

Press Coverage | December 18, 2023

Agencies' Aggressive Merger Approach Was Tested in 2023

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Barbara Sicalides was quoted in the December 18, 2023 *Law360* article, "[Agencies' Aggressive Merger Approach Was Tested in 2023](#)."

Barbara T. Sicalides, a partner with Troutman Pepper, told *Law360* that the ruling is part of a recent trend that has shown courts are willing to consider the fixes offered by merging parties to address competition concerns, even if the agencies find them deficient.

"If a buyer is willing to find a solution ... certainly the trend appears to be that courts won't just ignore those efforts," Sicalides said. "The impact of those efforts on the analysis is important."

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Viewed alongside the court's decision in the Microsoft-Activision case, along with a D.C. federal court's rejection last year of the DOJ's bid to block UnitedHealth's \$13.8 billion acquisition of Change Healthcare, Sicalides said the Illumina case shows the courts are considering the "market realities" of contractual fixes companies are offering to ease merger concerns.

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Sicalides said the case is important because it implicates the ability of companies to collaborate and that the judge employed a "very aggressive read of the law" by not fully crediting what the airlines argued were clear benefits of the deal for consumers.

"It is difficult to tell how much effect you could have only because the judge's opinion is so unequivocal," she said. "It's hard to tell whether other judges with different facts would readily rely on it."

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Sicalides said the case and JetBlue's promises raise an issue that was a common theme throughout the year, with companies bringing their merger fixes to court after being unable to secure a settlement from one of the agencies, and said the judge's comments suggest the court is receptive.

"The judge in the Spirit merger case clearly thinks that the court should take into consideration the potential

remedies that have been proposed,” she said. “Certainly, the trend appears to be that courts are not just going to ignore those efforts.”

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