

Merger Antitrust Settlement Procedures	
DOJ	FTC
Staff and parties reach a settlement agreement in the form of a Proposed Final Judgment that both sides will accept without any adjudication of liability (subject to approval by front office and court). The staff and parties also will execute a Hold Separate Stipulation and [Proposed] Order	Staff and merging parties execute an Agreement Containing Consent Orders containing a proposed Decision and Order and a proposed Order to Hold Separate and Maintain Assets
Staff prepares a Complaint and a Competitive Impact Statement	Staff prepares an Administrative Complaint and an Analysis of Agreement Containing Consent Orders to Aid Public Comment
If required, merging parties will propose and obtain staff approval of an individual to serve as the compliance monitor and execute an agreement conveying the necessary powers to the monitor	If required, merging parties will propose and obtain staff approval of an individual to serve as the compliance monitor and execute a Hold Separate Trusteeship Agreement conveying the necessary powers to the monitor
Assistant Attorney General signs off on settlement agreement, signs the complaint, and authorizes staff to initiate an action in court	Commissioners vote to issue the Administrative Complaint and the Order to Hold Separate and Maintain Assets and simultaneously to accept for public comment the proposed Decision and Order
DOJ files a complaint in federal district court and simultaneously files the proposed final judgment and the stipulation and proposed order	
A judge is assigned the case, reviews the papers, and “so orders” the Hold Separate Stipulation and Order	
Once the Hold Separate Stipulation and Order is “so ordered” by the court, the parties may close their transaction	Once the Order to Hold Separate and Maintain Assets is issued, the parties may close the transaction
Public notice of the proposed consent decree is published in the Federal Register and in general and trade press as appropriate, and public comments are invited	Public notice of the proposed consent order is published in the Federal Register and public comments are invited
60-day Tunney Act comment period closes	30-day public comment period closes
DOJ publishes public comments (if any) on DOJ web site and provides an analysis of any comments to the court. The merging parties may also submit their own analysis of the public comments to the court.	FTC publishes public comments (if any) on FTC web site and provides an analysis of any comments to the Commissioners. The merging parties may also submit their own analysis of the public comments to the commissioners.
DOJ files a certification that the requirements of the Tunney Act has been satisfied and a motion for entry of the proposed final judgment	
Court may hold a “public interest hearing” in open court if commenters request	
If court determines that the proposed final judgment satisfies the Tunney Act “public interest” standard, it will enter the judgment. If not, the court typically will inform the DOJ and the parties of the deficiencies it finds (perhaps with some solutions acceptable to the court) and gives the DOJ and the merging parties an opportunity to amend the proposed final judgment and resubmit it to the court.	With a majority vote of the commissioners, the Commission will enter a final Decision and Order. If it appears that there is not a majority in favor, the staff (after talking to the individual commissioners) and the parties (after talking to the individual commissioners and the staff) will have the opportunity to negotiate an amended consent order to propose to the commissioners.