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Subject: DOJ Merger Challenges A New Reality, Antitrust Head Says

PUBLIC POLICY

Wednesday, September 21, 2016

TOP NEWS

DOJ Merger Challenges A New Reality, Antitrust Head Says

The head of the U.S. Department of Justice's Antitrust Division said Tuesday that the federal government's antitrust model has evolved from settlements or resolutions brokered within the confines of the agency to "litigation mode," where judges and other third-party referees decide the fate of proposed mergers.

Dozens Of States, Biz Groups Challenge DOL Overtime Rule

More than 50 business groups and 21 states on Tuesday filed suit in the Eastern District of Texas challenging the U.S. Department of Labor's overtime exemption rule changes, arguing the agency unconstitutionally overstepped its authority to establish a federal minimum salary level for white collar workers.

Warren Calls For Wells Fargo CEO's Head At Senate Hearing

Sen. Elizabeth Warren, D-Mass., on Tuesday called on Wells Fargo & Co.'s CEO to resign, return hundreds of millions of dollars in compensation and face a criminal investigation over the fraudulent accounts created by the company's employees that resulted in a \$185 million fine against the bank.

Senate Report Says Clean Water Rule Can't Be Justified

The Republican-controlled U.S. Senate Committee on Environment and Public Works on Tuesday issued a report claiming the U.S. Environmental Protection Agency and Army Corps of Engineers' justification for its controversial Clean Water Rule doesn't hold up and urged Congress to step in and limit the agencies' authority.

Ex-Pa. Justices Renew Suit Over Retirement Age Referendum

A pair of former Pennsylvania Supreme Court justices launched a renewed legal challenge on Monday disputing the wording of a ballot measure set to go to voters this November that would amend the state's constitution to raise the mandatory retirement age for judges from 70 to 75.

Senate Starts Stopgap Funding Debate, Details In Flux

The U.S. Senate on Tuesday started considering a funding measure to keep the government running after Sept. 30, although Republicans and Democrats are still negotiating the details and any deal in the Senate still has to pass the House in the next 10 days.

Former Speaker Boehner Lands At Squire Patton Boggs

LAW FIRMS

Akin Gump
Anderson Kill
Ballard Spahr
Brune Law PC
Cadwalader Wickersham
Chamberlain Hrdlicka
Covington & Burling
Cravath Swaine
Davis Polk
Debevoise & Plimpton
Dechert
Dentons
Fish & Richardson
Gibson Dunn
Hangley Aronchick
Hogan Lovells
Holland & Knight
Jones Day
K&L Gates
Kirkland & Ellis
Kline & Specter
Latham & Watkins
LeClairRyan
Littler Mendelson
Milberg LLP
Mintz Levin
Morgan Lewis
Morrison & Foerster
O'Melveny & Myers
Ogletree Deakins
Osborn Maledon
Otterbourg PC
Pepper Hamilton
Pillsbury Winthrop

John Boehner, the former U.S. House speaker who resigned last year amid political infighting with more conservative members of his party, is back in the Beltway at Squire Patton Boggs.

ANALYSIS

5 Takeaways From The DOT's New Self-Driving Cars Policy

The Obama administration's first-of-its-kind federal policy aiming to accelerate the development of self-driving cars establishes a rigorous safety protocol for carmakers and technology companies to meet, while also seeking to expand the U.S. Department of Transportation's regulatory reach into car design and performance standards. Here are five takeaways from the Federal Automated Vehicles Policy unveiled Tuesday.

BANKING & SECURITIES

Tilton's Latest Suit Over SEC In-House Rules Draws Request

A New York federal judge Tuesday ordered private equity magnate Lynn Tilton to explain why a new suit she filed this month challenging the constitutionality of the U.S. Securities and Exchange Commission's use of administrative proceedings to enforce securities laws passes jurisdictional muster.

HK Watchdog Seeks To Ease Derivative Position Limits

The Hong Kong Securities and Futures Commission launched a consultation with exchange participants Tuesday that seeks to relax position limits on trading listed derivatives, hoping to broaden appeal of the region's futures and options markets.

BNY Mellon Asks 2nd Circ. To Deny Argentina Trust Payout

The Bank of New York Mellon on Monday urged the Second Circuit to deny a payout to a group of bondholders from a \$6.3 billion Republic of Argentina trust, arguing that the claimants have no right to the funds because they haven't settled a default agreement with Argentina as it repairs its economy.

Coalition Says Public Backs More Corporate Disclosure

A coalition of the AFL-CIO and eight public interest groups, including Public Citizen and the Center for American Progress, called on the U.S. Securities and Exchange Commission Tuesday to beef up corporate reporting requirements, saying the evidence shows strong public support for more disclosures.

ENERGY & ENVIRONMENTAL

Enviros Urge Obama To Bar Arctic, Atlantic Drilling

Environmental groups on Tuesday pressed President Barack Obama to permanently bar new oil and gas drilling in the U.S. Arctic and Atlantic oceans, saying it's necessary in order meet the goals laid out by the global climate agreement the U.S. recently ratified.

Scientists Caution Against Trump's Plan To Duck Climate Pact

Hundreds of top scientists published an open letter on Tuesday warning against the "severe and long-lasting" ramifications that would come from the U.S. pulling out of the landmark Paris climate change agreement, as Republican presidential nominee Donald Trump has vowed to do if elected.

Quinn Emanuel

Reed Smith

Shook Hardy

Skadden

Sprague & Sprague

Squire Patton Boggs

Sutherland Asbill

Weber Gallagher

White & Case

COMPANIES

AT&T Inc.

Alliance of Automobile
Manufacturers

America Fujikura Ltd.

American Federation of Labor &
Congress of Industrial
Organizations

BTI Consulting Group Inc.

Baker Hughes Inc.

Bayer AG

Center for American Progress

CenturyLink Inc.

Charter Communications Inc.

Competitive Carriers Associatio

Dow Chemical Co.

E. I. du Pont de Nemours and
Company (DuPont)

Electrolux AB

Energy Transfer Partners, L.P.

Facebook

Frontier Communications
Corporation

Global Automakers

Halliburton Company

Hong Kong Exchanges and
Clearing

International Bar Association

John Hancock Financial

Los Angeles Times

Lyft Inc.

McGraw Hill Financial Inc.

MetLife Inc.

Monsanto Company

National Association of
Manufacturers

National Cable &

Telecommunications Associatic

Enviro Group Challenges Approvals In \$1.5B Pa. Gas Project

A Pittsburgh-area environmental group launched a legal challenge on Monday over approvals that the Pennsylvania Department of Environmental Protection announced in August it had awarded for a cryogenic gas processing plant that an Energy Transfer Partners LP unit is planning as part of a \$1.5 billion investment in Western Pennsylvania.

HEALTH & LIFE SCIENCES

Wedding Invitation Biz Can't Block Phoenix Anti-Bias Law

Owners of a Phoenix art studio alleging a city ordinance violates their freedoms of speech and religion by requiring them to sell wedding invitations to same-sex couples can continue their lawsuit but cannot yet stop Phoenix from enforcing its law, an Arizona judge has ruled.

IP & TECHNOLOGY

Antitrust Group Comments On Draft IP Licensing Guidelines

The Global Antitrust Institute at George Mason University School of Law on Tuesday submitted a comment in response to the U.S. Department of Justice and the Federal Trade Commission's proposed update of the antitrust guidelines for intellectual property licensing, offering both praise and suggestions to improve the plan.

TRANSPORTATION & INFRASTRUCTURE

Mayor Recalls 'Total Gridlock,' Frustration Of GWB Closures

Fort Lee Mayor Mark Sokolich told jurors Tuesday at the George Washington Bridge lane-closing trial that the closures left his hometown in complete gridlock without warning from the Port Authority of New York and New Jersey after the mayor had refused to endorse New Jersey Gov. Chris Christie for re-election.

NY, NJ Officials Reach Agreement On New Bus Terminal Plan

New York and New Jersey lawmakers have come to some agreement with officials from the Port Authority of New York and New Jersey over formulating a plan for a new bus terminal on the West Side of Manhattan, on Tuesday issuing a joint statement in favor of a comprehensive planning process.

REAL ESTATE

Boston OKs \$211M In Development Projects

The Boston Redevelopment Authority last week approved \$211 million in funding for seven development projects valued at \$259 million, voting in favor of an \$80 million eight-story office expansion, a \$52 million mixed-use development with 171 residential units and a \$45 million apartment complex with 114 units.

EMPLOYMENT

States Say Gender Identity Guidelines Injunction Is Clear

A coalition of states challenging federal guidance that transgender public school students be allowed to use the bathroom matching their gender identity told a Texas federal judge Monday that its block of the directive is

National Retail Federation Inc.

Natural Resources Defense Council

New York Giants

Planned Parenthood Federation

Sierra Club

Steris Corp.

Sunoco

Synergy Health Plc

Syngenta AG

The Bank of New York Mellon Corporation

TiVo Inc.

U.S. Chamber of Commerce

Verizon Communications

Wells Fargo & Co.

WinnCompanies LLC

GOVERNMENT AGENCIES

Army Corps of Engineers

Congressional Research Service

Consumer Financial Protection Bureau

European Commission

Executive Office of the President

Federal Acquisition Regulatory Council

Federal Aviation Administration

Federal Communications Commission

Federal Trade Commission

Financial Conduct Authority

Government Accountability Office

Illinois Department of Transportation

National Highway Traffic Safety Administration

National Institute of Standards & Technology

New York State Department of Financial Services

Office of the Comptroller of the Currency

Office of the Director of National Intelligence

Pennsylvania Department of Environmental Protection

Port Authority of New York & New Jersey

perfectly clear and that a request from the U.S. Department of Justice for clarification should be rejected.

III. Gov. Fights State Job Review Amid Political Hire Cuts

Illinois Gov. Bruce Rauner on Monday pledged to continue eliminating political patronage hiring from all state government jobs after laying off state Department of Transportation workers hired under former governors, while Rauner's lawyers are fighting to block a federal court monitor from expanding the review of all state positions.

COMPETITION

Senate Panel Grills Agriculture Execs Over Merger Motives

Members of both parties grilled executives from Bayer, Monsanto, DuPont, Dow and Syngenta over their planned megadeals Tuesday, questioning whether the merged companies could raise food prices and use IP licenses to quash competitors.

GOVERNMENT CONTRACTS

GSA Responds To Concerns About Data Reporting Rule

The U.S. General Services Administration on Monday issued an extensive response to contractors' concerns regarding its recent transactional data reporting rule, addressing dozens of questions.

Lawmakers Want Block On Planned \$1.15B Saudi Arms Sale

A bipartisan group of House lawmakers introduced a resolution Tuesday intended to block a planned \$1.15 billion sale of U.S. tanks, armored vehicles and related equipment to Saudi Arabia, citing concerns over a Saudi-led coalition's purported bombing of civilians in Yemen.

Watchdog Dings VA Over \$1.9M Spent On Canceled Contract

The U.S. Department of Veterans Affairs' Office of Inspector General found nothing improper Monday in the agency's decision to terminate an e-learning contract, but that didn't stop the watchdog from chastising the VA for spending \$1.9 million for an unfinished project.

Continuing Resolutions Create Uncertainty For DOD: Report

A new report by the Congressional Research Service warns of the "budget uncertainty" and "general management challenges" confronting the Pentagon should federal lawmakers pass a continuing resolution, suggesting a short-term move would delay important military projects from littoral combat ships to A-10 components.

House Votes To Give GAO More Authority To Seek Information

The U.S. House of Representatives on Tuesday unanimously passed legislation intended to cut reporting burdens on the U.S. Government Accountability Office and to give it more authority to seek information from federal agencies, including through civil lawsuits if needed.

INTERNATIONAL TRADE

US Trade Official Rebukes Criticism Of TPP Arbitration Rules

A top trade official in the Obama administration on Tuesday struck back at criticism that the arbitration regime built into the embattled Trans Pacific

Securities and Exchange Commission

U.S. Air Force

U.S. Department of Defense

U.S. Department of Homeland Security

U.S. Department of Justice

U.S. Department of Labor

U.S. Department of State

U.S. Department of Transportal

U.S. Department of Veterans Affairs

U.S. Environmental Protection Agency

U.S. General Services Administration

U.S. House of Representatives

U.S. Senate

U.S. Supreme Court

United Nations

Partnership favors foreign investors over U.S. public interests, countering that the TPP imposes a hefty burden on claimants seeking to challenge domestic policies in an international tribunal.

EU Trade Boss Makes Pitch For Beleaguered Regional Pacts

European Union Trade Commissioner Cecilia Malmstrom on Tuesday stood by her office's robust trade liberalization agenda that has taken a beating in recent months, vowing to press ahead with ongoing U.S. trade talks and the effort to ratify the already completed deal with Canada.

TAX

Trump's Tax Plan Unclear On Pass-Through Income: Report

Confusion over how Donald Trump would tax individual income derived from pass-through businesses has resulted in wildly divergent estimates of anywhere from \$2.6 trillion to \$5.9 trillion in lost federal revenue over a decade, according to a Monday report from the Tax Foundation.

Data Security Gets New Look With Insurance Tax Credit Bill

A House lawmaker's proposal to give a tax credit to companies who purchase data breach insurance and implement a widely respected cybersecurity framework is likely to win backing for its approach of encouraging rather than requiring robust protections, but questions about how strong safeguards will actually need to be is likely to raise roadblocks.

Philly Soda Tax Challengers Seek Pa. High Court's Intervention

A group opposed to Philadelphia's controversial new tax on sweetened beverages has urged the Pennsylvania Supreme Court to exercise special jurisdiction over their recently launched lawsuit challenging the constitutionality of the levy.

TELECOMMUNICATIONS

FCC Chairman Pledges Review Of Data Roaming Rules

The Federal Communications Commission will follow through on its commitment in the Open Internet Order last year to take another look at data roaming rules for mobile providers, FCC Chairman Tom Wheeler said on Tuesday, promising to push for a new proposal this year.

AT&T Knocks 'Serious Flaws' In New FCC Set-Top Box Plan

A trade group and AT&T Inc. on Monday unleashed a wide-ranging takedown of the Federal Communications Commission's latest proposal for new set-top box competition rules, telling the FCC that even tweaking or removing parts of it wouldn't satisfy significant legal and policy problems.

Verizon Tells FCC Not To Void Special Access Contracts

The Federal Communications Commission should let contracts for special access services with provisions it now deems unlawful to "run their course," Verizon has told the agency, lobbying against an immediate change to existing agreements.

EXPERT ANALYSIS

Steps For Conducting A Successful Pay Equity Audit

While laws prohibiting pay discrimination have been around for decades,

recent legislative and regulatory changes have propelled pay equity into the spotlight. This renewed focus creates new challenges for compliance-minded employers that not only strive to achieve fair pay practices, but also seek to minimize the risk of pay equity claims, say Liz Washko and Lara de Leon of Ogletree Deakins Nash Smoak & Stewart PC.

[New York Sets Uncomfortable Cybersecurity Precedent](#)

New York's recently proposed cybersecurity regulations for financial institutions are very broad and expose senior officers and board members to all manner of penalties. One can expect that other states will follow with similar regulations, says Brian Finch, co-chairman of Pillsbury Winthrop Shaw Pittman LLP's privacy practice.

[Inside The FCA's Regulatory Sandbox](#)

The U.K. Financial Conduct Authority recently opened its "regulatory sandbox" scheme to financial services firms and technology companies. Covington & Burling LLP partner Charlotte Hill discusses the FCA's thinking on the sandbox and how it is addressing certain challenges.

[LEGAL INDUSTRY](#)

[The 4 Firms That Strike Fear In GCs](#)

General counsels have singled out four law firms that they're most afraid to face in court, pointing to the firms' ability to upend business operations, rack up costly bills and potentially ruin the reputations of their clients' litigation opponents.

[How To Win A Piece Of The Highest-Stakes Litigation Work](#)

Companies now deal with bet-the-company litigation at a rate that has quadrupled since 2014, according to a new report. Here's how law firms can capitalize on the growth and win the high-stakes work that a company's survival depends on.

[Civic-Minded Approach Makes For Better Attys, Scholars Say](#)

The notion of a lawyer being an amoral "hired gun" needs to be set aside, according to a Monday report by legal scholars, and more focus should be placed on a lawyer's role as "civic teacher," which will in turn enhance their work for public good as well as their business.

[Pro Bono Firm Of 2016: Covington & Burling](#)

From securing the release of Guantanamo Bay detainees to scoring victories for immigrant teachers and Guatemalan migrant forestry workers, Covington & Burling LLP has earned the distinction of being one of Law360's Pro Bono Firms of 2016.

[Rainmaker Q&A: Holland & Knight's Jeffrey Mittleman](#)

Never be afraid to ask for a meeting with a potential client. The worst that they can say is no, and then at least you know. Getting that first meeting is the most vital step, says Jeffrey Mittleman, co-leader of Holland & Knight's health care and life sciences industry team.

[Rainmaker Q&A: Dechert's Mark Thierfelder](#)

Notwithstanding the constant (and often unsolicited) advice I received as a law student and junior associate to work on my golf game, I focused on avenues that were genuine interests to develop personal relationships with

clients. As such, I have spent more time with clients that have become close friends doing things we each enjoy, says Mark Thierfelder, chairman of the corporate and securities group and the global private equity practice at Dechert LLP.

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