

It's Not Over Until It's Over:
Who Can (and Should)
Enforce Competition Laws

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CRESSE Lawyers' Lecture

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Enforcement Agents

- Who?
- When?

Agenda

- Case Studies
- Policy Implications
- Caveat: Personal Views

Three Merger Cases

- *Steves & Sons, Inc. v. Jeld-Wen Holding, Inc.* (E.D. Va; filed 2016)
- *T-Mobile/Sprint* (Pending merger)
- *U.S. v. Aetna/CVS* (D.D.C. 2018)

Tunney Act (1974)

- Justice Dep't Settlements
- Requires:
 - Disclosure
 - Public Comment
 - Judicial Review

Qualcomm in Context

- FTC Cases Since 2001
 - Single-firm conduct: 12
 - Tech/network/platforms: 10
 - Supreme Court Trilogy
 - Qualcomm*

FTC v. Qualcomm (S.D. Ca. 2019)

- District Court: Infringement
- Justice Department
 - “Expression of Interest”
 - Remedy

Enforcement Multiplicity

- Rationales
- Disadvantages

Policy Implications

- Settlements
- Side Effects
 - Modern Harvard School
- Networks
- Regulatory Ecology