

Additional Statement of Commissioner Thomas B. Leary

Arch Coal, Inc.

Docket No. 9316, File No. 031 0191

I have joined in the decision to close this matter and agree with the Commission's Statement of its reasons. I add this brief comment only because I originally dissented from the decision to seek a preliminary injunction and said then "that the administrative arena is the best place to address the challenging issues presented by this case."¹

I still believe that an administrative trial would have been preferable. Although the complaint's theory of output coordination was in no way novel, the factual issues in this particular case were complex. In addition, prospects for post-merger relief, if needed, were better in this case than in most.

However, that was then and this is now. In light of the facts developed during the preliminary injunction proceeding, I no longer have reason to believe that the merger is likely to have an adverse effect on competition. In addition, if we were to start a lengthy administrative proceeding today to review a merger that was consummated some nine months ago, the focus inevitably would be more on what has happened than on what is likely to happen. As the Commission Statement points out, the post-merger record does not suggest that competition has thus far been harmed. We can always intervene down the road, should the need arise.

¹ Statement of Commissioner Thomas B. Leary, Arch Coal, Inc., File No. 031 0191 (4/6/04).