

Proprietary

Dealspeak North America – Sponsors beware: Roll-up and add-on strategies are on regulators’ radars

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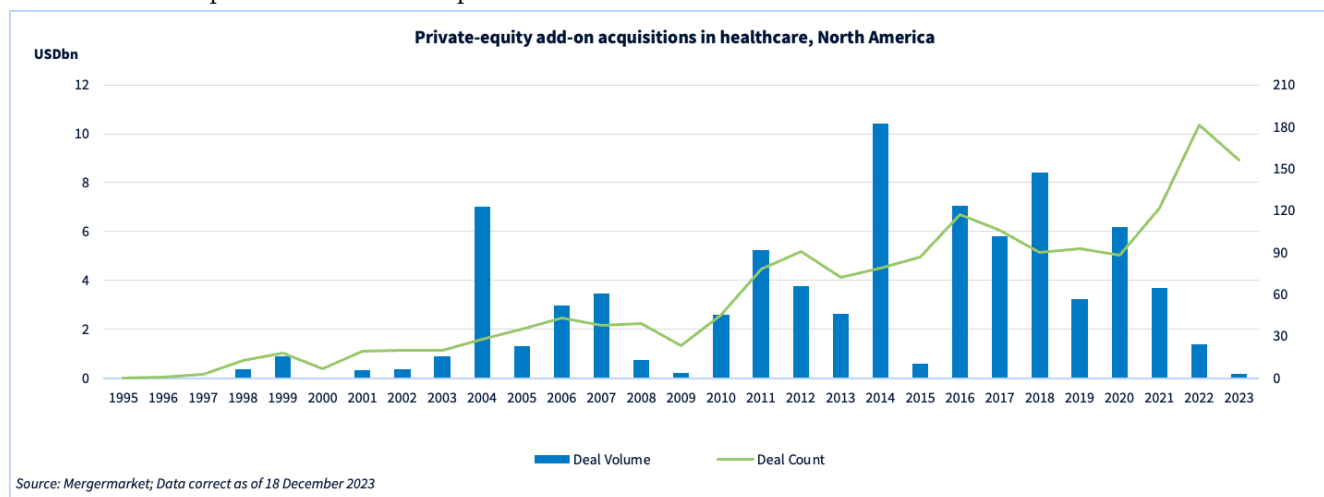
Private equity sponsors in the US have been put on notice that antitrust enforcers might not rubberstamp their add-on acquisitions but take a closer look instead.

Enforcement actions by the Federal Trade Commission (FTC) hint at a specific focus on roll-ups in healthcare. Attorneys have yet to see a chilling effect from possible increased regulatory risk, but say it is now part of dealmakers’ considerations.

In September, the FTC sued Welsh Carson for pursuing an aggressive roll-up strategy of Texas anesthesiology practices. The PE firm had not notified these transactions to the FTC because their size was below filing thresholds, currently USD 111.4m. The suit came after the FTC had ordered JAB Consumer Partners in 2022 to divest several veterinary clinics assembled in a roll-up and limited future add-ons.

Both actions followed repeated comments from FTC chair Lina Khan and head of the Department of Justice’s (DoJ) Antitrust Division, Jonathan Kanter, expressing concern with the cumulative impact of private equity roll-up strategies.

The extra scrutiny is yet to translate into the data. Because PE firms rarely disclose transaction value, deal count becomes the best metric. The number of add-on deals in North America’s healthcare sector remains historically high, despite dropping 14% in 2023 from 2022’s record of 181, according to *Mergermarket*. To put that into context, overall M&A activity in North America fell a sharper 20% over the same period.



Uncertainty abounds

Most PE firms in the US are still interested in doing deals and proceeding with them, notes Nathan Viehl, partner at Thompson Coburn. “PE firms are not hitting the brakes on deals if they have a good strategy that is not based on just raising prices.”

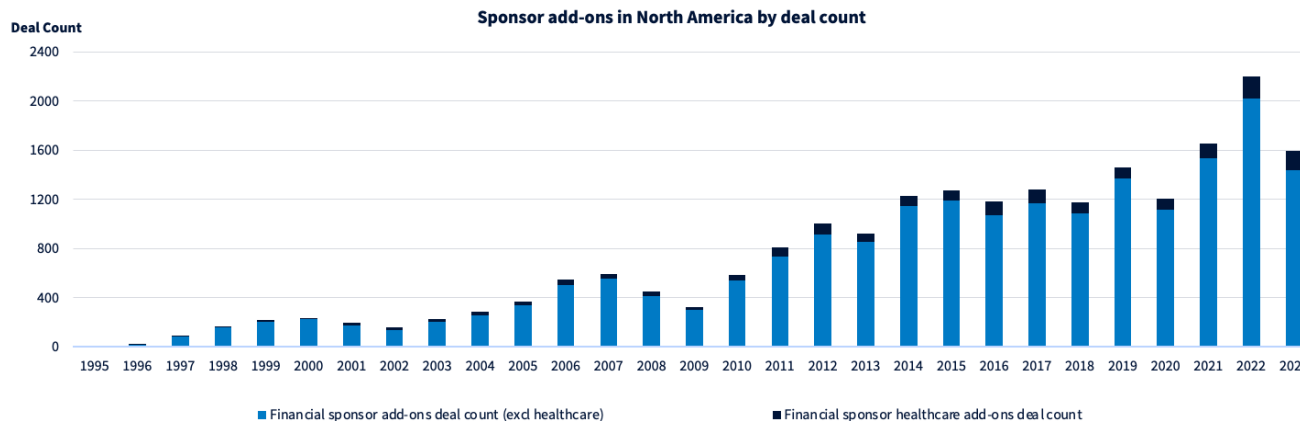
Sponsors want to know whether there is “hyper scrutiny” from the agencies or whether these enforcement actions are about especially egregious cases, says Jesse Solomon, partner at Davis Polk.

Tom McGrath, a partner at Linklaters, expects more such cases. The problem is the lack of clarity on what type of bolt-on strategy will draw scrutiny. “Is it the second, the third or the fourth acquisition in the same sector that will pull it across that line? It is a little hard to predict.”

The draft merger guidelines published by the FTC and DoJ this summer do not put forward a specific theory of harm about PE, even though the agencies have been very vocal about their concerns, adds Solomon.

The main focus seems to be the healthcare sector, where it is more prevalent for PE firms to make a series of small acquisitions, McGrath says.

The number of PE add-ons across all sectors in North America reached an all-time high of 2,199 in 2022, or about 16% of all M&A transactions. Although their number is down 28% in 2023, the 1,591 add-ons this year is still the third highest on record. Of those, 9.8% came in the healthcare sector, up from 8.2% in 2022 and 7.4% in 2021, according to *Mergermarket* data.



On notice

Is the Welsh Carson case a bellwether for strict enforcement against roll-ups in general? The FTC alleges Welsh Carson bought out more than a dozen anesthesiology practices in Texas to monopolize the market, set prices with remaining independent practices, and agreed with a large competitor to stay out of its market.

The case seems extreme, says Davis Polk’s Solomon. The allegations don’t address a garden variety PE roll-up and the case is based on traditional antitrust concerns rather than new theories of harm, he adds.

The type of business in a roll-up also matters, says Viehl. Where there is little consumer choice, such as in the Welsh Carson case, there is a higher risk. Roll-up strategies that don’t aggressively pursue market share in one region won’t have the same level of scrutiny, he adds.

Despite that, the recent regulatory attention has put everyone on notice. Both buyers and sellers now look at potential regulatory risks as part of an acquisition. Thompson Coburn’s Viehl does more antitrust analysis on deals than before, especially if part of a broader roll-up strategy. One impact of increased regulatory risk, warns McGrath of Linklaters, could be on sellers, as PE firms pay lower prices to account for the risk.

Written by Luuk de Klein, with analytics by Izaz Ansari

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