

Paving the way for state enforcement

Pennsylvania challenges Colas–Suit–Kote deal

October 2026

On October 13, 2026, the Commonwealth of Pennsylvania sued to prevent Colas Inc.'s (Colas) proposed acquisition of Suit–Kote under Section 7 of the Clayton Act.

The complaint alleges that the transaction will likely lessen or eliminate competition in the provision of asphalt emulsions and pavement preservation services in several Pennsylvanian counties. According to an order filed with the US District Court for the Western District of Pennsylvania, the state has agreed to permit the transaction to proceed subject to divestitures and an additional capacity-expansion requirement.

The challenge illustrates how state enforcers can use merger litigation to secure structural remedies. It also underscores the continued importance of state attorneys general merger enforcement, even in the absence of federal intervention, particularly where transactions threaten competition in localized markets.

The transaction and Pennsylvania's challenge

Colas owns and operates asphalt emulsion plants and storage facilities, and provides asphalt emulsion and pavement preservation services in Pennsylvania. In August 2025, Colas agreed to acquire rival Suit–Kote, which distributes liquid asphalt, manufactures emulsion mixes, and provides road construction and pavement preservation services. These products and services are used by government agencies and other purchasers to maintain and extend the useful life of roads.

[Pennsylvania Attorney General Dave Sunday filed suit](#) in the US District Court for the Western District of Pennsylvania to block the transaction under Section 7 of the Clayton Act (Section 7).¹ Section 7 prohibits mergers and acquisitions where the effect of the transaction "may be substantially to lessen competition, or to tend to create a monopoly" in any part of the country.²

According to the complaint, Colas and Suit–Kote are two of only four significant competitors in the asphalt emulsions market and significant competitors in the pavement preservation services market, meaning the acquisition would likely reduce the number of competitive alternatives for government purchasers for these services and enable the combined entity to raise prices with no competitive restraint. Such increases could raise road maintenance costs for Pennsylvania's state and local governments and, ultimately, taxpayers.

Although Pennsylvania filed suit challenging the acquisition, the Commonwealth has reportedly agreed to permit the transaction to proceed subject to remedies. Those remedies reportedly include the divestiture of four factories and a requirement that Colas expand capacity at one asphalt emulsion plant before completing the divestiture. The combination of asset divestitures and a capacity-expansion obligation reflects an effort not merely to transfer assets, but to preserve effective competitive capacity in the affected markets.

Notably, Pennsylvania brought its challenge without a parallel enforcement action by the Federal Trade Commission (FTC) or the Department of Justice (DOJ). Although the absence of federal intervention does not necessarily indicate that the agencies reviewed and cleared the transaction, the case illustrates how state attorneys general can independently pursue merger challenges where they identify competitive harm to businesses and consumers within their jurisdiction. State enforcers may place particular emphasis on localized competitive effects, including potential increases for public procurement and essential infrastructure projects, even where a transaction has not prompted federal enforcement. The action serves as a reminder that the absence of federal challenge does not necessarily provide dealmakers with certainty that a transaction will proceed without antitrust scrutiny.

¹ *Pennsylvania v. Colas Inc. and Suit–Kote Corporation*, Case No. 3:26-cv-01979 (W.D. Penn. Oct. 13, 2026).

² Clayton Act, Section 7 (15 U.S.C. § 18)

The rise of state antitrust merger enforcement

This case comes amid a broader shift in US antitrust enforcement with states increasingly pursuing independent challenges, requiring premerger notification filings, and more broadly seeking to fill perceived gaps in federal antitrust enforcement.

State-led merger challenges

Pennsylvania v. Colas Inc. et al. is not the first case where state attorneys general, without the participation of federal enforcers, have brought Section 7 cases to seek an injunction of a merger. There have been two other high-profile cases initiated just this year:

On March 18, 2026, a coalition of [eight states filed a lawsuit](#) seeking to enjoin the merger between Nexstar Media Group, Inc. and Tegna Inc., alleging the merger violated Section 7 as it would likely substantially lessen competition in the broadcast programming market. The US District Court for the Eastern District of California, on April 17, 2026, granted a [preliminary injunction](#) halting the merger during the pending litigation. The preliminary injunction was granted despite the fact the parties received merger approval from the DOJ, which granted early termination in March 2026. Litigation remains ongoing, with the states challenging an apparent violation of the court's hold separate order in July.

In July 2026, [twelve state attorneys general filed suit](#) in the US District Court for the Northern District of California seeking to prevent Paramount Skydance Corporation's acquisition of Warner Bros. Discovery, Inc. The states alleged that the transaction would "inflict substantial harm" on the entertainment industry. Notably, the suit came the day after the [DOJ cleared the transaction](#), finding it did not present any competition concerns. In September 2026, Paramount reached a settlement with the state attorneys general, which will presumably allow the merger to move forward.

State-level premerger notification requirements

In addition to challenging potentially anticompetitive mergers in federal court, states have increased their involvement in the premerger review process. Three states – California, Colorado and Washington – have enacted the Uniform Antitrust Pre-Merger Notification Act (UAPNA).³ UAPNA, or "Baby HSR," requires parties to concurrently file their federal premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) with the state attorney general if certain state nexus requirements are met.



Failure to file under the Baby HSRs may result in state civil penalties. With Baby HSR legislation pending in additional states, state attorneys general may gain greater opportunities to scrutinize transactions affecting local competition.

Beyond the Baby HSRs, many states have adopted healthcare transaction-specific notification requirements. To date, fourteen states have active healthcare transaction notification regimes, and two more states have laws that will go into effect in early 2027.⁴ These laws impact a wide variety of healthcare service providers, including hospitals, hospital systems, medical groups and physician practices, with some laws targeting transactions involving private equity groups or venture capital investing in healthcare practices. Notably, the laws vary by jurisdiction, making it crucial for businesses involved in these spaces to be aware of each jurisdiction's requirements.

Key takeaways for dealmakers

The Colas–Suit–Kote challenge reinforces the increasingly important role of state attorneys general in merger enforcement and highlights several practical considerations for companies contemplating transactions:

- **Federal inaction does not eliminate antitrust risk** – State attorneys general may independently investigate and challenge transactions even where the FTC or DOJ has declined to intervene. As federal merger litigation has slowed, state enforcers have demonstrated a growing willingness to pursue their own enforcement priorities and address perceived gaps in federal oversight.
- **Localized competitive effects can drive state enforcement** – Transactions involving regional businesses may attract scrutiny even where their national market implications are limited. States may be particularly focused on transactions affecting concentrated local markets, government procurement, essential infrastructure and costs to taxpayers.

³ Colorado and Washington adopted UAPNA in 2025, and premerger notification requirements are currently in effect. California enacted UAPNA in February 2026, which will go into effect January 1, 2027.

⁴ States with active healthcare transaction notification regimes include California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Nevada, New York, New Mexico, Oregon, Rhode Island and Washington. Maine's and Vermont's regimes will go into effect in January and March 2027, respectively.

- **State enforcement can materially affect deal terms and timing** – Pennsylvania’s reported resolution illustrates how state challenges can result in significant structural remedies, including divestitures and related operational commitments, even without parallel federal enforcement. Parties should assess potential remedies early and consider the implications for transaction economics and closing certainty.
- **State antitrust risk should be incorporated into transaction planning** – Parties should evaluate state-level premerger filing requirements and enforcement exposure alongside federal merger review, particularly where a transaction involves significant local competitive overlaps. Regulatory strategies, transaction agreements and closing timelines should account for potential state investigations and challenges, recognizing that HSR clearance does not insulate a transaction from subsequent state enforcement.

As state attorneys general continue to take a more prominent role in merger enforcement, early identification of state-level competitive concerns will be increasingly important to managing regulatory risk and preserving deal certainty.

Contacts



Mary Walser

Of Counsel, Washington DC
T +1 202 457 5249
mary.walser@squirepb.com



Katherine von Schaumburg

Associate, Washington DC
T +1 202 457 7645
katherine.vonschaumburg@squirepb.com