

What Does the New Administration's First Antitrust Merger Settlement Tell Us?

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The Federal Trade Commission (FTC) has agreed to accept the new administration's first settlement of a merger-enforcement challenge. The settlement includes the divestiture of three businesses and will allow Synopsys, Inc. to complete its \$34 billion acquisition of Ansys, Inc.

Although the remedy is consistent with the previously announced remedies accepted by the UK's Competition and Markets Authority and the European Commission (EC), the consent agreement is notable not only because it is the first of the administration but also because Chair Andrew Ferguson's related statement discusses when this FTC will choose settlement instead of litigation.

The statement points to both practical and substantive factors as guideposts for its decisions, including impact of a settlement proposal on litigation, ability to fashion a remedy that is structural (not behavioral), quality of the asset package available for divestiture, and strength of the proposed divestiture buyer.

The Merger

The parties' product portfolios are mostly complementary. Synopsys largely offers electronic design automation (EDA) software, services, and hardware used to design semiconductor devices, such as chips, and offers semiconductor intellectual property. Ansys mostly offers multi-physics simulation and analysis software and services to simulate and analyze the behavior of a product, process, or system using digital models. Some of these EDA tools are used by chip designers. The firms characterized the merger as the logical next step given their history of collaboration.

According to publicly available information, the parties filed the merger notifications in the UK and Europe in November 2024 before filing in the United States on January 29, 2025.

Theories of Harm

The FTC complaint alleges that Synopsys and Ansys are the only two competitors in optical software tools and that the transaction would give Synopsys the ability to determine input prices for producers of screens, lenses, and mirrors, including automotive, smartphone, camera, and television manufacturers. With respect to photonic software used for designing and simulating photonic devices, Synopsys and Ansys are head-to-head competitors

and view each other as their closest competitor despite the presence of other competitors. Similarly, each party considers the other its closest competitor for Register Transfer Level (RTL) power consumption analysis tools, and market participants recognize them as such. For example, Synopsys and Ansys have each innovated their products in direct response to competition from the other.

The Settlement

The UK and the EC provisionally accepted the parties' proposed remedy on January 8 and January 10, 2025, respectively. Although not yet final because the settlement remains subject to the public comment period, the FTC describes the consent order as "preserv[ing] competition across several software tool markets that are critical for the design of semiconductors and light simulation devices, which are used in a wide range of products."

Specifically, Synopsys will divest its optical software tools and photonic software tools, while Ansys will divest PowerArtist, a power consumption analysis tool. The settlement will also require the companies to provide a "limited amount" of technological support and transition services to the divestiture buyer so that it can immediately compete with the merged company.

Chair Ferguson issued a statement, which was joined by the two other commissioners, to explain his views on the role that remedies should play. Key points of the statement include:

- Litigation is the only tool that the agency has to prevent anticompetitive acquisitions;
- Although, in the past, not all merger remedies have been effective, they must be an option for the FTC;
- Only settlements the agency believes are certain to address the proposed transaction's anticompetitive effects are acceptable; and
- The commission intends to publish a policy statement on its understanding of the role of remedies.

The agency should not disregard proposed settlements that would address a merger's competition problems, because the parties can present that settlement as a remedy to the court during litigation. Courts often consider whether the proposed remedies would alleviate the competition concerns raised by the challenged transaction. Chair Ferguson acknowledges that even inadequate settlement proposals can complicate the agency's litigation efforts and substantially increase its risks. To avoid relegating the judgments about the acceptability of remedies to the parties to the transaction and the courts, the FTC will not preclude the potential for consent agreements such as that proposed by Synopsys and Ansys.

Additionally, given the expense and staff time necessary to litigate antitrust cases, refusing to settle merger cases unnecessarily limits the impact that the FTC can have with its finite resources.

The statement also makes clear that the agency should only accept settlements when it is confident that the settlement will protect competition "to the same extent that successful litigation would." As with prior administrations, behavioral remedies will be disfavored in merger matters. Also, structural remedies should typically involve the sale of a standalone or discrete business and all tangible and intangible assets necessary (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. The agency needs also be confident that the divestiture buyer has the resources and experience necessary to make the business competitive.

Although the statement acknowledges that “settlements, where they resolve the competitive concerns that a proposed transaction creates, save the commission time and money that it can then deploy toward other matters,” Chair Ferguson explains that he would favor litigation over an uncertain settlement.

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