

**Multi-Jurisdictional Merger Investigations:**  
*The Equitable-Dominion Deal*

David P. Wales

BUREAU OF COMPETITION FEDERAL TRADE COMMISSION



**Introduction**

- **Key Issues**
  - Antitrust merits
  - State action immunity
- **Some Misperceptions**
- **Practical Implications**

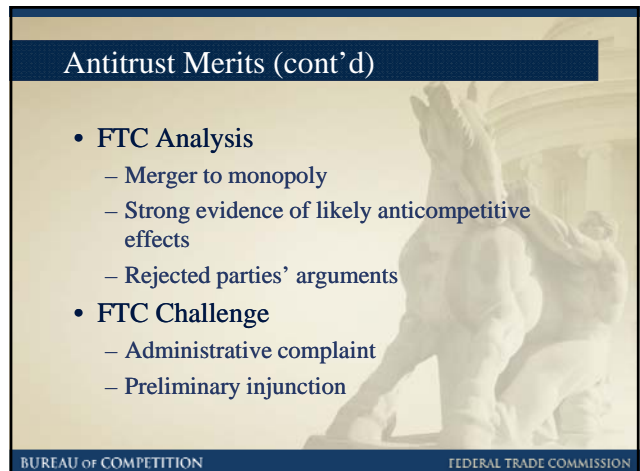
BUREAU OF COMPETITION FEDERAL TRADE COMMISSION



**Antitrust Merits**

- **Analytical Framework**
  - *Horizontal Merger Guidelines*
- **Key Evidence**
  - Documents, data, customer views
- **Parties' Arguments**
  - State action immunity, limited impact, efficiencies

BUREAU OF COMPETITION FEDERAL TRADE COMMISSION



**Antitrust Merits (cont'd)**

- **FTC Analysis**
  - Merger to monopoly
  - Strong evidence of likely anticompetitive effects
  - Rejected parties' arguments
- **FTC Challenge**
  - Administrative complaint
  - Preliminary injunction

BUREAU OF COMPETITION FEDERAL TRADE COMMISSION

## State Action Immunity

- **Multi-Jurisdictional Review**
  - Separate hurdles
- **District Court Erred**
- **Immunity Must Be Very Narrow**
  - Federalism, national competition policy
- **Midcal Test**
  - Clear articulation of policy to displace competition
  - Active state supervision

BUREAU OF COMPETITION

FEDERAL TRADE COMMISSION

## State Action Immunity (cont'd)

- **No Clear Articulation**
  - Must come from the state legislature
  - PUC review of deal not enough
  - Law expressly precludes approval of anticompetitive mergers
- **No Active State Supervision**
  - Many anticompetitive consequences from merger not monitored

BUREAU OF COMPETITION

FEDERAL TRADE COMMISSION

## Practical Implications

- **Strong Presumption Against State Action Immunity**
- **Unlikely To Become Prevalent Defense in Merger Cases**
- **Importance of Coordination in Multi-Jurisdictional Review**
- **Front-load**

BUREAU OF COMPETITION

FEDERAL TRADE COMMISSION