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I. INTRODUCTION

During the 2008 Presidential election, Barack Obama promised to "reinvigorate" antitrust enforcement in the United States. Candidate Obama focused in part on merger enforcement, an area in which he promised to "step up review of merger activity and take effective action to stop or restructure those mergers that are likely to harm consumer welfare."[2] Candidate Obama also argued, "we probably have to update how we approach antitrust to figure out what is truly anticompetitive behavior."[3] Following his election, observers predicted a significant change of position at both the Department of Justice Antitrust Division ("DOJ") and the Federal Trade Commission ("FTC") (collectively, the "Agencies").

Subsequent merger cases suggest that the Agencies revised their approach, sometimes significantly. These changes were particularly evident in the realm of merger remedies. During President Obama's first term, the Agencies—particularly the DOJ—imposed a string of novel merger remedies, including: (i) compulsory innovation (Google-ITA); (ii) compulsory FRAND licensing of a product that did not yet exist (also Google-ITA); (iii) the imposition of divestitures creating two new competitors to replace the loss of one competitor (Ticketmaster-Live Nation); (iv) prospective mandates on the level of employment and output (Gazette-Daily Mail); (v) long-term bans on serving specific current clients (Ticketmaster-Live Nation and Election Systems & Software-Premier Election Solutions); and (vi) significant restrictions on the use of intellectual property ("IP"), particularly patents in the pharmaceutical industry (Perrigo-Paddock) or those viewed as standard-essential (Bosch-SPX and Google-Motorola).

These novel remedies represent a significant and potentially troubling departure from traditional agency practice. During both the Clinton and Bush Administrations, the Agencies consistently held that some remedies, particularly conduct remedies, were likely to impose many costs and few benefits. But the Agencies revived a number of previously disfavored remedies during the first Obama Administration, including what the DOJ now characterizes as a "panoply" of conduct remedies.[4] In the aggregate, these remedies represent a significant

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[2] *See* Jacqueline Bell, *Obama to Take Aggressive Stance on Antitrust*, LAW360.COM, Oct. 31, 2008, http://www.law360.com/articles/75182/obama-to-take-aggressive-stance-on-antitrust (quoting Mr. Obama's statements from the campaign trail).

[3] *Id.*

[4] U.S. DEP'T OF JUSTICE ANTITRUST DIVISION, ANTITRUST DIVISION POLICY GUIDE TO MERGER REMEDIES 13, June 2011 [hereinafter 2011 POLICY GUIDE], http://www.justice.gov/atr/public/guidelines/205108.pdf ("There is a panoply of conduct remedies that may be effective in preserving competition.").

departure from the core merger remedy principles upon which the Agencies have traditionally operated.

Two caveats apply. First, our assessment is based on imperfect (and asymmetric) information. We readily acknowledge that non-public facts may justify remedies that, given our more limited view of a case, appear counterintuitive or ill-suited. We readily acknowledge that, were we privy to the same information as the Agencies, we may draw different conclusions with respect to a particular case than the ones we have reached and describe here. Yet these are largely concerns on the margin; the prevalence of novel remedies *in the aggregate* suggests a fundamental shift in Agency merger policy during the first Obama Administration.

Second, our comments are largely limited to merger remedies adopted by the Agencies during the first Obama Administration. More recent cases—such as United Technologies-Goodrich at the DOJ and General Electric-Avio at the FTC—suggest that both agencies may have returned to a more traditional approach.

II. HISTORICAL AGENCY APPROACH TO REMEDIES

At bottom, the Agencies seek remedies that will effectively replace lost competition. Thus, the Agencies historically have avoided remedies that either (i) are likely to be ineffective or (ii) go beyond the steps necessary to effectively replace lost competition. Both Agencies enshrined this approach in official guidance documents. The FTC addresses merger remedies in its *Frequently Asked Questions About Merger Consent Order Provisions* ("the FAQs"), which it first adopted in 2002.[5] The FAQs state as their basic principle: "that any divestiture or remedial provision must be considered sufficient to maintain or restore competition."[6] The FAQs are, in turn, modeled in large part on the findings of *A Study of the Commission's Divestiture Process* ("Divestiture Study"), which the FTC released in 1999.[7] To replace lost competition, the Divestiture Study contemplated only divestitures that created one new entrant in a given market;[8] it does not address, let alone endorse, any situations that would result in divestitures to two or more entities operating in the same relevant market.[9]

The DOJ took a similar view in its 2004 *Policy Guide to Merger Remedies*, emphasizing that "[a]lthough the remedy should always be sufficient to redress the antitrust violation, the purpose of a remedy is not to enhance premerger competition but to restore it."[10] The *Policy*

[5] FED. TRADE COMM'N, FREQUENTLY ASKED QUESTIONS ABOUT MERGER CONSENT ORDER PROVISIONS n.1, http://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/mergers/merger-faq [hereinafter FTC Merger FAQs].

[6] *Id.* n.1.

[7] STAFF OF THE BUREAU OF COMPETITION OF THE FED. TRADE COMM'N, A STUDY OF THE COMMISSION'S DIVESTITURE PROCESS (1999).

[8] *Id.* at iii ("The divestiture must be to a suitable entity—one that can replace the competition lost as a result of a merger —and the Commission must be able to approve both the buyer and the manner of divestiture.").

[9] *Id.* at 9 (noting that "[i]n some of the orders, multiple buyers were involved," but that these situations involved "a different buyer for each [retail store] site" or "where the assets to be divested included more than one product line").

[10] U.S. DEP'T OF JUSTICE ANTITRUST DIVISION, ANTITRUST DIVISION POLICY GUIDE TO MERGER REMEDIES 7, October 2004 [hereinafter 2004 POLICY GUIDE], http://www.justice.gov/atr/public/guidelines/205108.pdf.

Guide also noted that "restoring competition is the only appropriate goal with respect to crafting merger remedies."[11]

The Agencies also professed a strong preference for structural remedies. For example, the FTC adopted guidance stating that "most orders relating to a horizontal merger will require a divestiture" and noted in passing that "[c]onduct relief also may be required to remedy the anticompetitive effects of a vertical merger."[12] The DOJ took a similar view in the 2004 edition of its *Policy Guide*, which expressly noted that "structural remedies are preferred to conduct remedies in merger cases because they are relatively clean and certain, and generally avoid costly government entanglement in the market."[13] The *Policy Guide* also noted that because conduct remedies are "more difficult to craft, more cumbersome and costly to administer, and easier . . . to circumvent,"[14] the DOJ will consider conduct remedies either (i) "as an adjunct to a structural remedy" or (ii) when a structural remedy is either infeasible or would reduce economic efficiency.[15]

When the Agencies deem conduct remedies appropriate, they traditionally have limited their type and scope. For example, when the FTC's *Negotiating Merger Remedies* guidance document addresses conduct remedies, it notes that "conduct relief may include a requirement to erect firewalls to protect confidential information or a requirement not to favor certain entities."[16] Although the FTC's guidance does not foreswear other conduct remedies, it does suggest that the FTC takes a limited view of the types of permissible conduct remedies. This view also appears in the FAQs, which—beyond structural remedies—indicate that the FTC has in the past considered "certain transitional obligations, employee non-solicitation and incentive provisions and information firewalls."[17]

The DOJ's 2004 *Policy Guide* took essentially the same view, naming "firewalls, fair dealing, and transparency provisions" the "most common forms of stand-alone conduct relief."[18] Even for these limited conduct remedies, however, the DOJ cautioned that they "can present substantial policy and practical concerns."[19]

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[11] *Id.*

[12] FTC Merger FAQs, *supra* note 5, Question 1; FED. TRADE COMM'N, STATEMENT OF THE FEDERAL TRADE COMMISSION'S BUREAU OF COMPETITION ON NEGOTIATING MERGER REMEDIES [hereinafter Negotiating Merger Remedies], http://www.ftc.gov/tips-advice/competition-guidance/merger-remedies

[13] 2004 POLICY GUIDE, *supra* note 10, at 7.

[14] *Id.* at 18.

[15] *Id.*

[16] Negotiating Merger Remedies, *supra* note 12.

[17] FTC Merger FAQs, *supra* note 5, Question 1 ("For example, most orders relating to a horizontal merger will require a divestiture . . . . This general listing is not exhaustive; past orders have frequently included other provisions, such as certain transitional obligations, employee non-solicitation and incentive provisions and information firewalls.").

[18] 2004 POLICY GUIDE, *supra* note 10, at 22.

[19] *Id.* ("The most common forms of stand-alone conduct relief are firewall, fair dealing, and transparency provisions. As discussed below, however, their ongoing use, along with that of all other forms of stand-alone conduct relief, can present substantial policy and practical concerns.").

III. "UPDATING" THE AGENCIES' APPROACH DURING THE FIRST OBAMA ADMINISTRATION

Both Agencies accepted unusual merger remedies during the first Obama Administration. However, each agency took a slightly different approach; the DOJ developed several unusual conduct remedies, primarily for vertical mergers, whereas the FTC focused its efforts on regulating the use of intellectual property rights. Given these contextual differences, we discuss each in turn below.

A. Changes at the Department of Justice

Between 2010 and 2011, the DOJ imposed a series of novel conduct remedies designed to ameliorate competitive harms in vertical mergers. Although the DOJ sometimes also adopted more conventional conduct remedies,[20] several of these consent decrees featured novel terms. Relatedly, one of these vertical mergers also featured an unusual structural remedy. Perhaps to reflect these changes, the DOJ also updated its *Policy Guide on Merger Remedies* in June 2011.[21]

In some cases, the DOJ barred the merging parties from continuing existing commercial arrangements. In Ticketmaster-Live Nation, for example, the DOJ facilitated the entry of Anschutz Entertainment Group ("AEG") by requiring Ticketmaster to: (i) provide AEG with an AEG-branded primary ticket service supported by Ticketmaster technology for up to five years; (ii) grant AEG an option to acquire a royalty-free license to use Ticketmaster's then-current platform within a four year window; *and* (iii) once the five-year support period ended, abstain from providing primary ticketing services to AEG.[22]

Similarly, in Election Systems & Software-Premier Election Solutions ("ES&S-Premier"), a horizontal merger, the parties agreed to a divestiture remedy that barred the company from bidding for certain contracts with customers who used the acquired Premier equipment.[23] In

[20] Specifically, the DOJ obtained conduct remedies that were more or less in line with their pre-2010 objectives in one vertical merger case settled during that time, GrafTech's acquisition of Seadrift. In that case, the parties agreed (i) to erect a firewall between the upstream and downstream businesses, (ii) to terminate a most-favored nation (MFN) clause GrafTech held with a competing upstream supplier, and (iii) to terminate an information sharing agreement related to a since-terminated supply agreement. United States v. GrafTech Int'l Ltd., No. 10-02039, §§ IV.A.-IV.C., V.A. (D.D.C. Mar. 24, 2011) (Final Judgment). Somewhat unusually, however, the parties also agreed to provide certain ordinary-course documents to the DOJ each quarter and notify the DOJ of certain changes in Seadrift's production. *Id.* § IV.C.

[21] U.S. DEP'T OF JUSTICE ANTITRUST DIVISION, ANTITRUST DIVISION POLICY GUIDE TO MERGER REMEDIES, June 2011, http://www.justice.gov/atr/public/guidelines/272350.pdf [hereinafter 2011 POLICY GUIDE].

[22] United States v. Ticketmaster Entm't, Inc., No. 10-00139, § IV.A.2 (D.D.C. July 30, 2010) (Final Judgment) (describing the divestiture and limiting a private label ticketing arrangement between Ticketmaster and AEG to "a period of no more than five years from the date of execution of the license"); *see also* Competitive Impact Statement at 14, United States v. Ticketmaster Entm't Inc., No. 10-00139 (D.D.C. filed Jan. 25, 2010) ("The Final Judgment gives AEG incentives to exercise its option to acquire a copy of Host (or to develop or acquire a competing primary ticketing platform) by prohibiting Defendants from providing primary ticketing services to AEG's venues after AEG's right to use the AEG Site expires. That provision is critical to preserving competition in the primary ticketing services market because it guarantees that, within five years, AEG will have to either supply its own primary ticketing services or obtain them from some company other than the merged firm.").

[23] United States v. Election Sys. & Software, Inc., No. 10-00380, § IV.L. (D.D.C. June 30, 2010) (Final Judgment) (apart from a few small exceptions, "Defendant may not use such a license to attempt to compete for any opportunity to sell or lease Premier Voting Equipment System Products contained within a Request for Proposal (or

both cases, the DOJ appeared to sacrifice competition for some customers—such as those in ES&S-Premier that used Premier equipment—in an effort to create a viable alternative supplier for those customers not subject to the DOJ's ban. These remedies thus replaced competition only for a portion of the market; for the remaining customers, the remedies actually limit competition.

The DOJ imposed another creative remedy in the Google-ITA transaction: a compulsory innovation conduct remedy. To address concerns that Google would not maintain and upgrade ITA's existing product, called QPX, the settlement required Google to "devote substantially the same resources to the research and development and maintenance of QPX for the use of customers as ITA did in the average of the two years prior to the filing of the Complaint."[24] The settlement also required Google to create a new product, InstaSearch, that ITA was in the process of developing. Specifically, the settlement commits Google to undertaking "commercially reasonable efforts to ensure that the InstaSearch implementation conforms to the proposed technical specifications" and, if Google provides a version of InstaSearch that is better than the proof of concept specifications, commits Google to "make that improved product available to all OTIs."[25]

The DOJ also imposed complicated FRAND licensing obligations in two cases, Ticketmaster-Live Nation and Google-ITA.[26] While FRAND royalty calculations are perceived as complex even in ordinary cases, the Google-ITA consent added even more complexity to that analysis by requiring Google to sell on FRAND terms a product (InstaSearch) that did not yet exist.[27]

In a newspaper case, *Charleston Gazette-Daily Mail*, the DOJ required the divestiture of one paper, the *Daily Mail*, and set unusually detailed ongoing conduct obligations for it. To restore competition to its pre-close levels, the Final Judgment required the divestiture purchaser, MediaNews (or, in some cases, the associated joint venture formed under the Newspaper Preservation Act), to publish the *Daily Mail* daily, to budget for a staff of 32 full-time news and editorial employees, to offer a 50 percent discount on the purchased newspaper for at least six months, and thereafter to provide the same discount for both the *Daily Mail* and the *Gazette*.[28] Although the DOJ faced a less-than-ideal remedial situation, including a long-since consummated transaction and a joint operating agreement promising ongoing entanglement between the *Gazette* and the *Daily Mail* post-divestiture,[29] the DOJ's unusually detailed remedy is

RFP) or a Request for Quote (or RFQ) for a voting equipment system, or any upgrade, request or order that calls for replacement of 50 percent or more of a customer's installed voting equipment").

[24] Competitive Impact Statement at 10, United States v. Google Inc., No. 11-00688 (D.D.C. filed Apr. 8, 2011) [hereinafter Google-ITA Competitive Impact Statement]; *see also* United States v. Google Inc., No. 11-00688, § IV.F. (D.D.C. Oct. 5, 2011) (Final Judgment).

[25] Google-ITA Competitive Impact Statement, *id.*, at 11-12.

[26] *Ticketmaster Entm't, Inc.*, No. 10-00139, § IV.A.2 (Final Judgment); *Google*, No. 11-00688, §§ IV.A-IV.H. (Final Judgment).

[27] *Google*, No. 11-00688, § IV.H. (Final Judgment).

[28] United States v. Daily Gazette Co., No. 07-0329, § IV.B. (S.D. W.V., July 19, 2010) (Final Judgment).

[29] *See, e.g.*, Complaint ¶¶ 13-23, United States v. Daily Gazette Co., No. 07-0329 (S.D. W.V. filed May 22, 2007).

uncomfortably reminiscent of the Civil Aeronautics Board's regulation of airlines' sandwich sizes in the 1970s.[30]

Finally, the DOJ adopted an unusual structural remedy in Ticketmaster-Live Nation. As noted above, both agencies seek to adopt remedies that will replace lost competition effectively. But the agencies traditionally have not sought to make a market more competitive than it was pre-merger. Along with the various conduct remedies imposed in Ticketmaster-Live Nation, however, the DOJ adopted structural remedies designed to induce the entry of two new competitors (AEG and Comcast-Spectacor) to replace the one acquired firm (Live Nation).[31] Shortly after the merger, Assistant Attorney General Christine Varney acknowledged in Senate testimony that "[t]he settlement requires Ticketmaster to divest more ticketing than it will gain through its acquisitions of Live Nation."[32]

Perhaps to reflect its new approach to merger remedies, the DOJ issued a revised *Policy Guide* in June 2011.[33] The revised *Policy Guide* formally expands both the frequency with which the DOJ will impose conduct remedies and the species of conduct remedies it may consider. The revised version deletes any claim that conduct remedies are disfavored, particularly in the vertical merger context.[34] Although the revised *Policy Guide* expresses no limitation on the types of conduct remedies the DOJ will consider, it notes that "[t]here is a panoply of conduct remedies that may be effective in preserving competition."[35] This list includes provisions endorsed by the previous version of the *Policy Guide*, such as firewalls and "fair dealing" (non-discrimination) provisions, but also endorses more unusual provisions such as mandatory licensing, anti-retaliation provisions, and prohibitions on "certain kinds of contracting practices."[36] The revised edition also excises a passage noting that the ongoing use of conduct remedies—which the DOJ then limited primarily to firewalls, "fair dealing," and transparency provisions—"can present substantial policy and practical concerns."[37]

Consistent with this approach, AAG Varney defended the DOJ's record of unusual vertical merger remedies and *Policy Guide* revisions. In an interview in the *Wall Street Journal*, she argued that vertical mergers do not present the DOJ with "binary choices," and thus the DOJ is best served by using its full complement of remedies, including conduct remedies.[38]

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[30] The CAB's micromanagement of airlines' operations (including sandwich sizes) led then-CAB Chairman Alfred E. Kahn to ask, "Is this what my mother raised me to do?" *See* HERBERT HOVENKAMP, THE OPENING OF AMERICAN LAW: NEOCLASSICAL LEGAL THOUGHT, 1870-1970, at 321 (2015) (providing quote without attribution). Kahn went on to become the "Father of Deregulation."

[31] *Ticketmaster Entm't, Inc.*, No. 10-00139, §§ IV.A, IV.E (Final Judgment).

[32] Statement of Christine A. Varney, Ass't Atty. Gen., Antitrust Div., Before the Subcomm. on Antitrust, Comp. Pol'y & Consumer Rights, Senate Comm. on the Judiciary, Oversight of the Enforcement of the Antitrust Laws, at 3, June 9, 2010, *available at* http://www.justice.gov/atr/public/testimony/259522.pdf.

[33] 2011 POLICY GUIDE, *supra* note 21.

[34] *Id.* at 12.

[35] *Id.* at 13.

[36] *Id.*

[37] 2004 POLICY GUIDE, *supra* note 10, at 22 ("The most common forms of stand-alone conduct relief are firewall, fair dealing, and transparency provisions. As discussed below, however, their ongoing use, along with that of all other forms of stand-alone conduct relief, can present substantial policy and practical concerns.").

[38] Thomas Catan & Gina Chon, *Antitrust Chief to Step Down*, WALL ST. J., July 7, 2011, *available at* http://online.wsj.com/articles/SB10001424052702303544604576430171298566868.

B. FTC Cases

The FTC also experimented with unusual merger remedies during the first Obama Administration. In contrast to its sister agency's focus on conduct remedies, the FTC focused more narrowly on regulating the use of IP rights, particularly those in the pharmaceutical industry or those viewed as standard-essential. In at least three cases, the FTC imposed conduct remedies regulating IP and IP litigation not directly implicated by the transaction at issue. Notably, all three cases came towards the end of the first Administration.

First, in Perrigo's 2012 acquisition of Paddock, the FTC worried that payments received by Paddock under a back-up supply agreement would, post-merger, change Perrigo's incentives to develop a generic version of the prescription drug AndroGel.[39] To remedy this concern, the FTC severely limited Perrigo's ability to settle Hatch-Waxman Act litigation related to the prescription drug AndroGel, for the most part barring Perrigo from receiving "anything of value" to take any action "that otherwise deters, prevents, or inhibits" Perrigo's ability to sell generic AndroGel.[40] Although the acquisition did tangentially involve the AndroGel supply agreement, the FTC's contemporaneous action against patent settlements in other cases suggests that the remedy was designed to serve the FTC's broader policy goals.

Second, in November 2012, the FTC imposed a similar remedy as part of Bosch's acquisition of SPX. The FTC addressed the primary issue, increased horizontal concentration, through a divestiture remedy.[41] However, in response to pre-merger conduct by acquired company SPX, the FTC also required Bosch to license certain SPX SEPs on FRAND terms and to abandon pending patent litigation initiated by SPX.[42]

Third, in early January 2013, the FTC cleared Google's acquisition of Motorola Mobility with conditions intended to regulate Google's IP rights. The consent order required Google to honor FRAND commitments made on any standard-essential patents ("SEPs") issued or pending "in the United States or anywhere else in the world,"[43] without regard to whether they were part of the acquisition. The order also required Google to cease and desist from asserting its FRAND-encumbered SEPs in most patent litigation contexts.[44]

IV. RECENT TRENDS

Recent trends suggest that the agencies have returned to more conventional merger remedies. This trend is particularly apparent for vertical mergers, which are more susceptible to creative conduct remedies, particularly under the DOJ's 2011 *Policy Guide*. Two recent vertical mergers—one at each agency—provide useful, albeit limited, indications that the agencies are returning to more traditional approaches.

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[39] Complaint ¶15, *Perrigo Co.*, FTC Docket No. C-4329 ("The proposed acquisition would make Perrigo a party [a back-up supply] agreement [with Abbott and Par], thereby enhancing Abbott's and Perrigo's ability to coordinate on delaying the introduction of Perrigo's product into the market.").

[40] *Perrigo Co.*, FTC Docket No. C-4329, § IV.B, (July 26, 2011) (Decision & Order).

[41] *Bosch*, FTC Docket No. C-4377, § II (Apr. 24, 2013) (Decision & Order).

[42] *Id.* § IV.

[43] *Motorola Mobility LLC*, FTC Docket No. C-4410, §§ I.J., I.R., II.A. (July 24, 2013) (Decision & Order) (defining the term "FRAND Commitment" and ordering Google not to "revoke or rescind any FRAND Commitment" unless certain conditions were met).

[44] *Id.* §§ II.B-II.E.

Although the 2011 *Policy Guide* remains untouched, in the next significant vertical merger, United Technologies' 2012 acquisition of Goodrich, the DOJ imposed remedies more consistent with the FTC's policy statement than its own. United Technologies ("UTC") manufactured both the finished downstream product—aircraft turbines—and a significant component incorporated in the finished product, whereas Goodrich manufactured several upstream components for several downstream aircraft turbine manufacturers, including UTC competitor Rolls-Royce.[45] The DOJ was concerned that these linkages raised unilateral competitive effects issues for two products—large main engine generators and aircraft turbine engines—and coordinated effects issues for a third product, engine control systems for large aircraft systems.[46] Unlike Ticketmaster-Live Nation and its sibling settlements, however, the DOJ consent decree relies principally on structural divestitures, limiting conduct remedies—such as transition services and supply agreements—to those necessary to support the divestiture remedy.[47] That is, the DOJ once again limited conduct remedies to a complementary, rather than substitute, role.

Shortly after UTC-Goodrich, the FTC similarly imposed limited conduct remedies to settle concerns involving General Electric's ("GE") acquisition of Avio. Like UTC-Goodrich, the case concerned vertically related entities in the aircraft turbine supply chain; GE manufactured aircraft turbine engines, whereas Avio furnished critical components to GE and its competitors.[48] Unlike the DOJ cases, the parties agreed to a fix-it-first divestiture remedy.[49] To supplement the divestiture, the consent decree (i) imposes a firewall protecting competitively sensitive information on its downstream competitors held by Avio and (ii) prohibits GE from influencing Avio's development of a component for its rivals.[50]

V. CONCLUSION/RECOMMENDATIONS

Although we do not have perfect information, some of these merger remedies trouble us. Some agency remedies, such as compulsory innovation, compulsory licensing, and detailed conduct remedies that border on industrial engineering, risk exactly the kind of "costly government entanglement in the market" that the 2004 *Policy Guide* sought to avoid. Although it is difficult to say with certainty whether any individual remedy was appropriate, in the aggregate these remedies represented a significant shift in agency merger policy. The DOJ took it one step further, formalizing the change by revising its official *Policy Guide* in 2011.

However, we take comfort from the remedies in UTC-Goodrich and GE-Avio, which appear to signal the Agencies' return to more traditional merger remedies. We hope the Agencies will remain on their newfound course, and urge the DOJ to formalize this return to traditional remedial measures in the *Policy Guide* by formally reverting to its 2004 language.

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[45] Competitive Impact Statement at 13-18, United States v. United Techs. Corp., No. 12-01230 (D.D.C. filed July 26, 2012).

[46] *Id.*

[47] United States v. United Techs. Corp., No. 12-01230, §§ IV-VI (D.D.C. May 29, 2013) (Final Judgment).

[48] Complaint ¶¶ 8-14, *General Electric Co.*, FTC Docket No. C-4411 (filed Aug. 30, 2013).

[49] Press Release, Fed. Trade Comm'n, General Electric Agrees to Settlement with FTC that Allows the Purchase of Avio's Aviation Business, July 19, 2013, http://www.ftc.gov/news-events/press-releases/2013/07/general-electric-agrees-settlement-ftc-allows-purchase-avio%E2%80%99s (noting that "[t]he proposed order settling the FTC's charges builds on a commercial agreement GE, Avio, and Pratt & Whitney recently negotiated").

[50] *General Electric Co.*, FTC Docket No. C-4411, §§ III-V (Aug. 30, 2013) (Decision & Order).