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GTCR-Surmodics Decision Endorses the "I Did It My Way" Approach to Merger Review

US | November 2025

A federal court in Chicago has rejected the Federal Trade Commission's (FTC's) motion to enjoin GTCR's acquisition of Surmodics, marking a setback for the agency's merger enforcement strategy in a healthcare-related manufacturing market.

The decision underscores key lessons about market definition, divestiture remedies and the evolving enforcement landscape. It also highlights the continued significance of "litigating the fix," a strategy employed when merging parties defend a deal by proposing a targeted divestiture or structural remedy, and substantiating during litigation that addresses any competitive concerns. The ruling also offers a revealing test case for the 2023 Merger Guidelines issued jointly by the FTC and Department of Justice (DOJ). While the guidelines articulate a more expansive and interventionist framework for merger enforcement, the court's reasoning in this case shows that judicial application of Section 7 of the Clayton Act remains grounded in factual evidence, particularly around market definition, remedy credibility and competitive constraints.

Context

In May 2024, private equity firm GTCR agreed to acquire Surmodics, a medical-device coatings specialist, for approximately US $627 million. The merger would combine Surmodics, the largest provider of outsourced hydrophilic coatings in the US, with GTCR's existing portfolio company, Biocoat, the second-largest provider. The FTC alleged that the combination would give the merged firm more than 50% market share, raising concentration above the thresholds presumed illegal under Section 7 of the Clayton Act.

On March 6, 2025, the FTC filed suit to block the transaction, asserting that the merger would substantially lessen competition in the US market for outsourced hydrophilic coatings used in medical devices. The case became one of the agency's most closely watched tests of its post-2023 Merger Guidelines, and its willingness to challenge private-equity roll-ups in healthcare supply chains.

Key Findings

On November 10, 2025, US District Judge Jeffrey Cummings denied the FTC's request for a preliminary injunction, finding that the FTC had not met its burden to show a likelihood of success on the merits. Crucially, the court accepted the merging parties' proposed divestiture of certain Biocoat assets to contract-manufacturer Integer as sufficient to resolve any competitive concerns. The court also emphasized that original-equipment manufacturers (OEMs) with in-house coating capabilities provided an important competitive constraint, undermining the FTC's narrow market definition that excluded such OEMs.

Notably, the FTC had relied heavily on the Merger Guidelines' structural presumption, arguing that the merger would combine the two largest players in the outsourced hydrophilic-coatings market, significantly increasing concentration. Yet, the court found that market share metrics alone were insufficient without concrete evidence of likely anticompetitive effects, which the FTC had not demonstrated in light of the parties' proposed fix. The decision demonstrates that courts will not treat the Merger Guidelines' concentration thresholds as dispositive, especially when credible evidence of alternative constraints, such as OEM self-supply, exists.

Major Takeaways

The ruling reaffirms that courts are willing to credit parties' well-structured divestitures when assessing a merger's legality. Despite the FTC's skepticism toward partial divestitures, a credible and independently viable buyer (here, Integer) can satisfy judicial concerns about maintaining competition. The case adds to a growing line of "litigating the fix" precedents, where merging parties defend a transaction by embedding a proposed remedy into their litigation strategy. Instead of waiting for the FTC to negotiate a consent decree, the parties proactively developed and presented a detailed divestiture plan, complete with a ready and vetted buyer, operational separation plans and financial assurances.

Courts have been increasingly receptive to this approach when the remedy is credible, well-documented and addresses the specific theory of harm at issue. The court's acceptance of the Integer divestiture contrasts sharply with recent FTC rejections of proposed fixes, such as that in Illumina/Grail, where the agency viewed remedies as insufficient or illusory. Here, the court credited the parties' arguments that the divestiture would be both timely and likely to restore competition, undermining the FTC's argument that the remedy was too narrow.

Practically, "litigating the fix" requires careful, early planning. Parties should develop divestiture packages that include detailed business-unit delineations, transition-service plans and financially qualified acquirers. These proposals must be capable of being implemented quickly and monitored effectively. Parties often will want to present any proposed fixes to the agencies as early as practicable in an investigation, which provides an opportunity for the agencies to vet them and may avoid litigation altogether if the agencies are willing to accept a consent decree. And when litigation does become necessary, a well-substantiated fix can shift the burden back to the FTC and ultimately persuade courts that the transaction, as modified, does not violate Section 7.

The FTC is well aware of this strategy. In a statement accompanying the first merger settlement accepted by this administration, FTC Chairman Andrew Ferugson acknowledged that "litigation over a proposed remedy . . . does not always play out well for the agencies," and that settlement proceedings can effectively bring the FTC's expertise to bare and ensure accountability of merger remedies. Similarly, Chair Ferguson explained at a recent event that settlements can allow the agencies to "maximize enforcement in an efficient way," and that parties should present proposed remedies early, rather than "sandbagging" the process with eleventh-hour proposals that the agencies do not have time to vet.[1]

In the GTCR-Surmodics transaction, the parties heeded this advice and approached the FTC with a divestiture package, but the FTC ultimately rejected the offer on August 13, 2025.[2] Notwithstanding the FTC's rejection, the parties' efforts to develop and substantiate the robust remedy left them well-positioned to successfully defend the modified transaction in the expedited preliminary injunction proceeding in federal court.

While the 2023 Merger Guidelines provided the FTC with a strong theoretical foundation to challenge the GTCR/Surmodics merger, they did not ultimately control the outcome. Judge Cummings emphasized empirical evidence, customer behavior, credible remedy design and the practical realities of the coatings market over broad policy assertions. This underscores that while the guidelines guide agency discretion, courts remain the ultimate arbiters of whether a merger presents competitive concerns under the law.

For counsel, the takeaway is clear: while the FTC remains hostile to behavioral remedies and skeptical of partial divestitures, courts are willing to evaluate fixes on their merits. This creates strategic leverage for merging parties, particularly in transactions with plausible, narrowly defined overlaps. And while the 2023 Merger Guidelines emphasize new enforcement priorities; serial acquisitions, labor effects and innovation harms, courts remain cautious about adopting untested frameworks. The decision exemplifies that judges still require tangible, market-based evidence of harm and will not grant injunctions based solely on theoretical risks or agency policy preferences. This decision provides a modest, but meaningful counterpoint to the FTC's more aggressive posture under its current leadership. For merging parties, especially in concentrated industrial or healthcare markets, the case demonstrates that remedy-first strategies can succeed when supported by robust economic evidence and operational credibility.

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1 Georgetown Law 19th Annual Global Antitrust Enforcement Symposium.

2 *Federal Trade Commission v. GTCR, LLC, et. al*, No. 1:25-cv-02391, Joint Status Report Doc. No. 353, (N.D. Ill., filed Aug. 15, 2023).