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Distribution Merger Challenges at the FTC

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In recent years, the Federal Trade Commission (FTC) has launched significant investigations into mergers between distributors, with the merging parties resolving the FTC's concerns through consent, by abandoning the transaction entirely, or litigating the FTC's requests for injunction through judgment.[1] This precedent provides valuable insight into how the FTC analyzes such mergers.

Distribution mergers raise important and oftentimes complex competition concerns that require careful analysis of market structure and the likely competitive effects for particular classes of customers. Different distribution channels can sell precisely the same product but not actually compete against each other, because the idiosyncratic characteristics of one channel disqualify it as an option for a particular group of customers. The analysis below synthesizes key factors considered by the FTC in distribution mergers spanning the past two decades, including the FTC's more recent focus on acquisitions of disruptive distributors. These factors are essential for counsel to assess and proactively address to avoid a costly FTC challenge and likely death knell to a proposed distribution merger.

Three Kinds of Distribution Merger Reviews

Historically, the FTC investigated whether consolidation of firms with similar distribution footprints and characteristics raised competition concerns. More recently, the FTC also has investigated and challenged transactions where a dominant distributor acquired a nascent competitor who challenged the incumbent's distribution methodology with an alternative that threatened to disrupt the market for the better. For purposes of this article, we refer to the former as *Traditional Distribution Channel* (Traditional DC) mergers and the latter as *Disruptive Distribution Channel* (Disruptive DC) mergers. Consider these merger challenges:

- The FTC has twice challenged the proposed Traditional DC merger of Staples and Office Depot. The first challenge focused on the parties' retail stores—"office superstores"—while the second focused on the national distribution of office supplies to corporations.

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[1] Because of the industries allocated to the Antitrust Division of the Department of Justice, there have not been many distribution merger challenges at that agency. One notable one, involving the combination of Anheuser-Busch InBev and SABMiller, is described below; the remainder of the article is focused on the numerous challenges brought by the FTC.

In the most recent challenge, the FTC concluded (and the courts agreed) that the two largest national distributors of bulk office supplies were uniquely capable of providing office supplies in bulk to large businesses, with multiple offices, that required sophisticated transaction processing and logistics capabilities.

- Recently, in two relatively contemporaneous Disruptive DC merger challenges, the FTC challenged the acquisition of Harry's by Edgewell and Billie's by Procter & Gamble. In both cases, the FTC alleged that the dominant razor suppliers' attempts to acquire nascent competitive razor firms were likely to be anticompetitive. The FTC alleged that Harry's and Billie's disrupted razor competition through a lower-cost, internet-based, direct-to-consumer channel, while contemporaneously making inroads into the traditional retail distribution channel. In both deals, the FTC concluded that the two start-ups threatened to challenge long-held grips on the market for the sale of razors.

In all four of these cases, the FTC primarily focused on examining the closeness of competition between the merging parties in a given method of distribution, not on the sale of the product itself. For example, in the most recent *Staples II* challenge, the FTC was not worried that, in general, the merger would eliminate an important supplier of office supplies for individual consumers. Nor was there any question as to whether, post-merger, an individual consumer would still have plenty of opportunity to acquire pens and pencils from a variety of store types, both off and online. Instead, the FTC challenged the transaction because corporate customers with a nationwide footprint required vendors who could timely distribute products in bulk to all of the customer's locations, supported by robust logistics for order intake, tracking, and ultimate delivery.[2]

Relatedly, the FTC has investigated transactions where a customer acquires its distributor. Although these are "vertical mergers" (i.e., mergers involving firms at different levels of the supply chain), these transactions can nevertheless raise issues when the customer's competitors are deprived of access to a critical input (here, distribution). Such mergers either completely *foreclose* the customer's competitors from access to that input or make it such that the merger *raises its costs* to compete in the market.

FTC precedent provides critical insight into the type of evidence the FTC considers most significant when analyzing whether a distribution merger raises competitive concerns. In the next sections, we look at FTC precedent for both Traditional DC and Disruptive DC consolidation through horizontal and vertical mergers to distill the most critical issues considered by the FTC.

[2] Earlier this year, Staples again proposed an acquisition of Office Depot, this time with the condition of divesting Office Depot's commercial business unit, in an effort to foreclose any objections from the FTC. Matt Grossman & Drew FitzGerald, *Staples Seeks to Buy Office Depot, Again*, WALL STREET J., Jan. 11, 2021, https://www.wsj.com/articles/staples-seeks-to-buy-office-depot-again-11610381186?mod=e2tw. As of the date of this article, the transaction and divestiture proposal is under investigation by the FTC. Jenna Ebersole, *Staples' proposed Office Depot takeover is under US FTC investigation, ODP executive says*, mLex, Feb. 24, 2021.

Traditional DC Horizontal Merger Reviews

Over the past 20 years, the FTC has investigated and challenged a number of high-profile Traditional DC mergers. The FTC investigations have centered on identifying the set of competitive alternatives for specific sets of customers to determine whether the distribution merger presents a competitive issue. The FTC challenged the vast majority of Traditional DC mergers because the merging parties provided distribution for a specific class of customers with unique distribution needs—usually, large nationwide businesses. As the cases described below demonstrate, several critical factors were reasons to challenge each of these transactions, including:

- *Procurement Process:* The procurement process in many of these deals involved a Request for Proposal (RFP) process whereby a consumer (e.g., large national firm) issues an RFP with certain requirements and then negotiates with the firms that responded to the RFP to secure the lowest price and best terms possible. The FTC's concerns often centered on the merged entity's ability to utilize their post-merger knowledge of customers' needs and preferences to price discriminate during a post-merger RFP.

- *Scale:* In the Traditional DC mergers challenged, the FTC usually concluded that the competitors were two of just a few firms with the scale to deliver large quantities of product to consumers. While other distributors may have the ability to sell the products just like the merging parties, they could not secure the same quantity or breadth of product, which in turn left them unable to match the prices as the larger firms who could bargain for lower prices with their suppliers. Indeed, in *Sysco/US Foods*, the parties offered to remedy the competitive concern through a divestiture of warehouses to Performance Food Group, but the FTC and court ultimately concluded that Performance Food Group's scale would preclude it from ever obtaining competitive parity with the merged entity.[3]

- *Footprint*: The FTC also examined whether the merging Traditional DC firms had the capability to efficiently deliver products to customers with multiple and oftentimes diverse nationwide locations. Traditional DC firms without multiple distribution facilities face higher costs to transport—again, often making them less competitive than the merging firms. The FTC challenged the *Sysco/US Foods* transaction in large part because of the parties' similar and vast salesforces, delivery trucks, and ability to service large healthcare customers.[4]

[3] *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 74-75 (D.D.C. 2015).

[4] *See id.* at 75-76.

- *Delivery Time and Ability:* In several transactions, the FTC considered whether the merging firms, either because of their geographic footprint, scale, or logistics, had the ability to reach customers more quickly than other distribution alternatives. Additionally, the FTC considered the precision of the merging parties' delivery methods. For example, in *Staples II*, the merging parties' ability to achieve "desktop delivery" for nationwide customers was distinguishable from alternative providers.

- *Administrative Logistics and Support:* In some of the transactions challenged by the FTC, the merging parties had the unique or differentiated capacity to offer logistics support, including the ability to track and monitor the location of shipments or a customer's ongoing supply needs for automatic fulfillment, e-billing capabilities, specialized product catalogues, and other services, to facilitate the relationship and lower transaction costs. Thus, in *Staples II*, the FTC also considered the merging parties' ability to provide support and service to its customers a potential differentiating factor.[5]

- *Reputation:* Brand reputation is an important consideration; the FTC included longevity and financial security of distributors in its analysis of several mergers between Traditional DC firms. Oftentimes, larger and more sophisticated customers deal only with established distributors with long performance histories, as these shipments are often critical to the customers' success in their own businesses.

With that overview, we next turn to several significant Traditional DC mergers over the past two decades to illustrate these factors, highlighting the facts critical to the FTC's analysis:

Staples I. In 1997, the FTC challenged Staples, Inc.'s proposed acquisition of Office Depot, Inc.[6] The FTC focused on the parties' scale, footprint, and reputation as it argued that the proposed merger would combine the two largest office superstores, thereby reducing competition in the market for consumable office supplies sold via storefront and resulting in increased prices for products such as pens, paper, sticky notes, paper, etc.[7]

Drug Wholesalers. In 1998, the FTC challenged two proposed mergers in the wholesale prescription drug distribution market—McKesson Corp.'s proposed acquisition of AmeriSource

[5] *FTC v. Staples, Inc.,* 190 F. Supp. 3d 100, 119-21 (D.D.C. 2016) (hereinafter "*Staples II*").

[6] *FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1069 (D.D.C. 1997) (hereinafter "*Staples I*").

[7] *Id.* at 1073. It is worth noting that, over time, market dynamics can change, making previously taboo mergers permissible. For example, in 2013, Office Depot proposed an acquisition of Office Max—a situation that closely paralleled Staples' 1997 proposed merger of Office Depot. Unlike the 1997 *Staples I* case, however, this merger faced no challenge—the FTC unanimously approved the merger because it concluded that, in the intervening years, "the market for the sale of consumable office supplies ha[d] changed significantly" and office supply superstores . . . "face[d] significant competition . . . [so] the proposed merger [wa]s unlikely to substantially lessen competition[.]" Press Release, *Statement of the Federal Trade Commission Concerning the Proposed Merger of Office Depot, Inc. and OfficeMax, Inc.* (Nov. 1, 2013), https://www.ftc.gov/sites/default/files/documents/closing_letters/office-depot-inc./officemax-inc./131101officedepotofficemaxstatement.pdf. *See also* Press Release, *FTC Closes Seven-month Investigation of Proposed Office Depot/OfficeMax Merger* (Nov. 1, 2013), https://www.ftc.gov/news-events/press-releases/2013/11/ftc-closes-seven-month-investigation-proposed-office.

Health Corp. and Cardinal Health, Inc.'s proposed acquisition of Bergen Brunswig Corp.[8] The FTC focused on the merging parties' procurement processes, scale, delivery time, and administrative logistics and support as it argued that the proposed acquisitions would reduce the number of competitors in the national wholesale distribution of prescription drugs from four to two, and result in higher prices and a reduction in customer services.[9] More specifically, the FTC contended that the proposed acquisitions would harm competition because the four defendants were "the only wholesalers. . . able to provide national coverage through a network of distribution centers across the entire United States[,]"[10] so, if the acquisitions went forward, customers that required rapid delivery or emergency delivery of less popular prescriptions "—namely hospitals and independent pharmacies—would have no reasonable substitutes[,]"[11] leading to increased prices and a reduction in timely patient services.[12]

Blockbuster Video / Hollywood Entertainment. In 2004, Blockbuster Inc.—then the top video rental store in the United States—sought to acquire Hollywood Entertainment Corp.—then the third-largest video rental store.[13] The merger would have combined Blockbuster's 40 percent share of the market for video rental stores nationwide with Hollywood's estimated 25 percent of the market.[14] More than 80 percent of Hollywood's 1,920 stores were located within two miles of a Blockbuster, indicating a post-merger reduction in competition in those geographic markets.[15] The parties disagreed that video rental stores were a distinct form of distribution, arguing that new methods of video rental distribution such as Netflix or the direct delivery of movies to consumer TV sets from cable and satellite companies should factor into the competitive analysis; if it did, Blockbuster's market share would be far less than 40 percent. The FTC challenged the merging parties' compliance with the Second Request but did not have the opportunity to challenge the merits of the transaction before the proposed merger was abandoned by the parties;[16] thus, the question of whether alternative distribution served as a competitive constraint to video rental stores remained unresolved. (Through the hindsight of history, it now seems clear that Netflix was a considerable constraint on Blockbuster.)

[8] *See FTC v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 36 (D.D.C. 1998).

[9] *Id.* at 52, n. 11.

[10] *Id.* at 38.

[11] *Id.* at 47.

[12] *Id.* at 52, n.11.

[13] Joe Flint, *Blockbuster's Bid for Hollywood Is Panned by FTC*, WALL STREET J., Mar. 7, 2005, https://www.wsj.com/articles/SB110996089040070848.

[14] Rong-Gong Lin II, *Blockbuster Ends Bid for Rival Firm*, L.A. TIMES, Mar. 26, 2005, https://www.latimes.com/archives/la-xpm-2005-mar-26-fi-blockbuster26-story.html.

[15] John R. Wilke & Joe Flint, *Blockbuster May Face FTC Challenge*, WALL STREET J., Feb. 14, 2005, https://www.wsj.com/articles/SB110834115642553605.

[16] *See* Compl. for Inj. Relief Pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act, ¶ 1, (Mar. 4, 2005) (challenging Blockbuster's compliance with the FTC's second request and arguing that Blockbuster's response was incomplete because it provided, and failed to correct, incorrect pricing in its response to the request, leaving the FTC unable to evaluate the proposed merger).

Sysco / US Foods. In 2015, the FTC challenged the proposed merger of the nation's top two broadline foodservice distribution[17] companies—Sysco Corp. and US Foods, Inc.[18] Focusing on the parties' scale, footprint, delivery time, and administrative logistics and support, the FTC argued that the proposed merger would combine the only one-stop shop companies with the nationwide footprint necessary to provide next-day and emergency deliveries. Scale was an important factor in this case: Sysco had 72 distribution centers and US Foods had 61 distribution centers. The next largest competitor had less than one-quarter of Sysco and US Foods' combined distribution centers and less than 12 percent of their combined fleet of delivery trucks and, therefore, lacked the ability to provide the same next-day and emergency deliveries as Sysco and US Foods.[19] In the FTC's view, the proposed merger would have reduced competition for broadline foodservice distribution nationwide and in 32 local markets, resulting in increased prices for consumers.[20] Furthermore, the FTC also contended, and the court agreed, that the merger would enable price discrimination because, through the RFP/price negotiation process, Sysco and US Foods gained intimate knowledge of their customers' needs—they learned which customers had inelastic demand and no alternative to purchasing from the national broadline distributors.[21]

Staples II. In 2016, the FTC again challenged the proposed merger of Staples Inc. and Office Depot, Inc.—still two of the nation's largest office-supply companies.[22] In this iteration, the FTC focused on the sale of office supplies to large nationwide companies. Focusing on the parties' footprint, procurement processes, scale, administrative logistics and support, and delivery time, the FTC argued that the proposed merger would reduce competition nationwide in the market for consumable office supplies sold to businesses that purchase more than $500,000 of office supplies per year.[23] Specifically, the FTC contended that by merging the two largest office-supply companies—who, combined, regularly won nearly all large business-to-business contracts because they could deliver large quantities of office supplies nationwide and provide the unique customer service necessary for contracts with large businesses (e.g., high-level IT skills)—Staples and Office Depot would be primed to raise prices throughout the United States.[24] Although regional providers existed, the FTC argued, and the court found, that they were not

[17] Broadline foodservice distribution companies sell and deliver a broad array of food and related products to a variety of customers. *See Sysco Corp*., 113 F. Supp. 3d at 15.

[18] *Id.*

[19] *Id.* at 24-25.

[20] *Id.*

[21] *Id.* at 46. On the other hand, in *Pepsico, Inc. v. The Coca-Cola Company*, 315 F.3d 101, 107 (2d Cir. 2002), the Second Circuit concluded that a narrowly drawn distribution market, to include only fountain-dispensed soft drinks distributed through independent food service distributors (IFDs), was not sustainable because customers of all sizes and types also used bottler distributors (rather than IFDs) to deliver the same fountain-dispensed soft drinks. Where the evidence does not support excluding classes of distributors, e.g., customer testimony that alternatives are equally feasible, cost-effective, and timely, the FTC is unlikely to exclude such distribution alternatives from the relevant market. *Id.* at 108.

[22] *Staples II*, 190 F. Supp. 3d at 109-10.

[23] *Id.* at 111.

[24] *Id.* at 132-33.

substitutes for Staples or Office Depot because they lacked the same national footprint and scale and did not bid for, or were not awarded, large business-to-business contracts.[25]

Republic National / Breakthru Beverage. In 2019, the FTC investigated the proposed merger of Republic National Distributing Company and Breakthru Beverage Group—the second-largest distributor of premium wine and spirits in the United States and the third-largest North American beverage wholesaler, respectively.[26] Although the parties abandoned the merger before the FTC was able to challenge it, the FTC expressed concern in a post-abandonment press release that, had the merger not been abandoned, it would have "adversely impacted suppliers of wine and spirits that depend on these distributors to promote and distribute their products, and retail and foodservice customers that purchase these products from RNDC and Breakthru."[27] The market structure is also instructive here because, aside from the parties, only one other company would have had the national scale of distribution to match the merged company's pricing leverage.

Disruptive DC Horizontal Merger Reviews

In addition to the Traditional DC mergers discussed above, the FTC has recently increased its focus on Disruptive DC mergers that threaten to eliminate nascent, disruptive distributor channels. The cases below illustrate how the FTC considers competitive harm in Disruptive DC horizontal mergers:

Edgewell / Harry's: On February 3, 2020, the FTC filed an administrative complaint challenging the merger of Edgewell Personal Care Company, a consumer products company that supplies multiple razor brands, and Harry's Inc., an online, direct-to-consumer supplier of razors that had recently expanded its offerings to brick-and-mortar retailers.[28] The FTC argued that Edgewell sought to acquire Harry's because Harry's online, direct-to-consumer method of distributing razors and its expansion into brick-and-mortar stores disrupted traditional distribution channels, resulting in increased competition and forcing Edgewell to lower its prices to compete.[29]

[25] *Id.* at 113.

[26] Press Release, *Republic National Distributing Company and Breakthru Beverage Group Terminate Proposed Merger* (Apr. 5, 2019), https://wineindustryadvisor.com/2019/04/05/republic-national-distributing-company-and-breakthru-beverage-group-terminate-proposed-merger.

[27] Press Release, *Statement of the FTC's Bureau of Competition Regarding Announcement that Republic National Distributing Company and Breakthru Beverage Group have Terminated Their Acquisition Agreement* (Apr. 8, 2019), https://www.ftc.gov/news-events/press-releases/2019/04/statement-ftcs-bureau-competition-regarding-announcement-republic.

[28] Compl. at 1, 4, *Edgewell Personal Care Company and Harry's, Inc.*, FTC No. 9390 (Feb. 3, 2020).

[29] Press Release, *FTC Files Suit to Block Edgewell Personal Care Company's Acquisition of Harry's, Inc.* (Feb. 3, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-files-suit-block-edgewell-personal-care-companys-acquisition.

Procter & Gamble / Billie's: Eleven months after challenging the *Edgewell / Harry's* transaction, the FTC brought suit to block P&G's acquisition of another upstart razor company, Billie's.[30] Similar to *Edgewell / Harry's*, the FTC alleged that P&G sought to acquire Billie's—a direct-to-consumer seller of women's razors and body care products—because Billie's was a nascent, but rapidly growing, head-to-head competitor of P&G that was disrupting the traditional distribution channels for the razor market.[31]

In both challenges the FTC's analysis centered on the specific distribution channels at issue and the competitive interaction between the nascent competitors and the incumbent firms. The key question in these cases was whether the nascent competitors threatened to disrupt the market's traditional distribution channel—namely the traditional retail channel of razor distribution through entry and price competition.

Acquisition of Key Distribution Partners

In addition to challenging horizontal distribution mergers, the FTC and the Department of Justice (DOJ) have also investigated and challenged several vertical transactions where a customer purchased a critical distribution partner. According to the *2020 Vertical Merger Guidelines*, transactions of distributors by customers could raise competitive problems where the effect of the acquisition is to *raise rivals' costs* or *foreclose* rivals from competing altogether. There are a number of critical issues that raise agency concerns:

- *Prevalence and Efficacy of Alternative Distribution Methods:* The FTC often focuses on the efficacy of alternative distribution methods—whether rivals can readily switch to alternative distribution channels without any meaningful effect on the price, quality, or availability of the product or service. If there are concerns that alternative distributors will be unable to fulfill the demands of the remaining non-integrated firms, the FTC has challenged the merger as anticompetitive, as it suggested it would in *Barnes & Noble / Ingram Book* before the parties abandoned the deal.

- *Cost to Replicate Distributor in the Market:* The cost to replicate the distributor in the market also is also a key focus; the agency has examined whether rivals could readily duplicate the distributor's services through vertical integration without expending significant cash flow. Because distribution networks are often expensive to establish, the FTC has raised concerns about deals where the only alternative for non-vertically integrated firms following an acquisition of a distributor is to build their own networks to service their own needs.

[30] Press Release, *FTC Sues to Block Proctor & Gamble's Acquisition of Billie, Inc*. (Dec. 8, 2020), https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-block-procter-gambles-acquisition-billie-inc.

[31] *Id.*

- *Access to Competitively Sensitive Information*. Because distributors often serve multiple downstream firms, when one of those downstream firms acquires a critical distributor, the acquisition could provide the acquirer with critical, competitively sensitive information about its competitors through their dealing with the acquired distributor. Thus, in *Staples / Essendant,* the FTC required a firewall to solve the concern that Staples would get sensitive pricing and demand information from Essendant about Staples' competitors.

The cases below illustrate how the agencies have analyzed these concerns:

Barnes & Noble / Ingram Book. In 1999, the FTC issued a press release stating that it would seek an injunction challenging Barnes & Noble's (then the largest book retailer in the United States) acquisition of Ingram Book Group (the largest book wholesaler in the United States), because Barnes & Noble had its own distribution centers and was considering offering its distribution services to other retailers, making it poised to become one of Ingram's competitors.[32] The FTC raised concerns that the merger would raise rivals' costs and hamper competition, but before it could seek the injunction, the parties abandoned the merger.[33]

Anheuser Busch InBev / SABMiller. In 2015, Anheuser-Busch InBev (ABI) announced that it would acquire SABMiller. In order to resolve any competition concerns in the United States, the parties agreed upfront to divest ABI's interest in MillerCoors. The DOJ nevertheless required a consent decree that not only required the agreed upon divestiture, but also addressed foreclosure concerns related to available distribution channels for non-ABI high-end and craft beers, which the DOJ viewed as an important source of continued competition. To ensure continued access to distribution for competing brands, ABI a) was forced to discontinue any practices that limited distributors from selling competing beers, and b) could not acquire beer distributors or brewers (of any size) without prior approval from the DOJ.[34]

Staples / Essendant. In 2019, the FTC imposed a remedy as a condition of clearing the merger of Staples, Inc. and Essendant, Inc.—the largest vertically integrated reseller of office products in the United States and the largest U.S. wholesale distributor of office products selling exclusively to resellers, respectively.[35] According to the FTC, the proposed merger would permit Staples to access Essendant's commercially sensitive business information (i.e., detailed information about end customers' orders provided by Essendant's reseller customers), which would allow Staples to underbid its midmarket business-to-business office product contract competitors—Essendant's reseller customers—by comparing its bid prices to Essendant's customers' likely bid

[32] Sheila F. Anthony, *Remarks before the American Law Institute-American Bar Association (ALI-ABA), Product Distribution and Marketing Meeting*, (Mar. 9, 2000), https://www.ftc.gov/es/public-statements/2000/03/vertical-issues-federal-view.

[33] *Id.*

[34] *Id.*

[35] *See* Compl., ¶ 1, (Jan. 25, 2019).

prices before those bids had been placed.[36] The FTC alleged this behavior would result in increased prices in the sale and costs in the distribution of office products to midmarket business-to-business customers that sold office products and related services.[37] Ultimately, the FTC permitted the merger to proceed, conditioned on Staples and Essendant walling off Staples' business-to-business sales operations from Essendant's wholesale business so that Staples cannot access Essendant's commercially sensitive information.[38]

Conclusion

Over the years, the FTC investigated and sued to block mergers between distributors. In Traditional DC mergers, the FTC often focuses on six key factors—1) procurement process, 2) scale, 3) footprint, 4) delivery time and ability, 5) administrative logistics and support, and 6) reputation—as it analyzes whether the merger would prevent a class of customers from procuring the products in question from the distribution channel. In Disruptive DC mergers or mergers involving the acquisition of key distribution partners, the agencies focus primarily on the nature of the distribution channel itself—whether the nascent competitor has created an alternative distribution channel or has entered the traditional distribution channel and threatens to disrupt the relevant market. In each situation, however, one aspect remains the same: a challenge to the proposed merger by the FTC (or the DOJ) is a costly process that, in many instances, sounds the death knell for the merger.

[36] *Id.* ¶¶ 7, 11.

[37] *Id.* ¶¶ 7, 11.

[38] Press Release, *FTC Imposes Conditions on Staples' Acquisition of Office Supply Wholesaler Essendant Inc.* (Jan. 28, 2019), https://www.ftc.gov/news-events/press-releases/2019/01/ftc-imposes-conditions-staples-acquisition-office-supply.