FTC IonQ Review Unearths A Divide In Vertical Merger Remedy

By **Nicholas Cheolas** (August 27, 2026)

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Vertical merger enforcement has a familiar problem: Theories of harm are established, but difficult to prove. A vertically integrated firm could gain the ability and incentive to disadvantage rivals by withholding critical inputs, degrading access or obtaining competitively sensitive information. Yet courts regularly recognize that vertical mergers can also create efficiencies and that, unlike horizontal mergers, there is no doctrinal shortcut to showing harm.

The Federal Trade Commission's recent review of IonQ Inc.'s proposed acquisition of SkyWater Technology Inc. puts that problem in focus. On July 31, the FTC announced it had closed its investigation into the proposed merger, and IonQ announced that the transaction was completed.[1]

FTC Chairman Andrew Ferguson and Commissioner Mark Meador issued separate statements explaining why.[2] They agreed that the transaction warranted scrutiny and that a suit to block it would be an imprudent use of agency resources. But they split over whether the evidence justified a behavioral remedy.

With only two commissioners on the commission instead of the usual five, the FTC lacked the votes to move forward, but Ferguson and Meador's statements offer a candid window into how enforcers may approach vertical merger concerns after a string of difficult government cases.

Their disagreement also revives a question: When enforcers see a credible risk of vertical harm but face an uphill litigation path, must they choose between litigation or clearance?

Despite their stated distaste for behavioral remedies, both Ferguson and Meador appear to say no — though they seemingly disagree as to the quantum of evidence needed to justify a negotiated remedy.

This presents a more interesting question for vertical merger planning and analysis going forward — particularly in platform, digital and other markets where access, interoperability and data flows are key competitive variables.

The Transaction and the FTC's Concerns

IonQ is one of several companies racing to develop fault-tolerant quantum computers. SkyWater is an American advanced semiconductor foundry that provides chip fabrication and development services to quantum-computing companies, including IonQ and some of IonQ's rivals.

IonQ has said the acquisition would accelerate research and development by permitting closer collaboration with its manufacturing partner.[3]

That same relationship created the competitive concern, and what Ferguson described in his statement as two "textbook likely anticompetitive effects." First, IonQ could control SkyWater's services and "slow-roll access to or withhold entirely" inputs needed by rivals.

Switching foundries may be possible, but Ferguson reasoned that an abrupt transition could delay cutting-edge projects by months. Second, the acquisition could expose IonQ to rivals' competitively sensitive technical information held by SkyWater, potentially weakening customers' willingness to invest in and cooperate with the foundry.[4]

But Ferguson also viewed these potential effects as transient. In the longer run, he reasoned, rivals could move to other foundries, including capacity supported by federal investment. Nor did he ignore the transaction's potential upside: vertical integration could reduce transaction costs, eliminate double marginalization and strengthen innovation.

He therefore proposed what he described as a "next-generation behavioral remedy," including nondiscrimination obligations, information firewalls, customer switching assistance, and a prior notice requirement for another foundry acquisition.[5]

Agreement on the Framework, Disagreement on the Evidence

Despite their disagreement on the ultimate result, Ferguson's and Meador's statements are substantially aligned. Both commissioners took the foreclosure and information-access concerns seriously. Both recognized that vertical integration can produce meaningful efficiencies.

Both treated the duration of any harm and expanded federal investment in quantum capacity as important — with liberal references to the Trump administration's policy objectives and investments in quantum computing. And both agreed that an injunction against the entire transaction was not warranted.

Their disagreement centered on the evidentiary threshold for intervention. Ferguson concluded that the "unique circumstances of the quantum-computing market" and FTC staff's investigation gave him the statutory "reason to believe" the merger "may be substantially to lessen competition" in the short term.[6]

He favored what he called a "pragmatic, middle-ground approach" that would preserve the deal's benefits while protecting rivals during a transition.[7]

Meador disagreed. "The evidence available is insufficient to demonstrate that the effect of the transaction may be to substantially lessen competition," he wrote. In his view:

- The hypothetical foreclosure share was below relevant benchmarks;
- SkyWater was not a must-have;
- The risks were short-term; and
- Government investments would create alternative pathways.[8]

Meador seemed to disagree as to whether the proposed remedies were actually a "middle-ground approach," instead describing "a regulatory intervention by the commission into a highly competitive and dynamic innovation market" through an "extensive remedial order."[9]

National security and policy considerations also played a role. Ferguson viewed a remedy as a bridge protecting competition until new domestic capacity arrives, thereby safeguarding federal investments and national leadership.[10] Meador viewed those investments as evidence that alternatives would expand and the alleged bottleneck would dissipate.[11]

And though these considerations led the two commissioners to different conclusions, they continue a trend of national security and industrial policy influencing merger decision outcomes.

Traction in 2023 Merger Guidelines

IonQ-SkyWater provides more evidence that 2023 merger guidelines continue to gain traction as an analytical framework. Ferguson cited Section 2.5 to substantiate his concerns that a vertical merger may permit the combined firm to limit rivals' access to important products or gain access to competitively sensitive information.[12]

Meador noted that the guidelines "wisely raised the profile of these types of concerns," but pressed on limiting principles, including the guidelines' 50% foreclosure-share threshold and the competitive significance of related products.[13]

Meador had similarly relied on the 2023 guidelines in his May 1, 2026, statement supporting the remedy in 365 Retail-Cantaloupe.[14]

There, he cited the guidelines' focus on serial acquisitions and Sections 2.5 and 2.6 to explain how combining hardware and software could strengthen a dominant firm's ability to restrict interoperability, foreclose rivals, and entrench its position — while also noting, as he later did in IonQ-SkyWater, that even a related-product share below 50% may raise concerns when the related product matters to trading partners.[15]

The Gray Zone Between Clearance and Litigation

Ferguson's statement provides a candid overview of the litigation reality facing enforcers. From 1980 until 2017, Ferguson noted, the agencies did not try a vertical merger case — although they resolved others through behavioral relief.

But since 2017, the FTC and DOJ have brought five vertical cases and lost all but one. Across the cases, courts noted the absence of "short-cuts" to show vertical harm and credited efficiencies and parties' unilateral remedial commitments. As Ferguson put it, "courts have stacked the deck against challenges to vertical mergers."[16]

That record creates a practical bind. Often, the evidence developed in a merger investigation is equivocal. Customers may identify credible risks and switching costs, while internal documents may support an ability-and-incentive theory.

Other evidence may reveal alternatives, conflicting incentives, efficiencies or rapid entry. Many concerns raised by market participants reflect credible fears but are inherently probabilistic, forward-looking predictions.

And a full trial can consume substantial agency resources and produce not only a loss, but adverse precedent that makes the next case harder. Those trade-offs matter more when resources are constrained.

These dynamics — combined with the agencies' stated desire for shorter, more focused merger investigations[17] — highlight emerging and important questions: What happens when a targeted investigation develops conflicting evidence of anticompetitive effects, sufficient to consider a negotiated remedy, but insufficient to support either a litigated challenge or unconditional clearance? Would additional investigation — Ferugson praised staff's "targeted and efficient" investigation that "quickly identified" risks to competition and put the matter on a "fast-track" to potential resolution[18] — have changed the outcome, or produced evidence sufficient to convince either commissioner?

In this environment, the evidentiary threshold needed to support behavioral remedies is critical. Both Ferguson and Meador outline reasoned approaches to this key question while looking at the same record. Ferguson's view is pragmatic: Although skeptical of conduct remedies, he noted that they "cannot [be] off the table."[19]

If courts credit party-designed commitments in litigation, the government should not have to choose only between a difficult challenge and unconditional clearance.

Meador's view is doctrinal: Evidence that is "insufficient" (in his view) to demonstrate anticompetitive effects is also insufficient to support "regulatory intervention."[20]

Both views are reasonable and defensible, and likely reflect competing instincts among staff and career leadership at both agencies. But if merger review moves toward shorter, more focused investigations, greater receptivity to prophylactic relief — even where the evidence is mixed, as it often is — could mean more intervention and more settlements, especially in vertical mergers where litigation risk and agency resource constraints loom large.

Is a Two-Commissioner FTC Enough?

The matter also shows the cost of operating with only two commissioners. The FTC is designed as a five-member body, although its rules permit the commissioners in office to constitute a quorum. Agreement or consensus allows the agency to act. A one-to-one split does not.

Here, that institutional constraint changed the available outcome. Ferguson voted for an order; Meador did not. As Ferguson explained, "the contrary view is a reasonable one, and that view prevailed in an equally divided Commission."[21]

Without a majority for the remedy, early termination became, in his words, "the only course available."[22] Complex merger investigations — and vertical mergers in particular — often lead enforcers to the space between clear approval and clear illegality. A larger commission might not have changed the result, but it could have supplied a decisive vote or produced a coalition to support narrower relief.

No Clear Formula, but Important Signals

IonQ-SkyWater should not be overread as a general embrace of behavioral remedies or a retreat from vertical enforcement. The facts were unique, the asserted risks were temporary and national-security considerations were unusually prominent. But the matter offers several durable lessons.

First, the 2023 merger guidelines continue to influence how current enforcers frame and assess vertical issues, even when they disagree on the evidence.

Second, foreclosure and access to rivals' sensitive information remain live concerns, particularly where a target controls competitive inputs or information.

Finally, litigation difficulty and scarce resources can affect not only whether an agency sues, but which remedies it considers. Fourth, the FTC's commission composition can determine whether a middle-ground solution is viable at all.

And as merger-enforcement policy evolves, accumulating data points provide useful directional guidance, but not yet a reliable formula for predicting individual outcomes. Some point in different directions.

A preference for structural remedies may conflict with greater receptivity to behavioral relief in vertical matters. Faster investigations may conserve resources, but they also may require decisions before ambiguities in the evidentiary record can be resolved.

And a general preference for settlements does not tell parties how much evidence of potential harm will cause the agency to demand one. Much will necessarily depend on the transaction, the market and the evidence.

Still, after eras of frequent vertical challenges, then virtually none, then a series of mostly unsuccessful litigated challenges, IonQ-SkyWater suggests that vertical enforcement could be entering another phase: quicker and more targeted investigations producing few litigated challenges, but potentially more, and more extensive, behavioral settlements.

That possibility matters across many industries, including technology and platform markets, where interoperability and control of data or interfaces can be central; healthcare, where vertical integration remains a prominent concern; and manufacturing and defense markets, where control of scarce inputs or capacity may create foreclosure risks.

More broadly, parties should not overread the agencies' realistic view of vertical merger litigation success and general skepticism of behavioral remedies as permissiveness.

As Ferguson and Meador's statements indicate, agency staff and leaders will continue to investigate and engage with matter-specific evidence and have emphasized that, in certain circumstances, vertical mergers may present competitive risks that require behavioral remedies.

Meanwhile, the agencies' willingness to conduct faster, targeted merger investigations increases the importance of parties developing proactive merger clearance strategies in vertical deals that could present material and credible competitive risks.

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[1] Federal Trade Commission, Statements on the Grant of Early Termination of the FTC's Investigation of IonQ's Proposed Acquisition of SkyWater (July 31, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/07/statements-grant-early-termination-ftcs-investigation-ionqs-proposed-acquisition-skywater; https://www.ionq.com/news/ionq-completes-acquisition-of-skywater-technology; https://www.ionq.com/news/ionq-completes-acquisition-of-skywater-technology.

[2] FTC, Statement of Chairman Andrew N. Ferguson in the Matter of IonQ, Inc. and SkyWater Technology, Inc., Matter No. 2610061 (July 31, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-ionq-skywater.pdf ("Ferguson Statement"); FTC, Statement of Commissioner Mark R. Meador in the Matter of IonQ, Inc. and SkyWater Technology, Inc., Matter No. 2610061 (July 31, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-ionq-skywater-statement.pdf ("Meador Statement")

[3] Meador Statement at 1, n.2.

[4] Ferguson Statement at 4.

[5] Ferguson Statement at 9.

[6] Ferguson Statement at 1.

[7] Ferguson Statement at 8.

[8] Meador Statement at 2.

[9] Meador Statement at 2, 5.

[10] Ferguson Statement at 5.

[11] Meador Statement at 5-6.

[12] Ferguson Statement at 4.

[13] Meador Statement at 1, 4.

[14] FTC, Statement of Commissioner Mark R. Meador In the Matter of Providence Equity Partners L.L.C. and Cantaloupe, Inc., Matter No. 2510100 (May 1, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-statement-providence-cantaloupe.pdf.

[15] Id. at 4-5.

[16] Ferguson Statement at 6-7.

[17] See DOJ, Justice Department Resumes Targeted HSR Merger Review Process (July 23, 2026), https://www.justice.gov/opa/pr/justice-department-resumes-targeted-hsr-merger-review-process.

[18] Ferguson Statement at 9.

[19] Ferguson Statement at 7.

[20] Meador Statement at 2.

[21] Ferguson Statement at 9.

[22] Ferguson Statement at 1.