

Dulani and Warr Examine FTC and DOJ Clarification on Passive Investment in *Law360*

In the News

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Stinson LLP Partners [Jeetander Dulani](#) and [Nicci Warr](#) authored an article for *Law360*, "Filing Clarifies FTC, DOJ's Passive Investment Stance," examining the Federal Trade Commission and U.S. Department of Justice's recent clarification of the "solely for investment" exemption in federal antitrust law.

Their analysis highlights the agencies' joint statement of interest filed in an ongoing Texas antitrust case, which for the first time confirms that certain governance-focused activities may be consistent with passive investment status. At the same time, the statement makes clear that advocacy crossing into operational or strategic decision-making, or coordinated efforts among investors, could jeopardize the exemption.

"The message is clear: Governance engagement is safe, but the road from passive to active can be shorter than investors think," Dulani and Warr write. "Staying on the right side of the line requires a clear-eyed understanding of the rules and careful monitoring of post-acquisition conduction, as compliance must be maintained over the entire holding period, not just as the time of acquisition."

The article also addresses the agencies' reaffirmed skepticism of the "common ownership" theory of antitrust harm and explores the implications for institutional investors, particularly in balancing fiduciary responsibilities with compliance throughout the investment period.

Dulani's practice includes competition disputes, mergers and acquisitions, government investigations and other complex litigation. He regularly represents clients before the Department of Justice and Federal Trade Commission in merger and conduct investigations and advises on antitrust risk and compliance.

Warr counsels clients on complex litigation involving antitrust, consumer protection and intellectual property issues, with a particular focus on emerging technologies. She draws on her experience at the intersection of intellectual property and competition law to help clients find efficient and effective

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solutions.

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