

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2019

Tuesdays and Thursdays, 3:30-5:30 pm
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CLASS 10 WRITTEN ASSIGNMENT

Instructions

Submit by email by 3:30 pm on Thursday, October 10
Send to dale.collins@shearman.com
Subject line: Merger Antitrust Law: Assignment for Class 10

Assignment

Time: Early 2014
Calls for a memorandum to the client

John Taylor, the general counsel of Albertsons (not really), has read your memorandum on antitrust risk-shifting provisions in acquisition agreements. Taylor understands that if Albertsons agrees to a capped divestiture obligation (a qualified hell-or-high-water provision), the company will be contractually required to accept a consent order with whatever divestitures the FTC may demand up to the cap. Taylor also understands that Albertsons has the right before the drop-dead date to convince the FTC to moderate its demands. (“Right before” in this context means enough time before the drop-dead date to negotiate and sign a consent settlement with the FTC.)

Likewise, if Albertsons were to agree to include an antitrust reverse termination fee in the acquisition, Albertson would like to maximize its opportunity and ability to negotiate the most favorable consent decree possible with the FTC in order to close the deal with the least amount of restructuring and avoid the payment of the reverse payment fee.

Taylor has asked you to prepare a short memorandum explaining what provisions Albertsons should be seeking when it negotiates the acquisition agreement with Safeway in order to maximize its ability to negotiate a more favorable consent settlement with the FTC. He wants to understand whether Safeway is likely to resist any of these provisions and, if so, what arguments Albertsons can make to convince Safeway to accept them.

If you have any questions, please let me know.