
Democratic FTC Commissioner Merger Dissents: A Roadmap for the Future?

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I. Introduction

In recent years, both Republican and Democratic-led antitrust agencies have pursued aggressive merger enforcement programs, litigating many cases and settling many more. However, “populist” and other progressive critics have urged the Federal Trade Commission (FTC) and the Department of Justice Antitrust Division (Antitrust Division) to be more aggressive in their merger enforcement.¹

What might more aggressive enforcement look like in practice, with a Democratic-led FTC and Antitrust Division in the Biden Administration? A series of split decisions in merger cases at the FTC offers potential answers. In these decisions, the two Democratic commissioners—Rohit Chopra and Rebecca Slaughter—outline a substantially more interventionist enforcement approach than their Republican colleagues. If the opinions expressed in their dissents become views at the FTC and the Antitrust Division during the Biden Administration, businesses would face important implications for transaction closing risks, the likelihood and type of remedies that may be imposed, and the length of investigations.²

Changes are soon arriving at the top of both the FTC and the Antitrust Division. At the FTC, Chairman Joseph Simons announced that he will resign effective January 29, 2021, along with much of the Bureau of Competition’s senior staff. Moreover, the Biden transition has announced that Commissioner Chopra will be nominated to be the Director of the Consumer Financial

¹ Leon B. Greenfield, Perry A. Lange, and Nicole Callan, *Antitrust Populism and the Consumer Welfare Standard: What are We Actually Debating?*, 83 ANTITRUST L.J. 393 (2020).

² Michael Acton, *Democratic Party’s antitrust reform agenda faces gridlock regardless of election outcomes, US FTC’s Wilson says*, MLEX (Nov. 19, 2020) (“[C]ommissioners Rebecca Slaughter[’s] and Rohit Chopra[’s] ... dissenting opinions, Wilson said, provide a ‘roadmap’ for how a Democratic-controlled FTC will approach mergers and antitrust”).

Protection Bureau (CFPB), which means that he will be stepping down from the FTC.³ After a period of fluidity based on the timing of those departures, there will be a 3-2 Democratic majority (with a Democratic chair) once the Senate confirms replacements for Chairman Simons and Commissioner Chopra. Moreover, with the Democrats having an (albeit narrow) Senate majority, a new Assistant Attorney General for Antitrust could be confirmed quickly—in early to mid-2021.

Of course, it remains to be seen how closely the views of the new Democratic commissioners and Antitrust Division Front Office will actually align with those of the current Democratic commissioners. We explore below how enforcement at the U.S. antitrust agencies is likely to develop if one assumes that the agencies follow a path resembling the enforcement agenda described in Commissioners Chopra's and Slaughter's dissents. We also provide some practical guidance on what businesses planning potentially controversial mergers can do to prepare for this possibility.

II. Background on the Current FTC Commissioners

The current FTC commissioners come from diverse backgrounds, which may inform their views in controversial cases. Commissioner Rohit Chopra, who often writes the most extensive dissents, has the least traditional background. He holds an MBA from The Wharton School of the University of Pennsylvania and is not a lawyer. After working as a management consultant at McKinsey & Co., he served as Assistant Director of the CFPB, overseeing the CFPB's student loan agenda, and a Special Advisor to the Secretary of Education in the Obama Administration focusing on student lending. Commissioner Rebecca Slaughter was nominated after serving as Chief Counsel to Senate Majority Leader Chuck Schumer, where she focused on antitrust among other areas.

Two of the Republican commissioners—Chairman Joseph Simons and Commissioner Christine Wilson—had extensive prior experience at the FTC and as private antitrust practitioners. Chairman Simons came to the FTC from a large law firm, and before that served as the Director of the Bureau of Competition at the FTC. Commissioner Wilson served as a senior lawyer at Delta Airlines immediately before her appointment and was the chief of staff for a previous FTC chair. The other Republican commissioner—Commissioner Noah Phillips—was Chief Counsel to Senator John Cornyn on the Judiciary Committee, advising on antitrust among other matters, and had previously been in private practice.

³ Andrew Ackeman, Andrew Restuccia, and Ken Thomas, *Biden is Expected to Pick Rohit Chopra to Lead Consumer-Finance Agency*, THE WALL STREET JOURNAL (Jan. 17, 2021).

III. Themes in Democratic Commissioners' Merger Dissents

Several merger matters where the current Democratic commissioners dissented provide rich insights into how enforcement might proceed if more interventionist enforcers controlled the FTC or the Antitrust Division.

A. More Stringent Review on the Merits, Especially for Vertical Mergers

Enforcers in a Democratic-controlled agency would likely subject various types of mergers to more searching review. However, the Democratic commissioner dissents suggest that reviews of mergers with vertical aspects are particularly likely to undergo outcome-determinative changes in the Biden Administration.

In *Fresenius/NxStage*, for example, Commissioners Chopra and Slaughter dissented from a proposed remedy (which addressed only horizontal concerns) based on vertical concerns.⁴ The transaction combined NxStage, the leading supplier of home dialysis machines, with Fresenius, one of two near duopolists (with DaVita) in dialysis clinics, which purchase home dialysis machines to provide to patients. Commissioner Chopra opined that the transaction could “choke off entry” by suppliers of home machines—especially those without “deep pockets.”⁵ Because Fresenius would have incentives to carry NxStage machines, potential dialysis entrants would be largely dependent on selling to DaVita, which could use the resulting buyer power to depress home machine purchase prices.

The Commission majority cited evidence that, long after *Fresenius/NxStage* was announced, CVS Health announced its intention to enter home dialysis machines and at least one other firm was likely to enter in the short-term. Commissioner Chopra countered that “limiting the potential sphere of entrants to only those with deep pockets or with access to a captive set of patients will not lead to the same level of vigorous competition that comes from an ecosystem of small firms.”⁶ The

⁴ Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of Fresenius Medical Care/NxStage, No. 171-0227 (Feb. 19, 2019), https://www.ftc.gov/system/files/documents/public_statements/1455740/171_0227_fresenius-nxstage_slaughter_statement_2-19-19.pdf; Dissenting Statement of Commissioner Rohit Chopra, In the Matter of Fresenius Medical Care AG & Co. KGaA and NxStage Medical, Inc., No. 171-0227 (Feb. 19, 2019), https://www.ftc.gov/system/files/documents/public_statements/1455733/171_0227_fresenius_nxstage_chopra_statement_2-19-19.pdf.

⁵ Commissioner Slaughter wrote a shorter dissent raising concerns similar to those that Commissioner Chopra raised. Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of Fresenius Medical Care/NxStage, No. 171-0227 (Feb. 19, 2019), https://www.ftc.gov/system/files/documents/public_statements/1455740/171_0227_fresenius-nxstage_slaughter_statement_2-19-19.pdf.

⁶ Dissenting Statement of Commissioner Rohit Chopra, In the Matter of Fresenius Medical Care AG & Co. KGaA and NxStage Medical, Inc., No. 171-0227, at 3 (Feb. 19, 2019), https://www.ftc.gov/system/files/documents/public_statements/1455733/171_0227_fresenius_nxstage_chopra_statement_2-19-19.pdf.

majority also argued that the merger would increase usage of potentially life-saving home dialysis machines because the vertical integration would give Fresenius greater financial incentives to promote in-home (rather than in-clinic) treatment. Commissioners Chopra and Slaughter questioned whether the merger was necessary to obtain those benefits and whether the benefits were sufficient to outweigh anticompetitive vertical effects.⁷

Staples/Essendant involved the combination of one of two retail office supply superstores with the largest U.S. wholesale distributor of office supplies. All of the commissioners agreed that the transaction raised potential vertical concerns because the same private equity firm—Sycamore Partners—would control both Staples and Essendant, and Essendant supplies resellers that compete with Staples to sell to mid-sized businesses.⁸ The Commission majority approved a settlement under which Sycamore Partners agreed to establish an information firewall intended to ensure that Staples would not receive competitively-sensitive information regarding Essendant’s customers or the businesses those customers supply, which could enable Staples to charge higher prices to end customers than Staples would otherwise charge.⁹

In dissent, Commissioners Chopra and Slaughter asserted that (at least in some geographies) Sycamore Partners would have incentives and the ability to cause Essendant to increase prices to the resellers to divert business to Staples, and the remedy would not address that concern.¹⁰ Although the Commissioners reached differing conclusions based on complex, case-specific facts and economic considerations, the dissenting commissioners clearly weighed the potential competitive harms and efficiencies differently than the majority and were less willing to give the merging parties the benefit of the doubt about post-merger competitive conditions. Further, the dissenting commissioners were not satisfied that the information firewall would prove efficacious in preventing competitive harm.¹¹

⁷ *Id.*; Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of Fresenius Medical Care/ NxStage.

⁸ Statement of Chairman Joseph J. Simons, Commissioner Noah Joshua Phillips, and Commissioner Christine S. Wilson Concerning the Proposed Acquisition of Essendant, Inc. by Staples, Inc., No. 181-0180 (Jan. 28, 2019), https://www.ftc.gov/system/files/documents/public_statements/1448328/181_0180_staples_essendant_majority_statement_1-28-19.pdf.

⁹ *Id.*

¹⁰ Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of Sycamore Partners, Staples, Essendant, No. 181-0180 (Jan. 28, 2019), https://www.ftc.gov/system/files/documents/public_statements/1448321/181_0180_staples_essendant_slaughter_statement.pdf; Statement of Commissioner Rohit Chopra, In the Matter of Sycamore Partners, Staples, and Essendant, No. 181-0180 (Jan. 28, 2019), https://www.ftc.gov/system/files/documents/public_statements/1448335/181_0180_staples_essendant_chopra_statement_1-28-19_0.pdf.

¹¹ *Id.*

Commissioners Slaughter and Chopra also both dissented from the revised *Vertical Merger Guidelines* (Guidelines) issued by the FTC and the DOJ Antitrust Division.¹² In detailed statements, they criticized, among other things, the new Guidelines' over-emphasis, in their view, on the potential for vertical mergers to create efficiencies.¹³ They also argued that the Guidelines impose too high a standard for proof of anticompetitive effects,¹⁴ and fail adequately to consider issues such as creation of buyer-side market power, disincentives to entry, and other changes to market conditions (such as the loss of potential entrants or increased vertical integration) as opposed to the merging parties' incentives.

Commissioners Slaughter and Chopra went a step further just one month after the presidential election in a joint statement regarding the FTC's *Commentary on Vertical Merger Enforcement*.¹⁵ The Commissioners cautioned "against relying on the Vertical Merger Guidelines and the Vertical Merger Commentary as an indication of how the FTC will act upon past, present, and future transactions." They further noted the need for aggressive enforcement "against the harms of vertical mergers," potentially presaging a more interventionist approach under Democratic leadership.¹⁶

If the Democratic commissioners' approach to mergers prevails going forward, parties to vertical mergers should bear in mind the following considerations when planning and defending their transaction:

- Prepare to make a compelling, case-specific showing that merger-specific efficiencies from vertical integration exist, and that those efficiencies will outweigh potential anticompetitive effects.

¹² Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In re FTC-DOJ Vertical Merger Guidelines, No. P810034 (June 30, 2020), https://www.ftc.gov/system/files/documents/public_statements/1577499/vmgslaughterdissent.pdf; Dissenting Statement of Commissioner Rohit Chopra, Regarding the Publication of Vertical Merger Guidelines, No. P810034 (June 30, 2020), https://www.ftc.gov/system/files/documents/public_statements/1577503/vmgchopradissent.pdf.

¹³ See, e.g., Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In re FTC-DOJ Vertical Merger Guidelines at 8 (advocating "appropriate skepticism about unsupported efficiency claims"); see also Dissenting Statement of Commissioner Rohit Chopra, Regarding the Publication of Vertical Merger Guidelines.

¹⁴ See, e.g., Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In re FTC-DOJ Vertical Merger Guidelines at 8 ("To some antitrust enforcers and observers, uncertainty points clearly in the direction of less enforcement. To me, high uncertainty means only that we have a challenging job in front of us, which will require greater effort in the name of protecting competition and consumers.").

¹⁵ Joint Dissenting Statement of Commissioners Rohit Chopra and Rebecca Kelly Slaughter, Regarding the Vertical Merger Commentary, No. P181201 (Dec. 22, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585062/p181201chopraslaughtervmcdissent.pdf.

¹⁶ *Id.*

- Prepare for the agency to take a more skeptical view regarding likely competitive effects and place on the merging parties the burden of doubt about the future.
- Prepare for the agency to inquire into whether the merger could harm competition by giving remaining, non-vertically integrated suppliers or customers too much seller/buyer power over competitors of the merging firm.
- Consider responses to potential concerns that vertical integration will make it difficult for smaller firms to compete, even if large companies would not be foreclosed.
- Be even more prepared to defend the adequacy of information firewalls to address potential concerns about information flow.

B. Stricter Scrutiny of Structural Merger Remedies and Divestiture Buyers

If a Democratic-controlled agency adopts views similar to those of Commissioners Chopra and Slaughter, merging parties also should expect even more searching scrutiny of divestiture remedies, including heightened scrutiny of proposed buyers of divested assets. The agencies may also be more likely to require bespoke remedy provisions designed to address case-specific concerns about divestiture buyers’ incentives or ability to compete aggressively.

In several merger settlements, Commissioner Chopra, and to a lesser extent Commissioner Slaughter, criticized divestitures as falling short of fully restoring competition. More generally, Commissioner Chopra has critiqued the process and metrics the Commission uses to approve prospective divestiture buyers. He has urged the Commission to review potential buyers’ likelihood of success with the assets using the “due diligence” employed by a “lender, insurer, or equity investor”—i.e., private actors with skin in the game.¹⁷

For example, in his dissent in *AbbVie/Allergan*, Commissioner Chopra questioned Nestlé’s suitability, as the divestiture buyer, to fully restore competition lost as a result of the overlap in pancreatic enzyme replacement therapy drugs.¹⁸ Among other things, he raised concerns that Nestlé—best known as a food and beverage company—lacked a pre-existing pharmaceutical business, that it would be a less effective competitor than Allergan because it would offer only a single drug to insurers (rather than marketing a portfolio), and that Nestlé’s management would, in

¹⁷ Dissenting Statement of Commissioner Rohit Chopra, In the Matter of AbbVie, Inc./Allergan plc, No. 1910169, at 7 (May 5, 2020), https://www.ftc.gov/system/files/documents/public_statements/1574583/191-0169_dissenting_statement_of_commissioner_rohit_chopra_in_the_matter_of_abbvie-allergan_redacted.pdf.

¹⁸ *Id.* at 7-13. Commissioner Slaughter joined Commissioner Chopra’s concerns in a separate statement. Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of AbbVie, Inc./Allergan plc, No. 191-0169 (May 5, 2020), https://www.ftc.gov/system/files/documents/public_statements/1574577/191_0169_dissenting_statement_of_commissioner_rebecca_kelly_slaughter_in_the_matter_of_abbvie_and_0.pdf.

Commissioner Chopra's view, lack the same incentives to invest in the divested business that it has to invest in its "core business" in food and beverage.¹⁹

In other transactions, Commissioner Chopra has raised concerns that certain categories of buyers or investors—because of the inherent nature of their business—are more likely to flip assets, seek to charge higher prices in the short run, or fail to invest in innovation and therefore should be subject to stricter scrutiny.²⁰ For example, in his initial concurring statement in *Linde/Praxair*, Commissioner Chopra expressed concern that a private equity firm was a major investor in the joint venture purchasing some of the assets.²¹ Commissioner Chopra dissented from the *Eldorado/Caesars* settlement because, among other reasons, "the Commission's due diligence on Twin River [the divestiture buyer] did not adequately analyze the role of new [hedge fund] investors exerting enormous control."²²

In all three of these mergers, Commissioner Chopra suggested that the Commission could have mitigated some of his concerns through restrictions on the divestiture buyer or seller—such as an agreement not to resell the assets within a certain time frame, requirements to invest certain amounts, or mechanisms to align management incentives—or through more aggressive post-divestiture monitoring regimes.

Under the dissenters' approach to divestitures, parties should be prepared to address even more robustly:

- Whether the buyer can effectively compete if it is from outside the relevant industry or lacks a similar portfolio of related products as the target.
- The incentives of the buyer and its management, including assumptions about the supposed behavior of private equity or hedge funds, or whether success with the divestiture assets will be important to the buyer's overall financial success.

¹⁹ Dissenting Statement of Commissioner Rohit Chopra, In the Matter of AbbVie, Inc./Allergan plc, at 7-13.

²⁰ Commissioner Chopra has raised these concerns outside of the remedies context, suggesting that a particular buyer's behavior or history could be a basis to reject a merger entirely. Statement of Commissioner Rohit Chopra, In the Matter of Sycamore Partners, Staples, and Essendant, No. 181-0180, at 4-5 (Jan. 28, 2019), https://www.ftc.gov/system/files/documents/public_statements/1448335/181_0180_staples_essendant_chopra_statement_1-28-19_0.pdf.

²¹ Statement of Commissioner Rohit Chopra in the Matter of Linde AG and Praxair LLC, No. 1710068 (Oct. 22, 2018), https://www.ftc.gov/system/files/documents/public_statements/1416947/1710068_praxair_linde_rc_statement.pdf. Commissioner Chopra later dissented from a modification of the settlement, echoing his prior concerns. Dissenting Statement of Commissioner Rohit Chopra, Regarding Petitions for Modification in the Matter of Linde AG and Praxair LLC, No. 1710068, at 2 (Nov. 13, 2020), https://www.ftc.gov/system/files/documents/public_statements/1583218/1710068c4660lindechopradissentstatement.pdf. Commissioner Slaughter did not participate in the vote.

²² Dissenting Statement of Commissioner Rohit Chopra, In the Matter of Eldorado Resorts and Caesars Entertainment, No. 191-0158, at 2 (June 26, 2020), https://www.ftc.gov/system/files/documents/public_statements/1577363/dissenting_statement_of_commissioner_rohit_chopra_in_the_matter_of_eldorado-caesars_1910158.pdf.

- The divestiture buyer’s other, recent transactions and whether they enhance or complicate the buyer’s ability to compete with the assets.
- The financing of the divestiture and whether the buyer will be left too leveraged to compete effectively.
- Whether the buyer is the “best” option from a competition perspective, as opposed to merely an adequate one.

If the agencies become even more engaged in prescribing remedy details, parties could also face agency insistence on specific remedy provisions designed to address concerns about divestiture buyers’ incentives or ability to compete aggressively. For example, the agencies could insist on pre-notice provisions for flipping assets, compensation incentives for buyers’ executives, latitude for relevant divisions to obtain financing independently from corporate-level senior management, or even prohibitions on certain merged firm practices (e.g., bundled pricing).

C. Longer and More Complex Reviews

Under the approaches suggested by the Democratic commissioner dissents, in potentially controversial cases, merging parties should expect longer and more expansive agency reviews, with more substantial requests for information. They may need to consider earlier engagement with FTC Commissioners or the Antitrust Division Front Office.

The Democratic commissioners have repeatedly expressed concerns that merger reviews have been too limited or pursued with insufficient rigor, especially in the pharmaceutical area.²³ They have urged more expansive investigations to consider additional theories of potential competitive harm and to consider broader industry implications going beyond narrow product overlaps. For example, in *Bristol-Myers/Celgene*, Commissioner Chopra opined that the Commission has put undue emphasis “on reaching settlements” in pharmaceutical mergers that address overlaps in narrow drug markets.²⁴ Both he and Commissioner Slaughter argued for broader reviews of such transactions, especially regarding effects on innovation.²⁵ Commissioner Slaughter has argued for

²³ Dissenting Statement of Commissioner Rohit Chopra, In the Matter of AbbVie, Inc./Allergan plc, No. 1910169, (May 5, 2020), https://www.ftc.gov/system/files/documents/public_statements/1574583/191-0169_dissenting_statement_of_commissioner_rohit_chopra_in_the_matter_of_abbvie-allergan_redacted.pdf; Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of Bristol-Myers Squibb and Celgene, No. 191-0061, at 1-2 (Nov. 15, 2019), https://www.ftc.gov/system/files/documents/public_statements/1554283/17_-_final_rks_bms-celgene_statement.pdf.

²⁴ Dissenting Statement of Commissioner Rohit Chopra, In the Matter of Bristol-Myers Squibb, No. 1910061, at 1-2 (Nov. 15, 2019), https://www.ftc.gov/system/files/documents/public_statements/1554293/dissenting_statement_of_commissioner_chopra_in_the_matter_of_bristol-myers-celgene_1910061.pdf.

²⁵ *Id.* Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of Bristol-Myers Squibb and Celgene, No. 191-0061, at 1-2 (Nov. 15, 2019), https://www.ftc.gov/system/files/documents/public_statements/1554283/17_-_final_rks_bms-celgene_statement.pdf.

a more expansive review of merger effects on broad industry conditions, such as pricing trends, particularly for pharmaceuticals, and incentives for anticompetitive conduct “including pay-for-delay settlements, sham litigation, and anticompetitive product hopping.”²⁶ As noted above, both Commissioners have placed particular emphasis on thorough investigations of potential vertical anticompetitive effects.²⁷

If Commissioners Slaughter’s and Chopra’s concerns become the controlling view, Bureau of Competition and Antitrust Division Staff will be required to account for these types of concerns even more than they already do. This will likely lead to more expansive initial information requests, broader second requests, and more extensive requests to third parties. The Staff may have less flexibility to narrow the scope of these requests through negotiations and be more likely to challenge the parties’ compliance with the second request.²⁸

Additionally, Commissioner Chopra has suggested that the commissioners undertake more direct supervision of investigations, including holding formal meetings on large investigations before remedy negotiations and requiring a vote of the Commission before closing large merger investigations.²⁹ Such steps would increase demands on the resources of the Staff, the parties, and the commissioners and require additional lead time.

Finally, Democratic leadership at the FTC and the Antitrust Division may seek even closer coordination with state attorneys general in merger enforcement. In *AbbVie/Allergan*, Commissioner Chopra stated that state regulators serve as “key partners in competition enforcement” who can help block unlawful mergers.³⁰ Commissioner Chopra argued that the Commission should forgo finalizing merger settlements until the parties have complied with state subpoenas and “other reasonable information requests” from state attorneys general.³¹ Enhancing

²⁶ *Id.* at 2.

²⁷ Dissenting Statement of Commissioner Rebecca Kelly Slaughter, In the Matter of Fresenius Medical Care/NxStage, No. 171-0227, at 2 (Feb. 19, 2019), https://www.ftc.gov/system/files/documents/public_statements/1455740/171_0227_fresenius-nxstage_slaughter_statement_2-19-19.pdf.

²⁸ 15 U.S.C. § 18a(g)(2).

²⁹ Dissenting Statement of Commissioner Rohit Chopra, In the Matter of AbbVie, Inc./Allergan plc, No. 1910169, at 17-18 (May 5, 2020), https://www.ftc.gov/system/files/documents/public_statements/1574583/191-0169_dissenting_statement_of_commissioner_rohit_chopra_in_the_matter_of_abbvie-allergan_redacted.pdf.

³⁰ *Id.* at 19.

³¹ *Id.* Commissioner Chopra also called on the Commission to assist state legislatures in enacting state law merger control and notification regimes. *Id.* In *UnitedHealth/DaVita*, Commissioners Slaughter and Chopra highlighted the remedy obtained by the Attorney General of Colorado in its parallel investigation, and criticized the Commission for not pursuing an enforcement action in Colorado. In their joint statement, they suggested they might have voted against the Commission’s settlement, but for the Colorado Attorney General’s settlement. Statement of Commissioners Rebecca Kelly Slaughter and Rohit Chopra, In the Matter of United HealthGroup and DaVita, No. 181-0057 (June 19, 2019), https://www.ftc.gov/system/files/documents/public_statements/1529359/181_0057_united_davita_statement_of_cmmrs_s_and_c.pdf.

the roles of states in merger review has the potential to introduce further complexity and time into the process.

If Commissioners Chopra's and Slaughter's approach becomes controlling, parties should be prepared to:

- Respond to broader information requests from the reviewing agencies at various stages of the investigation.
- Work with Staff even more proactively to minimize the burdens and length of the investigation.
- Identify the potential for state-level interest in the transaction and, as appropriate, incorporate state attorneys general reviews into the transaction strategy and timeline.
- Consider budgeting additional time and resources to finalize antitrust review and reach transaction close.

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