

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2018

Tuesdays and Thursdays, 3:30-4:55 pm
Dale Collins
dale.collins@shearman.com
www.appliedantitrust.com

CLASS 4 WRITTEN ASSIGNMENT

Instructions

Submit by email by 3:30 pm on Thursday, September 6
Send to dale.collins@shearman.com
Subject line: Merger Antitrust Law: Assignment for Class 4

Assignment

Time: Early 2014

Calls for a list of questions (with explanations) to be sent to the client
For more background, see the Albertsons/Safeway case study in Unit 3 and the instructor's assignment and answer for Class 3

Alice Smith, the general counsel of Safeway (not really), having read your memorandum on how the antitrust laws are likely to apply to the transaction and the FTC's merger review process, has taken you up on your offer to prepare an initial document and information request for the company in order to enable you to perform a preliminary antitrust analysis of the transaction.

In drafting this request, Ms. Smith asks you to keep two things in mind.

First, the Albertsons' approach is very confidential and only Safeway's most senior executives are aware of the offer. The company wants to keep it that way, so any response to your request will have to be collected by the senior executives. That said, Ms. Smith asks that you should ask for anything you think is important for a good but still preliminary analysis with the understanding that the company may not be able to provide you with everything at this time. If the deal goes forward, she tells you, it will be possible to bring more people into the loop later to get more detailed information.

Second, both to enable Ms. Smith to prioritize your requests (and explain their importance to other executives when she asks them to collect the documents and information), Ms. Smith asks that you give a brief explanation of how you will use each of your requests to inform your antitrust analysis. Although Ms. Smith knows the basic contours of antitrust law generally and its application to supermarket mergers in particular from your first memorandum, this is the first time she has been faced with an FTC merger review and she wants to be able to explain to the business people why it is important for them to collect the documents and information you are requesting. Smith tells you that you may assume that the business people have read your first memorandum and that you may (if you think it would be helpful) to give explanations for groups of requests rather than each request individually.

NB: For the purpose of this exercise, you may assume that Albertsons and Safeway only operate supermarkets, that is, full-line retail grocery stores that enable customers to purchase substantially all of their weekly food and grocery shopping requirements in a single shopping visit. The only customers of interest are retail consumers. Safeway operates 1335 supermarkets throughout the country, although it has been shrinking due to competitive pressures, especially from Walmart. Albertsons operates 1075 stores in much of the country. After the merger, the combined company will be the third largest company in the supermarket business nationwide after Walmart and Kroger.

If you have any questions, send me an e-mail. See you in class. Dale