Shrinking Market Definition in Merger Reviews

When a merger or corporate acquisition is the subject of Department of Justice (DOJ) or Federal Trade Commission (FTC) review, market definition is generally the primary disputed issue. In reviewing a proposed merger or acquisition, the DOJ, FTC, or—if litigation ensues—a court, analyzes whether the proposed deal will have an adverse economic impact on the market in which the companies that are the subject of the merger operate. In antitrust parlance, this is referred to as the “market definition.” The more narrowly the market is defined, the higher the likelihood the conclusion will be that there is an adverse impact on competition. To give an example, if the Washington Redskins and Baltimore Ravens were looking to merge into a single team, whether the market was defined as professional football teams in the Washington-Baltimore regions, as all professional sports throughout the United States, or something in between, would have an enormous impact on the market definition analysis.

In a recent string of cases, the DOJ and FTC successfully argued that courts should employ narrow market definitions in order to establish adverse economic impact. When considering product markets in the antitrust context, the first thing that often comes to mind is protecting individual consumers from powerful companies in danger of achieving (or that have successfully achieved) a monopoly. However, a number of recent cases focus on product submarkets, which are more narrowly defined than the retail market for products or services. Beginning in 2015, merger enforcement agencies increased their focus on commercial submarkets and commercial channels.

The concept of a submarket is nothing new. More than 50 years ago, the Supreme Court recognized in Brown Shoe Co. v. United States that “well-defined submarkets may exist that, in themselves, constitute product markets for antitrust purposes.” The recent approach is notable because these product submarkets focus on the specific needs of certain large commercial customers, as opposed to typical individual retail consumers. It is still unclear if this cluster of cases is actually a trend, and if so, a trend that will continue under the current administration. Nonetheless, these cases suggest that product submarkets that are narrowly tailored to specific types of corporate customers could be a continuing source of success for merger enforcement authorities.

Antitrust Merger Enforcement

Section 7 of the Clayton Act, 15 U.S.C. § 18, prohibits mergers or acquisitions “where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.”

Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR), as amended, certain mergers and acquisitions must be reviewed and cleared by the FTC or DOJ. If a proposed merger
or acquisition meets review thresholds, the company or companies
proposing a merger or acquisition must submit a form notifying the
FTC and DOJ and pay a filing fee.7

Although parties to a deal file with both the DOJ and FTC, only
one agency reviews the proposed transaction. The transaction
cannot be consummated until after a statutorily designated waiting
period during which the reviewing agency conducts a preliminary in-
vestigation to determine whether the proposed transaction requires
a comprehensive investigation. If such a determination is made, the
reviewing agency issues a Request for Additional Information (also
referred to as Second Request), which is akin to full-blown but com-
pressed discovery in typical civil litigation. In addition to document
requests, interrogatories, and employee interviews or depositions
directed to the parties, the reviewing agency may also conduct
interviews and/or depose customers and competitors regarding the
relevant industry and the proposed transaction. A second waiting
period goes into effect once the responding parties have “substantially
complied” with the agency's Second Request.

The agency can then elect to challenge or block the merger if it
believes the proposed deal violates § 7. In addition, under § 13(b) of
the FTC Act, 15 U.S.C. § 53(b), the FTC can seek a temporary re-
straining order and preliminary injunction when the FTC “has reason to
believe … that any person, partnership, or corporation is violating,
or is about to violate, any provision of law enforced by the [FTC],”
until the FTC’s administrative proceeding is resolved.

The ‘Relevant Market’

Market definition is a “necessary predicate” to deciding whether a
merger contravenes the Clayton Act.8 Indeed, “defining the relevant
market is critical in an antitrust case because the legality of the pro-
posed merger … in question almost always depends on the market
power over the parties involved.”9

In order to determine the effect on competition, antitrust analysis
first looks to the “relevant market.” In Brown Shoe, Co. v. United
States, the Supreme Court explained that “the outer boundaries of
a product market are determined by the reasonable interchange-
ability of use or the cross-elasticity of demand between the prod-
uct itself and substitutes for it.”10 In other words, courts define the
relevant market by determining what products or services serve as a
reasonable substitute for the product or service at issue. The inquiry
focuses on (1) functional interchangeability, and (2) whether a price
increase of one product would cause purchasers to switch to a differ-
ent product and whether purchasers could do so easily.

As the Supreme Court explained in Brown Shoe, “well-defined
submarkets” may exist within the broader market “which, in them-
selves, constitute product markets for antitrust purposes.”11 Courts
determine “the boundaries of such a submarket” by examining
“practical indicia,” including the following: (1) “industry or public
recognition of the submarket as a separate economic entity,” (2) “the
product’s peculiar characteristics and uses,” (3) “unique production
facilities,” (4) “distinct customers,” (5) “distinct prices,” (6) “sensi-
tivity to price changes,” and (7) “specialized vendors.”12

Of course, the appropriate relevant market inherently varies de-
pending on industry and also, at times, geography. And the relevant
market definition necessarily takes both into account. “First, the ‘re-
levant product market’ identifies the product and services with which
the defendants’ products compete. Second, the ‘relevant geographic
market’ identifies the geographic area in which the defendant com-
petes in marketing its product or service.”13

In four recent cases, antitrust enforcement agencies have focused
on the size and reach of corporate customers that the parties to the
proposed merger were capable of serving.

**FTC v. Sysco**

On Feb. 19, 2015, the FTC filed an administrative complaint object-
ing to the proposed $8.2 billion merger between Sysco Corporation
and US Foods Inc.14 The FTC and several states15 also sought a
temporary restraining order and preliminary injunction to enjoin the
merger during administrative proceedings to determine whether
the proposed merger violated § 7 of the Clayton Act. The FTC
successfully obtained an injunction from the U.S. District Court for
the District of Columbia on June 23, 2015.16 The court described
the proceedings as follows: “The proceedings in this case have been
extraordinary. The FTC investigated the proposed merger for more
than a year before filing suit. Then, within a two-month period, the
parties worked tirelessly to exchange millions of documents, depose
dozens of witnesses, and secure over a hundred declarations. The
court heard live testimony for eight days in early May 2015.”17

Unsurprisingly, the district court noted “market definition has been
the parties’ primary battlefield in this case.”18 The FTC argued
that the relevant market consisted of broadline food distributors
with a national network of distribution centers. On the other hand,
the defendants asserted that the “relevant market [was] the entire
$231 billion foodservice distribution industry, consisting not only of
broadline food distributors, but also specialty distributors, systems
distributors, and cash-and-carry stores.”19 Sysco and US Foods also
disputed the existence of a “product market for ‘national customers,’
asserting that such a market had been created by the FTC out of
whole cloth to artificially inflate [the] defendants’ market shares.”20

As explained in the FTC’s administrative complaint, “broadliners
sell and deliver food and related products to a variety of foodservice
operators, including restaurants, hospitals, hotels, school cafeterias,
and other places where people ‘eat food away from home.’”21 Stated
another way, “as the name implies, a broadline foodservice distrib-
utor sells and delivers a ‘broad’ array of food and related products
to just about anywhere food is consumed outside the home.”22 The
FTC’s administrative complaint alleges that “Sysco and US Foods are
the only two broadline [food] distributors with nationwide networks
of distribution centers, making them the best options for customers
with facilities spread across the country.”23 Further, “post-merger,
Sysco could control approximately 75 percent of the sales of broad-
line foodservice distribution services to national customers.”24

The administrative complaint distinguishes between what it re-
ters to as “national customers,” “customers with numerous facilities
dispersed nationally or across multiple regions of the United States,
… such as national hotel chains, foodservice management com-
panies, and group purchasing organizations,” and large restaurant
chains, as opposed to smaller, local restaurants.25 The FTC’s relevant
market definition rests on the premise that “many national custom-
ers are most effectively served by a broadline foodservice distributor
that has the capability to provide nationwide coverage.”26 Purposed
reasons include the availability of private-label products, flexible and
reliable delivery, consistency of products, and centralized and high
level customer service. The government alleged that post-merger,
Sysco would control approximately 75 percent of sales of broadline
foodservice distribution to national customers.27

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Defendants argued that the national customer product market was “contrived,” and “that the FTC’s distinction between national and local customers is ‘factually and economically meaningless.’” Specifically, they argued that the national-local distinction is “improperly based on an administrative distinction as to whether the customer prefers to be managed at the corporate level (making it a ‘national’ customer) or at the local distribution center (making it a ‘local’ customer),” not customer characteristics.

Noting that neither side comprehensively addressed the issue, the district court analyzed whether there is a legal basis for defining a product marked based on customer-type. The court observed that the issue “is not free from controversy” and reasoned:

Admittedly, defining a product market based on a type of customer seems incongruous. After all, one ordinarily thinks of a customer as purchasing a product in the market, and not as the product market itself. But, in this case, according to the FTC, the national customer and broadline product converge to define a market for broadline products sold to national customers. Broadline distributors must offer a particular kind of “product”—a cluster of goods and services that can be delivered across a broad geographic area—to compete for national customers. In that sense, the customer’s requirements operate to define the product offering itself.

However, the court declined to reach this issue, and instead grounded its analysis on the Brown Shoe practical indicia and merger guidelines’ “small but significant and non-transitory increase in price test,” commonly referred to as the “SSNIP test.”

The court concluded that the evidence “support[ed] a finding that broadline distribution to national customers is a relevant product market,” in light of the following: (1) industry and public recognition, (2) distinct customer needs, (3) defendants’ operations, and (4) expert testimony regarding the percentage of national customers that would need to remain in the broadline market to make a price increase profitable as compared to the actual percentage of national customers who would remain in the market by switching to another broadliner.

With regard to industry and public recognition, the court found the fact that regional broadliners have formed cooperatives to compete for customers “among the most compelling evidence” because they were specifically formed to compete with Sysco and US Foods “by enabling regional competitors to combine to provide nationwide or multiregional delivery and, importantly, to offer a single point of contact for the customer.” “Put simply, the business ventures like [these cooperatives] would not exist if there were not a separate market for customers who have national or multiregional distribution needs.” Further, in addition to reports by outside consulting and research firms, and an industry trade group, the defendants’ own documents recognized the distinction between national and local customers. In addition, the court emphasized that Sysco and US Foods are the only broadliners “with true nationwide service capability.”

The defendants argued, in part, that “under the FTC’s theory, they presently have a duopoly as to national customers, yet they do not earn duopoly profits on that customer class. [The] defendants thus maintain that, just as they cannot today price discriminate to earn duopoly profits, they would not be able to price discriminate after the merger to earn monopoly profits.” The court found the argument “unconvincing,” reasoning that the defendants’ “present inability to earn duopoly profits on national customers is probably because large customers can keep prices down by leveraging the defendant companies against one another.”

However, the court held that the FTC satisfied its burden of showing a “reasonable probability” that the proposed merger would harm competition within the bounds of the “broadline distribution to national customers” market. Rather than appeal the district court’s decision, Sysco announced it would terminate its $8.2 billion acquisition of US Foods in June 2015 and pay a $300 million breakup fee, as well as $12.5 million to the planned buyer of certain US Foods divested distribution centers.

FTC v. Staples

On Dec. 7, 2015, the FTC voted 4-0 that there was “reason to believe” that the proposed merger between Staples Inc. and Office Depot Inc. “would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially reducing competition.” Two days later, on Dec. 9, 2015, the FTC filed a complaint in the U.S. District Court for the District of Columbia, seeking a temporary restraining order to the preliminarily enjoin Staples and Office Depot from consummating their proposed $6.3 billion merger.

Most American consumers are familiar with the retail business of these two office supply superstores. However, echoing the FTC’s approach in the Sysco case, above, the FTC focused on a narrow subset of these businesses: sales to “large ‘business-to-business’ customers (i.e., business customers buying for their own end-use) in the United States,” dubbed “B-to-B customers.” The FTC further alleged that the defendants are the best options for most large B-to-B customers—and the only meaningful options for some large customers—particularly those with facilities in multiple regions of the country.

As with national customers of broadline food distributors, the FTC alleged that “many large B-to-B customers require that their office supplies vendor provide a broad range of national-brand and private-label products, flexible and reliable delivery (including desktop delivery), high levels of customer service, customizable product catalogs, detailed utilization reporting, and sophisticated information technology interfaces for procurement and billing.”

In addition to the ability to leverage the buying power of a customer’s multiple locations to maintain lower prices, the complaint alleged that the convenience afforded by these types of features lowers the costs of doing business. Again, echoing the complaint in Sysco, the FTC alleged that “local or regional vendors (including but not limited to W.B. Mason), local or regional consortia, and ad hoc region-by-region networks of suppliers have higher costs and thus higher prices, limited geographic footprints, and/or logistical and coordination challenges for large B-to-B customers.”

As with Sysco, the FTC tailored its relevant market definition to the specific needs of large B-to-B customers and certain key attributes of that business:

The relevant market is the sale and distribution of consumable office supplies to large B-to-B customers in the United States. Large B-to-B customers are particularly vulnerable to the proposed merger because many have nationwide or multi-regional operations and require an office supplies vendor that can provide low pricing, high levels of service, and delivery
Across all of their operations. For such customers, Staples and Office Depot are the two best options.43

Allegedly, the post-merger market share would be more than 70 percent of the “relevant market.”44

On May 17, 2016, Judge Emmet G. Sullivan preliminarily enjoined the defendants from consummating their merger.45 Judge Sullivan’s opinion began: “Drawing an analogy to the fate of penguins whose destinies appear doomed in the face of uncertain environmental changes, [Staples] and [Office Depot] argue that they are like ‘penguins on a melting iceberg,’ struggling to survive in an increasingly digitized world and an office-supply industry soon to be revolutionized by new entrants like Amazon Business.”46

Judge Sullivan described the proceedings before the district court as follows:

This antitrust case involved an extraordinary amount of work. As a result of the FTC’s investigation and seven weeks of discovery, more than 15 million pages of documents were produced, more than 70 depositions around the country were taken, and five expert reports were completed. The court presided over an evidentiary hearing and heard testimony from 10 witnesses from March 21, 2016, to April 5, 2016. Nearly 4,000 exhibits were admitted into evidence.47

And, as with Sysco, the defendants indicated that they would abandon the merger if a preliminary injunction issued, notwithstanding their right to a trial before an administrative law judge at the FTC.48

Again, unsurprisingly, the parties “vigorously” disagreed “about how the relevant product market should be defined.”49 The district court found the following Brown Shoe practical indicia most relevant to the case: “(a) industry or public recognition of the market as a separate economic entity; (b) distinct prices and sensitivity to price changes; and (c) distinct customers that require specialized vendors that offer value-added services, including (i) sophisticated information technology (IT) services; (ii) high-quality customer service; and (iii) expedited delivery.”50 The court relied on Sysco, and noted parallels between large national companies that require broadline distributors and large national companies that use B-to-B office supply services. The court also emphasized the fact that B-to-B customers solicit requests for proposals and often have multiyear contracts.51

The defendants argued, in part, “that [the plaintiffs’ attempt to protect ‘mega companies’ is misplaced because the merger ‘indisputably will benefit all retail customers and more than 99 percent of business customers.”52 Further, “antitrust laws exist to protect competition, even for a targeted group that represents a relatively small part of an overall market.”53

However, the court found persuasive that defendants’ own documents acknowledged that the proposed merger would affect prices offered to B-to-B customers:

Significantly, Defendants themselves used the proposed merger to pressure B-to-B customers to lock in prices based on the expectation that they would lose negotiating leverage if the merger were approved. See e.g., PX05236 (ODP) at 001 (“This offer is time sensitive. If and when the purchase of Office Depot is approved, Staples will have no reason to make this offer.”); PX05249 (ODP) at 001 (“[The merger] will remove your ability to evaluate your program with two competitors. There will only be one.”); PX05514 (ODP) at 003 (“Today, the FTC announced 45 days for its final decision. You still have time! You would be able to leverage the competition, gain an agreement that is grandfathered in and drive down expenses”).54

The court concluded that there was “overwhelming evidence” that the “alleged market of consumable office supplies (a cluster market) sold and distributed by the defendants to large B-to-B customers (a targeted market) is a relevant market for antitrust purposes.”55 Judge Sullivan further concluded that the government carried its “ultimate burden of showing that they are likely to succeed in proving, after a full administrative hearing on the merits, that the proposed merger ‘may be substantially to lessen competition, or to tend to create a monopoly’ in violation of Section 7 of the Clayton Act.”56 As promised, the two companies abandoned the proposed merger shortly after Judge Sullivan’s order rather than continue the administrative proceedings.57

**United States v. Electrolux**

On July 1, 2015, the DOJ filed a complaint seeking to enjoin AB Electrolux and Electrolux North America Inc. from acquiring General Electric Company’s (GE) appliance business unit, which includes ranges, cooktops, and wall ovens.58 Ultimately, Electrolux and GE abandoned the $3.3 billion deal, but only after trial began.59

As alleged, there are two distinct sales channels for the appliance at issue: retail and contract.60 Unsurprisingly, the retail channel consists of individual consumers and household appliance purchasers, including through “mass” or value purchases. The contract channel consists primarily of “American home builders, property managers, and other contract channel appliance purchasers.”61 The DOJ’s complaint began by focusing on the retail market, but its case hinged on the significantly more narrow contract channel as the relevant market.

Unlike Sysco and Staples, here the DOJ’s relevant market definition encompassed the commercial channel generally, as opposed to a particular subset of commercial customers with unique needs. Specifically, the DOJ alleged three relevant contract-channel markets: (1) ranges sold to contract-channel purchasers, (2) cooktops sold to contract-channel purchasers, and (3) wall-ovens sold to contract-channel purchasers.62 The DOJ further alleged that “because they often purchase major cooking appliances under individually negotiated contracts, and can therefore be made subject to targeted price increases, sales in the contract channel can constitute a relevant antitrust market.”63

It is curious, however, that the complaint alleges that anticompetitive effects would be felt beyond what it urges is the relevant market. As the complaint explains, “while the proposed acquisition’s harmful effects likely would be particularly acute in sales to contract-channel purchasers, those effects also likely would be felt across all purchases of major cooking appliances.”64

Because the case settled during trial, it remains unclear whether a broader commercial submarket would be a legally viable relevant market under the circumstances. Presumably, however, establishing a commercial channel submarket would be less burdensome than establishing a relevant market that consists of a narrow subset of commercial customers.
United States v. Anthem

Most recently, on July 21, 2016, the United States, joined by 11 states and the District of Columbia, sued to enjoin the proposed merger between Anthem Inc. and Cigna Corp. due to the alleged effect on competition “in the sale of commercial health insurance to two groups of customers: ‘national accounts’ and ‘large group employers.’” On Feb. 21, 2017, U.S. District Judge for the District of Columbia Amy Berman Jackson enjoined the proposed merger. 69

The district court began its analysis by clarifying that “this case does not involve health care obtained through government programs such as Medicare or Medicaid, or health insurance sold to individuals either directly or through a public exchange. The allegations that were tried relate solely to the commercial market—the sale of medical benefits coverage to employers.” 65 Generally, there are two types of commercial plans: fully insured plans and self-insured plans. 66 The defining feature of self-insured plans is that the employer pays medical costs and only relies on insurance companies for access to a provider network and plan administration. 67 On the other hand, with fully insured plans, “it is the insurer’s obligation to cover the health care costs incurred by the employees and their dependents in addition to administering the claims.” 68 The plaintiffs defined the product market as “the sale of commercial health insurance to national accounts with 5,000 employees or more.” 71 And the court agreed.

Citing Staples, the court explained that a “submarket exists when sellers can profitably raise prices ‘to certain targeted customers but not to others,’ in which case regulators ‘may evaluate competitive effects separately by type of customer.’” 72 The court reasoned that national accounts are a unique set of customers with unique needs, stating that “there was considerable evidence presented to establish that there is a distinct type of large employer that is looking for an insurance plan that can deliver a national network, a high degree of plan customization, and sophisticated claims administration, customer service, and data reporting.” 73 The court further determined that 5,000 employees is an appropriate definition in light of practical indicia and economic expert testimony.

In addition, the court rejected the defendants’ argument that there was no economic basis for combining both self-insured and fully insured plans into a single health care coverage product market for national accounts. 74 The court explained that the combination did “not invalidate the proposed market. The law is clear that the ‘product’ that comprises the market need not be a discrete good for sale.... While most national accounts purchase [self-insured] plans, the narrow distinction between these types of plans does not alter their key elements: the network being supplied and the claims administration services delivered to the customer.” 75

The D.C. Circuit affirmed the issuance of a permanent injunction against the merger due to its likely substantial anticompetitive effect in the “market for the sale of medical health insurance to national accounts” in 14 states, “as well as to large group employers in Richmond, Virginia.” 76 The defendants did not challenge the district court’s findings on the relevant market. Rather, the defendants appealed on the ground that the court failed to consider claimed medical cost savings due to reduced provider rates, without harm to the providers. 77 The D.C. Circuit held that “the district court did not abuse its discretion in enjoining the merger based on Anthem’s failure to show the kind of extraordinary efficiencies necessary to offset the conceded anticompetitive effect of the merger in the 14 Anthem states: the loss of Cigna, an innovative competitor in a highly concentrated market.” 78 The D.C. Circuit further held “that the district court did not abuse its discretion in enjoining the merger based on its separate and independent determination that the merger would have a substantial anticompetitive effect in the Richmond, Va., large group employer market.” 79 The fact that defendants did not appeal the district court’s relevant market determination is a telling sign that commercial submarkets are gaining increasing recognition.

Conclusion

At times, the submarkets relied on in these cases may seem arbitrary to the average consumer who has no exposure beyond retail markets. However, in certain instances, commercial submarkets can impact individual consumers’ retail experience and pricing. As noted by Judge Mehta in Sysco, in balancing the equities, absent an injunction “‘unscrewing’ the eggs’ would be a daunting task and would have negative effects on “the foodservice distribution industry, its customers, and the ultimate consumers—Americans who eat outside the home.” 80 Although that analysis is not germane to the relevant market inquiry, it highlights that there are entire markets that impact individual retail consumers to which those very end users are not exposed. While not as direct, ultimately, commercial channel price increases in office supplies or cooking appliances would likely also be passed on to individual consumers in some respects. Nonetheless, as this line of cases makes clear, commercial submarkets may become an increasingly important driver of antitrust enforcement.

Endnotes


HSR filing fees can be substantial. In 2017, filing fees ranged from $45,000 to $280,000 depending on the size of the proposed transaction. Filing Fee Information, Fed. Trade Comm’n (Feb. 27, 2017), https://www.ftc.gov/enforcement/premerger-notification-program/filing-fee-information.


Brown Shoe, 370 U.S. at 325 (“Because § 7 of the Clayton Act prohibits any merger which may substantially lessen competition ‘in any line of commerce,’ it is necessary to examine the effects of a merger in each such economically significant submarket to determine if there is a reasonable probability that the merger will substantially lessen competition. If such a probability is found to

Danielle Moriber is an associate at Bilzin Sumberg Baena Price & Axelrod LLP in Miami. © 2017 Danielle Moriber. All rights reserved.
exist, the merger is proscribed.”) (emphasis in original).
7Id.
8Id.
10Id. at 1.
12Id.
13Id. at 1.
14Id. at 24.
15Id.
16Id.
18Id.
19Id. at 1.
20Id.
21Id. at ¶ 6.
22Id. at ¶ 4.
23Sysco, 113 F. Supp. 3d at 38.
24Id. at 87.
25Id. at 38.
26Id. at 38-48.
27Id.
28Id.
29Id. at 40.
30Id. at 17.
31Id. at 47-48.
32Id. at 48.
35The Commonwealth of Pennsylvania and the District of Columbia joined the FTC.
37Staples Complaint, at ¶ 1.
38Id. at ¶ 2.
39Id. at ¶¶ 6, 43.
40Id. at ¶ 8.
41Id. at ¶ 12.
42Id. at ¶ 36. Note that the relevant product market exempted ink and toner for printers and copiers, or “other office-related products, such as janitorial or breakroom products.” Id. at ¶¶ 39-40.
43Id. at ¶ 14.
44Staples, 190 F. Supp. 3d at 138.
45Id. at 109.
46Id. at 110.
47Id.
48Id. at 116.
49Id. at 118-119.
50Id. at 119.
51Id. at 126 (internal citations omitted); See Merger Guidelines § 3 (“When price discrimination is feasible, adverse competitive effects on targeted customers can arise, even if such effects will not arise for other customers.”).
52Id.
53Id. at 127.
54Id.
55Id. at 138.
58Per the DOJ’s Spring 2016 Antitrust Division Update, trial began in early November 2015, and testimony was scheduled to end Dec. 7. But “very early on the morning of Dec. 7, and after four weeks of trial, General Electric exercised its contractual right to walk away from the transaction along with a termination fee of $175 million.” GE and Electrolux Walk Away from Anticompetitive Cooking Appliance Merger Before Four-Week Trial Ends, Division Update Spring 2016 (Apr. 5, 2016), https://www.justice.gov/atr/division-operations/division-update-2016/ge-electrolux-walk-away-anticompetitive-appliance-merger.
59Id. at ¶ 14.
60Id at ¶ 2.
61Id. at ¶ 26.
62Id. at ¶ 23.
63Id. at ¶ 1.
65Id.
66Id. at 187.
67Id. at 188.
68Id.
69Id.
70Id. at 193.
71Id. at 195.
72Id. at 195-96.
73Id. at 201.
74Id.
75Id.
77Id. at 349.
78Id.
79Id.
80Sysco, 113 F. Supp. 3d at 87.