns about concentration risk. Teaming agreements, non-competes, and other restrictive provisions in deal documents and employee agreements have been highlighted as warranting investigation by watchdogs and perhaps a seat in detention. In August, the FTC approved omnibus resolutions to seek compulsory process in collusive practices and M&A transactions, giving FTC staff free reign to chase potential violators. With suspension, debarment, and license revocation on the table, avoiding detention is now more crucial than ever.

Let's All Play Nice in the Sandbox

The federal government marketplace is vast and fiercely competitive. In FY21, over \$637B was spent on obligated government contract dollars, shared across millions of contracted employees. In fact, per the 2022 WashTech Top 100, the 10 largest government contractors accounted for less than 10% of the obligated contract dollars, and the top 100 largest accounted for just ~21%. No one contractor occupies a significant share of the sandbox – the top two, Leidos and Lockheed, occupied 3% of the obligated contract dollars in FY21. The reality is, thousands of contractors support the federal government in some capacity. There is no shortage of toys to go around in government contracting. And other sectors (e.g., Big Tech) have clear bullies that rule the playground, gobbling up the smalls, moving fast, and breaking sandcastles. Where GovCon is concerned, maybe we should just let the kids play.

Staying Out of the Principal's Office

No one wants to be the kid called to the principal's office. Given the Biden Administration's focus on antitrust enforcement, it is critical that you consider antitrust implications in evaluating transactions. Even if competition challenges seem unlikely, they should be brought to the whiteboard early, particularly following the DOJ probe into Booz Allen's EverWatch acquisition. Plan for regulatory scrutiny from day one, assuming every email, study, and diligence report will be reviewed. Be mindful of SBA's "present effect rule" – an LOI may create affiliation between parties negotiating a potential merger, impacting small business status and eligibility. Extra credit for qualified parties that submit timely premerger HSR notification filings and are awarded early termination of the waiting period. Sitting in the principal's office wastes precious time and resources and takes away from the main assignment: growing your business.