Volume 4, Number 6 November–December 2026

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Publisher: David Nayer
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This journal's cover includes a photo of Washington D.C.'s Metro Center underground station. The Metro's distinctive coffered and vaulted ceilings were designed by Harry Weese in 1969. They are one of the United States' most iconic examples of the brutalist design style often associated with federal administrative buildings. The photographer is by XH_S on Unsplash, used with permission.

Cite this publication as:

The Journal of Federal Agency Action (Fastcase)

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A Full Court Press, Fastcase, Inc., Publication

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729 15th Street, NW, Suite 500, Washington, D.C. 20005
https://www.fastcase.com/

POSTMASTER: Send address changes to THE JOURNAL OF FEDERAL AGENCY ACTION, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

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ISSN 2834-8796 (print)
ISSN 2834-8818 (online)

Federal Trade Commission's Expanded Remedy Framework for a Micromarket Kiosks Merger and What It Signals for Future Deals

Nicholas Cheolas and Alissa Lynwood*

In this article, the authors examine a proposed merger of two providers of "micromarket kiosks" and related software and services, the Federal Trade Commission's theories of harm, the proposed settlement announced by the agency, and what attorneys and dealmakers should take away for future transactions.

In May 2026, the Federal Trade Commission (FTC) announced a proposed settlement to resolve a merger of two providers of "micromarket kiosks" and related software and services. The FTC's consent order—which would allow 365 Retail Markets, LLC's proposed acquisition of Cantaloupe, Inc. to proceed—combines structural divestitures with extensive forward-looking software interoperability and non-discrimination provisions. The settlement—and FTC Commissioner Mark R. Meador's accompanying statement—also provides more granular guidance on how the FTC evaluates deals today and how the FTC's renewed focus on remedies may evolve going forward. The order is also notable for what it reveals about enforcement priorities under the second Trump administration: a demonstrated willingness to resolve even significant mergers in highly concentrated markets with divestitures alongside detailed behavioral remedies, at least in certain matters. This article examines the deal, the FTC's theories of harm, the remedy package, and what attorneys and dealmakers should take away for future transactions.

The Journal of Federal Agency Action / November–December 2026, Vol. 4, No. 6, pp. 379–392.
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ISSN 2834-8818 (online).

The Transaction Would Combine the Leading Kiosk Providers

On June 15, 2025, 365 Retail Markets, LLC, a portfolio company of Providence Equity Partners L.L.C., announced its intent to acquire Cantaloupe, Inc. for $848 million.[1]

365 is the largest provider of micromarket kiosks in the United States. Micromarkets are unattended, self-service mini-convenience stores typically located in offices, breakrooms, warehouses, and similar "high-trust" semi-private locations. Unlike traditional vending machines, micromarkets feature open shelves that accommodate a broader inventory of items, including freshly prepared foods. Micromarket kiosks are the point-of-sale devices used to allow end users to self-scan items, process payments, and enable food service operators (FSOs) to track inventory. 365 is also vertically integrated: it sells the back-end software that powers kiosks, including its Parlevel vending management software (VMS)[2] and its market-leading[3] LightSpeed warehouse management software (WMS),[4] alongside its hardware kiosks and credit card terminals. That vertical integration—spanning hardware, payment processing, VMS, and WMS—was central to the FTC's theories of harm.

Cantaloupe has been a leading provider of credit card point-of-sale readers affixed to vending machines and similar unattended retail devices. In December 2022, Cantaloupe acquired Three Square Market, Inc., which resulted in Cantaloupe becoming the second-largest provider of micromarket kiosks in the United States. Cantaloupe also offers the "Seed" VMS, used by its own micromarket customers and by numerous third-party kiosk providers, and a tablet-based WMS called Pick Easy.[5] Cantaloupe's Seed VMS serves not only Cantaloupe's own kiosk customers but also third-party kiosk providers. Its integrations thus directly influence the competitive viability of 365's rivals—a dynamic central to the FTC's vertical theory of harm.

According to the FTC's complaint, the U.S. market for micromarket kiosks and related software and services is highly concentrated. 365 holds "roughly 70 percent share, or higher" of the relevant market, the FTC alleged, with Cantaloupe a "distant second." Cantaloupe itself acknowledged in public earnings calls that "[one] could use the term 'duopoly'" to describe the market, with itself and 365 "essentially . . . [the] two players that dominate

that market." Such candid public statements by company executives about competitive dynamics—particularly those made in investor-facing contexts—can be viewed by antitrust enforcers as "hot documents" under the 2023 Merger Guidelines and can materially influence merger investigations.

FTC Alleges the Merger Would Eliminate Competition, Drive Up Prices, and Reduce Quality

The FTC's complaint—filed along with its settlement and voted out on May 1, 2026—alleged that the acquisition, as originally structured, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the sale and provision of micromarket kiosks and related software and services to FSOs in the United States.[6] The complaint asserted both horizontal and vertical theories of harm.

Horizontal Theory

First, the FTC alleged that 365 and Cantaloupe are each other's closest competitors and that the acquisition would eliminate "substantial head-to-head competition," making it more likely that prices would increase and quality would decrease. Other micromarket kiosk providers, the complaint asserted, "have a negligible share of the relevant market, and/or lack the significant scale, scope, or core focus on micromarket kiosks to replicate the current closeness of competition between 365 and Cantaloupe." The FTC also alleged that other point-of-sale devices and unattended retail formats (such as vending machines and smart coolers) are not reasonable substitutes for micromarket kiosks, and that new entry would not be timely, likely, or sufficient to deter the alleged anticompetitive effects. Such "horizontal" mergers have historically been challenged more frequently than vertical mergers by antitrust enforcers. The horizontal theory here was straightforward: a merger of the leading competitors, with a combined share near 80 percent, in a market where the next-largest rivals lack meaningful scale presents a fact pattern that Section 7 was designed to address.

Vertical Theory

Second, the FTC alleged that the transaction would give the merged firm "the ability and incentive to foreclose rivals by eliminating interoperability, or providing less reliable or more costly access" between its own products and competing kiosks or related software services—VMS and WMS.[7] Today, integrations between micromarket kiosks and VMS are governed by voluntary industry standards set by the National Automatic Merchandising Association (NAMA); the connection between WMS and VMS is similarly interoperable in practice, though not governed by an industry standard.[8] The complaint expressed concern that the merged firm could "deny integrations between competing providers of micromarket kiosks and Cantaloupe's VMS or deny rival VMS or WMS providers the ability to integrate with 365's micromarket kiosks," preventing rivals from accessing critical functionality and making it more difficult for customers to switch providers.[9] While such "vertical" concerns are often examined in merger investigations, these theories have historically been less likely to form the basis of merger challenges and are often seen as more difficult for enforcers to win in litigation. That litigation risk likely influenced the FTC's decision to resolve the vertical concerns through detailed behavioral remedies, rather than seeking to block the transaction outright on foreclosure grounds—an approach that may prove instructive in future matters involving mixed horizontal and vertical dynamics.

Finally, the complaint tied the alleged consumer harm to "kitchen table" concerns, alleging that the transaction "would increase the cost of food at micromarkets to end consumers, including at the breakroom table of many blue-collar workers." These affordability concerns have been front-of-mind for antitrust enforcers in recent months and could motivate enforcers to act—either through settlements or outright challenges. Whether framed as a standalone theory or as a rhetorical amplifier for broader structural concerns, the "blue-collar worker" narrative reflects a deliberate enforcement messaging strategy—one that dealmakers should expect to see deployed in future matters involving consumer-facing pricing effects, however attenuated.

The FTC Requires Both Structural Divestitures and Future Behavioral Obligations

To resolve these concerns, the FTC accepted a consent order that combines structural and behavioral remedies.

First, the order requires 365 to divest Cantaloupe's entire U.S. Three Square Market business—including micromarket kiosks, smart coolers, VMS, and WMS assets—to Seaga Manufacturing, Inc., an Illinois-based manufacturer with experience in "unattended retail" technology.[10] The FTC explained that the divestiture is "designed to ensure that an independent competitor can immediately provide integrated solutions comparable to those offered by Cantaloupe prior to the Proposed Transaction."[11]

Second, the order imposes detailed forward-looking interoperability requirements on 365. 365 must "offer, maintain, and establish integrations on the same or similar terms regardless of the identity of the third party or customer," so long as the customer or third party adheres to NAMA standards (or other industry standards in effect during the order's term).[12] Fees must be "reasonable," and although 365 may charge different fees to different parties, those fees must be "objective, specific, and related to the work being performed."[13] 365 is also prohibited from degrading or altering existing integrations except in limited reasonable circumstances, may not use confidential information obtained through integration processes for competitive advantage, and must adhere to consensus-based industry standards.[14] The breadth of these obligations—spanning non-discrimination, fee reasonableness, confidentiality firewalls, and participation in standard-setting—reflects a recognition that technical foreclosure can arise through degradation and friction, not merely outright denial of access. Parties operating in technology-adjacent markets should view these provisions as a potential template for the remedies the FTC may seek where a dominant firm controls critical integration points.

Third, 365 must provide Seaga with transition assistance for a limited period sufficient to allow the divestiture buyer to operate the Three Square Market business in a manner equivalent in all material respects to how Cantaloupe did so pre-acquisition.[15]

Finally, the settlement requires 365 to provide advance written notification to the FTC before acquiring "any interest in any

company involving Micromarket Kiosks in the United States"—a heightened safeguard against further consolidation in the relevant market.[16] The FTC also appointed a Monitor to oversee compliance with both the divestiture and the interoperability obligations[17] for 10 years.[18] The prior-notice obligation is notably broad: it applies regardless of deal size and therefore captures transactions that would not otherwise trigger HSR reporting thresholds.

The FTC contends that the structural divestiture restores the head-to-head competition lost through the transaction, while the behavioral interoperability commitments neutralize the merged firm's enhanced technical capability and incentive to foreclose rivals through its expanded combined hardware-software footprint. Whether that two-track theory proves effective in practice is difficult to assess at the remedy stage, but may ultimately determine whether the order achieves its competitive objectives over its 10-year term.

FTC Commissioner Meador's Statement Provides Additional Insight Into Merger Analysis

FTC Commissioner Meador voted to approve the complaint and consent order and issued a separate statement that merits close reading. Although the FTC ultimately resolved the matter without litigation, Meador's statement frames the transaction as raising serious competitive concerns and articulates an enforcement posture that draws on more assertive themes from the 2023 Merger Guidelines and modern monopolization doctrine.

A Competitor Merger in a Highly Concentrated Market—Resolved Through Settlement

Meador described the transaction in pointed terms: 365's proposed acquisition of Cantaloupe, in its original form, "would have significantly strengthened 365 Retail's already dominant position of more than a 70 percent share in the highly concentrated national market for the sale and provision of micromarket kiosks and related software and services to foodservice operators."[19] Notwithstanding that characterization, the FTC elected not to challenge the deal, but instead negotiated remedies. Meador's statement explains why the

FTC believed a settlement was appropriate, but it also suggests that different circumstances could dictate a different outcome.

Early, Constructive Engagement Can Drive Outcomes

Meador credited the parties for their cooperative posture, describing the transaction and negotiated remedies as "a strong example of the efficiency of the premerger review program" and explaining that the parties "engaged with staff promptly and constructively and worked cooperatively throughout the investigation."[20] He observed that counsel "appearing before the Commission have an obligation to operate in good faith," and that "[t]hat obligation was met here, which facilitated a remedy that fully addressed the competitive concerns that staff identified during the Commission's review of the proposed transaction."[21]

Serial Acquisitions and Course-of-Conduct Analysis

A central thread of Meador's statement is concern with 365's history of "serial acquisitions," including transactions below Hart-Scott-Rodino thresholds, and 365's 2021 acquisition of Avanti. Citing an announcement video in which 365's founder and chief executive officer described the Avanti deal as bringing "the three innovators in the space and the three founders … all under one roof,"[22] Meador stated that this framing "raises concerns that 365 Retail has viewed acquisitions as a means to bring leading competitors together under a single corporate structure in order to enhance its already dominant market position."[23]

Drawing on Sections 2.7 and 2.8 of the 2023 Merger Guidelines and a string of merger and monopolization precedents, Meador emphasized the need to evaluate "the cumulative competitive effects of the serial chain of acquisitions of which this transaction is a part" and to consider "any related conduct undertaken by 365 Retail before this proposed acquisition to the extent it could be analyzed as an anticompetitive course of conduct." Notably, his statement observed that "[e]ven where earlier acquisitions are not independently unlawful, they may still constitute part of an exclusionary course of conduct relevant to Sections 7, 1, and 2 analyses." These themes echo concepts often promoted by enforcers viewed as more "aggressive" and reflect a willingness to apply them in the

current administration. The significance of this framing extends beyond the micromarket context: it suggests that an acquirer with a pattern of below-threshold acquisitions in a concentrated market may face scrutiny of its broader transaction history when it ultimately pursues a deal large enough to attract agency attention. Roll-up strategies that have proceeded unimpeded for years are not immune from retrospective course-of-conduct analysis.

Entrenchment and Technical Foreclosure

Meador also emphasized what he characterized as the merged firm's enhanced ability to engage in technical foreclosure. He explained that because 365 "already holds a dominant position," combining its hardware with Cantaloupe's software assets "would give the merged firm new and enhanced technical capabilities to restrict interoperability … and deprive rivals of access to functionalities essential for competitive offerings."[24] He noted that "[u]nder established precedent, a dominant firm's acquisition of an additional technical mechanism through which it could foreclose access to critical inputs or raise barriers to entry can independently violate Section 7 of the Clayton Act, and potentially Section 2 of the Sherman Act."[25] Absent "compelling evidence that the merged firm would lack an incentive to pursue such a foreclosure strategy in the future," the transaction "may have the effect of substantially lessening competition" or "tend to create a monopoly by raising barriers to entry in a manner that entrenches the incumbent's already dominant position. . . ."[26]

A "Strong Preference for Clean Divestitures"—With Behavioral Backstops

Meador reaffirmed the FTC's general approach to remedies, stating that "[t]here should be a strong preference for clean divestitures of standalone business lines that avoid entanglements which require ongoing Commission oversight."[27] Here, he found, Seaga is a credible buyer with "the resources, relevant experience, and operational capability to compete vigorously on day one."[28] The prior notice obligation provides "an additional important safeguard, particularly in light of 365 Retail's history of serial acquisitions. . . ."[29]

But the structural relief alone, in Meador's view, did not fully address vertical foreclosure risk. The interoperability and fee-monitoring requirements, paired with a 10-year duration and a qualified monitor, "are designed to operate alongside the structural relief and maintain the parties' existing incentives to support access to critical inputs needed to compete."[30] Meador described this as a "tailored approach" reflecting "[t]he case-specific features of this market" and the "bargaining dynamics unique to this industry," cautioning that "different circumstances in a different market could easily justify a different outcome."[31]

Key Takeaways for Future Deals

It is notable that the FTC chose not to block what it characterized as a merger between close, head-to-head competitors in a highly concentrated, effectively duopolistic market. Instead, the FTC pursued a broad, forward-looking remedy package—combining structural divestiture with detailed behavioral interoperability obligations. Indeed, leadership at both the FTC and the Department of Justice (DOJ) Antitrust Division (the agencies) have repeatedly emphasized their willingness to engage in remedy discussions across matters, though with a strong preference for divestitures over behavioral commitments that require ongoing oversight and monitorship. That stated preference and the actual practice, as this order illustrates, are not always aligned. Still, the settlement provides several practical takeaways for transaction planners, antitrust counsel, and in-house teams managing regulatory risk.

The Agencies Are Willing to Settle; Parties Should Constructively Engage

The matter underscores what officials have said publicly and consistently: FTC and DOJ are willing to resolve even significant mergers in highly concentrated markets through negotiated remedies where the parties engage early, candidly, and in good faith. Meador expressly framed the outcome as an example of "the efficiency of the premerger review program. . . ."[32] And officials have consciously sought to avoid "litigating the fix," where parties propose—and a court must evaluate—merger remedies *after* an agency has sued to block a transaction.[33] Counsel weighing remedy strategy

should treat early, substantive engagement on remedy design as a meaningful lever—particularly in transactions presenting clear horizontal overlaps and vertical complications.

Serial Acquisitions May Be Scrutinized

Meador's statement is notable in its endorsement of more assertive enforcement positions. For example, the statement makes clear that the FTC is prepared to evaluate transactions in the context of a firm's broader acquisition history—including deals that do not trigger the HSR reporting threshold—and to consider whether a chain of acquisitions, even if each one is independently lawful, may form part of an "exclusionary course of conduct."[34] Acquirers with active "roll-up" strategies in concentrated markets should expect more searching review and should be prepared to address cumulative-effects narratives early. Anticipating and rebutting course-of-conduct theories at the outset of an investigation may be essential to a path through review.

Vertical Foreclosure Risk Remains on Enforcers' Radars

Meador's framing—that an acquisition giving a dominant firm new technical capabilities for foreclosure can independently violate Section 7 and potentially Section 2—signals that vertical and ecosystem theories continue to be on enforcers' minds. While the agencies have had limited success litigating vertical merger cases in court, such concerns may be more addressable through negotiated settlements. Acquirers with meaningful market power should expect staff to focus on how new assets, particularly software or data assets, change or enhance the merged firm's ability or incentive to deny rivals access to critical inputs.

Interoperability Remedies May Become a Template—With Implications for Tech Transactions and Digital Platforms

Vertical theories of harm in mergers have proven challenging to establish in court. As a result, enforcers have often chosen not to litigate exclusively vertical theories of harm. Although recent years have seen more vertical merger challenges, behavioral

remedies have more often been the tool of choice to address vertical concerns. The 365-Cantaloupe order is notable, though, for its forward-looking and detailed obligations as to interoperability, non-discrimination, fee reasonableness, integrations, and confidentiality firewalls.

While the FTC characterized the settlement as tailored to the particular characteristics and dynamics of the market, the behavioral components offer a template that could be deployed in future deals presenting a "risk" of vertical foreclosure, even if establishing that risk at trial would be difficult. The implications are particularly significant for digital platforms and technology acquisitions, where ecosystem control, data flows, and API access are central competitive parameters. Parties to vertical or hybrid mergers should thus think proactively about whether interoperability or access commitments, voluntary or negotiated, can de-risk a deal.

Structural Relief Remains Preferred But Is Not Exclusive

Meador's statement reiterates the FTC's "strong preference for clean divestitures" and reflects skepticism toward stand-alone behavioral remedies.[35] Where behavioral relief appears, expect it to be paired with structural divestiture, narrowly tailored, time-limited, and accompanied by monitor oversight and prior-notice obligations.

But despite the agencies' stated preference for structural remedies—FTC Chair Andrew Ferguson has, for example, criticized behavioral remedies as "disfavored" and "difficult or impossible" for the agencies to enforce effectively[36]—conduct remedies appear alive and well. In a 2025 aerospace merger, the FTC required safeguards around information flows, supply assurances, and non-discrimination; in advertising services, an FTC settlement imposed limits on coordinated conduct and the use of competitively sensitive data across business lines; and in the pharmaceutical distribution sector, the FTC has advanced conduct remedies focused on pricing transparency, restrictions on exclusionary rebate practices, and prohibitions on steering. Similarly, in live entertainment, a recent DOJ settlement framework emphasized ongoing conduct obligations—including limits on retaliation, requirements to deal on non-discriminatory terms, and monitoring mechanisms. While enforcers have been rhetorically receptive to remedies but hostile

to behavioral fixes, they have also shown a willingness to deploy the latter in service of the former.

Conclusion

In many ways, the 365-Cantaloupe consent order confirms clear trends from the first 18 months of the second Trump administration: the agencies are willing and able to resolve matters through settlement, structural remedies remain preferred, and traditional horizontal concerns about the loss of head-to-head competition remain priorities for enforcers.

But the order also provides additional data points on emerging and open questions. For example, in late May, Commissioner Meador argued that opting for settlement rather than litigation preserves agency resources that could be deployed to other matters.[37] This could allow the agencies to "fix" more deals with fewer resources than a litigation-first posture would allow. Likewise, mandated interoperability, nondiscrimination, and data requirements represent strong, ongoing obligations to hedge against vertical foreclosure concerns that have traditionally been difficult to prove in litigation. While Meador's statement describes these remedies as a "tailored approach" responsive to "dynamics unique to this industry" and the "case-specific features of this market," he also cited "real-world concerns raised by customers and rival operators who depend on continued access to critical technology inputs"—concerns that are often raised by market participants in merger investigations, particularly in tech and digital markets.[38] What remains to be seen is how willing enforcers will be to deploy behavioral remedies to protect against often difficult-to-prove vertical effects and whether the 365-Cantaloupe framework becomes a durable template or remains an artifact of the particular competitive dynamics of a discrete market.

Notes

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1. Complaint ¶ 6, PEP VIII/Cantaloupe, FTC Docket No. C-4831 (May 1, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/Cantaloupe-Complaint.pdf (Complaint).

2. Vending management software (VMS) enables food service operators to remotely monitor kiosk inventory, track sales data, and manage product pricing and planograms across multiple locations.

3. Analysis of Agreement Containing Consent Order § II.A, PEP VIII/Cantaloupe, FTC Docket No. C-4831 (May 1, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/Cantaloupe-AACCO-APC.pdf (AACCO); Complaint ¶¶ 25-26.

4. Warehouse management software (WMS) coordinates the logistics of restocking, routing drivers, managing product pick lists, and optimizing delivery scheduled to ensure kiosks remain adequately supplied.

5. AACCO § II.B; Complaint ¶¶ 23, 26.

6. Id. ¶¶ 33-34.

7. Id. ¶ 30.

8. AACCO § III; Complaint ¶ 17.

9. Complaint ¶ 30.

10. Id. § II.A; AACCO § VII.

11. AACCO § VII.

12. Decision and Order § III.A.

13. Id. § III.A.

14. Id. §§ III.B, III.D, III.E.

15. Id. § V.

16. Id. § XI.A.

17. Id. § IX.A; AACCO § VII.

18. Decision and Order § XVII.

19. Statement of Commissioner Mark R. Meador at 1, PEP VIII/Cantaloupe, FTC Docket No. C-4831 (May 1, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-statement-providence-cantaloupe.pdf (Meador Statement).

20. Id. at 1.

21. Id.

22. Id. at 3 (alteration in original) (quoting 365 Retail Markets, We Are ONE: 365 and Avanti Merge, at 3:05 (YouTube, Sept. 15, 2021)).

23. Id.

24. Id. at 5.

25. Id. at 5.

26. Id.

27. Id. at 6.

28. Id. at 7.

29. Id.

30. Id.

31. Id. at 8.

32. Id. at 1.

33. Mark R. Meador, Commissioner, FTC, Procedural Integrity in the Merger Review Process, at 1 (May 20, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-litigate-the-fix.pdf (Meador May 20, 2026, Speech).

34. Meador Statement at 4 n.7.

35. Meador Statement at 6.

36. Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak and Commissioner Mark R. Meador at 7, Synopsys, Inc. & Ansys, Inc., FTC Matter No. C-4820 (May 28, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf.

37. Meador May 20, 2026, Speech at 4.

38. Meador Statement at 8.