

'Back To The Future': Rick Rule Bets On New Era Of Antitrust

By Justin Wise

Law360 (March 24, 2022, 4:56 PM EDT) -- "Back to the future." That's how Rick Rule, the veteran lawyer who led the U.S. Department of Justice's Antitrust Division during the Reagan administration, describes what this week's launch of his Washington, D.C., antitrust boutique Rule Garza Howley LLP represents.

For Rule, who most recently co-led the competition practice at Paul Weiss Rifkind Wharton & Garrison LLP, the move is indicative of a return to the robust enforcement era of the 1950s, '60s and '70s, when private antitrust practices flourished as regulators pursued a broad range of cases challenging corporate behavior.



Rick Rule

Rule is betting the Biden administration's ambitious antitrust agenda is the beginning of a similar epoch where regulators have an expansive view of anti-competitive conduct, engendering an array of sophisticated legal needs. Four partners, including former Covington & Burling LLP antitrust group co-head Deb Garza, signed on to join Rule Garza Howley LLP, which launched on March 21.

Paul Weiss counsel Dan Howley will serve as managing partner of the new firm, and Rule has also brought on William Dolan, a former senior associate with Debevoise & Plimpton LLP, and Margot Campbell, a former in-house counsel at pharmaceutical giant Johnson & Johnson, as partners.

"Even in the Trump administration, there was a broadening of the scope of antitrust and it was becoming more important," Rule told Law360 Pulse, noting that he's been "toying" for years with the idea of forming an antitrust boutique.

But when the Biden administration came in and appointed champions of antitrust policy reform, competition law gained more importance to businesses than at any time in Rule's career, he said.

If he was ever going to open his own firm, he said, "now was the right time."

The enforcement priorities of the '50s and '60s "are returning," Rule said, "and there will be a demand for our services — a demand that's hard to meet in a large, multipractice law firm because of client conflicts and various other factors."

Rule Garza Howley joins a small but influential group of boutiques with an antitrust focus,

including Axinn Veltrop & Harkrider LLP and Constantine Cannon LLP, which launched in New York in the 1990s under similar circumstances.

Steve Axinn, who co-founded Axinn as an antitrust boutique in 1997 after three decades as an attorney at Skadden Arps Slate Meagher & Flom LLP, told Law360 Pulse that he was "constantly bumping into conflicts" as the BigLaw firm ballooned in size.

"When you have a book of clients the size of a small telephone directory, people will call you up and ask if you can represent them, and you check and discover their adversary is in that book, and then you're screwed," Axinn said. "And that kept happening."

"I felt if I went out on my own I would pick the clients I would want to represent," he added. "That's exactly what happened."

Most lawyers, however, aren't equipped to make such a move, according to Dan Binstock, a partner at Washington, D.C., recruiting firm Garrison & Sisson, because "most people are not Rick Rule and Deb Garza," who each have roughly 40 years of experience working both in government and at the helm of BigLaw antitrust practices.

The pair both graduated from the University of Chicago Law School in 1981 and later worked for the DOJ at a time when the so-called Chicago School of economics, which narrowed the focus of antitrust harm to a consumer welfare standard, helped shape government policy.

Rule eventually worked his way up to head the DOJ's Antitrust Division at the age of 31, making him the youngest person ever confirmed to the post.

That narrower approach to antitrust enforcement, which focused chiefly on the effect of business practices on consumer prices, led to a plunge in enforcement actions. By extension, a lot of work for the private antitrust bar dried up.

Some antitrust firms responded by diversifying their focus. At the same time, law school graduates began showing some reluctance about launching careers in the field, according to lawyers who practiced at the time. For instance, Bergson Borkland Margolis & Adler, a prominent antitrust boutique in the '70s, dissolved in 1986 as antitrust work declined, according to a Washington Post report from that year.

"The notion that, years later, Rick is starting an antitrust boutique is ironic to me, and would be to anybody who was there at that time," Constantine Cannon founder Lloyd Constantine, who led the antitrust division in the New York attorney general's office from 1980 until 1991, told Law360 Pulse. "Rick was very much at the center of an effort during the 1980s to miniaturize antitrust."

Rule said his position atop an influential government unit at the time served as a springboard for the rest of his career. He first entered private practice in his mid-30s and quickly started serving as lead antitrust counsel in corporate transactions.

His first decade in private practice coincided with a gradual uptick in antitrust enforcement during the Clinton administration. His track record during that time included advising on the \$75 billion deal that formed oil industry giant ExxonMobil. He also represented Microsoft in a government monopoly action against the tech giant that reached a settlement in 2001.

Rule's experience also includes going on the offense. He once represented parties that took aim at Google for allegedly using unlawful agreements to make it impossible for smaller rivals to compete. Rule worked that case, which was dismissed in 2011, with a team at Cadwalader Wickersham & Taft LLP that included Jonathan Kanter, an outspoken critic of Google who now leads the DOJ's Antitrust Division.

"That's kind of how Kanter got his start in going after big-platform players," said Rule.

Kanter and his counterpart at the Federal Trade Commission, Lina Khan, are now pushing for a more expansive view of anti-competitive harm following what they say has been years of unchecked consolidation that has hurt the broader economy. That's created a new pace of work for some antitrust practices as they advise on a more rigorous merger review process and enforcement actions brought against tech giants like Facebook and Google.

Rule noted that the Biden administration's mindset is an effort to replace the Chicago School ideology that was enforcers' dominant mode of thinking when he left government.

Rule is leaving BigLaw behind for the first time in three decades, and with it he loses the perks of a large firm, such as the army of associates who can take on certain transactions work. But Rule and Garza, who also spent much of the past three decades in BigLaw, said they aren't concerned.

Garza, whose credentials include serving as the acting head of the DOJ's Antitrust Division during the George W. Bush administration, told Law360 Pulse that many companies look for their "preferred antitrust lawyer" when seeking out counsel for important competition law matters.

"In that sense, the boutique fits that model," she said.

Garrison & Sisson's Binstock said it was too early to say whether the new firm is indicative of a larger trend.

"But if antitrust enforcement continues to increase as expected, client conflicts could become more front and center for certain practitioners [and prompt exits]," he said.

Paul Weiss partner Scott Barshay said in a statement that the firm expects to work with Rule and Garza's new shop in the future, a relationship in which Rule said his firm may act as "advisers to advisers." Rule also noted he's taking with him some clients who had been retaining Paul Weiss exclusively for antitrust work.

"This is just a different way of practicing and approaching antitrust," said Garza.

--Editing by Alanna Weissman.