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DoJ Sues to Block Hewlett Packard's \$14 Billion Acquisition of Juniper Networks

Yesterday, the U.S. Department of Justice ("DoJ") sued under s. 7 of the Clayton Act to block the \$14 billion acquisition by Hewlett Packard Enterprises (HPE:NYSE) of Juniper Networks (JNPR:NYSE), which was announced earlier this month. Under the deal, Juniper shareholders will receive \$40.00 per share in cash, to be financed by term loans ultimately to be replaced by new debt, convertible securities, and cash. The Clayton Act prohibits mergers that may substantially lessen competition or which may tend to create a monopoly. The Complaint alleges that the transaction, if consummated, would leave the combined company and principal competitor Cisco Systems in control of over 70% of the U.S. enterprise wireless networking market, as well as eliminating the current competition between HPE and Juniper, a smaller, but considered more innovative, rival. A copy of the DoJ complaint can be found [Here](#).

We have reported in the past on the activist merger review and control policies of the Biden administration Federal Trade Commission ("FTC") and DoJ. See, "FTC and DoJ Launch Effort to Restrict Anticompetitive Mergers," "FTC Restores Restrictive Prior Approval Merger Review Policy," and "FTC Sets Ambitious M&A Enforcement Agenda," all available at [Kurtin PLLC Mergers & Acquisitions](#). The DoJ complaint, filed in the U.S. District Court for the Northern District of California, is the first antitrust action commenced by the DoJ or FTC since the second Trump administration began, and may begin to answer the question of whether the two federal agencies will maintain the activist posture to merger review and control, especially in the tech sector, begun under

former FTC Chair Lina M. Khan and former DoJ Antitrust Division Chief Jonathan Kanter. The U.K. Competition and Markets Authority and European Union have already cleared the transaction.

The DoJ complaint notes that Cisco and HPE have held relatively stable market positions as number one and two, respectively, in the enterprise wireless networking market, but that Juniper has risen to number three, from under 2% of the U.S. market in 2019 to 6.5% in 2021, and also that enterprise wireless networking is a massive and growing market, increasingly the way businesses communicate within themselves, for example with sales staff and others remote from headquarters, and with upstream suppliers and vendors and downstream distributors and customers. In recent years, according to the DoJ, HPE engaged in strenuous efforts to beat Juniper's product offerings, and having proved unable to do so, decided to acquire Juniper instead, presumably the very attempt to create a monopoly by eliminating competition that the Clayton Act prohibits.

For additional information, please contact us at info@kurtinlaw.com.

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