

Merger remedies remain a viable strategic option in Trump 2.0

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Three merger settlements announced across industrial sectors last week demonstrate that the U.S. antitrust agencies' stated openness to structural remedies is real. Transacting parties should therefore evaluate potential divestitures early in their deal planning process and consider whether remedies may offer a viable path to obtaining antitrust clearance under this administration.

Six months ago, the [first merger settlements announced under Trump 2.0](#)¹ signaled Federal Trade Commission (FTC) and U.S. Department of Justice Antitrust Division (DOJ) openness to divestitures to address potential competitive concerns arising from mergers, a significant change from the approach under the Biden administration. Recent agency actions confirm this policy shift. Earlier this month, Daniel Guarnera, Director of the Bureau of Competition at the FTC, stated that parties undertaking their own remedies without entering into a settlement with the antitrust agencies and preparing to defend the deal in court, a strategy known as "litigating the fix" that had become more prevalent in the prior administration, is now "[i]n many cases ... unnecessary, because the FTC is willing to engage with parties in good faith to determine if our concerns can be resolved before we file an enforcement action."² Three settlements announced by the FTC and DOJ last week confirm that divestitures may be a viable option for obtaining clearance in many transactions. As a result, transacting parties should consider strategic, credible, and well-defined divestitures as viable paths to deal clearance.

Proposed settlements must meet the agencies' remedies criteria

FTC Chair Andrew Ferguson has previously outlined his criteria for valid remedies proposals, stating that the FTC remains "clear-eyed about the dangers of inadequate or unworkable settlements."³ Instead, Chair Ferguson stated that an acceptable remedy "involves the sale of a standalone or discrete business, or something very close to it," and that the divestiture must include all assets needed "(1) to 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."⁴ Further, Chair Ferguson emphasized that a divestiture buyer must have "the resources and experience necessary to make that standalone business competitive in the market." Similarly, during her confirmation hearing, DOJ Assistant Attorney General Gail Slater noted that she expected "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."⁵ Consistent with these statements, last week the FTC and DOJ announced three new merger settlements, confirming the administration's willingness to negotiate divestitures across a range of sectors.

January 2026 merger settlements

Sevita Health / BrightSpring

In *Sevita Health / Bright Spring*, the FTC alleged that a proposed acquisition of BrightSpring's ResCare Community Living business by Sevita would "combine the two largest national providers of residential services to individuals with intellectual and developmental disabilities, known as IDD services."⁶ The FTC alleged that the combination would result in fewer options for, and lower quality services to, a vulnerable population and disincentivize investment, training, and individualized services.⁷

To resolve its competitive concerns, the proposed consent order would require Sevita to divest 128 intermediate care facilities in Louisiana, Indiana, and Texas to Dungan Group,⁸ another operator of intermediate care facilities with a successful track record of prior acquisitions.⁹ The proposed order would also prohibit Sevita from acquiring any other facilities providing IDD services located near any divestiture facility for 10 years.¹⁰

Reddy Ice / Arctic Glacier

The DOJ also announced a proposed final judgment (PFJ) in the industrial ice sector in connection with the proposed acquisition by Reddy Ice of Arctic Glacier. DOJ alleged that absent divestiture, the transaction "would have led to higher prices and lower service quality on packaged ice, a staple Americans enjoy everywhere from backyard cookouts to cross-country flights."¹¹

The settlement requires the merging parties to divest assets in California, Massachusetts, New York, Oregon, and Washington, including certain manufacturing and distribution facilities and customer relationships and contracts to a number of local divestiture buyers, and to provide advance notification for certain future transactions.¹² The PFJ comes only six months after signing of the transaction.

Columbus McKinnon / Kito Crosby

Finally, the DOJ also announced a PFJ in the manufacturing sector in connection with the acquisition by Columbus McKinnon Corporation (CMCO) of Kito Crosby Limited (Kito).¹³ The DOJ had alleged that CMCO and Kito are "two of the leading manufacturers in the markets for electric chain hoists and overhead lifting chain in the United States" and compete head-to-head to manufacture, distribute, and sell those products.¹⁴

To resolve concerns that the transaction would "result in higher prices, lower quality, and reduced innovation to the detriment of customers," the settlement requires CMCO to divest its power chain hoist business and its chain business to a private investment fund with "significant experience in industrial manufacturing."¹⁵

Conclusion

Trump 2.0 antitrust enforcers have made clear that they are committed to vigorous enforcement, especially in consumer-facing sectors of the economy, but have signaled less skepticism of M&A than the Biden administration. The settlements announced last week across a diverse range of sectors confirm that the antitrust agencies are open to resolving competitive concerns in certain transactions with divestitures that allow deals to close without litigation. As a result, merging parties should evaluate potential feasibility of divestitures early in the transaction process.

Given the agencies' willingness to engage on remedies, transacting parties will benefit from careful evaluation and planning for divestitures which may provide a means to avoid delay, expense, and uncertainty in some deals. Consistent with Chair Ferguson's guidelines, parties should be prepared to show the agencies how the scope of the assets proposed to be sold will allow a divestiture buyer to operate the business effectively as a strong competitor going forward.

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.

Nathaniel L. Asker

+1 212 450 4113
nate.asker@davispolk.com

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Nathan Kiratzis

+1 212 450 4157
nathan.kiratzis@davispolk.com

Anna M. Kozlowski

+1 212 450 3327
anna.kozlowski@davispolk.com

Gregory S. Morrison

+1 212 450 3455
gregory.morrison@davispolk.com

Suzanne Munck af Rosenschold

+1 202 962 7146
suzanne.munck@davispolk.com

Howard Shelanski

+1 202 962 7060
howard.shelanski@davispolk.com

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- ¹ See Davis Polk client update, *First merger settlements under Trump 2.0 signal the return of remedies* (June 3, 2025), <https://www.davispolk.com/insights/client-update/first-merger-settlements-under-trump-20-signal-return-remedies> (hereinafter "June 3, 2025 client update").
- ² Anna Langlois, *Litigating the fix is unnecessary, FTC official says*, *Global Competition Review* (Jan. 15, 2026), <https://globalcompetitionreview.com/gcr-usa/article/litigating-the-fix-unnecessary-ftc-official-says>.
- ³ In the December 2025 FTC settlement in the Boeing/Spirit AeroSystems case, Boeing was required to make certain divestitures and both parties agreed to certain behavioral commitments, including, for example, continuing "to provide aerostructures and aerostructure services to competing contractors for military aircraft programs." See Press Release, Federal Trade Commission, "FTC Requires Boeing to Divest Several Spirit Assets to Proceed with Merger" (December 3, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-requires-boeing-divest-several-spirit-assets-proceed-merger>. However, the agencies continue to express skepticism regarding standalone behavioral remedies, which they have characterized as "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." See June 3, 2025 client update.
- ⁴ See June 3, 2025 client update; 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.
- ⁵ Gail Slater, Responses to Written Questions of Senator Mazie Hirono for Hearing on Nominations (submitted February 17, 2025).
- ⁶ Press Release, Federal Trade Commission, "FTC Takes Action to Prevent Anticompetitive Healthcare Services Merger" (January 30, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/01/ftc-takes-action-prevent-anticompetitive-healthcare-services->

[merger?utm_source=govdelivery](#) (hereinafter, “FTC Press Release”).

⁷ FTC Press Release.

⁸ Proposed Consent Order, (January 30, 2026) https://www.ftc.gov/system/files/ftc_gov/pdf/2510060SevitaDecisionOrder.pdf (hereinafter, “FTC Proposed Consent Order”). An FTC proposed order becomes final after a notice and comment period.

⁹ See FTC Press Release; see also FTC Proposed Consent Order; Analysis of Agreement Containing Consent Order to Aid Public Comment, *In re Centerbridge Seaport Acquisition Fund L.P. & Bright Spring Health Servs., Inc.*, No. C-4829 (Fed. Trade Comm’n Jan. 30, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/2510060sevitaapcfn.pdf.

¹⁰ See FTC Proposed Consent Order

¹¹ Press Release, Department of Justice, “Justice Department Requires Reddy Ice to Divest Assets to Proceed with Proposed Acquisition of Arctic Glacier” (January 30, 2026), <https://www.justice.gov/opa/pr/justice-department-requires-reddy-ice-divest-assets-proceed-proposed-acquisition-arctic> (hereinafter, “DOJ Press Release”).

¹² See Proposed Final Judgment, (January 30, 2026) <https://www.justice.gov/atr/media/1426121/dl?inline> (hereinafter “DOJ PFJ”); see also DOJ Press Release. DOJ settlements must be reviewed and approved by a federal district court judge before they become final pursuant to the Tunney Act, 15 U.S.C. § 16.

¹³ See Press Release, Department of Justice, “Justice Department Requires Columbus McKinnon to Divest Assets to Proceed with Acquisition of Kito Crosby” (January 29, 2026), <https://www.justice.gov/opa/pr/justice-department-requires-columbus-mckinnon-divest-assets-proceed-acquisition-kito-crosby>.

¹⁴ *Id.*

¹⁵ *Id.*