

## 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 20 WRITTEN ASSIGNMENT

#### Instructions

Submit by email by 3:30 pm on Tuesday, November 12

Send to [dale.collins@shearman.com](mailto:dale.collins@shearman.com)

Subject line: Merger Antitrust Law: Assignment for Class 20

#### Assignment

Calls for a memorandum.

At the Bureau Directors' meeting on the Clare's/Benny's ice cream merger, the parties raised a new defense: the large supermarket chains, which account for 75% of Benny's sales, have sufficient buyer power to protect themselves from any attempted by the combined firm to raise prices. The parties said at the meeting that they had talked to each of the ten largest supermarket market chains in the country and none of them had any concerns about the merger. Indeed, the parties represented that Kroger, Ahold, and Albertsons, the three largest supermarket chains in the country, are each willing to provide a witness at the preliminary injunction hearing to testify that the company does not object to the transaction. Although sometimes customers will tell the parties one thing and the staff the opposite, in this case the staff's interviews during the course of the investigation confirmed that none of the major supermarket chains have any concerns about the transaction.

Melissa Brown, your section chief, has asked you to prepare a memorandum evaluate the strength of this defense if the FTC seeks a preliminary injunction in district court to block the transaction pending an administrative resolution of the merits.