

Effective outlining

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Separate analysis and presentation

- It is often useful to prepare two kinds of outlines
 - **Analysis.** This outline tracks the legal elements and includes a discussion of the evidence. The analytical outline is a living document.
 - **Presentation.** Specific to an audience and occasion, relies on the substance of the analytical outline but incorporates it selectively
- The (one) analytical outline is the center from which the (many) presentation outlines are derived

Focus: Analysis

Analytical outline

Market definition

Product

Geography

Market power

Direct evidence

Circumstantial evidence

Market shares

Entry barriers

Theory of harm

Unilateral effects

Enables market-wide capacity reduction

Elimination of unique, hard-to-replace competition

Coordinated effects

Entry

Timely

Likely

Sufficient

Cognizable efficiencies

Failing firm

Focus: Presentation

Merger Risk Assessment for the Board of Directors

- What's been done (scope of project)
- Process and timing (HSR, ROW)
- Factors driving the substantive analysis
- Likely government concerns
- Responses to concerns
- Risk assessment/benchmark
- Risk mitigation strategy

Initial agency merits presentation (FTC/DOJ)

- The transaction
- The parties
- The products at issue (e.g., technology tutorial)
- Reasons for doing the deal (e.g., synergies)
- Product overlaps
 - Non-issues
 - Legitimate issues
- Unilateral effects
- Coordinated effects
- Summary

Briefs in civil litigation, deposition preparation, etc.

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