FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institution effective as of the Date Closed as indicated in the listing.

SUPPLEMENTARY INFORMATION: This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992, issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions that have been placed in liquidation, please visit the Corporation website at *www.fdic.gov/bank/individual/failed/banklist.html,* or contact the Chief, Receivership Oversight at *RO@fdic.gov* or at Division of Resolutions and Receiverships, FDIC, 600 North Pearl Street, Suite 700, Dallas, TX 75201.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC ref. No.	Bank name	City	State	Date closed
10551	Community Bank and Trust—West Georgia	LaGrange	GA	05/01/2026

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on May 5, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026–09064 Filed 5–6–26; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

[File No. 251 0100]

365 Retail Markets and Cantaloupe; Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 8, 2026.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''365 Retail Markets and Cantaloupe; File No. 251 0100'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex K), Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before June 8, 2026. Write ''365 Retail Markets and Cantaloupe; File No. 251 0100'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''365 Retail Markets and Cantaloupe; File No. 251 0100'' on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex K), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies

the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before June 8, 2026. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') with Garage Topco LP, PEP VIII Intermediate 7 L.P., and 365 Retail Markets, LLC. (collectively ''365'') and Cantaloupe, Inc. (''Cantaloupe''). The proposed Consent Agreement is intended to remedy the anticompetitive effects that likely would result from 365's proposed acquisition of Cantaloupe (the ''Proposed Transaction'').

The Commission alleges in its Complaint that the Proposed Transaction, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the U.S. market for micromarket kiosks and related software and services. Separately, the Proposed Transaction may provide the merged entity with the ability and incentive to inhibit necessary interoperability between different products and services offered by its competitors in unattended foodservice retail.

The Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Transaction. Specifically, under the terms of the Consent Agreement, 365 is required to divest the U.S. assets related to Cantaloupe's Three Square Market business, which Cantaloupe obtained through its recent acquisition of Three Square Market, Inc. (''Three Square Market''). Additionally, the Consent Agreement requires 365 to offer customers and third parties integrations with its software and hardware on reasonable and non-discriminatory terms under specific circumstances.

I. The Parties and the Proposed Transaction

365 is the largest provider of micromarket kiosks in the United States. 365 is also a vertically integrated provider, selling not only hardware kiosks and credit card terminals, but back-end software that assists foodservice operators in inventory, pricing, and fulfillment across their foodservice locations.

USA Technologies was founded in 1992 and rebranded as Cantaloupe in 2021. Cantaloupe is a leader in credit card point-of-sale readers (''card readers''), which can be affixed to vending machines, or other devices, such as amusement rides, to effectuate credit card payments on these devices. Following its acquisition of Three Square Market in December 2022, Cantaloupe is the second largest provider of micromarket kiosks in the United States.

Pursuant to an Agreement and Plan of Merger executed on June 15, 2025, 365 plans to acquire the voting securities of Cantaloupe in an all cash-transaction valued at approximately $848 million.

II. The Relevant Market and Related Products

The Complaint alleges the relevant market in which to analyze the Proposed Transaction is the sale and provision of micromarket kiosks and related software and services. The United States is the relevant geographic market in which to assess the competitive effects of the Proposed Transaction.

Micromarkets are essentially small unattended convenience stores that are typically in high-trust locations like offices and breakrooms. In contrast to traditional vending machines, micromarkets have open shelves, allowing a wider inventory of differently sized items and freshly prepared foods.

Micromarket kiosks are used in micromarkets to enable end users to self-scan their selected items, facilitate the processing of credit cards, and enable food service operators to track inventory sold. The micromarket kiosks are commonly equipped with a screen, an embedded user interface, and payment infrastructure to enable transactions without the need for an attended cashier. Foodservice operators purchase micromarket kiosks from vendors, such as 365 and Cantaloupe, and pay these vendors recurring monthly usage fees as well as a percentage of each transaction made on the device.

The Complaint alleges other point-of-sale devices are not reasonable substitutes for micromarket kiosks. These other devices have different feature sets, use cases, and/or are not equipped to integrate with other back-end software needed by foodservice operators to manage micromarkets, along with their other attended or unattended foodservice retail locations.

Many foodservice operators use vending management software (''VMS'') to centralize operations across all their unattended foodservice locations. Akin to the brain of the foodservice operator's operation, VMS allows foodservice operators to track sales, monitor purchasing habits, manage inventory, measure theft rates, and set dynamic pricing instantaneously across their entire portfolio of unattended and attended retail devices, which may include traditional vending machines, micromarket kiosks, smart coolers, and self-serve dining points of sale. VMSs and vending hardware from different providers are generally interoperable because the providers voluntarily use industry-wide data standards defined by the National Automatic Merchandising Association (''NAMA'').

Foodservice operators also often use warehouse management software (''WMS'') to streamline inventory fulfillment among its various locations. WMS uses data from a foodservice operator's VMS to determine the type and quantity of products that need to be restocked at each location. The software alerts drivers to fill their trucks with the necessary inventory for each service location and optimizes routes to ensure that they only bring the necessary items, and that they are delivered timely. The connection between WMS and VMS is not governed by an industry standard, but systems offered by different providers are typically interoperable today.

IV. Market Structure

The Commission's Complaint alleges that Cantaloupe is 365's closest competitor and most significant competitive threat in the sale and

provision of micromarket kiosks and related software and services. Other competitors may offer micromarket kiosks, but many 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.

V. Competitive Effects

The Complaint alleges that the Proposed Transaction, if consummated, may substantially lessen competition in the market for micromarket kiosks and related software and services. Given 365's dominant position in micromarkets and Cantaloupe's position as its largest and most significant rival, the Complaint alleges that the Proposed Transaction will decrease head-to-head competition and may increase the likelihood that the merged entity unilaterally exercises market power to further lessen competition.

Separately, the Complaint alleges that the Proposed Transaction may provide the merged entity both the ability and incentive to inhibit the interoperability between micromarket kiosks, card readers, VMS, and WMS. Such an act would foreclose rivals from critical functionality and force customers to change all hardware and software to obtain more competitive offers or innovative features on a single product. The Complaint alleges that this would substantially lessen competition, including by increasing switching costs for foodservice operators.

VI. Entry Conditions

The Complaint alleges that entry into the U.S. market for micromarket kiosks and related software and services would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Proposed Transaction.

VII. The Agreement Containing Consent Orders

The Consent Agreement addresses the competitive concerns raised by the Proposed Transaction through both structural and behavioral remedies. The Consent Agreement requires 365 to divest to Seaga Manufacturing, Inc. (''Seaga'') the complete U.S. business of Three Square Market. These assets include micromarket kiosks, smart coolers, VMS, and WMS. 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.

Seaga, headquartered in Freeport, Illinois, is a leader in manufacturing, design, engineering, and sales of vending technologies and accessories. Although it does not currently compete with 365 in the sale or provision of micromarket kiosks and related software and services, it has operated in the unattended retail industry for over 36 years and has substantial experience in software and client support.

The Consent Agreement also requires 365 to provide hardware and software integrations to customers and third parties on reasonable and nondiscriminatory terms, as long as the customer or third party follows NAMA standards, or any other standards in effect during the term of the Consent Agreement. Additionally, it prohibits degradation of established integrations and limits the merged entity's ability to use confidential information obtained through integration processes. It also requires continued adherence to consensus-based industry standards where applicable.

The Consent Agreement also requires 365 to provide the Commission with prior notice before acquiring any business or entity related to micromarket kiosks in the United States.

The Commission will appoint Mr. Edward Buthusiem as the Monitor to ensure that the parties comply with all their obligations pursuant to the Consent Agreement, including the transfer of assets to Seaga and interoperability commitments.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

Statement of Commissioner Mark R. Meador

I vote to approve the Complaint and Consent Orders in this matter. This transaction and the negotiated remedies represent a strong example of the efficiency of the premerger review program and illustrates how early, good-faith engagement can yield settlement outcomes that restore competition and benefit consumers. The parties engaged with staff promptly and constructively and worked cooperatively throughout the investigation. As I have stated before, parties and counsel appearing before the Commission have an obligation to operate in good faith. That 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.

The statement below elaborates on my views regarding why this transaction—specifically, the use of serial acquisitions and the potential threat for the merged firm to engage in exclusionary conduct post-transaction given its existing dominant position—raises competitive concerns that warrant significant scrutiny. It also explains why the proposed remedy alleviates these concerns and how different circumstances could have warranted a different outcome.

Industry Background

As alleged in the Commission's complaint, 365 Retail's proposed acquisition of Cantaloupe, in its original form, would have significantly strengthened 365 Retail's already dominant position of more than a 70% share in the highly concentrated national market for the sale and provision of micromarket kiosks and related software and services to foodservice operators.[1] The complaint further alleges that the acquisition of Cantaloupe's software services, combined with 365 Retail's significant hardware assets, would have created a substantial risk of foreclosure by providing 365 Retail with both the incentive and the enhanced technical capability to exclude rivals by limiting interoperability and other critical functionalities and making it harder to switch providers.[2]

For context, micromarket kiosks are self-checkout point-of-sale systems that allow customers to purchase items in unattended micromarkets. Within this national market, the parties are significant head-to-head competitors, with 365 Retail serving as the largest and most established supplier.[3]

Operators in this market rely on multiple interconnected systems, including kiosks where customers check out, payment systems, vendor management software (VMS), and warehouse management software (WMS). Many food service operators (FSOs) depend on the ability to mix and match these components from different vendors so they can operate their businesses efficiently and avoid becoming locked into a single provider. Today, this interoperability exists mainly because firms voluntarily support it, despite some, including 365 Retail, having the technical ability to restrict it.[4]

[1] Complaint ¶ 20, *In re* Garage Topco LP, PEP VIII Intermediate 7 L.P., 365 Retail Markets, LLC, and Cantaloupe, Inc., Matter No. 2510100 (May 1, 2026).

[2] *Id.* ¶ 30.

[3] *Id.* ¶¶ 19–21.

[4] *Id.* ¶¶ 30–31.

FSOs with large portfolios of locations face significant costs and disruptions when replacing kiosks. Small obstacles to interoperability therefore can have outsized competitive effects. A weakened ability to mix and match systems could make it harder for rival firms to compete. As the range of workable options narrows, FSOs become more exposed to increased fees, higher payment processing charges, or reduced service quality. These added burdens would predictably be passed on to consumers who rely on micromarkets for meals and snacks during the workday.

Background on Proposed Remedies

The proposed remedy includes significant divestitures of kiosk assets, the imposition of strict interoperability and nondiscrimination requirements for certain hardware and software services, and a requirement that 365 Retail provide transition services for a limited period to the divestiture buyer, Seaga.

The order's provisions are designed to ensure that (1) Seaga is well-positioned to compete and expand in the short term, and (2) the merged firm cannot reduce interoperability or take other steps that lock customers into its ecosystem or raise switching costs. My assessment of these provisions, and how the proposed remedy package addresses the competitive concerns presented by the transaction, follows below.

Competitive Concerns

The competitive concerns raised by the proposed transaction are outlined in the FTC complaint and the analysis section of the proposed agreement containing consent orders to aid public comment. In short, the complaint alleges that the transaction would eliminate head-to-head competition between two of the largest suppliers of micromarket kiosks, increase the risk of higher prices and reduced innovation, and give the merged firm the ability and incentive to foreclose rivals by restricting interoperability and access to essential software and technology inputs.

Two additional issues raise unique legal questions that, in my view, warrant further emphasis and attention.

First, the transaction takes place against the backdrop of a pattern of serial acquisitions by 365 Retail, including acquisitions that fell below HSR thresholds and its 2021 acquisition of Avanti. For example, in the announcement video following the Avanti acquisition, Joe Hessling, the Founder and CEO of 365 Retail, stated that the transaction brought ''the three innovators in the space and the three founders . . . all under one roof.'' [5] 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. Accordingly, in reviewing the proposed transaction and the proposed remedy package, it was necessary to evaluate the proposed transaction not only on a standalone basis, but also to consider the cumulative competitive effects of the serial chain of acquisitions of which this transaction is a part.[6] It was further necessary to take into account any related conduct undertaken by 365 Retail before this proposed acquisition to the extent it could be analyzed as an anticompetitive course of conduct [7] that could violate section 7 of the Clayton Act [8] and, potentially, sections 1 [9] and 2 [10] of the Sherman Act (and, in turn, section 5 of the Federal Trade Commission Act).[11]

[5] 365 Retail Markets, *We are ONE: 365 and Avanti Merge,* at 3:05 (YouTube, Sep. 15, 2021), *https://www.youtube.com/watch?v=kbay X1LLjdk.*

[6] Fed. Trade Comm'n & U.S. Dep't of Justice, Merger Guidelines § § 2.7, 2.8 (2023). The Commission and the courts have long evaluated the cumulative competitive effects of serial acquisitions rather than viewing each transaction in isolation. *See, e.g.,Hosp. Corp. of Am.* v. *FTC,* 807 F.2d 1381, *1384–86 (7th Cir. 1986) (evaluating the probable effects of a defendant's acquisitions of several hospitals taken together); AshGrove Cement Co.* v. *FTC, 577F.2d1368, 1380 n.15 (9th Cir.1978) (explaining that the passage of time does not mitigate the cumulative effects of successive acquisitions); FTC* v. *Cardinal Health, Inc., 12 F. Supp. 2d 34, 66 (D.D.C. 1998) (evaluating the competitive effects of the proposed transactions as a whole based their effect on concentration levels and industry trends).* The legislative history and public understanding of the 1950 Celler-Kefauver amendments likewise reflect concern with serial acquisitions and their aggregate effects on competition. *See Foremost Dairies, Inc., 60 F.T.C. 944, 1050–51, 1082 (1962);* Earl W. Kintner *et al.,* Federal Antitrust Law § 40.5 (2d ed. 2026).

[7] Even where earlier acquisitions are not independently unlawful, they may still constitute part of an exclusionary course of conduct relevant to section 7 and section 1 and 2 analyses. Statement of the Federal Trade Commission at 3, *In re* Cardinal Health, Inc. (Apr.17, 2015) (explaining that earlier acquisitions can be ''initial steps in a monopolization scheme''); Beatrice Foods Co., 67 F.T.C. 473, 726–27 (1965) (explaining that transactions can be scrutinized as ''part of a series'' or as a ''course of conduct''); *cf. Continental Ore Co.* v. *Union Carbide Corp.,* 370 U.S. 690, 699 (1962) (faulting the appellate court for disregarding evidence that the defendant had ''interfered with, acquired, or destroyed'' independent sources of vanadium oxide through a combination of acquisitions, supply-foreclosure arrangements, and refusals to supply); *Poller* v. *Columbia Broad. Sys.,* 368 U.S. 464, 468–69 (1962) (explaining that even if a termination of affiliation rights and an acquisition were each lawful on their own, it could violate the Sherman Act ''if such a cancellation and purchase were part and parcel of unlawful conduct or agreement with others or were conceived in a purpose to unreasonably restrain trade, control a market, or monopolize''); *United States* v. *Paramount Pictures, Inc.,* 334 U.S. 131, 152 (1948) (''[E]ven if lawfully acquired, [acquisitions] may have been utilized as part of the conspiracy to eliminate or suppress competition. . . . In that event divestiture would likewise be justified.''); see also *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.,* 472 U.S. 585, 599, 611 (1985) (affirming verdict where the appellate court ''in its review of the evidence on the question of intent . . . considered the record 'as a whole' and concluded that it was not necessary for Highlands to prove that each allegedly anticompetitive act was itself sufficient to demonstrate an abuse of monopoly power' '' (quoting *Aspen Highlands Skiing Corp.* v. *Aspen Skiing Co.,* 738 F.2d 1509, 1522 n.18 (10th Cir. 1984)).

[8] 15 U.S.C. 18.

[9] 15 U.S.C. 1; see also Organisation for Economic Co-operation and Development [OECD], Working Party No. 3 on Co-operation and Enforcement, Roundtable on the Standard for Merger Review, with a Particular Emphasis on Country Experience with the Change of Merger Review Standard from the Dominance Test to the SLC/SIEC Test, Note by the United States, ¶ 12–13, DAF/COMP/WP3/WD(2009)5 (June 9, 2009), *https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2000-2009/mergerstandard.pdf* (''It is now widely agreed that a showing of likely anticompetitive effects suffice to establish a violation of Section 1 [of the Sherman Act], just as it does under the [substantially lessen competition] standard [of Section 7 of the Clayton Act]''); *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.,* 359 U.S. 207, 213–14 (1959) (quoting *Int'l Salt Co.* v. *United States,* 332 U.S. 392, 396) (''the Sherman Act has consistently been read to forbid all contracts and combinations 'which ''tend to create a monopoly,'' ' whether 'the tendency is a creeping one' or 'one that proceeds at full gallop' '').

[10] 15 U.S.C. 2. Modern courts in monopolization cases analyze conduct holistically based on the evidence in the record taken as a whole. See, e.g., *Duke Energy Carolinas, LLC* v. *NTE Carolinas II LLC,* 111 F.4th 337, 354 (4th Cir. 2024) (''It is foundational that alleged anticompetitive conduct must be considered as a whole.''), cert. denied, 145 S. Ct. 2748 (2026); *Sanofi-Aventis U.S., LLC* v. *Mylan, Inc.* (In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.), 44 F.4th 959, 982 (10th Cir. 2022) (explaining that it was necessary to analyze each challenged practice separately ''[f]or the sake of accuracy, precision, and analytical clarity'' before evaluating whether the evidence ''in totality'' demonstrated any ''synergistic effect'') (quoting *Ne. Tel. Co.* v. *Am. Tel. & Tel. Co.,* 651 F.2d 76, 95 n.28 (2d Cir. 1981)); In re Lipitor Antitrust Litig., 855 F.3d 126, 147 (3d Cir. 2017) (''courts must look to the monopolist's conduct taken as a whole rather than considering each aspect in isolation'') (quoting *LePage's Inc.* v. *3M,* 324 F.3d 141, 146 (3d Cir. 2003)); *Intergraph Corp.* v. *Intel Corp.,* 195 F.3d 1346, 1367 (Fed. Cir. 1999) (''Each legal theory must be examined for its sufficiency and applicability, on the entirety of the relevant facts''); see also *Viamedia, Inc.* v. *Comcast Corp.,* 951 F.3d 429, 453 (7th Cir. 2020) (''a dominant firm's conduct may be susceptible to more than one court-defined category of anticompetitive conduct.''); *New York* v. *Actavis PLC,* 787 F.3d 638, 653–54 (2d Cir. 2015) (citations omitted) (explaining that while product withdrawal or improvement alone may be legal, ''when a monopolist combines product withdrawal with some other conduct, the overall effect of which is to coerce consumers rather than persuade them on the merits, and to impede competition, its actions are anticompetitive under the Sherman Act''); *Conwood Co.* v. *U.S. Tobacco Co.,* 290 F.3d 768, 783 (6th Cir. 2002) (concluding that plaintiff presented evidence that defendant engaged in a ''systematic effort to exclude competition'' and rejecting defendant's contention that its actions constituted ''isolated sporadic torts.'').

[11] 15 U.S.C. 45. The Commission's authority under section 5 of the FTC Act extends to Sherman

Second, because 365 Retail already holds a dominant position in the national sale and provision of micromarket kiosks and related software and services to foodservice operators, the combination of 365 Retail's hardware assets and Cantaloupe's software assets would give the merged firm new and enhanced technical capabilities to restrict interoperability between micromarket kiosks and deprive rivals of access to functionalities essential for competitive offerings.[12] Under 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. Specifically, the incipiency requirements of the Clayton Act target acquisitions that place the acquiring firm in a unique position to engage in exclusionary conduct,[13] while the Sherman Act addresses efforts by firms with monopoly power to use acquisitions to maintain a dominant market position or obtain control over critical inputs as a means of impeding actual or potential competition.[14] Accordingly, 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 in the short and medium term by enabling the dominant firm to cut off access to critical inputs rivals need to compete,[15] or tend to create a monopoly by raising barriers to entry in a manner that entrenches the incumbent's already dominant position in a relevant market.[16]

Evaluation of the Proposed Remedies

In evaluating the proposed remedy, I apply the same principles I have previously articulated regarding effective merger settlements.

To reiterate, remedies remain an important part of the merger-enforcement toolkit.[17] They allow transactions to proceed under conditions of transparency and accountability, and enable the Commission to use its expertise to ensure remedies remain tailored to mitigate any potential competition concerns.[18] Consumers benefit from competition that remains intact, and parties can pursue transactions that create new growth opportunities that do not harm competition, while the business community benefits from the efficient operation of the merger review program. Where resolution is available, it can conserve time and resources for both the agency and the parties in a manner fully consistent with the Commission's mandate to protect competition and consumers. Importantly, merger settlements can serve a fundamental law enforcement function by preventing violations of the antitrust laws and arresting unlawful conduct in its incipiency.

But remedies must work in practice. When meaningful uncertainty remains about whether competition will be restored, that uncertainty must be resolved in favor of consumers.[19] In those circumstances, we should be prepared to litigate. The text, statutory framework, and legislative history underlying the antitrust laws and FTC Act confirm that the antitrust laws are more concerned with underenforcement than overenforcement.[20] That Congressional directive must continue to drive enforcement and settlement decisions.

There should be a strong preference for clean divestitures of standalone business lines that avoid entanglements which require ongoing Commission oversight. Parties must also approach the Commission early, candidly, and in good faith, and be prepared to propose a credible divestiture buyer with the financial capability, operational readiness, and industry expertise necessary to restore competition.[21]

At the same time, in certain limited cases, behavioral relief may be appropriate. For example, such relief may be proper where it is narrow and time-limited (such as the provision of transition services) or necessary to guard against the likelihood of foreclosure that would otherwise undermine the proposed divestitures. The Commission must also be prepared to monitor any such relief and ensure it is narrowly tailored in scope.

These principles inform the concrete criteria I apply when evaluating proposed remedies.

- Whether the divested assets form a part of a viable, standalone business.
- Whether the buyer has the financial and operational capability to compete immediately.
- Whether any behavioral provisions are enforceable and designed to address the competitive concern at issue, or directly support the effectiveness of the structural relief.

Act and Clayton Act conduct violations. See, e.g., *California Dental Ass'n* v. *FTC,* 526 U.S. 756, 762 n.3 (1999); *FTC* v. *Ind. Fed'n of Dentists,* 476 U.S. 447, 454 (1986); FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244 (1972); *FTC* v. *Cement Inst.,* 333 U.S. 683, 694 (1948) (''[A]ll conduct violative of the Sherman Act may likewise come within the unfair trade practice prohibitions of the Trade Commission Act''); *Fashion Originators' Guild of Am., Inc.* v. *FTC,* 312 U.S. 457, 463 (1941) (''If the purpose and practice of the combination of garment manufacturers and their affiliates runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition.'').

[12] Fed. Trade Comm'n & U.S. Dep't of Justice, Merger Guidelines § 2.5.A.2, at 16 n.30 (2023) (''The Agencies will generally infer, in the absence of countervailing evidence, that the merging firm has or is approaching monopoly power in the related product if it has a share greater than 50% of the related product market. A merger involving a related product with share of less than 50% may still substantially lessen competition, particularly when that related product is important to its trading partners.'').

[13] *FTC* v. *Procter & Gamble Co.,* 386 U.S. 568, 577 (1967) (''[T]here is certainly no requirement that the anticompetitive power manifest itself in anticompetitive action before § 7 can be called into play''); *FTC* v. *Consol. Foods Corp.,* 380 U.S.592, 598 (1965) (''the force of § 7 is still in probabilities, not in what later transpired. That must necessarily be the case, for once the two companies are united no one knows what the fate of the acquired company and its competitors would have been but for the merger.''); *United States* v. *E.I. du Pont de Nemours & Co.,* 353 U.S. 586, 597 (1957) (''the Government may proceed at any time that an acquisition may be said with reasonable probability to contain a threat that it may lead to a restraint of commerce or tend to create a monopoly of a line of commerce.''); Int'l Salt Co., 332U.S. at 396 (quoting 15 U.S.C. 18) (explaining that the law forbids agreements that ''tend to create a monopoly'' and does not ''await arrival at the goal before condemning the direction of the movement.''); see also *Cargill, Inc.* v. *Monfort of Colo., Inc.,* 479U.S.104, 121–22 (1986) (rejecting the argument that a plaintiff lacks standing to challenge a merger that could likely enable the acquiring firm to engage in future anticompetitive conduct such as predatory pricing).

[14] *See e.g., United States* v. *GrinnellCorp.,* 384 U.S. 563,573–76 (1966); *United States* v. *Am. Tobacco Co.,* 221 U.S. 106, 163, 184 (1911); *Standard Oil Co.* v. *United States,* 221U.S.1, 75 (1911).

[15] Fed. Trade Comm'n & U.S. Dep't of Justice, Merger Guidelines § 2.5 (2023).

[16] *Id.* at § 2.6; see also David Lawrence, The Merger-Monopolization Gap, 101 N.Y.U. L. Rev. (forthcoming 2026) (manuscript at 62–63), *https://ssrn.com/abstract=6315858* (reviewing the text, legislative history, and Supreme Court precedent interpreting section 7 and concluding that the statute reaches mergers that allow a firm to entrench its dominant position by positioning it to engage in exclusionary conduct).

[17] *See* Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak and Commissioner Mark R. Meador, *In re* Synopsys, Inc. and ANSYS, Inc. (May 28, 2025); Statement of Commissioner Mark R. Meador, *In re* Alimentation Couche-Tard, Inc. and Giant Eagle, Inc. (June 26, 2025) [hereinafter Meador ACT/Giant Eagle Statement].

[18] Statement of Commissioner Mark R. Meador at 2–3, *In re* Synopsys, Inc and ANSYS, Inc. (Oct. 17, 2025).

[19] Meador ACT/Giant Eagle Statement, *supra* note 17, at 2.

[20] Mark Meador, *Antitrust Policy for the Conservative* 25 (Fed. Trade Comm'n May 1, 2025), *https://www.ftc.gov/system/files/ftc_gov/pdf/antitrust-policy-for-the-conservative-meador.pdf.*

[21] Meador ACT/Giant Eagle Statement, *supra* note 17, at 2.

• Whether the remedy works without ongoing Commission supervision or, if monitoring is required, whether the Commission is well positioned to fulfill that oversight function.

• Whether the proposed settlement fully resolves the competitive concerns at the time it is proposed.

• Whether the remedy eliminates the merged firm's ability and incentive to engage in future exclusionary conduct, including monopolization strategies that rely on technical foreclosure.

After careful review of information contained in the investigatory record, particularly the parties' ordinary course documents and third-party statements, it is my view that the remedy here satisfies these criteria and mitigates the concerns I've outlined above given the market conditions and bargaining dynamics relevant to this industry.

Regarding the structural relief contained in the proposed order, the settlement requires clean divestitures of autonomous business lines, including Cantaloupe's micromarket kiosk business and related software services. The proposed divestiture buyer, Seaga, has the resources, relevant experience, and operational capability to compete vigorously on day one. Seaga's existing business incentives, including its incentives to develop its own software and hardware offerings and to support cross-platform integrations, significantly mitigate typical vertical or ecosystem lock-in concerns that often accompany transactions of this nature.

The prior notice requirement for future acquisitions involving micromarket-related businesses is an additional important safeguard, particularly in light of 365 Retail's history of serial acquisitions preceding the current transaction. That requirement ensures that the Commission will be alerted to future deals that may further reduce competition.

The transition services provisions are appropriately limited, incidental to the transfer of assets, and necessary to ensure continuity of operations while the divestiture buyer is in the process of establishing independent back-end systems. Moreover, they are short-term and technical in nature and require only temporary oversight for the duration of the approximately one-year transition period. Importantly, the commitments to divest are binding and structured to require minimal Commission oversight, consistent with the Commission's longstanding expectation that structural relief be self-sustaining and capable of operating autonomously.

Although the proposed remedial package is structural in nature, there are additional targeted behavioral provisions that are both necessary and appropriately tailored to address concerns related to the acquisition of Cantaloupe's software assets.

In particular, the interoperability and fee-monitoring requirements are designed to operate alongside the structural relief and maintain the parties' existing incentives to support access to critical inputs needed to compete in the provision of micromarket kiosks. The proposed behavioral commitments therefore play a meaningful role in preventing the merged firm from leveraging its expanded control over hardware and software to deprive rivals of access to critical functionalities and data connections.

Given 365 Retail's existing market position and its significant hardware portfolio, the acquisition of Cantaloupe's software services would create a material risk that the merged firm could, in the future, engage in exclusionary practices that violate section 2 of the Sherman Act. Such practices could include, but are not limited to, conditioning customer access to its systems on restrictive terms that limit data portability, degrading interoperability with other service providers, and limiting cross-compatibility for operators seeking to migrate their data systems. By directly eliminating the mechanisms through which future foreclosure could occur, the remedy ensures that the merged firm cannot use its enhanced technical capabilities to engage in exclusionary conduct in the micromarket kiosk market or pursue monopolization strategies in adjacent markets.

Because the proposed transaction will be subject to enforceable safeguards that preserve interoperability and institute fee-monitoring, the post-transaction integration of hardware and software assets, to the extent permitted by the order, can proceed in ways that accelerate complementary innovation, maintain competition, and facilitate new entry. When interoperability is preserved and foreclosure incentives are neutralized, integration is more likely to generate efficiencies which will ultimately be passed on to consumers without the accompanying risk of the merged firm engaging in exclusionary conduct.

The ten-year duration of the interoperability provisions, the presence of a qualified monitor, and the divestiture buyer's capacity to develop and operate its own hardware and software all work together to ensure that the remedy is durable, enforceable, and fully addresses the competitive risks identified during the investigation.

For these reasons, it is my view that the proposed remedies contained in the consent order fully resolve the competitive concerns raised by this transaction. It is important to bear in mind, however, that the proposed remedy package was crafted with close attention to the bargaining dynamics unique to this industry and was shaped directly by real-world concerns raised by customers and rival operators who depend on continued access to critical technology inputs. The case-specific features of this market warranted the tailored approach reflected in this order, and different circumstances in a different market could easily justify a different outcome.

Conclusion

The proposed remedy reflects the precision the Commission continues to apply to secure relief that advances our competition mandate and protects American consumers. It also underscores the importance of evaluating a company's overall course of conduct, including its past acquisition history and any risks related to foreclosed access, when assessing the competitive implications of a transaction. Given 365 Retail's history of serial acquisitions and the heightened risks that additional consolidation could pose, it is imperative that Commission staff continue to closely scrutinize any future transactions involving 365 Retail consistent with the prior-notice provisions in the order. Continued, proactive oversight will be necessary to prevent further entrenchment of market power and to safeguard the competitive conditions upon which businesses in these and adjacent markets rely.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10393]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to