

## MERGER ANTITRUST LAW

LAWJ/G-1469-05  
Georgetown University Law Center  
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Tuesdays and Thursdays, 3:30-5:30 pm  
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### CLASS 7 ASSIGNMENT

#### Instructions

Submit by email by 3:30 pm on Tuesday, September 24  
Send to [dale.collins@shearman.com](mailto:dale.collins@shearman.com)  
Subject line: Merger Antitrust Law: Assignment for Class 7

#### Assignment

Time: Early September 2015  
Calls for an outline for a law firm partner

Diane Lockhart, an antitrust partner in your law firm, has received a call from her client Walgreens. Walgreens is considering making an acquisition of Rite Aid and they are seeking your firm's advice on what they can do to best understand the antitrust risk presented by the transaction and how they might be able to deal with any problems that might arise through the divestiture of some stores. They have asked for a meeting with Ms. Lockhart next week to discuss these questions.

Ms. Lockhart believes that the best way to evaluate the antitrust risk is to prepare a presentation to the investigating agency that gives a complete defense of the deal. Ms. Lockhart likes these initial presentations to have the following sections:

1. An overview of the parties and the transaction
2. The business rationale for the deal
3. Customer benefits from the deal (if any can be identified)
4. Why the market would not allow the deal to be anticompetitive even if the parties had the incentive to raise prices or otherwise harm customers

To make the client meeting next week as productive as possible, Ms. Lockhart has asked you to use these headings and prepare an outline of (1) the documents we would like to receive in advance of the meeting, and (2) the questions we should explore with the client at the meeting.<sup>1</sup> The "loop" within Walgreens is very small and only includes the CEO, the CFO, the GC, the chief strategic officer, and several other very senior executives (all of whom will be at the meeting), so they will be limited in both the types and amount of documents they can collect and the questions they will be able to answer at the meeting. That said, the executives will want to

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<sup>1</sup> Note that the company should not be burdened with documents you can obtain from the Internet and other public sources, but you should note in your outline the need for any such documents and where you can obtain them.

get a general sense of what a more detailed antitrust analysis will require once more people are brought into the loop as negotiations progress and the companies get closer to a signing.

The transaction is very confidential, so it is important that you do not identify the target in the memorandum. The code name for the matter is Project Asclepius. The target's code name is Epione.

NB: The reading materials will give you a good sense of the problems that ultimately emerged in the deal. The purpose of this assignment is for you to identify what you would ask the company to provide in terms of documents and information at this early stage in the transaction to begin to determine what these problems are likely to be.