

Multi-Jurisdictional Merger Investigations:
The Equitable-Dominion Deal

David P. Wales

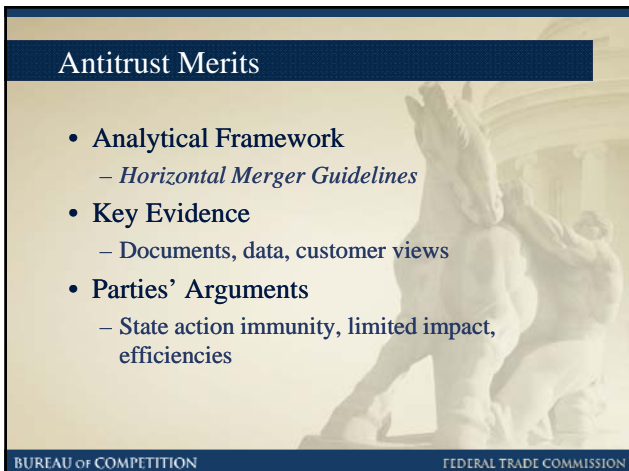
BUREAU OF COMPETITION FEDERAL TRADE COMMISSION



Introduction

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

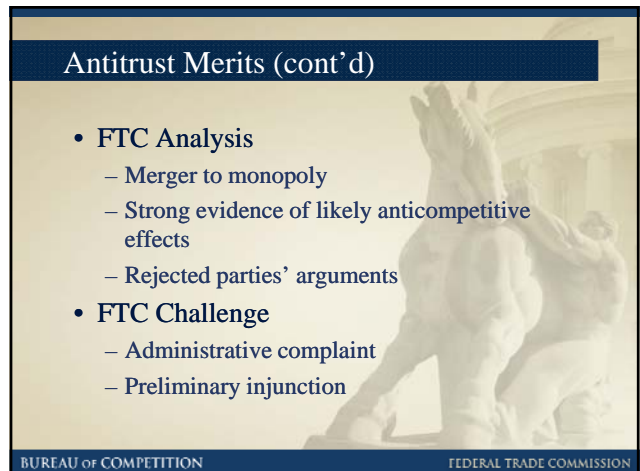
BUREAU OF COMPETITION FEDERAL TRADE COMMISSION



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