

## MERGER ANTITRUST LAW

LAWJ/G-1469-05  
Georgetown University Law Center  
Fall 2023

Tuesdays and Thursdays, 11:10 am – 1:10 pm  
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### READING GUIDANCE

#### **Class 19 (October 31): “Loose ends”**

We will spend Thursday finishing our discussion of the Clare’s/Benny’s ice cream merger.

Although we will not discuss them in class, there are two important loose ends that our case studies have not addressed: the power buyers defense and the failing company defense. I have included excerpts from two recent opinions and some notes to cover these defenses (pp. 4-28). I have also summarized these defenses in the class slides on downward pricing pressure defenses (slides 36-46). Merging parties assert these defenses occasionally, but neither has been successful in modern antitrust history. Still, your merger antitrust education would not be complete without them. Moreover, they may appear on an exam question, so prepare your “boilerplate” accordingly.

Finally, if you have the time, I have included a transcript from the DOJ’s challenge to the Penguin Random House/Simon & Schuster merger where the district court excluded the defendants’ evidence from the trial record as inadmissible (pp. 30-54). It is interesting reading.

Please email me if you have any questions.