

MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2025

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
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READING GUIDANCE

Class 14 (October 9): “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 some recent opinions and notes to cover these defenses (pp. 4-43). I have also summarized these defenses in the class slides on downward pricing pressure defenses (slides 42-54). 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 be implicated in 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. 45-69). It is interesting reading.

Please email me if you have any questions.