**MERGER ANTITRUST LAW**

LAW 1469
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Tuesdays and Thursdays, 3:30 pm – 5:30 pm
Dale Collins
wdc30@georgetown.edu
www.appliedantitrust.com

## Class 18 (October 28): Potential and Nascent Competition Mergers (Unit 10)

Our remaining case studies will deal with nonhorizontal mergers, that is, mergers between firms that are not incumbent competitors of one another. Two types of nonhorizontal mergers attract attention in modern U.S. enforcement: potential competition mergers and vertical mergers.

This unit examines potential competition mergers. Theories of anticompetitive harm premised on the elimination of potential rivalry through acquisition come in three related but distinct variants.

The first theory, known as the *actual potential competition doctrine*, looks directly at the elimination of possible near-term future rivals through their acquisition before they can enter the market as independent competitors. The idea here is that, in the absence of the acquisition, the potential entrant would have entered the market and its entry would have improved the competitive performance of the marketplace. Under this theory, the acquisition is anticompetitive because, on a forward-looking basis, it eliminates future rivalry and makes the market less competitive than it would have been without the transaction. The elimination of actual potential competition is the most commonly invoked theory of potential competitive harm.

The second theory, known as the *perceived potential competition doctrine*, looks at actions incumbent firms in the market currently may be taking to discourage firms they perceive as potential future entrants from entering the market. Under this theory, incumbent firms (unilaterally) take actions that increase the level of competitive activity—such as keeping prices low—which reduces the returns from operating in the market and hence decreases the attractiveness of entry. The harm arises when the perceived potential entrant is acquired, negating the incentive for incumbent firms to keep prices low or take other actions to discourage entry, and, as a result, prices in the market increase. Although accepted by the Supreme Court as a theory of anticompetitive harm in Section 7 cases,[1] this theory has all but been eliminated from the antitrust enforcement toolkit for lack of situations where it may apply.[2]

A third variant of potential competition theory took shape in the final years of the first Trump administration and was subsequently developed by the Biden administration. Under the so-called *nascent competition theory*, an actionable harm to competition arises when a dominant firm acquires a company whose innovation—whether exploited by the target itself, by another acquirer, or by a potential licensee—poses a significant future threat to the acquirer's dominance at some indefinite point. This theory substantially extends the traditional actual potential competition doctrine because it does not require that the target be a probable or imminent entrant into the incumbent's market in the absence of the acquisition. The Biden administration's enforcement agencies actively sought cases to apply this theory, particularly against dominant

[1] *See* United States v. Falstaff Brewing Corp., 410 U.S. 526, 531-37 (1973); United States v. Marine Bancorporation, 418 U.S. 602, 624-25 (1974).

[2] *But see* FTC v. Meta Platforms Inc., No. 5:22-CV-04325-EJD, 2023 WL 2346238 (N.D. Cal. Feb. 3, 2023) (denying FTC's Section 13(b) petition on actual and perceived potential competition theories).

technology platforms, but never found a suitable one to test in court. It remains to be seen how the second Trump administration will approach this area, but the indications are that it intends to retreat from the broader nascent competition concept. Both the FTC under Chairman Andrew Ferguson and the DOJ Antitrust Division under Assistant Attorney General Gail Slater have emphasized predictability and adherence to established potential competition doctrine, signaling a departure from the more expansive theories advanced under Khan and Kanter.[3]

As noted above, the Supreme Court has expressly recognized the elimination of perceived potential competition as an anticompetitive harm cognizable under Section 7. The Court, however, has reserved judgment on the elimination of actual potential competition.[4] Lower courts, the FTC, the 1984 DOJ Merger Guidelines, and the 2023 DOJ/FTC Merger Guidelines have recognized (or at least assumed arguendo) the elimination of actual potential competition as an anticompetitive harm under Section 7; no court, when presented with the theory, has refused to consider it.[5] From the 1980s until 2020, the federal enforcement agencies did not try a potential competition case since the 1980s. However, the agencies have alleged the elimination of actual potential competition in complaints in a number of cases that were resolved through consent settlements. Since 2020, the agencies have litigated two potential competition cases—*FTC v. Steris Corp.* (Steris/Synergy Health)[6] and *FTC v. Meta Platforms, Inc.* (Meta/Within)[7]—and lost both of them for failure of evidence. Although the agencies have filed two complaints in recent years alleging that the elimination of nascent competition violates Section 7 (if not Section 2 of the Sherman Act), no court has adjudicated the theory on the merits, so it remains judicially untested.[8] We may hear something from the courts on the theory, however, when Judge James Boasberg decides the FTC's challenge to Facebook's past acquisitions of Instagram and WhatsApp. At the time each company was acquired, they were arguably nascent, or at least distant potential, competitors of Facebook. The trial ended in late May 2025, after six weeks of

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[3] *See* Press Release, Fed. Trade Comm'n, FTC Chairman Applauds Revocation of Biden-Harris Executive Order on Competition (Aug. 13, 2025); Gail Slater, Ass't Att'y Gen., Antitrust Div., U.S. Dep't of Justice, Unleashing Innovation the American Way: Through Free Market Competition, Keynote Address at the 2025 Georgetown Law Global Antitrust Enforcement Symposium, Washington, DC (Sept. 16, 2025).

[4] *See* Marine Bancorp, 418 U.S. at 625; Falstaff, 410 U.S. at 537-38.

[5] *See, e.g.*, Yamaha Motor Co. v. FTC, 657 F.2d 971 (8th Cir. 1981); United States v. Siemens Corp., 621 F.2d 499 (2d Cir. 1980); FTC v. Atl. Richfield Co., 549 F.2d 289 (4th Cir. 1977); FTC v. Meta Platforms Inc., No. 5:22-CV-04325-EJD, 2023 WL 2346238, at *21 (N.D. Cal. Feb. 3, 2023); United States v. Phillips Petroleum Co., 367 F. Supp. 1226 (C.D. Cal. 1973), *aff'd sub nom.* Tidewater Oil Co. v. United States, 418 U.S. 906 (1974), *and aff'd*, 418 U.S. 906 (1974); Altria Group, Inc., No. 9393, 2022 WL 622476 (F.T.C. Feb. 23, 2022) (initial decision); B.A.T. Indus., No. 9135, 1984 WL 565384 (Dec. 17, 1984) *see also* FTC v. Steris Corp., 133 F. Supp. 3d 962, 966 (N.D. Ohio 2015) ("[T]he FTC has clearly endorsed this theory by filing this case, and the administrative law judge will be employing it during the proceeding. . . . Accordingly, in deciding the likelihood of success on the merits, the Court will assume the validity of this doctrine.").

[6] 133 F. Supp. 3d 962 (N.D. Ohio 2015) (rejecting FTC's theory that Steris' proposed $1.9 billion acquisition of Synergy Health would eliminate future competition in radiation sterilization services).

[7] 654 F. Supp. 3d 892 (N.D. Cal. Feb. 3, 2023) (rejecting FTC's theory that alleges that Meta's proposed $69 billion acquisition of Within would eliminate actual and perceived potential competition from Meta in virtual reality (VR) dedicated fitness applications).

[8] *See* First Amended Complaint for Injunctive and Other Equitable Relief, FTC v. Facebook, Inc., No. 1:20-cv-03590 (D.D.C. filed Aug. 19, 2021) (alleging in part that Facebook's acquisition of Instagram and WhatsApp eliminated nascent competition from the acquired companies in social networking) (in litigation); Complaint, United States v. Visa Inc., No. 3:20-cv-07810 (N.D. Ca. Nov. 5, 2020) (alleging that Visa's $5.3 billion acquisition of Plaid would eliminate a nascent competitive threat to Visa's online debit business) (deal abandoned before trial).

testimony before Judge James Boasberg. Both parties have completed their post-trial briefings, and a ruling is pending.

**Eliminating actual potential competition**

An actual potential competitor is a firm that does not currently compete in the relevant market but would enter in the near future, either de novo or through a "toehold" acquisition of a small, competitively insignificant incumbent firm. If, however, the actual potential entrant merges with a significant incumbent firm, its incentives to enter the market independently disappear, and the market will lose that measure of additional competition that the near-term future new entry would have entailed.

Although the target company is usually the putative actual potential entrant, the theory equally applies when the acquirer is the putative entrant. The latter situation occurs when the acquirer has a "make or buy" decision and chooses to buy rather than make.

Given this concept, several conditions are required for anticompetitive harm to result from the elimination of an actual potential entrant:

1. *Noncompetitiveness*. The relevant market in which the anticompetitive effect may occur must be operating noncompetitively prior to the acquisition. If the market is operating competitively, new entry cannot improve the competitive performance of the market. Some courts have held that a plaintiff may make out a prima facie case of this element through evidence of sufficiently high market concentration.[9]
2. *Uniqueness*. The putative potential entrant must be largely unique in its incentives and ability to enter the relevant market. If there are numerous other similarly situated potential entrants, eliminating one through acquisition is unlikely to affect the long-run level of competition in the market. The conventional wisdom is that the agencies are unlikely to challenge a transaction under the actual potential competition doctrine if three or more other firms share the entry advantages ascribed to the putative potential entrant.
3. *"Available, feasible means" of procompetitive entry*. The putative potential entrant must have the means of entering the market in the near future in a way that would likely improve the competitive performance of the target market. Courts recognize two procompetitive entry alternatives: de novo entry and "toehold" entry. For de novo entry to qualify as an "available, feasible means" of procompetitive entry, any barriers to entry into the market must not be so high as to make entry difficult and hence unlikely. For a toehold acquisition to qualify as an "available, feasible means" of procompetitive entry: (a) toehold firms must exist in the target market that, if acquired, would provide a viable avenue to developing a significant market presence; and (b) such firms must be available for acquisition, presumably on objectively reasonable terms.
4. *Incentive*. But for the acquisition, the putative potential entrant must have a sufficient incentive in addition to the ability to enter the market using one of the above means to make entry in the near future likely. Objective evidence of intent to enter (including in contemporaneous regular course of business documents) is usually the most

[9] *See Meta Platforms Inc.*, 654 F. Supp. 3d at 922.

compelling.[10] Courts are more mixed on the probative value of subjective testimony from the alleged actual potential entrant of its intent to enter or not enter the relevant market.[11]

5. *Procompetitive effect*. Assuming the potential entered the market in the absence of the acquisition, its entry must materially improve the competitive performance of the market.

The actual potential competition theory has not fared well in the courts. The usual problem is that the courts find that the preponderance of the evidence fails to show that the putative potential entrant would enter the market in the near future in the absence of the acquisition. Although testimony by the potential entrant's executives that they have not decided to enter the market is somewhat suspect by itself (given their support of the acquisition), the evidence usually also shows a lack of planning or the commitment of resources necessary to enter the market in the near term. The evidence also frequently shows a business case that entry would be unprofitable, or at least too risky to attempt prudently, and that the putative potential entrant has other opportunities to pursue that promise greater and less risky financial returns.

The "near future" is not well-defined in the case law.[12] The conventional wisdom is that entry should be likely within two years but for the acquisition. In some situations, however, courts may apply the actual potential entry doctrine where the potential entrant is committing the necessary resources and is on a well-defined path to enter the market, but regulatory approvals are likely to delay entry beyond two years. The prime example is the entry of pharmaceutical firms into new drugs requiring lengthy clinical trials for FDA approval.[13]

Fashioning an adequate remedy in an actual potential case can be difficult. In many cases, there may be no remedy short of divesting the incumbent operating business or blocking the acquisition in its entirety. In other cases, however, it may be possible to create actual entry by a viable competitor by divesting the assets of the potential entrant. For example, when Actavis

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[10] *See id.* at 932 ("The Court first notes that it will accord little weight to subjective evidence and statements provided by Meta employees during the course of this litigation. Although they are relevant, entitled to some weight, and no doubt offered by persons of character, the bias affiliated with such ex post facto testimony is widely recognized and unavoidable.").

[11] *Compare* Mercantile Texas Corp. v. Bd. of Governors of Fed. Rsrv. Sys., 638 F.2d 1255, 1270 (5th Cir. 1981) ("Not only is objective evidence undeniably probative, but subjective evidence is not required to establish a violation of the Clayton Act standard. On remand, the Board may rely exclusively on objective evidence if that evidence is sufficient to support the findings we require.") (internal citation omitted), *with* Meta Platforms, 654 F. Supp. 3d at 927 ("Here, the Court will first consider whether the objective evidence presented by the FTC supports the findings and conclusions necessary to satisfy the actual potential competition doctrine. If the objective evidence is weak, inconclusive, or conflicting, the Court will consult subjective evidence to illuminate the ambiguities left by the objective evidence, with the understanding that the subjective evidence cannot overcome any directly conflicting objective evidence."), *and with B.A.T. Industries*, 1984 WL 565384, at *26 (noting that "the inherent limitations of economic evidence mean that, standing alone," purely objective evidence could not "establish liability under the actual potential entrant theory") (Bailey, Comm'r, concurring). Many courts have also consulted both objective and subjective evidence in reaching their conclusions. *See, e.g.*, *Yamaha Motor*, 657 F.2d at 979; *Siemens Corp*., 621 F.2d at 507; *Phillips Petroleum*, 367 F. Supp. at 1239 (recognizing that subjective evidence is "relevant and entitled to consideration, [but] cannot be determinative").

[12] For cases requiring that the actual potential entrant be likely to enter in the "near future" absent the acquisition, see Tenneco, Inc. v. FTC, 689 F.2d 346, 352 (2d Cir. 1982); United States v. Siemens Corp., 621 F.2d 499, 505 (2d Cir. 1980); BOC Int'l, Ltd. v. FTC, 557 F.2d 24, 29 (2d Cir. 1977).

[13] The FTC has issued numerous complaints, all settled by a divestiture consent decree, that a combination between one pharmaceutical manufacturer with an incumbent drug with few if any competitors and another pharmaceutical manufacturer with a competing drug in the development pipeline although not yet FDA-approved violates Section 7.

sought to acquire Warner Chilcott, the FTC alleged that the transaction would eliminate actual potential competition against three Warner Chilcott-branded pharmaceutical products since Actavis would be the first, in the absence of the transaction, to manufacture and sell a generic version of these drugs.[14] As a remedy, the Commission accepted a consent order that required Actavis to divest all of its rights and assets relating to its generic versions of the drugs to Amneal Pharmaceuticals, a New Jersey-based generic pharmaceutical company.[15] At the time, Amneal marketed 65 products and maintained an active product development pipeline. The idea was that Amneal had the ability and incentive to "step into the shoes" of Actavis in developing the generic versions and entering the market with these products once it obtained FDA approval. Actavis was also required to supply generic versions of two of the products to Amneal for two years, which Amneal could extend at its option for up to two additional one-year terms.[16]

**Eliminating perceived potential competition**

A perceived potential competitor is a firm not currently selling in the market that incumbent firms regard as "on the wings" of the market, that is, ready, willing, and able to enter the market as a new independent participant but waiting because the financial returns on entry are not sufficiently attractive. The idea behind the perceived potential entrant doctrine is that incumbent firms recognize this threat of entry and the likely harm to them individually if entry occurs. With this recognition, the incumbent firms then act "more competitively" than they would in the absence of this threat to keep the financial returns on entry low and continue to discourage the potential entrant from actually entering. If, however, the perceived potential entrant merges with a significant incumbent firm in the market, the perceived potential entrant essentially becomes a "member of the club" and stops being a competitive threat, allowing incumbent firms to cease their endeavors to discourage the firm's independent entry by keeping the market more competitive. In this sense, eliminating a perceived potential entry through acquisition is anticompetitive because the acquisition removes the premerger procompetitive force exerted by the threat of independent entry.

Many of the necessary conditions for an anticompetitive effect to arise from eliminating perceived potential rivalry are closely related to the conditions of the actual potential competition doctrine. These conditions reflect the fact that firms are unlikely to be perceived as potential entrants unless they are actually likely potential entrants.

1. *Non-competitiveness*. For the elimination of perceived potential competition to have any anticompetitive effect, the market must be susceptible to coordinated interaction. An oligopolistic market structure is sufficient to satisfy this condition. Again, some courts

[14] Complaint ¶¶ 8-10, 12(b)-(c), *In re* Actavis, Inc., No. C-4414 (F.T.C. issued Sept. 27, 2013) (settled by consent order).

[15] Decision & Order, In re Actavis, Inc., No. C-4414 (F.T.C. issued Sept. 27, 2013); *see* Analysis of Agreement Containing Consent Orders To Aid Public Comment, *id*.

[16] For a related remedy, see Complaint ¶¶ 10, 12(b), *In re* Novartis AG, No. C-4364 (F.T.C. issued July 16, 2012) (alleging the elimination of actual potential generic competition against Solaraze, a branded drug sold by Fougera that is used to treat actinic keratosis), and Decision & Order, No. C-4364 (F.T.C. issued July 16, 2012) (consent decree requiring Novartis to withdraw from a marketing arrangement with Tolmar for a forthcoming generic version of Solaraze, return all rights in the generic version to Tolmar, and precluding Fougera from pursuing patent infringement litigation against Tolmar with respect to its generic product).

have held that a plaintiff may make out a prima facie case of this element through evidence of sufficiently high market concentration.[17]

2. *Perception as a likely potential entrant*. Incumbent firms must perceive the firm as a likely potential entrant. Courts are mixed on whether they are willing to credit subjective testimony from representatives of incumbent firms that they perceive the putative entrant as a perceived potential entrant or demand more objective evidence (such as contemporaneous regular course of business documents).

3. *Uniqueness*. Incumbent firms must regard the perceived potential entrant as largely unique in its incentives and ability to enter the relevant market. If there are numerous other similarly situated potential entrants in the minds of incumbent firms, the elimination of one through acquisition is unlikely to affect the long-run level of competition in the market. The conventional wisdom is that the agencies are unlikely to challenge a transaction under the actual potential competition doctrine if the entry advantages ascribed to the putative potential entrant are shared by three or more other firms.

4. *Incumbent reaction to the threat of entry*. Incumbent firms must be shown to be responding to the perceived threat of entry by lowering their prices, improving their product quality, or engaging in some other procompetitive activities to discourage the entry of the perceived potential entrant. Courts are mixed on whether they are willing to credit subjective testimony from representatives of incumbent firms that they are acting to deter entry because of the perceived threat of entry or demand more objective evidence (such as contemporaneous regular course of business documents).

5. *Anticompetitive effect*. It must be in the profit-maximizing interest of incumbent firms to cease some or all of their procompetitive entry-deterring conduct in the wake of the acquisition to the detriment of competition in the market.

Ironically, although the Supreme Court has recognized the elimination of perceived potential competition as a valid theory of anticompetitive harm, the agencies have rarely invoked the theory since 1980.[18] There is no remedy for the elimination of perceived potential competition short of enjoining the transaction.

With this background, you should be able to read quickly the class notes for more background on the theories of perceived and actual potential competition (slides 3-22). I will give you an overview in class of some of the cases in which consent decrees have been entered on the actual potential competition theory.

The materials on the STERIS/Synergy Health case are well worth reading (pp. 3-48). However, I recommend starting with the rest of the reading guidance and the class notes, then returning to the case materials. Judge Dan A. Polster's opinion illustrates the evidentiary rigor required by modern courts to prove an actual potential competition theory under Section 7. The FTC contended that Steris' $1.9 billion acquisition of Synergy Health would eliminate Synergy as an

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[17] *See Meta Platforms Inc.*, 654 F. Supp. 3d at 922.

[18] The only litigated case brought by the Justice Department or FTC since the 1980s is *Meta Platforms Inc.*, 654 F. Supp. 3d at 939-41 (finding the FTC sufficient pleaded the potential competition theory in its complaint but finding on the record that the objective evidence did not support a reasonable probability that firms in the relevant market perceived Meta as a potential entrant and tempered their affected competitive activity as a result).

"actual potential entrant" into the U.S. market for contract sterilization services by halting its plan to introduce commercial x-ray sterilization technology that could compete with Steris' gamma facilities. The court, however, denied a preliminary injunction, holding that the FTC failed to show Synergy "probably would have entered" the U.S. market absent the merger. The record confirmed that Synergy's x-ray entry project had dedicated internal advocates who actively promoted U.S. market entry from 2013 through 2014 and that work on the project continued for four months after the merger was announced in October 2014 before being terminated in February 2015. Judge Polster found that this timing—rather than immediate termination upon announcement—"may actually be the best evidence that it was done for legitimate business reasons" rather than anticompetitive motive. He credited contemporaneous business evidence showing a complete absence of firm customer commitments or revenue guarantees (customers expressed only "academic" interest), the high capital and risk burden the $40 million project posed (described as a "bet the farm" investment for Synergy), and buyers' reluctance to switch from gamma to x-ray sterilization given conversion costs of $250,000 to $500,000 per product plus FDA approval requirements. In the court's view, those commercial realities, not the pending merger, explained the project's suspension—underscoring that speculation about uncertain entry cannot sustain a potential competition challenge without credible proof that entry was both probable and imminent.

**Eliminating nascent competition**

In recent years, reformers have been agitating for the antitrust laws to do something about well-entrenched monopolies, especially in high-tech industries. This has resulted in a focus on so-called "nascent competitors." A "nascent competitor" is a firm that can potentially threaten a dominant firm's position at some time in the future. The threat usually resides in the nascent competitor's development of a new technology or product that could possibly shift share away from the dominant firm.

The actual potential competition doctrine requires, among other things, that (1) but for the acquisition, the putative potential entrant would have sufficient incentive and ability to make entry in the market reasonably probable in the near future, and (2) assuming entry occurred, the entry must have a reasonable probability of materially improving the competitive performance of the market.

By their nature, "nascent competitors" almost always fail to satisfy these requirements. At the time of the acquisition, the nascent competitor may not be actively considering entering the market with a product competitive with the acquiring dominant firm. Even if the nascent competitor is considering entering the market—or selling itself or licensing its technology to a third party that would enter the market—entry may be more distant than in "the near future." And even if entry is contemplated in the near future, the technological and commercial success of entry—and the competitive impact of entry—may be highly speculative.

Even so, proponents of challenging acquisitions by dominant firms of nascent competitors argue that even a slight chance of disrupting the acquirer's market dominance at some point in the future should be preserved for the benefit of society. The argument is most compelling in the case of a so-called "killer acquisition," where a dominant firm acquires a new, potentially competitive technology specifically to suppress it. The idea, of course, is that suppressing a new technology yields no societal benefits and could cause substantial harm by stifling innovation. However, identifying "killer acquisitions" is challenging in practice. Sophisticated acquiring firms typically defend the acquisition

by claiming that they intend to accelerate the development of the acquired technology and integrate it into new, improved products. As a result, discerning whether an acquisition is genuinely intended to suppress competition or foster innovation can be difficult.

In any event, to deal with the failure of the actual potential competition doctrine as currently interpreted by the courts to deal with nascent competitors, some commentators have suggested that the government enforcement agencies and other challengers allege a Section 2 monopolization or attempted monopolization violation in addition to a Section 7 claim. They argue that when a firm with monopoly power acquires a nascent competitor that could threaten its monopoly, it constitutes an actionable exclusionary act to maintain the incumbent's monopoly. No court to date, however, has ruled on the application of Section 7 or Section 2 on this theory.

Read the slides on nascent competitors (slides 23-38) to get some more background. That is probably enough. But if you are interested, read the materials on the DOJ's challenge to Visa's proposed acquisition of Plaid (pp. 50-81) and the FTC's challenge to Facebook's acquisition of Instagram and WhatsApp (pp. 83-162, although pages 108-24 and 158-61 would be sufficient).

The Visa/Plaid case is not a pure nascent competitor case because, according to the DOJ's complaint, Plaid indicated it would enter the market with a product that could undermine Visa's position in credit cards.[19] But what makes the case interesting are the concerns expressed by Visa management about the nascent competitive threat Plaid posed if Visa did not acquire it, either on its own or, perhaps more concerning, in the hands of another acquirer. The case squarely raises the issue of what the enforcement agencies and the courts should do when there is substantial evidence that the acquisition was partly, if not principally, motivated by the acquiring company's desire to keep the target out of the hands of another acquirer to suppress possible future competition.

The FTC's complaint against Facebook portrays its acquisitions of Instagram and WhatsApp as deliberate efforts by Facebook to eliminate emerging threats before they could erode its monopoly position in personal social networking. In the Instagram section (pp. 108-116), the FTC relies heavily on internal communications from Mark Zuckerberg and other executives acknowledging Instagram's rapid growth, shift to mobile, and capacity to compete for users as evidence to show anticompetitive intent. The WhatsApp section (pp. 116-124) extends this logic, arguing that WhatsApp's expanding user base and privacy-oriented model placed it on a trajectory to evolve into a substitutable social platform. The FTC's theory of harm links both deals to Facebook's broader "buy-or-bury" strategy: by purchasing each firm, Facebook neutralized potential competitors and protected its network-effects moat. This represents an ambitious attempt to transform traditional potential-competition doctrine—normally applied to firms on the verge of entry—into a retrospective monopolization claim rooted in acquisitions of far-earlier, still-hypothetical threats. The case thus raises core questions about evidentiary sufficiency and causation in proving that an acquisition of a nascent innovator likely altered the competitive trajectory of an already-dominant platform.

As always, email me if you have any questions.

[19] The DOJ's complaint is surprisingly light on the allegations that Plaid was contemplating entry. This suggests that something else was going on here. What do you think it might be?