

CLIENT ALERT

PRIVATE EQUITY FACES ANTITRUST SCRUTINY

October 2006

The US Department of Justice has launched an inquiry into the possible anti-competitive practices of private-equity firms. The apparent concern is that firms may be colluding on certain acquisitions in an anti-competitive manner - bidding jointly rather than competing to make the best offer.

Although Canada's Competition Bureau has not publicly acknowledged whether it is conducting a parallel inquiry, it often follows in the footsteps of its sister agency in the US. Indeed, the conduct may raise scrutiny under the Competition Act's price fixing and bid rigging rules.

Price fixing includes any agreement that unduly prevents or lessens competition in the purchase or sale of an interest in a corporation. Bid rigging offences may come into play depending in part on the nature of any agreements between the bidders.

These offences carry stiff sanctions, including imprisonment. Multi-million dollar fines are now routinely imposed and implicated executives frequently are exposed to prosecution.

In an era of vigorous antitrust enforcement, the initiation of such an investigation re-emphasises the need for particular care when structuring co-operative arrangements between private equity firms.

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