Before the Federal Trade Commission
Response to Synopsys, Inc. and ANSYS, Inc.
Docket No. FTC 2025-0035-0001

Written Comments from the American Economic Liberties Project
Solicitation for Public Comment on Proposed Consent Agreement

July 7, 2025

The American Economic Liberties Project ("AELP")[1] submits this comment in response to the Federal Trade Commission's ("FTC" or "the Commission") request for comments[2] regarding the Consent Agreement (the "Consent Agreement") proposed by the Commission to avoid filing a lawsuit to challenge an anticompetitive $35 billion merger between Synopsys, Inc. ("Synopsys") and ANSYS, Inc. ("Ansys") (collectively, "Respondents"). Accompanying the Consent Agreement is a statement issued by Chairman Andrew N. Ferguson, joined by Commissioners Melissa Holyoak and Mark R. Meador.[3]

I. Introduction

By the Commission's own representation, the FTC is a law enforcement agency, not a central planner.[4] That aspirational statement rings hollow in light of the consent decree proposed in this matter. The Trump-Vance FTC is rapidly distinguishing itself from the prior administration's policy of rigorous enforcement against illegal mergers. The Trump administration has failed to bring a single merger challenge to trial, and its eleventh-hour abandonment of one such challenge raises doubts as to its interest in doing so.[5] For its part, the Trump-Vance FTC, unfettered from the scorn of dissent,[6] comfortably theorizes about merger efficiencies, bemoans

[1] AELP is a nonpartisan, nonprofit research and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States.
[2] Federal Trade Commission, "Synopsys, Inc. and ANSYS, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment," Regulations.gov, June 5, 2025, https://www.regulations.gov/document/FTC-2025-0035-0001.
[3] Statement of Chair Andrew N. Ferguson, in the Matter of Synopsys, Inc./Ansys, Inc., Matter Number 2410059, May 28, 2005, ("Statement"). https://www.ftc.gov/system/files/ftc_gov/pdf/synopsys-ansys-ferguson-statement-joined-by-holyoak-meador.pdf.
[4] "But the Commission does not implement industrial policy. It is not a central planner. It is a cop on the beat." Statement, at 2.
[5] Rishabh Jaiswal, "US Justice Department settles antitrust case for HPE's $14 billion takeover of Juniper," Reuters, June 30, 2025, https://www.reuters.com/business/us-doj-settles-antitrust-case-hpes-14-billion-takeover-juniper-2025-06-28/
[6] On a recent podcast appearance, Chairman Ferguson acknowledged the "value" of dissents. ("I wrote 400 plus pages of dissents during my time as a minority commissioner. I think that adds value.") "FTC

capacity constraints to which it has acquiesced,[7] and hides behind untested, *ipse dixit* assertions of litigation risk. And, by inviting merging parties to negotiate settlements with the Commission,[8] the Commission assumes the very role of "central planner" that it derides, abandoning the "cop on the beat" role it superficially aspires to.

In its Statement, the Commission attempts to rationalize how consent decrees align with the Commission's statutory mandate to challenge illegal mergers. The result is a muddled and internally-conflicted analysis of the Commission's authority, providing little in the way of clarity to the public, while obscuring the Commission's law enforcement mandate behind a veil of unbridled discretion. Worse, the Commission's pro-settlement approach sends a signal to markets that the Commission would rather negotiate deals than fulfill its statutory obligation to challenge those it deems anticompetitive.

On the one hand, the Commission is correct that safeguarding markets from illegal mergers is "critical to protecting the vibrancy of the American economy."[9] Yet, in the same breath, the Commission exclaims that "mergers and acquisitions are a critical way in which capital fuels innovation," allowing investors to "realize returns on their investments."[10] Is that the motivating factor behind allowing Synopsys to acquire Ansys? The Commission does not say, and, given the extensive acquisition history of both parties, the shoe does not fit.

The Commission is sympathetic to the idea that past Commissions "became too comfortable with behavioral remedies that were difficult or impossible to enforce," "lock[ing] the Commission into the status of a monitor for individual firms rather than a guardian of competition."[11] Yet, just weeks after the subject Consent Agreement, the Commission proposed another consent decree imposing widely derided behavioral remedies to a $13.5 billion merger that would create the largest advertising holding company in the world.[12] In yet another proposed consent decree just three days after announcement of the Omnicom-Interpublic consent decree, the Commission stated that it reserves non-structural remedies for "extremely rare cases."[13] Is the Omnicom-Interpublic one such "extremely rare case"? The Commission does not pretend it is. To the

---

Chief Andrew Ferguson on the Trump Vision for Antitrust," Odd Lots, at 8:28, March 17, 2025, https://omny.fm/shows/odd-lots/ftc-chief-andrew-ferguson-on-the-trump-vision-for?in_playlist=podcast.

[7] Justin Wise, "FTC Chair Says He Wants to Reduce Agency Staffing Levels by 15%," Bloomberg Law, May 15, 2025, https://news.bloomberglaw.com/business-and-practice/ftc-chair-says-he-wants-to-reduce-agency-staffing-levels-by-15.

[8] "Moreover, when parties negotiate with the FTC on merger remedies—particularly transactions involving complex divestiture packages across multiple locations—it is essential that they approach Commission staff early, candidly, and in good faith." Statement of Commissioner Mark R. Meador in the Matter of Alimentation Couche-Tard, Inc./Giant Eagle, Inc., Matter Number 2410111, June 26, 2025. https://www.ftc.gov/system/files/ftc_gov/pdf/mark-meador-statement-act-giant-eagle.pdf.

[9] Statement, at 2.

[10] *Id.*, at 4.

[11] *Id.*, at 4.

[12] Federal Trade Commission, "FTC Prevents Anticompetitive Coordination in Global Advertising Merger," press release, June 23, 2025. https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-prevents-anticompetitive-coordination-global-advertising-merger.

[13] *Supra*, fn 5, at 1.

extent the Commission hopes to extend clarity to markets, the only consistency is the lack of any.

Next, the Commission argues that a settlement with the Commission, as compared to a "fix it first" obligation for merging parties, "promotes transparency and accountability on merger remedies." By the Commission's assessment, "fix it first" remedies, where parties attempt to resolve antitrust concerns before filing their pre-merger notification with the government, run the risk of inadequately addressing competitive concerns. This approach marks a stark departure from the Commission's approach under then-Chair Lina Khan, which sought to conserve agency resources by avoiding months-long negotiations of anticompetitive deals.[14] Experts have likewise warned of the avoidable expenditure of resources flowing from "an endless round of negotiations, modifications, brokering, and back and forth between the Agency and the parties over divestiture, access, and behavioral remedies."[15] To the extent the parties' "fix it first" remedy is inadequate, the Commission retains jurisdiction to challenge the balance of the merger. Nevertheless, despite repeated concerns about its limited capacity, the Commission chooses instead to expend its resources to make anticompetitive deals work, while taking the pressure off merging parties to do any hard work up front.

Contrary to this better wisdom, the Commission argues that settlements "must be on the table" because otherwise the expense and risk of litigation would divert the Commission's resources from other "actions challenging anticompetitive conduct." Do these other "actions challenging anticompetitive conduct" not bear their own litigation risk? The Commission offers no clear explanation. The Commission's reticence to enforce the law against anticompetitive mergers – unquestionably among the plenary authorities conferred by Congress on the Commission – cannot be justified by an ambient need to enforce the law elsewhere, particularly given the not-insignificant resources expended by the Commission to negotiate settlements. Yet, by rationalizing the Commission's pro-settlement approach through a malleable list of the Commission's limitations, the Commission strives for an inscrutable position beyond reproach.

At best, Chair Ferguson provides a sobering assessment of the inadequacy of a law constrained by resource limits and litigation risk outside the Commission's control. But capacity constraints are also a means by which the Commission launders its disinterest in its core function: enforcing the law. By contrast, recent memory shows how the Commission can use its pulpit to chill anticompetitive conduct upstream, rather than equivocate over the Commission's obvious and inherent constraints. The predecessor Commission sent a clear message that, "Executives should not presume that the FTC will agree to piecemeal divestitures."[16] The Trump-Vance

[14] Margaret Harding McGill, "FTC's new stance: Litigate, don't negotiate," Axios, June 8, 2022 ("'That is not work that the agency should have to do,' Khan said. 'That's something that really should be fixed on the front end by parties being on clear notice about what are lawful and unlawful deals.'") https://www.axios.com/2022/06/09/ftcs-new-stance-litigate-dont-negotiate-lina-khan.
[15] John Kwoka, Spencer Weber Waller, "Fix It Or Forget It: A 'No Remedies' Policy for Merger Enforcement," CPI Antitrust Chronicle, August 2021. https://cssh.northeastern.edu/wp-content/uploads/2021/08/CPI-Kwoka-Weber-Waller-FINAL.pdf,
[16] Federal Trade Commission, "Update from the FTC's Bureau of Competition," Remarks by Holly Vedova, Director, Bureau of Competition, at 12th Annual GCR Live: Law Leaders Global Conference,

Commission under Chair Ferguson broadcasts a strikingly different message: "Settlements … save the Commission time and money."[17] At worst, the Commission sends a message that the merger floodgates are open. Taking note, capital markets have all but entirely ceased discussion of antitrust deal risk.

As detailed herein, the proposed Consent Agreement in Synopsys/Ansys defies the 2023 Merger Guidelines by narrowly focusing on three sub-markets where the Commission alleges substantial direct overlap. Despite a professed desire to promote transparency,[18] the Commission fails to articulate why it limits the scope of the Consent Agreement to just these sub-markets, ignoring multiple other relevant markets where the merged entity will entrench its dominance, foreclose entry, and restrict the current market's dynamic and modular approach to semiconductor design, manufacturing and review. Instead, the Commission has negotiated a paltry settlement that allows Synopsys to become a one-stop-shop for semiconductor design, manufacturing, and simulation.

II. America's Anti-Merger Laws Foster A Free Enterprise System Fueled By Fair Competition and Internal Expansion.

Enforcement of laws that prevent anticompetitive mergers is part of a great American tradition, whereby companies succeed based on the merits of fair competition, innovation, and internal expansion. Indeed, Congress enacted laws restricting mergers and acquisitions ("M&A") for a variety of reasons that reflect deep skepticism towards industrial consolidation, regardless of whether control was organized vertically or horizontally.[19] Congress instead preferred a free enterprise system where businesses achieve growth and innovation through fair competition on the merits, and through investment in internal operations, including research and development.[20]

Textualism confirms that Congress erred on the side of skepticism toward M&A. Section 7 of the Clayton Act forbids M&A transactions where the "effect… may be substantially to lessen competition, or to tend to create a monopoly."[21] Applying a core tool of textualism– grammatical analysis[22]– that means banning transactions "that could possibly, in one or more realistic ways, either diminish the amount, scope, or intensity of competitive activity, or conduce to a course of

---

February 3, 2023, p. 10-12, https://www.ftc.gov/system/files/ftc_gov/pdf/vedova-gcr-law-leaders-global-conference.pdf.

[17] Statement, at p. 7.

[18] Commission Statement, at 5.

[19] *See, e.g.*, Basel Musharbash and Daniel Hanley, "Toward a Merger Enforcement Policy That Enforces the Law: The Original Meaning and Purpose of Section 7 of the Clayton Act," 61 Duquesne L. Rev. 1, 1-154, 113 (Winter 2025), https://sites.law.duq.edu/lawreview/wp-content/uploads/2025/04/duqlr_63n1_issue_low.pdf.

[20] *See*, e.g., Daniel Hanley, Structuring Competition to Foster Socially Beneficial Innovation (September 28, 2023). Competition Policy International Antitrust Chronicle, September 2023, Available at SSRN: https://ssrn.com/abstract=4586770.

[21] 15 U.S.C. § 18.

[22] Grammatically, "substantially" functions as a sentence adverb that modifies the copula "may be" rather than its complements ("lessen competition, or to tend to create a monopoly"). Musharbash at p. 17.

action or behavior that can eventually bring monopoly about."[23] The text does not mention capital raising, exit strategies, or returns on investment. Nor does it otherwise endorse erring on the side of consolidating economic sectors through M&A.

The legislative history likewise reflects skepticism towards M&A. The Senate Judiciary report for the Clayton Act of 1914 expressed a goal of "arrest[ing] the creation of trusts, conspiracies, and monopolies in their incipiency and before consummation."[24] When Congress amended the Clayton Act to close a loophole several decades later, House co-sponsor of the Celler-Kefauver Act of 1950, Rep. Emanuel Celler, explained that the bill would "call a halt to the merger movement… in this country."[25] The House Report cited a 1948 FTC report on concentration trends, noting that the "long-term rise in concentration is due in considerable part to the external expansion of business through mergers, acquisitions, and consolidation," and explained that was "the broad economic problem of high and increasing concentration with which the legislation is concerned."[26] The legislative history also reflects concerns that merger waves place "economic control in the hands of a very few people" and thereby threatened to turn democratic states into fascist, socialist, or communist states.[27] Although the bill did not ban mergers,[28] it is no coincidence that the Celler-Kefauver Act of 1950 is commonly known as the "Anti-Merger Act."[29]

Interpreting this legislative history, in 1950 the Supreme Court explained the type of free enterprise system Congress envisioned instead:

---

[23] Musharbash at p. 15.
[24] S. Rep. No. 63-695, at 1 (1914).
[25] 95 CONG. REC. 11485 (1950) (statement of Rep. Celler); Celler-Kefauver Act, 64 Stat. 1125 (1950).
[26] H. Rep. No. 81-1191, at 2-3 (1949).
[27] *See*, e.g., 95 CONG. REC. 16,452 (1950) ("I am not an alarmist, but the history of what has taken place in other nations where mergers and concentrations have placed economic control in the hands of a very few people is too clear to pass over easily. A point is eventually reached, and we are rapidly reaching that point in this country, where the public steps in to take over when concentration and monopoly gain too much power. The taking over by the public through its government always follows one or two methods and has one or two political results. It either results in a Fascist state or the nationalization of industries and thereafter a Socialist or Communist state. Most businessmen realize this inevitable result. Certain monopolistic interests are being very short-sighted in not appreciating the plight to which they are forcing their Government."); *see also* 49 CONG. REC. 11,486 (1949) (Senator Celler quoting Walter Lippman of Fortune magazine) ("The development of combinations in business, which are able to dominate markets in which they sell their goods, and in which they buy their labor and materials, must lead irresistibly to some form of state collectivism. So much power will never for long be allowed to rest in private hands, and those who do not wish to take the road to the politically administered economy of socialism, must be prepared to take the steps back toward the restoration of the market economy of private competitive enterprise.").
[28] *See* S. Rep. No. 81-1775, at 4 (1950) ("[I]t was not desired that the bill go to the extreme of prohibiting all acquisitions between competing companies."); *see also,* Eric A. Posner, "Market Power, Not Consumer Welfare: A Return to the Foundations of Merger Law," 86 Antitrust Law Journal 205, 210 (2024) (noting that the text of Section 7 suggests that "Congress meant to allow mergers between smaller firms or perhaps a merger between a large and small firm. But this is hardly a novelty in the law, where de minimis exceptions are ubiquitous.")
[29] Celler-Kefauver Anti-Merger Act (1950), https://fraser.stlouisfed.org/title/celler-kefauver-anti-merger-act-5841.

> "A company's history of expansion through mergers presents a different economic picture than a history of expansion through unilateral growth. Internal expansion is more likely to be the result of increased demand for the company's products and is more likely to provide increased investment in plants, more jobs and greater output. Conversely, expansion through merger is more likely to reduce available consumer choice while providing no increase in industry capacity, jobs or output. It was for these reasons, among others, Congress expressed its disapproval of successive acquisitions."[30]

This understanding is also reflected in the 2023 Merger Guidelines that current enforcers have retained.[31] The Guidelines explain that "[i]n general, expansion into a concentrated market via internal growth rather than via acquisition benefits competition."[32] Academics and business writers have likewise observed that growth through M&A can be "financially wasteful" because such transactions, "inherently divert financial expenditures that can be put toward more productive, socially beneficial use, such as spending that expands a firm's industrial capacity."[33]

The pro-growth, pro-innovation effects of faithful merger law enforcement have been confirmed repeatedly across a wide variety of industries. After an antitrust lawsuit in 1916, for example, American Can's "management followed a deliberate policy of growth by internal expansion rather than by acquisition," using retained earnings complemented by debt and stock sales to construct "more than a dozen new metal-can plants" around the country and expanding many existing plants to "double or more their previous capacity."[34] In the mid-20th Century, after DuPont's leaders recognized that their previous habit of "acquiring small competitors was less viable in the new, tougher antitrust environment," the company "changed its technology strategy

---

[30] *Brown Shoe Co v. United States,* 370 U.S. 294, 345 n. 72 (1962); see also *United States v. Philadelphia Nat. Bank,* 374 U.S. 321, 346, 370 (1963)

[31] Federal Trade Commission, "FTC Chair Andrew N. Ferguson Announces that the FTC and DOJ's Joint 2023 Merger Guidelines Are in Effect," press release, February 18, 2025, https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-chairman-andrew-n-ferguson-announces-ftc-dojs-joint-2023-merger-guidelines-are-effect; U.S. Department of Justice, "Memorandum: Use of the 2023 Merger Guidelines," to Antitrust Division staff from Acting Assistant Attorney General Omeed Assefi, February 18, 2025, https://www.justice.gov/atr/media/1389861/dl?inline.

[32] U.S. Department of Justice & Federal Trade Commission, Merger Guidelines, 11, December 18, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf. (*citing Ford Motor Co. v. United States*, 405 U.S. 562, 587 (1972).

[33] Daniel Hanley, Structuring Competition to Foster Socially Beneficial Innovation (September 28, 2023). Competition Policy International Antitrust Chronicle, September 2023, Available at SSRN: https://ssrn.com/abstract=4586770. *See also, e.g.*, F. M. Scherer, Industrial Market Structure and Economic Performance 562 (2nd ed. 1980) ("That society benefits under all but rare circumstances by channelling large corporations' energies into building rather than merely buying seems clear."); CITE https://www.pymnts.com/wp-content/uploads/2024/01/3-IN-PRAISE-OF-RULES-BASED-ANTITRUST-Daniel-A-Hanley.pdf (when laws "proscrib[e] certain conduct, firms are encouraged to engage in other conduct that achieves similar ends but also benefits the public," and antitrust enforcement can "channel firm investment into alternative fair methods of competition such as increased spending on research and development and productive capacity.").

[34] James W. McKie, Tin Cans and Tin Plate 88-89 (1959), https://archive.org/details/tincanstinplate0000unse/page/88/mode/2up?q=%22internal+expansion%22.

to rely more heavily on its own R&D."[35] After AT&T's attempted acquisition of T-Mobile was blocked, T-Mobile cut prices and made other pro-competitive changes that "transformed the industry," such as making it easier for consumers to switch providers by "abolish[ing] long-term consumer contracts."[36] More recently, after the FTC blocked an attempted merger between Nvidia and Arm, Arm went public instead and both companies thrived - with soaring stock values – by focusing on their core competencies.[37] In the wake of its abandoned $20 billion merger with Adobe, thwarted by the last administration's Justice Department, design software company Figma reinvigorated its products, and investors have celebrated that company's forthcoming public offering as a "chance to build a much bigger business than the Adobe deal."[38]

III. With its recent spate of consent decrees, the FTC returns to a troubling era of merger deregulation.

With its clear preference for consent decrees - signaled by the Commission's entreaty that merging entities approach the Commission "early"[39] to negotiate settlements, and three proposed consent decrees in the span of just 30 days[40] - the Trump-Vance FTC reverts to a dangerous era of non-enforcement and neglect of the rule of law. Federal antitrust enforcers began abandoning their role as enforcers of the law in favor of becoming apprentice dealmakers in the 1980s.[41] That shift was "not merely procedural," but instead had "important implications for enforcement policy, compliance incentives, and substantive law."[42] The result was a "corporate take-over wave," characterized by an approach to merger scrutiny that favored market deregulation and agency-led industrial policy. In short, otherwise illegal mergers were waived through via consent decrees rather than litigated.[43]

---

[35] David M. Hart, Forged Consensus, (1998), https://archive.org/details/forgedconsensuss0000hart/page/96/mode/2up?q=dupont.
[36] Hanley, Daniel, Structuring Competition to Foster Socially Beneficial Innovation (September 28, 2023). Competition Policy International Antitrust Chronicle, September 2023, Available at SSRN: https://ssrn.com/abstract=4586770.
[37] Kif Leswing, "FTC Chair Lina Khan takes victory lap on blocking Nvidia-Arm merger," CNBC, February 27, 2024, https://www.cnbc.com/2024/02/27/ftc-chair-lina-khan-takes-victory-lap-on-blocking-nvidia-arm-merger.html.
[38] Geoff Weiss, "Figma investors say going public is a better outcome than its abandoned Adobe deal," Business Insider, July 7, 2025, https://www.businessinsider.com/figma-ipo-investors-better-outcome-adobe-deal-2025-7.
[39] Meador Statement.
[40] Federal Trade Commission, "FTC Prevents Anticompetitive Coordination in Global Advertising Merger," press release, June 23, 2025, https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-prevents-anticompetitive-coordination-global-advertising-merger; Federal Trade Commission, "FTC Takes Action to Prevent Anticompetitive Effects of Retail Gas Station Deal," press release, June 26, 2025, https://www.ftc.gov/news-events/news/press-releases/2025/06/ftc-takes-action-prevent-anticompetitive-effects-retail-gas-station-deal.
[41] Thomas Sullivan, The Antitrust Division as a Regulatory Agency: An Enforcement Policy in Transition, 64 WASH. U.L. REV. 997, 1001 (1986) ("[T]he Antitrust Division has changed from a traditional, litigation-oriented enforcement agency to a regulatory agency.").
[42] *Id.*
[43] Douglas H. Ginsburg & Joshua D. Wright, Antitrust Settlements: The Culture of Consent, in WILLIAM E. KOVACIC: AN ANTITRUST TRIBUTE 177, 178 (Charbit et al. eds. 2013) ("By the 1980s, 97 percent of

Although Chair Ferguson claims that "a majority of divestiture settlements succeeded," his sole source of support is an Obama-era 2017 FTC self-retrospective that did not use basic "statistical methodology such as difference-in-differences," excluded nearly a quarter of divestitures because "the buyers of the divested assets could not even be identified," and used internally inconsistent methodology.[44] More rigorous empirical analyses reveal a far more troubling track record.[45]

Moreover, the deregulatory approach to merger scrutiny flies in the face of the law and FTC's own policies. As described herein, Congress was explicit with its intent that the Clayton Act be enforced to prevent industrial consolidation. The FTC Act and Commission policies reflect a similar intent to utilize consent decrees only in the most limited circumstances. Under Section 5(b), the FTC may bring cases challenging unfair methods of competition when it appears that such an action "would be of interest to the public[.]"[46] That standard also applies to settlements, which, as a previous FTC commissioner explained, "should be, first and foremost, in the public interest."[47]

In order words, "the terms of settlement of any litigation brought by the Commission should be negotiated and approved based on the same standards that caused the Commission to file suit in the first place."[48] Indeed, that is why the FTC solicits public comments and retains the right to withdraw acceptance of consent decrees it initially accepted, after reviewing those comments. ECFR 2.34(e); *see, e.g., Johnson Prods. Co. v. FTC*, 549 F.2d 35, 38 (7th Cir. 1977) ("The Commission, unlike a private litigant, must act in furtherance of the public interest.") (explaining that the public interest mandate entitles the FTC to reserve the option of withdrawing its acceptance of a consent decree after the public comment period).

---

civil cases filed by the Division resulted in a consent decree, and that percentage remained relatively constant at 93 percent in the 2000s. This trend has continued, with the Division resolving nearly its entire antitrust civil enforcement docket by consent decree from 2004 to present.") (citations omitted); *see also* Christopher A. Williams, Tiffany Lee, and Nick Marquiss, "Room for Agreement? Antitrust Merger Consent Decrees Policy and Practice Under the Biden Administration," CPI Antitrust Chronicle, November 2023, https://www.pymnts.com/wp-content/uploads/2023/11/5-ROOM-FOR-AGREEMENT-ANTITRUST-MERGER-CONSENT-DECREES-POLICY-AND-PRACTICE-UNDER-THE-BIDEN-ADMINISTRATION-Christopher-AWilliams-Tiffany-Lee-Nick-Marquiss.pdf ("from 2001 to 2020, roughly 80 percent of merger challenges were resolved by consent decree in lieu of litigation to block the transaction. Of the litigation challenges, a significant number — approximately 21 percent — were settled post-complaint") (citation omitted).

[44] *See* John Kwoka, Methodology Matters: Learning From--And About--Merger Remedies Reviews (March 1, 2024), https://ssrn.com/abstract=4834711.

[45] *See*, e.g., John Kwoka, "Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes" (April 4, 2012). Antitrust Law Journal , Vol. 78, 2013, https://ssrn.com/abstract=1954849.

[46] 15 U.S.C. § 45(b).

[47] Federal Trade Commission, "Consent Decrees: Is the Public Getting Its Money's Worth?," Remarks of J. Thomas Rosch, Commissioner, XVIIIth St. Gallen International Competition Law Forum, April 7, 2011, p. 6, https://www.ftc.gov/sites/default/files/documents/public_statements/consent-decrees-public-getting-its-moneys-worth/110407roschconsentdecrees.pdf.

[48] *Id.* at p. 7.

In the prior administration, the FTC elevated the "public interest" standard of merger review with a preference for litigation instead of "risky remedies." That approach was dictated by a recognition that consent decrees had had a track record so disastrous[49] that economists and scholars had proposed banning them altogether.[50] While the prior administration did not avoid consent decrees altogether, former FTC Chair Lina Khan and former Assistant Attorney General Jonathan Kanter nevertheless recognized, "[g]iven the difficulties in predicting future market realities, particularly in dynamic markets… the optimal remedy is often to oppose problematic mergers outright."[51] The "public should not bear the cost of a risky remedy," so agencies should "resolve doubts about the efficacy of a remedy in favor of rejecting it."[52]

To the extent divestiture remedies were appropriate, the FTC's policy was to accept only "divestitures that allow the buyer to operate the divested business on a stand-alone basis quickly, effectively, and independently, and with the same incentives and comparable resources as the original owner."[53] The DOJ likewise specified that divestitures must be of "sufficiently discrete and complete" business units in a non-dynamic market.[54]

On the occasions when Biden administration enforcers accepted consent decrees, they were typically paired with prior approval requirements.[55] This reinstated the FTC's historic practice, prior to 1995, of "routinely requiring merging parties subject to a Commission order to obtain prior approval from the FTC before closing any future transaction affecting each relevant market for which a violation was alleged."[56] This practice serves critical interests, including preventing facially anticompetitive deals, preserving Commission resources by avoiding repetitive in-depth review of the same or similar transactions, and better detecting deals below HSR reporting

---

[49] Krista Brown et al., "The Courage to Learn," The American Economic Liberties Project, pp. 48-55, https://www.economicliberties.us/our-work/courage-to-learn/.
[50] Hal Singer, "Beefing up Merger Enforcement by Banning Merger Remedies," ProMarkert, August 5, 2021, https://www.promarket.org/2021/08/05/merger-enforcement-ban-remedies-sprint/
[51] Letter from FTC Chair Lina Khan and Assistant Attorney General for Antitrust Jonathan Kanter to Canadian Minister of Innovation, Science and Industry François-Philippe Champagne, March 31, 2023, https://www.justice.gov/atr/page/file/1578296/dl?inline.
[52] *Id.*
[53] Federal Trade Commission, "Update from the FTC's Bureau of Competition," Remarks by Holly Vedova, Director, Bureau of Competition, at 12th Annual GCR Live: Law Leaders Global Conference, February 3, 2023, https://www.ftc.gov/system/files/ftc_gov/pdf/vedova-gcr-law-leaders-global-conference.pdf.
[54] Jonathan Kanter, Assistant Attorney General, Remarks to the New York State Bar Association Antitrust Section (Jan. 24, 2022), https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-antitrust-division-delivers-remarks-new-york.
[55] Federal Trade Commission, "Statement of the Commission on Use of Prior Approval Provisions in Merger Orders," https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf.
[56] Federal Trade Commission, "Statement of the Commission on Use of Prior Approval Provisions in Merger Orders," https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf.

thresholds.[57] As noted below, the current Commission dispenses of this authority, reinstating the 1995 policy statement on its own, befuddling accord.

IV. The Consent Agreement fails to consider the heightened anticompetitive risks of the Synopsys/Ansys merger.

Synopsys makes electronic design automation ("EDA") design software– a category of software tools used in the semiconductor industry to perform complementary tasks for designing integrated circuits and systems-on-chips, such as predicting circuit behavior, creating physical circuit elements, and verifying that designs are suitable for manufacture.[58] Synopsys is widely recognized as the leader in that broad market– with 46% market share as of 2024– followed by Cadence Design Systems (35.1%) and Siemens (12.2%).[59] Collectively, these three firms have made 93 acquisitions in just the past decade, with Synopsys alone acquiring 62 companies.[60]

Although Synopsys and Cadence offer many competing tools, only Cadence is currently regarded as an "All-in-One Solution."[61] Industry analysts have noted, for example, that although Synopsys offers a wide range of simulation capabilities, "Synopsys does not have a tool for simulating sophisticated electromagnetic applications in particular."[62] Customers seeking simulation of sophisticated electromagnetic applications must seek that service from an entity like Ansys, which supports a "broader set of applications."[63]

Synopsys' latest acquisition target Ansys is the fourth-largest EDA company,[64] and Ansys itself has made a dozen acquisitions in the past decade.[65] Ansys' strength is more narrowly focused

---

[57] *Id.*
[58] Chris Zeoli, "How Synopsys and Cadence are fueling the semiconductor industry's growth engine," Wing, May 30, 2024, https://www.wing.vc/content/how-synopsys-and-cadence-are-fueling-the-semiconductor-industrys-growth-engine#cadence-versus-synopsys; Complaint, Federal Trade Commission, In the Matter of Synopsys, Inc. and ANSYS, Inc., https://www.ftc.gov/system/files/ftc_gov/pdf/241_0059_synopsys-ansys_complaint_0.pdf.
[59] CSI Market, "Synopsys Inc," https://csimarket.com/stocks/competitionSEG2.php?code=SNPS; Khaveen Investments, "Cadence Design Systems: Gaining Ground To Synopsys," April 27, 2025, https://seekingalpha.com/article/4778567-cadence-design-systems-gaining-ground-to-synopsys.
[60] Khaveen Investments, "Synopsys: Market Position Boosted With Ansys Acquisition," July 17, 2024, https://archive.is/s1vbj#selection-2333.151-2333.374.
[61] TechOvedas, "How to Choose the Right EDA Tool Between Synopsys, Cadence & Siemens for Your Next Project," May 10, 2024, https://techovedas.com/how-to-choose-the-right-eda-tool-between-synopsys-cadence-siemens-for-your-next-project/.
[62] Khaveen Investments, "Synopsys: Market Position Boosted With Ansys Acquisition," July 17, 2024, https://archive.is/s1vbj#selection-2333.151-2333.374.
[63] "Ansys, on the other hand, supports a broader set of applications, which includes HFSS for circuit performance as well as Advanced Electromagnetic Effects Simulation, Twin Builder for system-level simulation, Lumerical for optical and photonic design, Thermal Desktop for thermal effects, Maxwell for electrical effects, and Ansys Mechanical for mechanical effects simulation."
[64] Khaveen Investments, "Synopsys: Market Position Boosted With Ansys Acquisition," July 17, 2024, https://archive.is/s1vbj#selection-2333.151-2333.374.
[65] *Id.*

on “simulation & analysis” software tools.[66] Within that category, it offers “more complete coverage” than Synopsys, with a variety of tools for electromagnetic effect simulation, system-level simulation, optical and photonic design, thermal effects simulation, and mechanical effects simulation.[67] In particular, Ansys offers several advanced electromagnetic simulation features that Synopsys products lack: “capabilities of performing high-frequency electromagnetic simulation, nonlinear mechanical simulation, as well as 3D electromagnetic simulation.”[68]

Ansys’ 10-K explains that it “work[s] with leading EDA software companies, including Altium, Cadence Design Systems, Synopsys, Siemens EDA and Zuken, to support the transfer of data between electronics design and layout software and our electronics simulation portfolio.”[69] Thus, customers are currently free to mix and match EDA software tools; for example, a customer could use Siemens electronic design and layout software, but Ansys electronics simulation software.

Consistent with their current offerings, Synopsis has “constantly” maintained “its focus regarding the offering of advanced custom design,” while Ansys “has been continuously undertaking key roles within fields related to electromagnetic modeling and analysis.”[70]

The combination of Synopsys and Ansys therefore creates a total integration of Synopsys’ manufacturing tools and Ansys’ more comprehensive simulation software. This integration creates significant risks, including entrenching Synopsys’ dominance in sub-markets where both Synopsys and Ansys currently specialize. Once Synopsys completes its acquisition of Ansys, the merged entity may degrade or end integrations of Ansys electronics simulation software with other EDA companies that compete with Synopsys. Further, if Respondents are permitted to merge, there is a risk the merged entity might limit or degrade integrations, steer customers towards its own products, or leverage its position by tying Ansys products to Synopsys products.

For example, a customer that wants to use Ansys electronics simulation software might suddenly face technical challenges or even contractual restrictions on using Cadence for electronic design and layout software. The merged entity could create a bundled software offering that combines Synopsys and Ansys tools at a higher price than if customers were able to shop around for component tools separately. Indeed, Synopsys already offers its tools as an “all-you-can-eat” bundle to at least some customers.[71] Post-merger, Synopsys could discontinue individual licensing of some Ansys tools. A customer that wants Ansys electro-magnetic

---

[66] Complaint, Federal Trade Commission, In the Matter of Synopsys, Inc. and ANSYS, Inc., https://www.ftc.gov/system/files/ftc_gov/pdf/241_0059_synopsys-ansys_complaint_0.pdf.
[67] Khaveen Investments, “Synopsys: Market Position Boosted With Ansys Acquisition,” July 17, 2024, https://archive.is/s1vbj#selection-2333.151-2333.374.
[68] *Id.*
[69] U.S. Securities and Exchange Commission, “ANSYS, Inc.” Form 10-K, fiscal year ended December 31, 2024, p. 14, https://investors.ansys.com/static-files/197c7dd3-97c8-4145-8f6c-8992eed48ba7.
[70] Khaveen Investments, “Synopsys: Market Position Boosted With Ansys Acquisition,” July 17, 2024, https://archive.is/s1vbj#selection-2333.151-2333.374.
[71] Chris Zeoli and Calvin Zeng, “Synopsys and Cadence: The $160B Unsung Giants of Semiconductor Design,” Data Gravity, April 18, 2024, https://www.datagravity.dev/p/synopsys-and-cadence-the-160b-unsung.

simulations might have to pay more for electronic design and layout software, because they would have to use Synopsys rather than a lower-priced competitor. Bundling Ansys offerings into Synopsys also runs the risk of chilling potential competition, by discouraging investment in startups focused on electronic simulation software.

The 2023 Merger Guidelines counsel against mergers that may have these effects, yet the FTC does not address any of them. Instead, the FTC's complaint, filed in tandem with the consent decree,[72] focuses on three markets wherein Synopsis and Ansys have substantial overlap: 1) optical software tools (combined share of 100%), 2) photonic tools used to design and simulate photonic devices (combined share over 60%), and 3) Register Transfer Level ("RTL") power consumption analysis tools (combined share over 70%).[73] The accompanying consent decree requires Respondents to divest 1) Synopsys' optics and photonics design products, along with certain assets and facilities, and 2) Ansys' RTL power consumption analysis product, PowerArtist, along with certain associated assets.[74] The Commission makes no representation that the acquiring entity, Keysight, is capable of taking on these new business lines, and Keysight, while capable in the high frequency chip domain, has no history of engagement in the sub-markets for optical software tools or photonic tools.

Assuming, *arguendo*, that Synopsys and Ansys are not actual or potential competitors in any of the other sub-markets in which Ansys provides electromagnetic simulations, the complaint disregards any potential anti-competitive effects - including entry foreclosure, increased switching costs, or a heightened risk of coordination - that would flow from the total integration of Synopsys' manufacturing tools and Ansys' simulation tools.

Despite the FTC's representation that this and other settlements "promote transparency,"[75] such transparency is woefully lacking here. In its anemic five-page complaint, the Commission fails to explain what other markets it considered before settling on the three narrow sub-markets enumerated in its complaint. The complaint fails to address any additional sub-markets in which Synopsys and Ansys currently specialize, where the merged entity will entrench its dominance. The complaint fails to address the risk of heightened entry foreclosure flowing from the soups-to-nuts integration of Synopsys' and Ansys' business lines. In the name of promoting transparency, the FTC provides anything but.

Moreover, the FTC undermines its authority in yet another way, returning to the practice of foregoing public approval requirements for future transactions affecting the relevant markets. Where the prior administration reinstated prior approvals, in a bid to avoid repetitive review of

[72] To the extent the adequacy of a proposed consent decree is measured based on the contours of an underlying complaint, the Commission is perversely incentivized to draft a complaint that fits the consent decree without alleging other potential anti-competitive effects.
[73] Complaint, Federal Trade Commission, In the Matter of Synopsys, Inc. and ANSYS, Inc., https://www.ftc.gov/system/files/ftc_gov/pdf/241_0059_synopsys-ansys_complaint_0.pdf
[74] Agreement Containing Consent Orders, Federal Trade Commission, In the Matter of Synopsys, Inc. and ANSYS, Inc., File No. 2410059, https://www.ftc.gov/system/files/ftc_gov/pdf/2410059c4820synopsysansysacco.pdf.
[75] Ferguson Statement at p. 5.

transactions impacting the same markets, today's FTC needlessly blinds itself to observed trends in an already-consolidated industry.

V. Conclusion

The Trump-Vance FTC treads on the dangerous terrain of a prior era's failed merger policy. Its recent run of consent decrees – in the current matter, and in the subsequent pending matters of Omnicom/Interpublic and Alimentation Couche-Tard/Giant Eagle – evinces a pattern of administrative deregulation of merger scrutiny. The Commission retains authority to change course in the instant matter. It would be wise to do so.