UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Commissioner
Mark R. Meador

Statement of Commissioner Mark R. Meador
In the Matter of Providence Equity Partners L.L.C. and Cantaloupe, Inc.
Matter No. 2510100

May 1, 2026

I vote to approve the Complaint and Consent Order in this matter. This transaction and the negotiated remedies represent a strong example of the efficiency of the premerger review program and illustrates how early, good-faith engagement can yield settlement outcomes that restore competition and benefit consumers. The parties engaged with staff promptly and constructively and worked cooperatively throughout the investigation. As I have stated before, parties and counsel appearing before the Commission have an obligation to operate in good faith. That obligation was met here, which facilitated a remedy that fully addressed the competitive concerns that staff identified during the Commission's review of the proposed transaction.

The statement below elaborates on my views regarding why this transaction—specifically, the use of serial acquisitions and the potential threat for the merged firm to engage in exclusionary conduct post-transaction given its existing dominant position—raises competitive concerns that warrant significant scrutiny. It also explains why the proposed remedy alleviates these concerns and how different circumstances could have warranted a different outcome.

Industry Background

As alleged in the Commission's complaint, 365 Retail's proposed acquisition of Cantaloupe, in its original form, would have significantly strengthened 365 Retail's already dominant position of more than a 70% share in the highly concentrated national market for the sale and provision of micromarket kiosks and related software and services to foodservice operators.[1] The complaint further alleges that the acquisition of Cantaloupe's software services, combined with 365 Retail's significant hardware assets, would have created a substantial risk of foreclosure by providing 365 Retail with both the incentive and the enhanced technical capability to exclude rivals by limiting interoperability and other critical functionalities and making it harder to switch providers.[2]

For context, micromarket kiosks are self-checkout point-of-sale systems that allow customers to purchase items in unattended micromarkets. Within this national market, the parties

[1] Complaint ¶ 20, *In re* Garage Topco LP, PEP VIII Intermediate 7 L.P., 365 Retail Markets, LLC, and Cantaloupe, Inc., Matter No. 2510100 (May 1, 2026).
[2] *Id.* ¶ 30.

are significant head-to-head competitors, with 365 Retail serving as the largest and most established supplier.[3]

Operators in this market rely on multiple interconnected systems, including kiosks where customers check out, payment systems, vendor management software (VMS), and warehouse management software (WMS). Many food service operators (FSOs) depend on the ability to mix and match these components from different vendors so they can operate their businesses efficiently and avoid becoming locked into a single provider. Today, this interoperability exists mainly because firms voluntarily support it, despite some, including 365 Retail, having the technical ability to restrict it.[4]

FSOs with large portfolios of locations face significant costs and disruptions when replacing kiosks. Small obstacles to interoperability therefore can have outsized competitive effects. A weakened ability to mix and match systems could make it harder for rival firms to compete. As the range of workable options narrows, FSOs become more exposed to increased fees, higher payment processing charges, or reduced service quality. These added burdens would predictably be passed on to consumers who rely on micromarkets for meals and snacks during the workday.

Background on Proposed Remedies

The proposed remedy includes significant divestitures of kiosk assets, the imposition of strict interoperability and nondiscrimination requirements for certain hardware and software services, and a requirement that 365 Retail provide transition services for a limited period to the divestiture buyer, Seaga.

The order's provisions are designed to ensure that (1) Seaga is well-positioned to compete and expand in the short term, and (2) the merged firm cannot reduce interoperability or take other steps that lock customers into its ecosystem or raise switching costs.

My assessment of these provisions, and how the proposed remedy package addresses the competitive concerns presented by the transaction, follows below.

Competitive Concerns

The competitive concerns raised by the proposed transaction are outlined in the FTC complaint and the analysis section of the proposed agreement containing consent orders to aid public comment. In short, the complaint alleges that the transaction would eliminate head-to-head competition between two of the largest suppliers of micromarket kiosks, increase the risk of higher prices and reduced innovation, and give the merged firm the ability and incentive to foreclose rivals by restricting interoperability and access to essential software and technology inputs.

[3] *Id.* ¶¶ 19–21.
[4] *Id.* ¶¶ 30–31.

Two additional issues raise unique legal questions that, in my view, warrant further emphasis and attention.

First, the transaction takes place against the backdrop of a pattern of serial acquisitions by 365 Retail, including acquisitions that fell below HSR thresholds and its 2021 acquisition of Avanti. For example, in the announcement video following the Avanti acquisition, Joe Hessling, the Founder and CEO of 365 Retail, stated that the transaction brought "the three innovators in the space and the three founders . . . all under one roof."[5] This framing raises concerns that 365 Retail has viewed acquisitions as a means to bring leading competitors together under a single corporate structure in order to enhance its already dominant market position. Accordingly, in reviewing the proposed transaction and the proposed remedy package, it was necessary to evaluate the proposed transaction not only on a standalone basis, but also to consider the cumulative competitive effects of the serial chain of acquisitions of which this transaction is a part.[6] It was further necessary to take into account any related conduct undertaken by 365 Retail before this proposed acquisition to the extent it could be analyzed as an anticompetitive course of

[5] 365 RETAIL MARKETS, *We are ONE: 365 and Avanti Merge*, at 3:05 (YouTube, Sep. 15, 2021), https://www.youtube.com/watch?v=kbay_X1LLjdk.

[6] FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, MERGER GUIDELINES §§ 2.7, 2.8 (2023). The Commission and the courts have long evaluated the cumulative competitive effects of serial acquisitions rather than viewing each transaction in isolation. *See, e.g.*, Hosp. Corp. of Am. v. FTC, 807 F.2d 1381, 1384–86 (7th Cir. 1986) (evaluating the probable effects of a defendant's acquisitions of several hospitals taken together); Ash Grove Cement Co. v. FTC, 577 F.2d 1368, 1380 n.15 (9th Cir. 1978) (explaining that the passage of time does not mitigate the cumulative effects of successive acquisitions); FTC v. Cardinal Health, Inc., 12 F. Supp. 2d 34, 66 (D.D.C. 1998) (evaluating the competitive effects of the proposed transactions as a whole based their effect on concentration levels and industry trends). The legislative history and public understanding of the 1950 Celler-Kefauver amendments likewise reflect concern with serial acquisitions and their aggregate effects on competition. *See* Foremost Dairies, Inc., 60 F.T.C. 944, 1050–51, 1082 (1962); EARL W. KINTNER ET AL., FEDERAL ANTITRUST LAW § 40.5 (2d ed. 2026).

conduct[7] that could violate Section 7 of the Clayton Act[8] and, potentially, Sections 1[9] and 2[10] of the Sherman Act (and, in turn, Section 5 of the Federal Trade Commission Act).[11]

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[7] Even where earlier acquisitions are not independently unlawful, they may still constitute part of an exclusionary course of conduct relevant to Section 7 and Section 1 and 2 analyses. Statement of the Federal Trade Commission at 3, *In re* Cardinal Health, Inc. (Apr. 17, 2015) (explaining that earlier acquisitions can be "initial steps in a monopolization scheme"); Beatrice Foods Co., 67 F.T.C. 473, 726–27 (1965) (explaining that transactions can be scrutinized as "part of a series" or as a "course of conduct"); *cf.* Continental Ore Co. v. Union Carbide Corp., 370 U.S. 690, 699 (1962) (faulting the appellate court for disregarding evidence that the defendant had "interfered with, acquired, or destroyed" independent sources of vanadium oxide through a combination of acquisitions, supply-foreclosure arrangements, and refusals to supply); Poller v. Columbia Broad. Sys., 368 U.S. 464, 468–69 (1962) (explaining that even if a termination of affiliation rights and an acquisition were each lawful on their own, it could violate the Sherman Act "if such a cancellation and purchase were part and parcel of unlawful conduct or agreement with others or were conceived in a purpose to unreasonably restrain trade, control a market, or monopolize"); United States v. Paramount Pictures, Inc., 334 U.S. 131, 152 (1948) ("[E]ven if lawfully acquired, [acquisitions] may have been utilized as part of the conspiracy to eliminate or suppress competition… In that event divestiture would likewise be justified."); *see also* Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 599, 611 (1985) (affirming verdict where the appellate court "in its review of the evidence on the question of intent . . . considered the record 'as a whole' and concluded that it was not necessary for Highlands to prove that each allegedly anticompetitive act was itself sufficient to demonstrate an abuse of monopoly power'" (quoting Aspen Highlands Skiing Corp. v. Aspen Skiing Co., 738 F.2d 1509, 1522 n.18 (10th Cir. 1984)).

[8] 15 U.S.C. § 18.

[9] 15 U.S.C. § 1; *see also* Organisation for Economic Co-operation and Development [OECD], Working Party No. 3 on Co-operation and Enforcement, *Roundtable on the Standard for Merger Review, with a Particular Emphasis on Country Experience with the Change of Merger Review Standard from the Dominance Test to the SLC/SIEC Test*, Note by the United States, ¶ 12–13, DAF/COMP/WP3/WD(2009)5 (June 9, 2009), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2000-2009/mergerstandard.pdf ("It is now widely agreed that a showing of likely anticompetitive effects suffice to establish a violation of Section 1 [of the Sherman Act], just as it does under the [substantially lessen competition] standard [of Section 7 of the Clayton Act]"); Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207, 213–14 (1959) (quoting Int'l Salt Co. v. United States, 332 U.S. 392, 396) ("the Sherman Act has consistently been read to forbid all contracts and combinations 'which "tend to create a monopoly,"' whether 'the tendency is a creeping one' or 'one that proceeds at full gallop'").

[10] 15 U.S.C. § 2. Modern courts in monopolization cases analyze conduct holistically based on the evidence in the record taken as a whole. *See, e.g.*, Duke Energy Carolinas, LLC v. NTE Carolinas II LLC, 111 F.4th 337, 354 (4th Cir. 2024) ("It is foundational that alleged anticompetitive conduct must be considered as a whole."), *cert. denied*, 145 S. Ct. 2748 (2026); Sanofi-Aventis U.S., LLC v. Mylan, Inc. (*In re* EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.), 44 F.4th 959, 982 (10th Cir. 2022) (explaining that it was necessary to analyze each challenged practice separately "[f]or the sake of accuracy, precision, and analytical clarity" before evaluating whether the evidence "in totality" demonstrated any "synergistic effect") (quoting Ne. Tel. Co. v. Am. Tel. & Tel. Co., 651 F.2d 76, 95 n.28 (2d Cir. 1981)); *In re* Lipitor Antitrust Litig., 855 F.3d 126, 147 (3d Cir. 2017) ("courts must look to the monopolist's conduct taken as a whole rather than considering each aspect in isolation") (quoting LePage's Inc. v. 3M, 324 F.3d 141, 146 (3d Cir. 2003)); Intergraph Corp. v. Intel Corp., 195 F.3d 1346, 1367 (Fed. Cir. 1999) ("Each legal theory must be examined for its sufficiency and applicability, on the entirety of the relevant facts"); *see also* Viamedia, Inc. v. Comcast Corp., 951 F.3d 429, 453 (7th Cir. 2020) ("a dominant firm's conduct may be susceptible to more than one court-defined category of anticompetitive conduct."); New York v. Actavis PLC, 787 F.3d 638, 653–54 (2d Cir. 2015) (citations omitted) (explaining that while product withdrawal or improvement alone may be legal, "when a monopolist combines product withdrawal with some other conduct, the overall effect of which is to coerce consumers rather than persuade them on the merits, and to impede competition, its actions are anticompetitive under the Sherman Act"); Conwood Co. v. U.S. Tobacco Co., 290 F.3d 768, 783 (6th Cir. 2002) (concluding that plaintiff presented evidence that defendant engaged in a "systematic effort to exclude competition" and rejecting defendant's contention that its actions constituted "isolated sporadic torts.").

[11] 15 U.S.C. § 45. The Commission's authority under Section 5 of the FTC Act extends to Sherman Act and Clayton Act conduct violations. *See, e.g.*, California Dental Ass'n v. FTC, 526 U.S. 756, 762 n.3 (1999); FTC v. Ind. Fed'n of Dentists, 476 U.S. 447, 454 (1986); FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244 (1972); FTC v. Cement

Second, because 365 Retail already holds a dominant position in the national sale and provision of micromarket kiosks and related software and services to foodservice operators, the combination of 365 Retail's hardware assets and Cantaloupe's software assets would give the merged firm new and enhanced technical capabilities to restrict interoperability between micromarket kiosks and deprive rivals of access to functionalities essential for competitive offerings.[12] Under established precedent, a dominant firm's acquisition of an additional technical mechanism through which it could foreclose access to critical inputs or raise barriers to entry can independently violate Section 7 of the Clayton Act, and potentially Section 2 of the Sherman Act. Specifically, the incipiency requirements of the Clayton Act target acquisitions that place the acquiring firm in a unique position to engage in exclusionary conduct,[13] while the Sherman Act addresses efforts by firms with monopoly power to use acquisitions to maintain a dominant market position or obtain control over critical inputs as a means of impeding actual or potential competition.[14] Accordingly, absent compelling evidence that the merged firm would lack an incentive to pursue such a foreclosure strategy in the future, the transaction may have the effect of substantially lessening competition in the short and medium term by enabling the dominant firm to cut off access to critical inputs rivals need to compete,[15] or tend to create a monopoly by raising barriers to entry in a manner that entrenches the incumbent's already dominant position in a relevant market.[16]

Evaluation of the Proposed Remedies

Inst., 333 U.S. 683, 694 (1948) ("[A]ll conduct violative of the Sherman Act may likewise come within the unfair trade practice prohibitions of the Trade Commission Act"); Fashion Originators' Guild of Am., Inc. v. FTC, 312 U.S. 457, 463 (1941) ("If the purpose and practice of the combination of garment manufacturers and their affiliates runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition.").

[12] FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, MERGER GUIDELINES § 2.5.A.2, at 16 n.30 (2023) ("The Agencies will generally infer, in the absence of countervailing evidence, that the merging firm has or is approaching monopoly power in the related product if it has a share greater than 50% of the related product market. A merger involving a related product with share of less than 50% may still substantially lessen competition, particularly when that related product is important to its trading partners.").

[13] FTC v. Procter & Gamble Co., 386 U.S. 568, 577 (1967) ("[T]here is certainly no requirement that the anticompetitive power manifest itself in anticompetitive action before § 7 can be called into play"); FTC v. Consol. Foods Corp., 380 U.S. 592, 598 (1965) ("the force of § 7 is still in probabilities, not in what later transpired. That must necessarily be the case, for once the two companies are united no one knows what the fate of the acquired company and its competitors would have been but for the merger."); United States v. E.I. du Pont de Nemours & Co., 353 U.S. 586, 597 (1957) ("the Government may proceed at any time that an acquisition may be said with reasonable probability to contain a threat that it may lead to a restraint of commerce or tend to create a monopoly of a line of commerce."); *Int'l Salt Co.*, 332 U.S. at 396 (quoting 15 U.S.C. § 18) (explaining that the law forbids agreements that "tend to create a monopoly" and does not "await arrival at the goal before condemning the direction of the movement."); *see also* Cargill, Inc. v. Monfort of Colo., Inc., 479 U.S. 104, 121–22 (1986) (rejecting the argument that a plaintiff lacks standing to challenge a merger that could likely enable the acquiring firm to engage in future anticompetitive conduct such as predatory pricing).

[14] *See e.g.,* United States v. Grinnell Corp., 384 U.S. 563, 573–76 (1966); United States v. Am. Tobacco Co., 221 U.S. 106, 163, 184 (1911); Standard Oil Co. v. United States, 221 U.S. 1, 75 (1911).

[15] FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, MERGER GUIDELINES § 2.5 (2023).

[16] *Id.* at § 2.6; *see also* David Lawrence, *The Merger-Monopolization Gap*, 101 N.Y.U. L. REV. (forthcoming 2026) (manuscript at 62–63), https://ssrn.com/abstract=6315858 (reviewing the text, legislative history, and Supreme Court precedent interpreting Section 7 and concluding that the statute reaches mergers that allow a firm to entrench its dominant position by positioning it to engage in exclusionary conduct).

In evaluating the proposed remedy, I apply the same principles I have previously articulated regarding effective merger settlements.

To reiterate, remedies remain an important part of the merger-enforcement toolkit.[17] They allow transactions to proceed under conditions of transparency and accountability, and enable the Commission to use its expertise to ensure remedies remain tailored to mitigate any potential competition concerns.[18] Consumers benefit from competition that remains intact, and parties can pursue transactions that create new growth opportunities that do not harm competition, while the business community benefits from the efficient operation of the merger review program. Where resolution is available, it can conserve time and resources for both the agency and the parties in a manner fully consistent with the Commission's mandate to protect competition and consumers. Importantly, merger settlements can serve a fundamental law enforcement function by preventing violations of the antitrust laws and arresting unlawful conduct in its incipiency.

But remedies must work in practice. When meaningful uncertainty remains about whether competition will be restored, that uncertainty must be resolved in favor of consumers.[19] In those circumstances, we should be prepared to litigate. The text, statutory framework, and legislative history underlying the antitrust laws and FTC Act confirm that the antitrust laws are more concerned with underenforcement than overenforcement.[20] That Congressional directive must continue to drive enforcement and settlement decisions.

There should be a strong preference for clean divestitures of standalone business lines that avoid entanglements which require ongoing Commission oversight. Parties must also approach the Commission early, candidly, and in good faith, and be prepared to propose a credible divestiture buyer with the financial capability, operational readiness, and industry expertise necessary to restore competition.[21]

At the same time, in certain limited cases, behavioral relief may be appropriate. For example, such relief may be proper where it is narrow and time-limited (such as the provision of transition services) or necessary to guard against the likelihood of foreclosure that would otherwise undermine the proposed divestitures. The Commission must also be prepared to monitor any such relief and ensure it is narrowly tailored in scope.

These principles inform the concrete criteria I apply when evaluating proposed remedies.

- Whether the divested assets form a part of a viable, standalone business.
- Whether the buyer has the financial and operational capability to compete immediately.

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[17] *See* Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak and Commissioner Mark R. Meador, *In re* Synopsys, Inc. and ANSYS, Inc. (May 28, 2025); Statement of Commissioner Mark R. Meador, *In re* Alimentation Couche-Tard, Inc. and Giant Eagle, Inc. (June 26, 2025) [hereinafter Meador ACT/Giant Eagle Statement].
[18] Statement of Commissioner Mark R. Meador at 2–3, *In re* Synopsys, Inc and ANSYS, Inc. (Oct. 17, 2025).
[19] Meador ACT/Giant Eagle Statement, *supra* note 17, at 2.
[20] Mark Meador, *Antitrust Policy for the Conservative* 25 (FED. TRADE COMM'N May 1, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/antitrust-policy-for-the-conservative-meador.pdf.
[21] Meador ACT/Giant Eagle Statement, *supra* note 17, at 2.

- Whether any behavioral provisions are enforceable and designed to address the competitive concern at issue, or directly support the effectiveness of the structural relief.
- Whether the remedy works without ongoing Commission supervision or, if monitoring is required, whether the Commission is well positioned to fulfill that oversight function.
- Whether the proposed settlement fully resolves the competitive concerns at the time it is proposed.
- Whether the remedy eliminates the merged firm's ability and incentive to engage in future exclusionary conduct, including monopolization strategies that rely on technical foreclosure.

After careful review of information contained in the investigatory record, particularly the parties' ordinary course documents and third-party statements, it is my view that the remedy here satisfies these criteria and mitigates the concerns I've outlined above given the market conditions and bargaining dynamics relevant to this industry.

Regarding the structural relief contained in the proposed order, the settlement requires clean divestitures of autonomous business lines, including Cantaloupe's micromarket kiosk business and related software services. The proposed divestiture buyer, Seaga, has the resources, relevant experience, and operational capability to compete vigorously on day one. Seaga's existing business incentives, including its incentives to develop its own software and hardware offerings and to support cross-platform integrations, significantly mitigate typical vertical or ecosystem lock-in concerns that often accompany transactions of this nature.

The prior notice requirement for future acquisitions involving micromarket-related businesses is an additional important safeguard, particularly in light of 365 Retail's history of serial acquisitions preceding the current transaction. That requirement ensures that the Commission will be alerted to future deals that may further reduce competition.

The transition services provisions are appropriately limited, incidental to the transfer of assets, and necessary to ensure continuity of operations while the divestiture buyer is in the process of establishing independent back-end systems. Moreover, they are short-term and technical in nature and require only temporary oversight for the duration of the approximately one-year transition period. Importantly, the commitments to divest are binding and structured to require minimal Commission oversight, consistent with the Commission's longstanding expectation that structural relief be self-sustaining and capable of operating autonomously.

Although the proposed remedial package is structural in nature, there are additional targeted behavioral provisions that are both necessary and appropriately tailored to address concerns related to the acquisition of Cantaloupe's software assets.

In particular, the interoperability and fee-monitoring requirements are designed to operate alongside the structural relief and maintain the parties' existing incentives to support access to critical inputs needed to compete in the provision of micromarket kiosks. The proposed behavioral commitments therefore play a meaningful role in preventing the merged firm from leveraging its expanded control over hardware and software to deprive rivals of access to critical functionalities and data connections.

Given 365 Retail's existing market position and its significant hardware portfolio, the acquisition of Cantaloupe's software services would create a material risk that the merged firm could, in the future, engage in exclusionary practices that violate Section 2 of the Sherman Act. Such practices could include, but are not limited to, conditioning customer access to its systems on restrictive terms that limit data portability, degrading interoperability with other service providers, and limiting cross-compatibility for operators seeking to migrate their data systems. By directly eliminating the mechanisms through which future foreclosure could occur, the remedy ensures that the merged firm cannot use its enhanced technical capabilities to engage in exclusionary conduct in the micromarket kiosk market or pursue monopolization strategies in adjacent markets.

Because the proposed transaction will be subject to enforceable safeguards that preserve interoperability and institute fee-monitoring, the post-transaction integration of hardware and software assets, to the extent permitted by the order, can proceed in ways that accelerate complementary innovation, maintain competition, and facilitate new entry. When interoperability is preserved and foreclosure incentives are neutralized, integration is more likely to generate efficiencies which will ultimately be passed on to consumers without the accompanying risk of the merged firm engaging in exclusionary conduct.

The ten-year duration of the interoperability provisions, the presence of a qualified monitor, and the divestiture buyer's capacity to develop and operate its own hardware and software all work together to ensure that the remedy is durable, enforceable, and fully addresses the competitive risks identified during the investigation.

For these reasons, it is my view that the proposed remedies contained in the consent order fully resolve the competitive concerns raised by this transaction. It is important to bear in mind, however, that the proposed remedy package was crafted with close attention to the bargaining dynamics unique to this industry and was shaped directly by real-world concerns raised by customers and rival operators who depend on continued access to critical technology inputs. The case-specific features of this market warranted the tailored approach reflected in this order, and different circumstances in a different market could easily justify a different outcome.

Conclusion

The proposed remedy reflects the precision the Commission continues to apply to secure relief that advances our competition mandate and protects American consumers. It also underscores the importance of evaluating a company's overall course of conduct, including its past acquisition history and any risks related to foreclosed access, when assessing the competitive implications of a transaction. Given 365 Retail's history of serial acquisitions and the heightened risks that additional consolidation could pose, it is imperative that Commission staff continue to closely scrutinize any future transactions involving 365 Retail consistent with the prior-notice provisions in the order. Continued, proactive oversight will be necessary to prevent further entrenchment of market power and to safeguard the competitive conditions upon which businesses in these and adjacent markets rely.