

Word on the Street: DOJ Issuing Inquiries Into Director Interlocks

In April, Assistant Attorney General Jonathan Kanter noted in a [speech](#) that the DOJ's enforcement of Section 8 of the Clayton Act (which prohibits interlocking directorates) would not be limited to its merger review process and that the DOJ is "ramping up efforts to identify violations across the broader economy, and we will not hesitate to bring Section 8 cases to break up interlocking directorates."

We understand that the DOJ has recently started to send letters to some public companies inquiring about director or management interlocks. In light of this, you may want to consider examining whether any of your existing or proposed directors or management serve on the board or management at any company that could be considered a competitor.

Bear in mind that the DOJ and FTC can only seek injunctive relief for Section 8 violations (i.e., removing the interlock). As part of a Section 8 investigation, however, the agencies are likely to look for evidence of other anticompetitive conduct or collusive behavior in violation of other antitrust laws, including Section 1 of the Sherman Act (which regulates agreements that unreasonably restrain trade), which could subject the companies and individuals involved to additional costly and lengthy investigations and potentially civil or criminal penalties.

Finally, note that private parties may also sue to enforce Section 8 and, unlike the federal agencies, seek treble damages.

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