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# DOJ Will File Statement Supporting Application of the Rule of Reason to No-Poaching Clauses in Franchise Agreements

The U.S. Department of Justice recently announced its intent to file a statement of interest in three pending class action lawsuits, which each challenge no-poaching agreements, filed against franchisors in federal court in Washington. In its notice, the DOJ stated that "[a] no-poaching agreement between a franchisor and a franchisee, within the same franchise system, . . . merits rule of reason analysis at the proper procedural stage." In so writing, the DOJ made clear its disagreement with the plaintiffs' arguments in these cases that the less rigorous per se or quicklook methods of analysis apply. The DOJ also wrote that, "the franchise model by itself, absent other facts, cannot constitute a 'hub and spoke' conspiracy that would trigger per se or quick-look treatment," which directly counters another argument made by the plaintiffs. No-poaching cases that have survived the motion to dismiss stage have done so because the courts have found that either the per se or quicklook analysis might be applicable, so the DOJ's statement might be very impactful. Gray Plant Mooty will continue to monitor and report on developments in the litigation of no-poaching clauses.

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