



Office of the Chairman

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**Statement of Chairman Andrew N. Ferguson  
In the Matter of IonQ, Inc./ SkyWater Technology, Inc.  
Matter Number 2610061**

July 31, 2026

Earlier this week the Commission granted early termination of its review of IonQ, Inc.’s (“IonQ”) proposed acquisition of SkyWater Technology, Inc. (“SkyWater”), a deal involving research and development for quantum computing.<sup>1</sup> I did not prefer this outcome. But this agency is a multi-member Commission, and reasonable minds differed on the facts that staff’s investigation uncovered, and what to do about them. My colleague and I firmly agree that a lawsuit to enjoin this merger entirely would be an imprudent use of the agency’s resources. Early termination was therefore the only course available to the Commission.

I write briefly to explain why I had proposed a different course than early termination. Staff’s investigation and the unique circumstances of the quantum-computing market at issue here gave me the required “reason to believe”<sup>2</sup> that the effect of this vertical merger “may be substantially to lessen competition” in the short term, while likely providing benefits to competition and innovation in the long run.<sup>3</sup> Given that conclusion, I believe the deal warranted a behavioral remedy which would have cured those short-term risks to competition while facilitating the deal’s long-term benefits. I therefore write to explain both the competitive risks and how the proposed decision and order (“Order”) for which I voted would have ameliorated them, thereby protecting long-term American dominance in quantum computing consistent with President Donald Trump’s policy objectives.

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Quantum computing could transform multiple industries.<sup>4</sup> A fully realized quantum computer would be able to solve many problems much more quickly than a conventional computer ever could. For example, future quantum computers could defeat the asymmetric encryption

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<sup>1</sup> FTC, Legal Library: Early Termination Notices, <https://www.ftc.gov/legal-library/browse/early-termination-notice> (last visited July 30, 2026).

<sup>2</sup> 15 U.S.C. § 45(b). Under this standard, the Commission must have evidence sufficient to make the “threshold determination that further inquiry is warranted” in order to bring an enforcement action. *FTC v. Standard Oil of Cal.*, 449 U.S. 232, 241 (1980); *Boise Cascade Corp. v. FTC*, 498 F. Supp. 772, 779 (D. Del. 1980). That reason must be “well-grounded” in evidence that the Commission gleaned from its pre-filing investigation. *Standard Oil*, 449 U.S. at 246 n.14; see also *AMREP Corp. v. FTC*, 768 F.2d 1171, 1177 (10th Cir. 1985).

<sup>3</sup> 15 U.S.C. § 18.

<sup>4</sup> See Quantum Computing Explained, Nat’l Inst. Standards and Tech. (Mar. 18, 2025), <https://www.nist.gov/quantum-information-science/quantum-computing-explained>; Here’s How Quantum Computing Could Change the World, Wall St. J. (Aug. 1, 2025), <https://www.wsj.com/articles/heres-how-quantum-computing-could-change-the-world-c7a995b1>.

algorithms that have become industry-standard security measures in almost every sector of the economy—including for the protection of trade and national-security secrets. A conventional supercomputer would take billions of years to defeat a state-of-the-art encryption algorithm, but a quantum computer could do it in a matter of days or even hours.<sup>5</sup> Quantum computers also promise to perform certain simulations more quickly, which could greatly accelerate pharmaceutical drug development and other medical advances.<sup>6</sup> One study estimates that quantum computing could create up to \$2.7 trillion of economic value worldwide by 2035.<sup>7</sup> Accordingly, President Trump last month signed an executive order making it the government’s policy to ensure that America wins the quantum race.<sup>8</sup> And consistent with that policy, the Department of Commerce recently invested nearly \$2 billion in American firms aimed at expanding domestic chip manufacturing, which will help promote competition in quantum innovation in the long run.<sup>9</sup>

But my review of staff’s investigation leads me to believe that this proposed merger, left unremedied, could throw a wrench in the rapid pace of innovation in the short run—even while promoting efficiencies in the long run. That is because of the special position that SkyWater currently enjoys in the market. IonQ is one of several quantum-computing companies aiming to develop and deploy one of the first fault-tolerant quantum computers in the world.<sup>10</sup> It is in an intense race with its rivals to innovate and bring this technology to market. These competitors each take significant risks investing in long-term projects at short-term loss, in hopes of winning that race. SkyWater specializes in semiconductor chip fabrication and development services for quantum-computing companies such as IonQ.<sup>11</sup> SkyWater is a U.S.-based quantum foundry and its status as an American firm is an attractive feature for many quantum-computer developers given the complexities involved in sourcing from abroad. It is therefore an important source of the

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<sup>5</sup> See What Is Post-Quantum Cryptography?, Nat’l Inst. Standards and Tech. (Aug. 13, 2024), <https://www.nist.gov/cybersecurity-and-privacy/what-post-quantum-cryptography>.

<sup>6</sup> See The quantum revolution in pharma: Faster, smarter, and more precise, McKinsey & Co. (Aug. 25, 2025), [https://www.mckinsey.com/industries/life-sciences/our-insights/the-quantum-revolution-in-pharma-faster-smarter-and-more-precise#](https://www.mckinsey.com/industries/life-sciences/our-insights/the-quantum-revolution-in-pharma-faster-smarter-and-more-precise#/).

<sup>7</sup> McKinsey Quantum Technology Monitor 2026: A commercial tipping point, McKinsey Tech. (Apr. 28, 2026), <https://www.mckinsey.com/capabilities/mckinsey-technology/our-insights/mckinsey-quantum-technology-monitor-2026-a-commercial-tipping-point>.

<sup>8</sup> Exec. Order No. 14413, 91 Fed. Reg. 38487 (June 25, 2026) (“It is the policy of my Administration to ensure that the United States maintains a strategic technical advantage in QIST and leads the development of a robust and trusted quantum ecosystem across QIST research, manufacturing, commercialization, and application.”).

<sup>9</sup> Department of Commerce Announces Letters of Intent With 9 Companies for \$2 Billion to Accelerate U.S. Leadership in Quantum Computing, Nat’l Inst. Standards and Tech. (May 21, 2026) (“Department of Commerce Announcement”), <https://www.nist.gov/news-events/news/2026/05/department-commerce-announces-letters-intent-9-companies-2-billion> (“A strong domestic quantum ecosystem is essential for U.S. national security, technological resilience and long-term strategic leadership.”).

<sup>10</sup> See generally About IonQ, <https://www.ionq.com/company> (last visited July 30, 2026); IonQ to Acquire SkyWater Technology, Creating the Only Vertically Integrated Full-Stack Quantum Platform Company, News Details, IonQ (Jan 26, 2026) (“IonQ Deal Announcement”), <https://investors.ionq.com/news/news-details/2026/IonQ-to-Acquire-SkyWater-Technology-Creating-the-Only-Vertically-Integrated-Full-Stack-Quantum-Platform-Company/default.aspx>.

<sup>11</sup> See SkyWater, <https://www.skywatertechnology.com/> (last visited July 30, 2026); Manufacturing, SkyWater, <https://www.skywatertechnology.com/manufacturing/> (last visited July 30, 2026); Technology & Design Enablement, SkyWater, <https://www.skywatertechnology.com/technology-and-design-enablement/> (last visited July 30, 2026); Technology as a Service (TaaS), SkyWater, <https://www.skywatertechnology.com/technology-as-a-service-taas/> (last visited July 30, 2026).

semiconductors that quantum-computer developers like IonQ (and its competitors) need for their projects.<sup>12</sup>

SkyWater's business relationships rely on a unique level of trust with its customers. No two quantum-computing projects are exactly alike. America's quantum innovators are pursuing different possibilities and theories in the race for the first fault-tolerant quantum computer. SkyWater develops, tests, and manufactures its chips based on the highly specific needs of its customers' projects.<sup>13</sup>

This merger is a vertical merger, which means that the companies are at different levels of the same supply chain.<sup>14</sup> Such transactions can bring about some benefits to consumers and competition, and modern antitrust doctrine treats many forms of vertical integration as benign or, in some cases, presumptively pro-competitive.<sup>15</sup> First, because the vertically integrated company can supply its own inputs, it avoids the transaction costs associated with finding a supplier and securing the input from that supplier; and it can coordinate timelines across business units. This efficiency can increase investment and lead to lower prices for end users.<sup>16</sup> Second, because the vertically integrated purchaser no longer has to pay margin to an independent supplier, it can reduce the total margin otherwise associated with the entire supply chain, which can further reduce prices for end users.<sup>17</sup> Finally, vertical integration may also improve the combined firm's innovation incentives because the combined entity will capture the full return of innovation from either entity. Applying those principles here, and as IonQ itself declared in announcing the deal,

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<sup>12</sup> See IonQ Deal Announcement (highlighting the importance of “access to a Trusted U.S. foundry” and explaining that a “quantum supply chain in the U.S. ... will allow IonQ to securely support multiple important Department of War programs ... and address critical national security vulnerabilities”); Department of Commerce Announcement (“A strong domestic quantum ecosystem is essential for U.S. national security, technological resilience and long-term strategic leadership.”).

<sup>13</sup> Cf. The Foundry Problem Quantum Can't Ignore, ISIG, <https://theisig.com/summit-blog/quantum-foundry-partnerships-scalable-manufacturing/> (last visited July 30, 2026) (“For quantum device companies, selecting a foundry partner is not simply a supply chain decision. It is a technology strategy decision. The fabrication partner shapes which architectures are viable, which improvements are achievable, and how quickly a company can iterate toward production-ready devices.”).

<sup>14</sup> Daniel Francis & Christopher Jon Sprigman, *Antitrust: Principles, Cases, and Materials* 465 (4th ed. 2026), [https://antitrustcasebook.org/download/Antitrust%20-%20Principles,%20Cases,%20and%20Materials%20Fourth%20Edition%20\(7.15.2026\).pdf](https://antitrustcasebook.org/download/Antitrust%20-%20Principles,%20Cases,%20and%20Materials%20Fourth%20Edition%20(7.15.2026).pdf) (“Francis & Sprigman on Antitrust”).

<sup>15</sup> See generally *ibid.*; see also Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 755a (online ed. May 2026) (“Areeda & Hovenkamp Antitrust Law”) (“In the great majority of cases no anticompetitive consequences can be attached to [vertical integration], and injury to competition should never be inferred from the mere fact of vertical integration.”).

<sup>16</sup> See Francis & Sprigman on Antitrust at 465 & n.745; see also Areeda & Hovenkamp Antitrust Law at ¶ 757c (“[C]ompetition will ensure that the cost savings of integration will be transformed into correspondingly lower prices to ultimate customers.”); Francine Lafontaine & Margaret Slade, Vertical Integration and Firm Boundaries: The Evidence, 45 J. Econ. Literature 629, 663 (Sept. 2007); Paul L. Joskow, Vertical Integration, in *Handbook of New Institutional Economics* 319–48 (C. Menard & M. M. Shirley eds., 2005).

<sup>17</sup> Dep't. of Justice & Fed. Trade Comm'n, Merger Guidelines § 2.5 n.31 (Dec. 18, 2023) (“2023 Merger Guidelines”); see Areeda & Hovenkamp Antitrust Law at ¶ 758a2 (“Consumers are better off for each instance of double marginalization eliminated.”); see also Jean Tirole, *The Basic Vertical Externalities, The Theory of Industrial Organization* 174–76 (MIT Press 1988).

IonQ stands to gain from the parties' planned vertical integration by being able to accelerate its own quantum-computing development.<sup>18</sup>

But vertical transactions may also raise competitive concerns. Here, staff's investigation revealed to my satisfaction that the parties' proposed deal presents two textbook likely anticompetitive effects. First, IonQ could withhold SkyWater's services from IonQ's rivals, leading to foreclosure, for example, in the form of a delay in its competitors' efforts to develop fault-tolerant quantum computers. Post-transaction, IonQ would have the ability to control the supply of SkyWater's chips and services, and an incentive to slow-roll access to or withhold entirely these necessary inputs from its competitors.<sup>19</sup> Such conduct would be particularly onerous for rivals who currently have semiconductor projects in development with SkyWater. Switching from one foundry to another is always expensive and time-consuming. Successfully making such a switch is also often constrained by industry capacity, which can be slow to expand.<sup>20</sup> That is especially true for firms operating on the experimental cutting edge, as quantum computing researchers necessarily are. Requiring IonQ's competitors to switch foundries suddenly and swiftly could thus add many months of delay to those competitors' projects, even if alternative sources of supply are readily available.<sup>21</sup> Second, the acquisition would give IonQ access to its competitors' competitively sensitive technical information housed within SkyWater, which could disadvantage those SkyWater customers and diminish incentives for future investments and cooperation with SkyWater.<sup>22</sup> Both scenarios could lead to substantial harm, especially in the short term—risking cutting-edge research and development efforts in quantum computing, reducing innovation in the U.S. market, and ultimately, and most critically, threatening efforts in the United States to achieve fault-tolerant quantum computing first, ahead of rival nations.<sup>23</sup>

If all of these harms were to come to pass, the consequences could be profound. Beyond mere direct economic impact, ceding our nation's lead in quantum computing could jeopardize our

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<sup>18</sup> See IonQ Deal Announcement (“IonQ’s manufacturing timelines are expected to accelerate through reduced wafer iteration times and parallelizing wafer prototypes.”).

<sup>19</sup> See 2023 Merger Guidelines § 2.5; Francis & Sprigman on Antitrust at 402 (“The primary concern [with vertical mergers] is usually ‘foreclosure’: the prospect that the merged firm might have the ability and incentive to limit rivals’ access to important inputs, distribution, customers, or complements in ways that would harm competition overall.”).

<sup>20</sup> See Chipmakers Are Ramping Up Production to Address Semiconductor Shortage. Here’s Why that Takes Time, Semiconductor Industry Association (Feb. 26, 2021), <https://www.semiconductors.org/chipmakers-are-ramping-up-production-to-address-semiconductor-shortage-heres-why-that-takes-time/> (“Unfortunately, increasing semiconductor capacity utilization takes time, because semiconductors are incredibly complex to produce. Making a chip is one of the most, if not *the* most, capital- and R&D-intensive manufacturing process on earth.”).

<sup>21</sup> See The U.S. Government Just Became a Quantum Investor, Advisorpedia (July 21, 2026), <https://www.advisorpedia.com/etf/the-us-government-just-became-a-quantum-investor/> (“Government investment alone does not guarantee any of the engineering challenges are now solved immediately.”).

<sup>22</sup> 2023 Merger Guidelines § 2.5; Francis & Sprigman on Antitrust at 402 (“Another concern is that a vertical merger might give the merged firm access to confidential information about its competitors (such as capacity constraints or input costs) that could lead to a reduction in the intensity of competition by diminishing rivals’ incentives to compete.”).

<sup>23</sup> See Exec. Order No. 14413, 91 Fed. Reg. 38487 (June 25, 2026) (“Today, as other nations move quickly to challenge American leadership, the United States must take a cohesive, whole-of-government approach to accelerate deployment and commercialization of quantum computing, sensing, and networking.”).

national security and expose other American industries to heretofore unimaginable security risks.<sup>24</sup> Quantum computing compromising existing encryption and security measures was a tail-end risk most commonly described in science fiction novels a few years ago. Although not yet here, that possibility is in sight—and it is close enough that the President has ordered far-reaching preparation for its arrival across key agencies of the federal government.<sup>25</sup> Our foremost national-security policymakers have stated that it is vital to prepare countermeasures for the possibility of quantum attacks.<sup>26</sup>

The concerns identified are significant, but they are almost entirely short-term concerns. In the long run, companies concerned about IonQ’s control of SkyWater can switch to other foundries to develop their projects. And orderly switching over the long run raises very few concerns. Once the switch is made, there is nothing to suggest that other foundries cannot match SkyWater’s performance and service levels. Moreover, the government’s investment in American firms aimed at expanding domestic chip manufacturing—i.e., the construction and maintenance of domestic foundries that would compete with SkyWater—ensures that there will be other high-quality foundries to which IonQ’s competitors can switch. The long-term risk to competition is therefore low.

## II

Given the short-term risks are potentially acute both to competition and to our national security, but the long-term risks are low and mitigated by President Trump’s pro-innovation policies, the question is what the Commission ought to do about the short-term risks. A suit to enjoin the merger outright here would be imprudent for two reasons. First, on my understanding of the facts, it would be overkill. The risks here are merely short-term, and the potential benefits are both short-term and long-term. Blocking the merger outright would eliminate the short-term risks, but it would also deny America the deal’s short-term and long-term benefits. That would be poor competition policy.

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<sup>24</sup> See, e.g., How to factor 2048 bit RSA integers with less than a million noisy qubits, Google Quantum AI (June 9, 2025), <https://arxiv.org/abs/2505.15917v1> (describing how a relatively modest theoretical quantum computer could quickly break the most popular form of powerful encryption).

<sup>25</sup> Exec. Order No. 14412, 91 Fed. Reg. 38483 (June 25, 2026) (“It is the policy of the United States to safeguard national security and maintain technological leadership by responsibly and effectively executing the transition of Federal information systems to National Institute of Standards and Technology (NIST)-approved Federal Information Processing Standards (FIPS) for Post-Quantum Cryptography (PQC), and to assist critical infrastructure owners and operators with their transitions.”).

<sup>26</sup> See Department of War Post Quantum Cryptography Strategy at 2 (Apr. 16, 2026), <https://dowcio.war.gov/Portals/0/Documents/Library/DoW-PQC-Strategy.pdf> (“The cryptographic system components we have deployed to secure critical mission functions are at risk due to advancements in adversarial capabilities to exploit quantum computing.”).

Second, vertical-merger litigation is rarely successful. Since the publication of Judge Bork's *The Antitrust Paradox* in 1978,<sup>27</sup> federal courts have generally treated vertical integration favorably.<sup>28</sup> Federal antitrust enforcers routinely challenged vertical mergers before the 1970s.<sup>29</sup> From 1980 until 2017, the agencies did not bring a single vertical-merger case to trial (although they settled a wide range of vertical-merger cases using behavioral remedies during the same period).<sup>30</sup> And since 2017, the federal government's litigation record in vertical-merger cases is not good. It has brought five such cases and lost all but one.<sup>31</sup> Vertical cases are further complicated by federal courts' willingness to treat the merging parties' remedial commitments (sometimes offered unilaterally) as weighty evidence against the risk of anticompetitive harm.<sup>32</sup>

That reality does not mean the Commission should never litigate vertical mergers. I harbor reservations about Judge Bork's belief that vertical integration is always good for the American

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<sup>27</sup> The book instigated a revolution in the way federal courts apply the antitrust laws; by one measure, over 100 court cases have cited Bork and the ideas espoused in *The Antitrust Paradox*. See Roger D. Blair & D. Daniel Sokol, *The Rule of Reason and the Goals of Antitrust: An Economic Approach*, 78 *Antitrust L.J.* 471, 476 (2012); see also, e.g., *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 101 (1984); *State Oil Co. v. Khan*, 522 U.S. 3, 16 (1997); *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 889, 897 (2007). And in that book, Judge Bork argued that courts should treat vertical mergers as categorically legal. Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* 226–31 (The Free Press 1978).

<sup>28</sup> See *FTC v. Tempur Sealy Int'l, Inc.*, 768 F. Supp. 3d 787, 811–812 (S.D. Tex. 2025) (“A well-respected treatise on the topic notes that ‘[e]very firm from the largest monopolist to the tiniest competitor is vertically integrated to one degree or another,’ and thus ‘injury to competition should never be inferred from the mere fact of vertical integration.’” (quoting Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 755a at 3 (5th ed. 2022))); *FTC v. Microsoft*, 681 F. Supp. 3d 1069, 1088 (N.D. Cal. 2023), *aff'd*, 136 F.4th 954 (9th Cir. 2025) (“For a vertical merger, such as the Microsoft/Activision merger, there is no short-cut way to establish anticompetitive effects, as there is with horizontal mergers. This is in part because many vertical mergers create vertical integration efficiencies between purchasers and sellers.” (cleaned up)); *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1057 (5th Cir. 2023) (“No such ‘short cut’ exists in vertical merger cases[.]”); *United States v. UnitedHealth Group Inc.*, 630 F. Supp. 3d 118, 130 (D.D.C. 2022) (“For a vertical merger there is no short-cut way to establish anticompetitive effects, as there is with horizontal mergers.” (cleaned up)); *United States v. AT&T, Inc.*, 310 F. Supp. 3d 161, 192–93 (D.D.C. 2018), *aff'd*, 916 F.3d 1029 (D.C. Cir. 2019) (same); *Fruehauf Corp. v. FTC*, 603 F.2d 345, 351–52 (2d Cir. 1979) (“A vertical merger, unlike a horizontal one, does not eliminate a competing buyer or seller from the market. It does not, therefore, automatically have an anticompetitive effect or reduce competition.” (cleaned up)).

<sup>29</sup> David Reiffen & Michael Vita, *Comment: Is There New Thinking on Vertical Mergers?*, 63 *Antitrust L.J.* 917, 917 (Spring 1995) (“In the 1960s, hostility towards vertical mergers was reflected in court decisions, such as *Brown Shoe*, and in the enforcement standards of the federal antitrust agencies. By 1970, judicial antipathy towards vertical mergers had reached the point where a leading industrial organization economist concluded that ‘emerging from the leading [Clayton Act] court interpretations is a virtual per se prohibition of ... vertical mergers likely to foreclose an appreciable share of some market.’ By one measure, the two federal antitrust agencies challenged twenty-seven vertical mergers between 1960 and 1970.”).

<sup>30</sup> See Jonathan M. Jacobson, *Vertical Mergers: Is It Time to Move the Ball?*, 33 *Antitrust L.J.* 6, 6 & n.3 (Summer 2019) (“But after aggressive vertical merger enforcement throughout the 1960s and 1970s, very few cases were brought in the 1980s; and notwithstanding some consent orders in a variety of cases since, there was no litigated case until *AT&T* this past year” and “The last prior vertical case tried [before *United States v. AT&T, Inc.*] was *United States v. Hammerhill Paper*, 429 F. Supp. 1271 (W.D. Pa. 1977).”); Steven C. Salop & Daniel P. Culley, *Vertical Merger Enforcement Actions: 1994–April 2020* (Apr. 15, 2020), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2541&context=facpub>. It is not a coincidence that the last time the government took a vertical-merger challenge to trial before 2017 was prior to 1978—the year that Judge Bork published *The Antitrust Paradox*.

economy (take, for example, vertical integration in the American healthcare markets).<sup>33</sup> And even when a party offers a remedy, the evidence may be so strong and the risk of harm so great that the Commission must proceed to litigation. Indeed, I supported the Commission’s most recent (failed) effort to block a vertical merger, notwithstanding that the parties had offered a remedy before trial.<sup>34</sup> But we must be honest with ourselves about the risks and likelihood of success of vertical-merger litigation, as well as the tradeoffs associated with bringing those cases rather than others.

Nor does the fact that the courts have stacked the deck against challenges to vertical mergers mean that the Commission should sit on its hands, closing investigations into transactions that may have consequential anticompetitive effects. There will be times when the Commission believes a vertical merger is likely to violate the antitrust laws, but rightly fears that litigation could end in a bad result and the creation of bad law. In such cases, the Commission must consider what every party considers in those circumstances—whether to accept a settlement that will mitigate the risks of anticompetitive harm to American consumers while avoiding the risk of a litigation loss, bad law, and the harm to American consumers that would follow an adverse judgment in court.

In vertical-merger cases, those settlements will often involve behavioral remedies. I have expressed skepticism about behavioral remedies in merger cases before, and I retain that skepticism.<sup>35</sup> But that skepticism cannot mean that they are off the table. First, they sometimes allow for a socially beneficial outcome that mitigates the harms from a vertical merger while allowing the benefits to be achieved. Second, courts routinely accept proposed behavioral remedies in vertical-merger cases as evidence of the absence of harm to competition; the government has

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<sup>31</sup> See Francis & Sprigman on Antitrust at 465 n.747 (“The agencies have litigated several vertical-merger cases in recent years, starting with DOJ’s 2017 challenge to AT&T / Time Warner, but with the exception of the challenge to Illumina / Grail (which was effectively an FTC win) the government lost each one.”); *FTC v. Tempur Sealy Int’l, Inc.*, 768 F. Supp. 3d 787 (S.D. Tex. 2025) (government loss); *FTC v. Microsoft*, 681 F. Supp. 3d 1069 (N.D. Cal. 2023), *aff’d*, 136 F.4th 954 (9th Cir. 2025) (government loss); *Illumina, Inc. v. FTC*, 88 F.4th 1036 (generally government win but vacating and remanding to Commission with instructions to consider effect of proffered “remedial agreement” under proper standard); *United States v. UnitedHealth Group Inc.*, 630 F. Supp. 3d 118 (D.D.C. 2022) (government loss); *United States v. AT&T, Inc.*, 310 F. Supp. 3d 161 (D.D.C. 2018), *aff’d*, 916 F.3d 1029 (D.C. Cir. 2019) (government loss).

<sup>32</sup> See, e.g., *AT&T*, 310 F. Supp. 3d at 241 n.51 (accepting defendants’ argument that their unilateral commitment to customers to arbitrate failures to agree on renewal terms diluted government’s theory of vertical harm); *UnitedHealth Group*, 630 F. Supp. 3d at 146–47 (ruling against the government’s data-misuse theory because, among other reasons, United unilaterally adopted a firewall policy post-complaint); *Tempur Sealy*, 768 F. Supp. 3d at 858–60 (finding that Tempur Sealy’s unilateral commitment to preserve a percentage of competitor slots in Mattress Firm stores helped “resolve[] any lingering concern” about anticompetitive effects).

<sup>33</sup> Vertical Integration in Health Care: Implications for Consumers, Employers, and Clinicians, Georgetown University, McCourt School of Public Policy, Center on Health Insurance Reforms (May 12, 2026), <https://chir.georgetown.edu/vertical-integration-in-health-care-implications-for-consumers-employers-and-clinicians/> (“Over the past decade, evidence of higher prices and constrained competition suggest that many of the expected efficiency gains from vertical integration have been more theoretical than real. Instead, the dominant effects have been rising costs for consumers and employers and reduced competitive pressure among providers.”).

<sup>34</sup> Press Release, FTC, FTC Moves to Block Tempur Sealy’s Acquisition of Mattress Firm: The Commission votes 5-0 to challenge a vertical deal seeking to combine the world’s largest mattress supplier and manufacturer with the largest U.S. mattress retailer (July 2, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-moves-block-tempur-sealys-acquisition-mattress-firm>; *FTC v. Tempur Sealy Int’l, Inc.*, 768 F. Supp. 3d 787 (S.D. Tex. 2025).

<sup>35</sup> Statement of Chairman Andrew N. Ferguson, Joined by Comm’r Melissa Holyoak and Comm’r Mark R. Meador, *In the Matter of Synopsys, Inc./Ansys, Inc.*, Matter No. 2410059, at 8 (May 28, 2025).

lost multiple vertical-merger cases in the last decade in no small part on the basis of *unilateral* behavioral remedies proposed by the merging firms.<sup>36</sup> If the Commission refuses to consider behavioral remedies, then our choice is either to bring difficult merger challenges in the face of a pro-vertical-integration presumption, or to do nothing. This is no choice at all. We owe the American people as much protection as the law and our resources allow. That responsibility means that, sometimes, a behavioral remedy will be the most procompetitive option.

In my view, that is precisely the scenario confronting the Commission here. The facts augured in favor of a pragmatic, middle-ground approach. If the combined firm were to foreclose competition in this emerging market, the short-term consequences could be dire. But blocking the merger outright may be equally dire, denying the integrated company the cost and coordination advantages that could propel it to enhance its innovation and to develop one of the first fault-tolerant quantum computers. The innovation harm to IonQ's rivals would come from the costly and time-consuming transition to new sources of supply. These transitions could have a particularly harmful effect on America's quest to dominate quantum computing if they need to be undertaken hastily, because of a newly merged SkyWater providing worse service or not providing sufficient firewalls protecting confidential information. If, for example, IonQ's competitors were to lose months of development on their projects because of hasty and harried switching, and IonQ's project failed for entirely different reasons, then this merger could be a serious setback for America's entire quantum industry and her national security. The risks are therefore short-term, but the long-term negative consequences of the realization of those risks would be quite devastating. If, however, IonQ's competitors' transitions were smooth and could take place over years, then the competitive risks would be eliminated, leaving only the benefits to innovation and competition.

Protecting short-term competition would also protect President Trump's substantial investments intended to secure America's long-term quantum dominance. The Department of Commerce has provided funding for the creation of two new foundries in the United States.<sup>37</sup> As they come online over the next several years, they will compete with SkyWater, providing new sources of domestic supply to fuel new projects and further innovation. Those future sources of supply will therefore help position the United States to secure long-term quantum dominance. But until then, SkyWater will enjoy a critically important short-term position in our domestic quantum supply chain. Ensuring that the merged firm does not use its position to disadvantage IonQ's rivals would help ensure that its rivals' projects will continue apace as the new sources of supply come online. That stability would in turn protect the Trump Administration's long-term investments, spurring vibrant competition in the quantum industry, by ensuring that the merged firm cannot slow the pace of innovation while the new foundries launch. That is why I believed a behavioral remedy aimed at protecting short-term competition—and the Trump Administration's investments in the quantum industry—was the appropriate course.

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<sup>36</sup> See *Tempur Sealy*, 768 F. Supp. 3d at 858–60 (behavioral remedy was proposed unilaterally by defendants post-complaint); *UnitedHealth Group*, 630 F. Supp. 3d at 146–47 (same); *AT&T*, 310 F. Supp. 3d at 184 (same).

<sup>37</sup> See Department of Commerce Announcement (“The Department of Commerce today announced the signing of 9 letters of intent to provide \$2.013 billion in federal incentives under the CHIPS and Science Act. These funds will support a portfolio of quantum companies, including two domestic quantum foundry companies ....”).

### III

To that end, Commission staff did truly outstanding investigative and enforcement work on this matter. They quickly identified the short-term risks to competition, conducting a targeted and efficient investigation that put the matter on a fast-track to a potential resolution with the parties, which I favored. They negotiated and secured what would have been a next-generation behavioral remedy for the Commission. It was designed to prevent the short-term anticompetitive effects I have reason to believe are likely to flow from the proposed transaction, while ensuring that the merged firm realized the potential efficiencies of the transaction. It would have done so by protecting IonQ's competitors who currently, or who would in the future, avail themselves of SkyWater's services from discrimination or misuse of confidential business information. The Order prohibited the merged firm from engaging in these behaviors with:

- Non-discrimination rules that ensured that IonQ's rivals would get fair, equal access to necessary chip inputs and infrastructure;
- Detailed information firewalls preventing key employees from working on the projects of both IonQ and its rivals;
- A requirement that the merged firm assist customers with switching at their request to ensure smooth, orderly transitions to new foundries;
- An arbitration requirement by which IonQ's rivals could obtain fair and fast resolution of their disputes with the merged firm;
- A monitor to ensure compliance;
- Protection for whistleblowers who come to the Commission or the monitor alleging failure to comply with the Order;
- A requirement to establish an antitrust-compliance training program and inform new customers at the outset of negotiations of the terms of the Order; and
- A requirement to provide prior notice to the Commission if the merged firm sought to acquire another foundry within a certain timeframe.

A majority of the Commission ultimately did not agree to adopt the Order. All merger cases involve predictions about the future, and reasonable people may look at the same facts and come to entirely different conclusions about the likely outcomes. I am confident about the danger the merger poses to competition, innovation,<sup>38</sup> and America's technological dominance in the short term. I believe a robust order aimed at ameliorating the short-term risks to competition would have been the right approach. But the contrary view is a reasonable one, and that view prevailed in an equally divided Commission.

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In the absence of a majority-approved Order, the next-best option is to get out of the way and permit the merger to close so that the likely benefits to competition and innovation may swiftly be realized. For that reason, the Commission has terminated its investigation into the merger.

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<sup>38</sup> Under my leadership, the Commission will closely monitor the quantum computing industry for potential threats to competition—including from the merged firm.