tors than two. Consequently, the Commission rejected the proposed divestitures[70] and sought a preliminary injunction, which the court granted.[71]

The enforcement action has clearly led to substantial benefits to consumers. Both Staples and Office Depot have expanded at a rapid rate. Within three years after the merger was abandoned each firm has surpassed the size that the merged Staples/Office Depot would have achieved. Both firms are competing aggressively. They are invading each other's markets and driving prices down to levels not even seen before the merger was proposed. In addition, both firms compete aggressively on the Internet, where Office Depot is the clear leader.

G. *Coordinated Interaction*

As markets are becoming more concentrated, there are increasing concerns over mergers that may enhance the ability of firms to engage in coordinated interaction. Almost invariably these mergers are resolved through significant divestitures, typically of ongoing businesses. Yet, where there is no acquirer with the incentives and ability to fully restore competition, even a substantial divestiture may be insufficient to remedy the threat of coordination.

DuPont's proposed acquisition of the Tioxide division of Imperial Chemical Industries in 1998 was structured in a way that sought to avoid antitrust problems. However, the FTC found that it fell short of a satisfactory solution. DuPont was the leading supplier both in the United States and the world of titanium dioxide (TiO_2) pigments, which are used in paints, plastics, paper, inks, and other products to provide whiteness, enhance brightness, and improve opacity. ICI was the second-largest supplier in the world, with plants located both in the United States and abroad. The deal was structured so that DuPont would acquire ICI's TiO_2 facilities outside North America, and NL Industries, another competitor, would acquire ICI's TiO_2 assets in the United States.[72]

The DuPont/ICI transaction therefore avoided a production overlap in North America. Even so, the proposed transaction did not avoid a *competitive* overlap because ICI also was a significant importer of TiO_2 into the United States, especially for use in plastics and architectural coatings. In fact, imports accounted for a majority of ICI's sales to North American customers. ICI was also developing new sulfate-based TiO_2 products to compete with DuPont's chloride-based products. Consequently, the acquisition would still give DuPont control over a very substantial percentage of the supply of TiO_2 for North American customers. The concern was that the elimination of an important import competitor like ICI could facilitate or increase the likelihood of coordinated behavior.[73]

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70 Press Release, FTC, FTC Rejects Proposed Settlement in Staples/Office Depot Merger (Apr. 4, 1997).

71 *Staples, Inc.*, 970 F. Supp. at 1093.

72 Press Release, DuPont, DuPont Terminates Agreements to Acquire ICI's White Pigments Business Outside North America and to Establish a Polyester Joint Venture in Pakistan (Jan. 4, 1999).

73 The investigation revealed that ICI had a unique incentive to import substantial quanti-

DuPont tried to address the concerns by proposing a supplemental basket of other arrangements: it would exclude from its acquisition one of ICI's European plants, which instead would be acquired by NL Industries; DuPont would supply TiO_2 products to NL for two years; DuPont would not compete against NL for North American customers by sourcing them from plants acquired from ICI; and DuPont would divest ICI's North American customer lists, current contracts, and customer information. There were several problems with these proposals. The plant that DuPont proposed not to acquire was a relatively minor supplier to North America, and the noncompetition agreement would be an oddity for an antitrust order. The most critical deficiency was that the proposal did not address the elimination of a competitor that stood in the way of coordinated behavior. As a result, the parties abandoned the transaction in January 1999.

IV. Conclusion

As the other articles in this issue articulate, there has been an important transition in policy towards merger remedies during the last decade of the 1990s. The antitrust agencies, primarily the FTC, have achieved a great deal by addressing the issue of merger remedies and strengthening both the scope and comprehensive nature of those remedies. However, as the articles in this symposium also suggest, there is a significant disparity between the agencies' approach to issues and the understanding of the private bar. Much of the agencies' position has been weakly articulated, and the controversies that currently exist suggest a significant need for the agencies to better articulate their policies and approach to merger remedies.

Although the antitrust agencies have achieved a great deal in approaching merger remedies, there are areas in which the process and the understanding of that process can be improved. Here are several suggestions for how the agencies could address the issues raised by the articles in this symposium:

ties of TiO_2 into North America because of the configuration of its extensive European facilities. ICI in fact had demonstrated a commitment to supply U.S. customers during peak demand periods, and it had been attracting increasing sales. Given its incentive to import, ICI was a potential disruptive force in any scheme to coordinate output or prices in North America. By removing that threat, it could become much easier for DuPont and remaining suppliers to engage in coordinated behavior. Concerns about coordinated behavior were sharpened by the presence of a number of factors that generally facilitate collusion, e.g., inelastic demand and substantial information flows between competitors. Firms had considerable knowledge of their competitors' capacity, pricing, and sales to individual U.S. customers. Thus, firms were capable of monitoring pricing and output and detecting cheating. In addition, DuPont already played a strong price leadership role in the industry with other firms taking their cues from DuPont. The elimination of ICI's import competition could only strengthen that role. Those concerns were heightened by evidence that North America's price declines during slack demand periods already were shallower relative to other regions. FTC staff also were concerned that with a more commanding position worldwide, DuPont would have increased incentives to close some of the capacity acquired from ICI to demonstrate its resolve to promote higher prices and encourage investment restraint by other suppliers.