

Merger Challenges Update

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Last September, we circulated a

[note highlighting the four merger challenges](#)

that the U.S. antitrust authorities were then pursuing. At the time, we noted that these matters underscored the antitrust authorities' vigorous enforcement agenda. Four months later, there have been significant developments in all four cases and this seems like a timely point for an update. As reflected below:

- in two cases, the government has prevailed at trial;
- in one case, the government and the parties settled with divestitures;
- in the final case, trial has been delayed to permit further settlement negotiations.

The two trial wins continue a recent string of victories for the U.S. antitrust agencies — and may well embolden them to bring more merger challenges in the future. The settlement and potential settlement demonstrate that the filing of a complaint by the government does not always spell doom for a proposed deal. In some cases, negotiations concerning a potential settlement continue after the filing of a complaint. It is still generally preferable, however, to negotiate a settlement prior to the commencement of litigation. After filing a complaint, the government may have less flexibility to settle — particularly as the allegations of the complaint may themselves exclude the possibility of certain types of resolutions.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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