

George S. Cary and Marian R. Bruno

*Merger Remedies*

49 Admin. L. Rev. 875 (1997)

Abstract by Alex M. Johnson

This article focuses on the Federal Trade Commission's (FTC) authority to issue divestiture orders as a remedy to illegal mergers in light of a study commissioned by sub-agencies of the FTC which articulated the problems of the divestiture process. Traditionally, the subject of divestiture orders arises in the context of consent agreements which are an alternative to complete nullification of an illegal merger transaction in violation of anti-competitiveness policies. The author examines the various reforms that the FTC undertook, including changing the divestiture period from twelve months to six months; requiring affected parties to identify up-front buyers as well as satisfactory assets; instituting a trustee provision that upon FTC approval allows completion of the divestiture process; and implementing a procedural mechanism that uses IPO's to execute divestitures. Additionally, the article addresses the potential consequences of parties who fail to meet the deadline for completing their divestiture and identifies the range of available options to avoid such penalties.