Keynote Remarks of FTC Chairwoman Edith Ramirez
The Hal White Antitrust Conference
Washington, DC
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Good evening, everyone. I am delighted to be here and want to thank [illegible] but it also occurred to me that this quip al conference focused on "dynamic competi evening.

What I would like to do tonight is t cases in which the Commission has add the key issues we have grappled with. L

First, the fact that a market may b enforcers should lower their vigilance in m market when necessary to protect comp intervention is grounded in rigorous analy examples of that type of analysis in the thr

Second, the fact that a market may

measurement services.[2] To remedy the likely loss of future competition, we required Nielsen to divest or license certain technological assets and, including relevant intellectual property, to a Commission-approved buyer, so that the buyer could offer a competing service.

As we explained in our Commission statement, Nielsen and Arbitron were best positioned to develop and market cross-platform services for two main reasons.[3] First, as current providers of single-platform audience measurement services for TV and radio, respectively, Nielsen and Arbitron were the only two companies operating large and demographically representative panels capable of reporting television programming viewership on an individualized basis (such as by age and gender). This reporting capability is critical to the development of any cross-platform product that would satisfy likely customer demand.

Moreover, both Nielsen and Arbitron had already invested significant time and resources toward the development of cross-platform products, as evidenced by their internal documents and by statements they had made publicly and to potential customers. Nielsen was already offering audience measurement services across different media platforms; for example, its "Extended Screen" product measures television and online viewing for a subset of its national panel. Arbitron was similarly developing a cross-platform audience measurement service for ESPN in partnership with comScore. Importantly, networks, media companies, and advertisers all believed that these two companies were best-situated to develop cross-platform services and market them in direct competition with each other.

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[2] Decision & Order, Nielsen Holdings N.V. and Arbitron Inc., File No. 131 0058 (F.T.C. filed Sept. 20, 2013), available at https://www.ftc.gov/system/files/documents/cases/140228nielsenholdingsdo.pdf; Compl. ¶ 12, Nielsen Holdings N.V. and Arbitron Inc., File No. 131 0058 (F.T.C. filed Sept. 20, 2013), available at https://www.ftc.gov/sites/default/files/documents/cases/2013/09/130920nielsenarbitroncmpt.pdf.

[3] Statement of the Fed. Trade Comm'n at 1, Nielsen Holdings N.V. and Arbitron Inc., File No. 131 0058 (F.T.C. filed Sept. 20, 2013), available at https://www.ftc.gov/sites/default/files/documents/cases/2013/09/130920nielsenarbitroncommstmt.pdf.

In short, although the nascent market for national, syndicated, cross-platform, audience measurement services is "dynamic" and characterized by some amount of uncertainty, we had a solid empirical basis for predicting that Nielsen and Arbitron would likely have become substantial head-to-head competitors absent the merger. Our enforcement remedy took full account of the dynamic character of this marketplace, and consumers are better off for it.

Next, I want to mention a preliminary injunction

time.[6] According to the complaint, Synergy's planned services would provide a competitive alternative to gamma radiation.[7]

The Commission thus charged that the challenged acquisition would eliminate likely future competition between STERIS's gamma sterilization facilities and Synergy's planned x-ray sterilization services, and that other competitors would be unlikely to fill the competitive gap.[8]

Unlike the Nielsen/Arbitron combination, in which our competitive concerns related to a future market for cross-platform audience measurement services, the STERIS/Synergy case involves concerns about a present market for contract sterilization services. But that market is potentially dynamic, as revealed by Synergy's alleged plans to disrupt the prevailing technology with an innovative competing technology. And that potential dynamism underlies the main competitive concerns expressed in our complaint. We will have to wait and see how the evidence unfolds in the federal district court and administrative proceedings.

Let me now move from merger cases to an illustrative FTC conduct case involving dynamic competition in the real estate market. In 2006, in the *Realcomp* case, the Commission charged that an association of real estate brokers in southeastern Michigan had implemented certain policies aimed at precluding discount real estate broker listings from gaining full access to the association's multiple listing service.[9] Following an administrative trial, the Commission found these policies amounted to an illegal concerted refusal to deal in violation of Section 1 of the Sherman Act.[10]

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[6] Id. ¶ 60.
[7] Id. ¶¶ 4, 15, 105.
[8] Id. ¶¶ 109-11, 115.
[9] Compl. ¶¶ 13-16, Realcomp II, Ltd., Dkt. No. 9320 (F.T.C. filed Oct. 12, 2006), available at https://www.ftc.gov/sites/(F)5(abIS</MCID 12 >>BDC /CS1 cs 0 0 1f)6(b)-l eavail2 l1.152 Td [Difdco&oc.gov<n

In short, enforcement decisions should be grounded in facts and rigorous analysis