

Analysis of Consent Order to Aid Public Comment

“good faith regulatory compliance defense” to antitrust liability is a narrow, rarely invoked defense. The defense applies only when there is an inconsistency between the antitrust laws and the imperatives imposed on the respondent by federal regulation, such that the respondent is not able to comply with both laws.⁹ “The defense does not insulate anticompetitive conduct that a respondent freely chooses to undertake; the conduct must be necessitated by regulatory and factual imperatives.”¹⁰

With regard to the Board’s conduct at issue here, there is no conflict or inconsistency between the Board’s obligations under the Dodd-Frank Act and its obligations under the antitrust laws; the Board may readily comply with both laws. The Dodd-Frank Act invites States (and not private actors such as the Board) to cooperate with federal au()3 (-4 (c (unde)-6 (r) (r)3 4aTd(B)7 (oa)-6 (r)3 (

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