

## First merger settlements under Trump 2.0 signal the return of remedies

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The FTC and DOJ recently announced the first settlements of merger enforcement actions reached under the second Trump administration. These actions follow comments from leadership at the antitrust agencies expressing an openness to structural merger remedies, an important contrast to the prior administration's refusal to negotiate remedies in most mergers. Nevertheless, both agencies have made clear that they remain skeptical of behavioral remedies.

On May 28, the Federal Trade Commission (FTC or Commission) announced that it would require Synopsys, Inc. and Ansys, Inc. to divest assets to win approval of Synopsys's proposed acquisition of Ansys. The announcement marks the Commission's first settlement of a merger enforcement action under the new administration.<sup>1</sup> The Commission voted to approve the settlement 3-0.<sup>2</sup> Along with the settlement, FTC Chair Andrew Ferguson issued a statement that supported the use of settlements when they can effectively address the identified competition harms. On June 2, the Antitrust Division of the Department of Justice (DOJ) announced that it had reached an agreement requiring Keysight Technologies Inc. to divest businesses in connection with its acquisition of Spirent Communications plc.<sup>3</sup>

### The first merger settlements of Trump 2.0

#### Synopsys/Ansys

The FTC complaint describes Synopsys and Ansys as leading providers of "certain software products used for [Electronic Design Automation (EDA) and Simulation & Analysis (S&A)] in the design of devices and integrated circuits." The FTC alleged the companies compete in three relevant product markets where they are alleged to be each other's only or closest competitor: (1) optical software tools; (2) photonic software tools for designing and simulating photonic devices; and (3) Register Transfer Level ("RTL") power consumption analysis tools.

To resolve competitive concerns arising from the transaction, the FTC accepted a "structural remedy" requiring the divestiture of overlapping businesses. Divestiture buyer Keysight Technologies Inc. will acquire Synopsys's optical software tools and photonic software tools and Ansys's PowerArtist power consumption analysis tool. The inclusion of assets from both companies in the set of divested assets is notable in that the FTC and the DOJ have sometimes been reluctant to permit merging parties to combine assets from both buyer and seller because of a concern with how quickly the purchaser of divested assets will be able to integrate disparate assets to form a competitive business.<sup>4</sup> In addition to the divestitures, the parties will provide some transition services and technological support to Keysight, and the Commission will appoint a monitor to oversee the implementation of the consent order.<sup>5</sup>

#### Keysight/Spirent

While Keysight will acquire assets Synopsys is required to divest, it will have to divest businesses in order to close its proposed acquisition of Spirent. DOJ identified Keysight and Spirent as leading providers of specialized equipment used to test various components of communications networks and measure and validate network performance.<sup>6</sup> The DOJ

complaint alleges that Keysight and Spirent “dominate three testing and measurement markets in the United States: high-speed ethernet testing, network security testing, and RF channel emulators.”<sup>7</sup> Under the settlement agreed upon with DOJ, the parties are required to divest Spirent’s businesses in these three areas to divestiture buyer Viavi Solutions, Inc. and assist Viavi in hiring certain key Spirent employees who support these businesses.<sup>8</sup>

## A return to (structural) remedies

Recent statements made by antitrust agency leadership under the new Trump administration have expressed greater willingness to use remedies to resolve concerns with mergers than the FTC or DOJ under the Biden administration.<sup>9</sup>

The Synopsys/Ansys and Keysight/Spirent settlements are the first concrete examples of this shift in enforcement. In addition, in connection with the Synopsys/Ansys consent decree filed by the Commission, FTC Chair Ferguson issued a statement, joined by Commissioners Melissa Holyoak and Mark Meador, explaining and confirming this change in approach signaled until now only in public statements.<sup>10</sup> He stated that settlements can “strike a balance that permits the procompetitive aspects” of the deal to proceed, while avoiding the costs and uncertainty of litigation and “maximiz[ing] the Commission’s finite enforcement resources.”<sup>11</sup>

Chair Ferguson contrasted the approach outlined in his statement with the views of the FTC under the Biden administration, which were summarized by former Chair Lina Khan as the Commission “focusing [its] resources on litigating, rather than on settling,” because working with merging parties to “fix” the problems with their deals is “not work that the agency should have to do.”<sup>12</sup> Chair Ferguson noted that a categorical refusal to settle may lead merging parties to attempt a “fix-it-first” approach in which they adopt a potentially inadequate remedy on their own, without the oversight and expertise of the FTC, before filing notification. Similarly, self-imposed remedies by merging parties during the regulatory review can lead to a dynamic in which the agencies and the parties are “litigating the fix” before generalist judges who decide the sufficiency of proposed remedies that the antitrust agency has rejected.<sup>13</sup> Chair Ferguson noted that this approach “does not always play out well for the agencies.”<sup>14</sup> Indeed, in recent years, courts have endorsed the sufficiency of fix-it-first resolutions, as in *Tempur Sealy/Mattress Firm*. While DOJ did not issue a detailed statement in connection with the Keysight/Spirent settlement, Assistant AG Slater made clear the benefits she sees versus remedies implemented outside the consent decree process: “This consent decree proceeding secures enforceable commitments from the merging parties, provides transparency into the Antitrust Division’s efforts to resolve merger investigations, and gives the public an opportunity to comment as provided by statute.”<sup>15</sup>

This openness to accepting structural remedies is a significant contrast from the prior administration on the DOJ side as well. In 2022, the DOJ rescinded the Merger Remedy Guidelines it had released just two years earlier under the first Trump administration and declined to issue a replacement. Jonathan Kanter, who led the DOJ’s Antitrust Division under the Biden administration, said that “when the division concludes that a merger is likely to lessen competition ... we should seek a simple injunction to block the transaction.”<sup>16</sup> His Trump administration successor, Assistant AG Slater, testified at her February confirmation hearing that “remedies, if done right, if they’re robust, divestitures, for example, can remove any competitive harm from a merger in order to allow it to proceed in a pro-consumer, pro-competitive manner.”<sup>17</sup>

## Structural remedies must meet certain conditions

Chair Ferguson made clear in his statement that divestitures must meet certain criteria to be deemed effective solutions to competition problems. Indeed, he noted that he is “clear-eyed about the dangers of inadequate or unworkable settlements,” and said the FTC should only accept a merger settlement when “it is confident that the settlement will protect competition in the relevant market to the same extent that successful litigation would.”<sup>18</sup> In particular, he stated that the FTC should not accept a structural remedy unless the following conditions are satisfied:<sup>19</sup>

- The remedy “involves the sale of a standalone or discrete business, or something very close to it,” along with all assets needed to “(1) make that line of business viable, (2) to give the divestiture buyer the incentive and ability to compete vigorously against the merged firm, and (3) to eliminate to the extent possible any ongoing entanglements between the divested business and the merged firm.”
- The Commission is confident that the divestiture buyer “has the resources and experience necessary to make that standalone business competitive in the market.”

Importantly, the criteria announced by Chair Ferguson for assessing the sufficiency of remedies are those that have been announced and employed by the agencies across multiple prior administrations, including the Obama administration and the first Trump administration. The settlement filed by DOJ tracks these same principles.<sup>20</sup>

## Conduct/behavioral remedies still disfavored

The FTC Chair's statement continued the agencies' skepticism toward the use of non-structural (behavioral or conduct) remedies, which do not require divestitures and instead mandate that the merged firm commit to do or not do certain things to prevent competitive harm. Chair Ferguson reiterated that the FTC's "strong preference should be for structural remedies over conduct remedies." Behavioral remedies are "disfavored" and should be "treated with substantial caution," as they are "often difficult or impossible for the Commission to enforce effectively and can lock the Commission into the status of a monitor for individual firms rather than a guardian of competition across the entire economy."<sup>21</sup> AAG Slater specified that she supported "structural remedies" multiple times as part of her confirmation process,<sup>22</sup> and confirmed in a recent interview that "there's obviously a strong bias for structural remedies."<sup>23</sup>

## Further guidance is forthcoming

Chair Ferguson also indicated that the Commission would publish "in due course" a policy statement "on its understanding of the role of remedies."<sup>24</sup> While it is possible the FTC may cooperate with DOJ on such a statement, in the past, the agencies have tended to issue separate guidance on the issue of merger remedies.

In the interim, transacting parties should consider whether there may be potential divestitures that meet the criteria outlined above which could enable the parties to resolve potential competitive concerns without the delay, expense, and uncertainty of litigation, and which could be considered as a potential strategic option in negotiating purchase agreements.

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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- <sup>1</sup> Press Release, Federal Trade Commission, "FTC to Require Synopsys and Ansys to Divest Assets to Proceed with Merger" (May 28, 2025), [https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-require-synopsys-ansys-divest-assets-proceed-merger?utm\\_source=govdelivery](https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-require-synopsys-ansys-divest-assets-proceed-merger?utm_source=govdelivery).
- <sup>2</sup> The FTC currently consists of only three Republican commissioners, after the administration dismissed the two Democratic commissioners on March 18. The dismissed commissioners have sued to challenge their removal. For more information, see Davis Polk client update, *Administration dismisses FTC's two Democratic commissioners, setting up battle over FTC independence* (Mar. 20, 2025), <https://www.davispolk.com/insights/client-update/administration-dismisses-ftcs-two-democratic-commissioners-setting-battle>.
- <sup>3</sup> Press Release, Department of Justice, "Justice Department Requires Keysight to Divest Assets to Proceed with Spirent Acquisition" (June 2, 2025), <https://www.justice.gov/opa/pr/justice-department-requires-keysight-divest-assets-proceed-spirent-acquisition> (hereinafter, "DOJ Press Release").
- <sup>4</sup> Merger Remedies Manual, Antitrust Division of the Department of Justice (Sep. 2020), at 11, <https://www.justice.gov/atr/page/file/1312416/dl> (withdrawn by the DOJ in 2022); Statement of the FTC Bureau of Competition, "Negotiating Merger Remedies," Federal Trade Commission (Jan. 2012), at 7, <https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf>.
- <sup>5</sup> Decision and Order, *In the Matter of Synopsys, Inc. / Ansys, Inc.*, FTC Matter No. 2410059 (May 28, 2025), at 7-23, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/241\\_0059\\_synopsys-ansys\\_decision\\_and\\_order\\_redacted\\_public\\_version\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/241_0059_synopsys-ansys_decision_and_order_redacted_public_version_0.pdf).
- <sup>6</sup> Complaint, *United States of America v. Keysight Technologies, Inc. and Spirent Communications plc*, No. 1:25-cv-01734 (D.D.C. June 2, 2025) at 2, <https://www.justice.gov/opa/media/1402286/dl>.

<sup>7</sup> *Id.*

<sup>8</sup> Proposed Final Judgement, *United States of America v. Keysight Technologies, Inc. and Spirent Communications plc*, No. 1:25-cv-01734 (D.D.C. June 2, 2025), at 2, 8, 10, <https://www.justice.gov/opa/media/1402311/dl> (hereinafter, “DOJ Proposed Final Judgment”).

<sup>9</sup> See Davis Polk client update, *Trump administration signals strong approach to antitrust enforcement* (Feb. 21, 2025), <https://www.davispolk.com/insights/client-update/trump-administration-signals-strong-approach-antitrust-enforcement>.

<sup>10</sup> Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak and Commissioner Mark R. Meador, *In the Matter of Synopsys, Inc. / Ansys, Inc.*, FTC Matter No. 2410059 (May 28, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf) (hereinafter, “Statement”).

<sup>11</sup> Statement, at 3.

<sup>12</sup> Margaret Harding McGill, *FTC’s new stance: Litigate, don’t negotiate*, Axios (Jun. 8, 2022), <https://www.axios.com/2022/06/09/ftcs-new-stance-litigate-dont-negotiate-lina-khan>.

<sup>13</sup> Statement, at 5-6.

<sup>14</sup> Statement, at 5.

<sup>15</sup> DOJ Press Release.

<sup>16</sup> Assistant Attorney General Jonathan Kanter, Remarks to the New York State Bar Association Antitrust Section (Jan. 24, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-delivers-remarks-new-york>.

<sup>17</sup> Hearing of the U.S. Senate Judiciary Committee, “Nominations” (Feb. 12, 2025), <https://www.judiciary.senate.gov/committee-activity/hearings/02/12/2025/nominations>.

<sup>18</sup> Statement, at 7.

<sup>19</sup> *Id.*

<sup>20</sup> DOJ Proposed Final Judgment, at 8-9.

<sup>21</sup> Statement, at 7-8.

<sup>22</sup> See, e.g., Gail Slater, Responses to Written Questions of Senator Mazie Hirono for Hearing on ‘Nominations,’ submitted February 17, 2025, [https://www.judiciary.senate.gov/imo/media/doc/2025-02-12\\_-\\_qfr\\_responses\\_-\\_slater.pdf](https://www.judiciary.senate.gov/imo/media/doc/2025-02-12_-_qfr_responses_-_slater.pdf). (“I expect this Administration will be more open to settlements in merger cases when effective and robust structural remedies can be implemented without excessively burdening the Antitrust Division’s resources.”)

<sup>23</sup> “Antitrust Under Trump: Experts Weigh In,” Capital Forum & FSG Global Conference Keynote (Apr. 2, 2025), <https://thecapitolforum.com/resources/antitrust-under-trump-keynote/>.

<sup>24</sup> Statement, at 1.