small_frog/E+/Getty Images

Merger Enforcement Actions with Four or More Remaining Competitors

Practical Law Antitrust

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) (the antitrust agencies) review mergers that may have anticompetitive effects in one or more markets. Many of the mergers reviewed by the antitrust agencies may result in a monopoly or duopoly in the market. However, the antitrust agencies are increasingly reviewing mergers that will instead result in at least four remaining competitors in the market.

From 2012 through 2013, 16 merger enforcement actions involved one or more markets with at least four remaining competitors. Of those 16 merger enforcement actions:

- The FTC brought 13 and the DOJ brought three.
- Two were brought post-consummation.
- Eight began as litigated cases, with a complaint filed in district court or as an administrative complaint, and resulted in:
  - three consent decrees (for summaries of these actions, search U.S. v. US Airways Group, Inc. and AMR Corporation (litigated case), In the Matter of Pinnacle Entertainment, Inc. and Ameristar Casinos, Inc. (litigated case) and In the Matter of Ardagh Group S.A., Saint-Gobain Containers, Inc. and Compagnie de Saint-Gobain (litigated case) in What's Market);
  - three abandoned deals (for summaries of these actions, search In the Matter of Integrated Device Technology, Inc. and PLX Technology, Inc. (litigated case), In the Matter of Reading Health System and Surgical Institute of Reading (litigated case) and In the Matter of Omnicare, Inc. (litigated case) in What's Market);
  - one decision for the FTC (for a summary of this action, search F.T.C. v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A. (litigated case) in What's Market); and
  - one decision for the DOJ (for a summary of this action, search U.S. v. Bazaarvoice, Inc. (litigated case) in What's Market).
- Six resulted in consent decrees (not including the three litigated cases that resulted in consent decrees). A consent decree is a settlement agreement between the antitrust agency and the merging parties, including a remedy for the merger (such as a divestiture of assets).
- Two resulted in a decision to close. The investigating antitrust agency issued statements providing its reasons for closing the merger investigations.

In many of these actions, the antitrust agencies focused on the parties' ordinary course of business documents in deciding whether to begin an investigation or litigation.

Search Corporate Transactions and Merger Control and How Antitrust Agencies Analyze M&A for more on how the antitrust agencies analyze mergers, acquisitions and joint ventures.

This article examines federal merger enforcement actions in which four or more competitors remain in the relevant market as a result of an acquisition. In particular, it discusses:

- The importance of the definition of the relevant market.
- Theories of competitive harm used by the antitrust agencies.
- The types of documents analyzed by the antitrust agencies.
- The antitrust agencies' reliance on market share and market concentration levels in evaluating the transaction's competitive effects.

MARKET DEFINITION

Generally, the more competitors in a market, made up of both a product market and a geographic market, the less likely a merger will have anticompetitive effects. This is because there are other competitors to counteract a price increase instituted by the merged firm. As a result, during a merger investigation, the merging parties often try to define the market broadly to include more competitors. Parties sometimes successfully argue for a broader market definition (for an example, search Office Depot, Inc. and OfficeMax, Inc. (decision to close) in What's Market). However, in other transactions, courts conclude that the market is narrowly defined (for an example, search F.T.C. v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A. (litigated case) in What's Market).

Search Analyzing a Relevant Market in Horizontal Mergers for more on how the antitrust agencies and courts define relevant markets.

BROAD MARKET DEFINITION

Merging parties have had success defining relevant markets broadly. For example, the FTC recently concluded that the market in the Office Depot and OfficeMax merger was much broader than office supply superstores by including brick-and-mortar retail office supply stores and online merchants. Among other things, the FTC's investigation showed that customers purchased office supplies at retailers that offer other products, such as mass merchants and club stores, as well as from online retailers, such as Amazon.

This broader definition of the market led to the inclusion of additional competitive players in the retail office supply market. Therefore, the FTC closed its investigation of the merger (for a summary of this action, search Office Depot, Inc. and OfficeMax, Inc. (decision to close) in What's Market).

In 2011, the FTC lost a preliminary injunction action seeking to enjoin Laboratory Corporation of America's acquisition of Westcliff Medical Laboratories, Inc. The merging parties competed in the sale of clinical laboratory testing services to physician groups. The FTC lost the preliminary injunction in part because the district court rejected the FTC's narrow definition of the market.

The FTC sought to define the market based on only one of the two types of methods of payment to laboratories for clinical testing services, payment on a capitated basis. Under the capitated payment model, health management organizations delegate specific healthcare services to be performed by physician groups in return for a fixed payment per member, per month. As a result, the FTC argued that the market included only the two merging competitors and one other competitor.

The court found that the relevant market was much broader and also included laboratory testing services on a fee-for-service (FFS) basis. FFS payers include third-party payers (such as private health insurance plans), government payers (most Medicare and Medi-Cal plans) and direct cash payers (mostly uninsured patients).

The court found that the two types of billing arrangements were merely two different ways of paying for the same service, which was identical regardless of the method of payment. Using the broader market definition, the court found that the merger was not a merger-to-duopoly as the FTC claimed, but rather combined two providers of laboratory services in a market with many other competitors (for a summary of this action, search F.T.C. v. Laboratory Corporation of America and Laboratory Corporation of America Holdings (litigated case) in What's Market).

NARROW MARKET DEFINITION

Conversely, the district court agreed with the FTC's narrow geographic market definition in *F.T.C. v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A.* The merging parties and the FTC agreed on the relevant product market, which included adult primary care physician services provided to commercially insured patients. The merging parties argued that the geographic market should include both Nampa, Idaho and nearby Boise, Idaho.

However, the court found the relevant geographic market to be the narrower market of Nampa. The court looked at the likely response of insurers to a price increase by primary care physicians to determine the geographic market. In Nampa, 68% of residents received their primary care from providers located in Nampa, while only 15% obtained their primary care in Boise. As a result, the market did not include any of the primary care practices in Boise, increasing the merged firm's share of the relevant market and the anticompetitive effects of the acquisition (for a summary of this action, search F.T.C. v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A. (litigated case) in What's Market).

The court similarly rejected Bazaarvoice's definition of the relevant market in *U.S. v. Bazaarvoice, Inc.* Bazaarvoice proposed a large cluster market that included online ratings and reviews (R&R) platforms and other social commerce tools, such as Q&As, blogs, forums and social networks. However, the court determined that the relevant product market consisted only of R&R platforms, which drastically reduced the number of competitors. The court also found a much narrower geographic market than Bazaarvoice had proposed. Bazaarvoice argued that the geographic market should be

Experts' View

ELIZABETH XIAO-RU WANG
PRINCIPAL
CHARLES RIVER ASSOCIATES

Dr. Wang is a principal in Charles River Associates' Competition Practice. She specializes in industrial organization, applied economics and econometrics. Dr. Wang has extensive experience in providing economic analyses for antitrust matters, including merger reviews, government investigations and private litigation.

BENJAMIN STEARNS
SENIOR ASSOCIATE
CHARLES RIVER ASSOCIATES

Mr. Stearns is a senior associate in Charles River Associates' Antitrust & Competition Practice. His specialties include industrial organization and applied econometrics. Since joining CRA in 2011, Mr. Stearns has conducted analyses for matters involving price fixing, false claims and mergers.

Dr. Wang and Mr. Stearns provide insights on the role of economists in mergers with four or more remaining competitors and explain the types of analyses they perform for these types of mergers:

How often are economists engaged in mergers with four or more remaining competitors?

Economists are often engaged to analyze whether a merger is likely to cause significant anticompetitive harm, regardless of how many competitors remain in the market. In general, the more remaining competitors in the market, the less likely there will be significant anticompetitive harm post-merger. Economists may help define the relevant markets, which helps determine how many firms are left in the market.

For example, in a merger involving supermarkets, economists may be asked to examine the scope of the geographic boundaries to see how many other supermarkets are close enough to provide significant competition. Similarly, economists may be asked to assess the boundaries of the product market by determining whether certain types of stores, such as club stores, convenience stores or organic food stores, compete with retail grocery stores.

However, even where there are multiple competitors in a market, the merger is more likely to raise concerns where the merging parties' products are close substitutes. This is particularly the case when dealing with differentiated products, meaning those with different features like cell phones or cars, where although there may be many competitors in the product market, the merging parties' products have the most similar features and are their customers' top two choices. A merger in a market with multiple competitors is also likely to raise concerns where it increases the likelihood of price coordination among the remaining competitors, particularly in markets with homogenous products, like milk.

What types of data or analyses do economists use to address the antitrust agencies' different theories of competitive harm in mergers with four or more remaining competitors?

There are two general theories of competitive harm that can arise as a result of mergers. Unilateral effects address whether the merged firm will have an incentive to raise prices on its own even if competitors do not also raise their prices in cooperation. Coordinated effects address whether the merger will increase the likelihood that firms in the relevant market will cooperate to jointly raise prices.

There are a variety of methods to assess unilateral effects of a proposed merger. Commonly used methods include, among others:

- Estimating a diversion ratio.
- Conducting merger simulations.
- Using the Gross Upward Pricing Pressure Index (GUPPI).

The diversion ratio between two competing firms (Firm A and Firm B) measures the percentage of lost sales following a price increase by Firm A that is captured by competing

worldwide, because technology knows no borders. However, the court found that the following factors pointed to a US market for R&R platforms:

- R&R platform providers license their products for specific websites, often limited by geography.
- Manufacturers and retailers often maintain separate websites (with separate contracts) for consumers located in different countries.
- There is no arbitrage of R&R platforms between manufacturers and retailers.

(For a summary of this action, search U.S. v. Bazaarvoice, Inc. (litigated case) in What's Market.)

THEORIES OF COMPETITIVE HARM

In deals where the change in competitors would have resulted in four or more competitors remaining in at least one relevant

Firm B. This statistic is typically viewed as a measure of the closeness of competition between the firms. A high diversion ratio indicates that the two firms' products are close substitutes and that, all else being equal, a merger of the firms is more likely to result in significant unilateral effects. On the other hand, a low diversion ratio generally indicates that the merger will not cause significant unilateral effects.

Merger simulation generally relies on economic models of firm and industry pricing behavior where the assumptions of the models are based on observed market facts. These models can be used to compare predicted prices before and after the proposed merger. If the predicted post-merger price is significantly above the premerger price, it is an indication that the merger is likely to cause competitive harm. Merger simulation is most often applied to branded consumer products where rich scanner data on price and quantity are available to help estimate the parameters of the model. Scanner data is generally derived from universal product codes (UPC codes) on branded products.

The GUPPI test provides a simple benchmark to evaluate the magnitude of the merger's impact on the buyer's incentives to increase prices. The GUPPI takes into account two important factors that affect the merging firm's post-merger pricing incentives:

- The merging firm's margin (or its profit) on the product that it sells.
- The diversion ratio of one merging firm's customers to the merging partner.

By analyzing how many sales are recaptured (as measured by the diversion ratio) and the profitability of those recaptured sales (as measured by the margin), the GUPPI provides a measure of how much of the firm's profits from those lost sales are recaptured through the merger, and therefore how much the merger eliminates a premerger pricing discipline.

Economic theory indicates that unconcentrated markets are less vulnerable to coordination. For mergers in concentrated markets, the antitrust agencies typically consider certain market characteristics as making successful coordination over time more likely, including whether:

- There is previous evidence of coordination or attempts to coordinate.
- The products in the market are homogenous.
- Price information is transparent, allowing rivals to observe prices promptly and accurately.
- Rivals have the ability to respond quickly to deviations and to punish defectors, among others.

The antitrust agencies are particularly sensitive to coordinated effects when the merger involves a firm that may have helped prevent coordination in the past, commonly referred to as a maverick firm. The antitrust agencies are likely to focus on whether there has been an industry maverick, and how the proposed merger affects the pricing incentives for the maverick firm (including whether the merger will eliminate that firm).

Search Economic Tools for Evaluating Competitive Harm in Horizontal Mergers for more on economic tools used to analyze mergers.

What is the timing of an economist's involvement in these kinds of transactions?

Economists can be helpful at various stages of a transaction. However, early involvement by economists can be highly beneficial and prevent delays in merger review, resulting in cost savings. When a company is formulating merger strategy, economists can help screen potential merger partners and assess the antitrust risks.

After the transaction is negotiated, economists can help:

- Analyze the data and documents most relevant to antitrust review.
- Define the relevant market.
- Conduct analyses to evaluate competition.
- Assess coordinated and unilateral effects depending on the documents and data available for the merger.
- Develop strategies by identifying potentially vulnerable areas.

During the merger review process, economists also frequently communicate with the antitrust agencies, including staff economists, by providing opinions in white papers or in meetings to address potential concerns and by identifying potential merger remedies to mitigate competitive harm caused by the merger.

market, the antitrust agencies, in addition to the loss of head-to-head competition and highly concentrated markets theories, analyzed the deals under the theories of:

- Loss of next-best choice.
- Vulnerability to coordination.
- Loss of a potential entrant.
- Loss of a maverick.

LOSS OF NEXT-BEST CHOICE

Loss of next-best choice is most frequently a theory of competitive harm in mergers to monopoly when, by definition, the only two competitors are a customer's next-best choice. However, even where a merger is not a merger to monopoly, the merging parties can be closer competitors for a number of customers than any other competitors in the market. This is frequently seen in mergers where the remaining competitors do not pose much of a threat to the merged entity.

The merger between Pinnacle Entertainment and Ameristar shows how the loss of next-best choice theory can be used in markets other than where there is a merger to monopoly. The FTC found that Pinnacle and Ameristar would soon be each other's closest competitors in the Lake Charles, Louisiana, casino market. Ameristar was in the process of opening a new casino that would be nearly identical in gaming and amenities to Pinnacle's high-end casino. As a result, the merging parties' casinos would each be a customer's next-best choice in Lake Charles. Other casinos in the area were highly differentiated and not nearly as close substitutes for the merging parties' casinos as they would be for each other. Although four competitors would remain post-merger:

- One competitor did not have high-end amenities and was significantly smaller.
- Another competitor was a combined horse racetrack and casino and could not offer table games.
- The third competitor was located about an hour away.

Therefore, customers would be unlikely to visit one of those other casinos in response to anticompetitive effects of the Pinnacle and Ameristar merger, including increased prices or decreased service quality (for example, decreased odds and fewer free or low cost amenities) (for a summary of this action, search In the Matter of Pinnacle Entertainment, Inc. and Ameristar Casinos, Inc. (litigated case) in What's Market).

Increased Bargaining Leverage

Loss of next-best choice can also be a factor in increasing bargaining leverage under the theory set out in Section 6.2, Bargaining and Auctions, of the 2010 Horizontal Merger Guidelines. Section 6.2 states that a merger between two competing sellers prevents buyers from playing those sellers against each other in negotiations. This can increase the bargaining leverage of the merged firm post-acquisition, particularly if the transacting parties are close substitutes for each other.

The FTC used this argument in its challenge of St. Luke's acquisition of its rival Saltzer Medical Group, arguing that although there were over six other competitors in the market for adult primary care physician services provided to commercially insured patients, customers would lose their next-best choice as a result of the merger (for a summary of this action, search F.T.C. v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A. (litigated case) in What's Market).

The court found that the acquisition gave St. Luke's increased bargaining leverage with health insurers. Before the acquisition, employers wanting to offer a competitive product had to include either St. Luke's or Saltzer in their health plans because their employees strongly preferred access to local primary care services. However, pre-acquisition, health plans had some bargaining advantage and had been able to resist St. Luke's rate demands because of a credible alternative option for employers (a plan that included Saltzer only). The existence of an alternative to St. Luke's allowed health plans to threaten to walk away if St. Luke's rate demands increased.

The merger would take away a health plan's best alternative, leaving health plans with no choice but to negotiate to include the combined St. Luke's/Saltzer on whatever terms it demanded. A health plan's only other option was to include another primary care service provider not locally situated, which was not an attractive choice for a health plan trying to market its network to local patients. As a result, employers would be unlikely to purchase a health plan that did not include a combined St. Luke's/Saltzer. Therefore, the court held that the acquisition:

- Added to St. Luke's market power and bargaining leverage.
- Weakened a health plan's ability to negotiate with St. Luke's.

Eliminating competition between customers' top two choices (as in the St. Luke's and Saltzer merger) can motivate and enable the merged firm to charge higher prices (rates) from the buyer than the merging parties would likely have offered separately absent the merger.

Two or Three Significant Competitors

Another example of the next-best choice theory occurs when the antitrust agencies find that a market may have only two or three significant competitors, although there are more competitors (commonly referred to as fringe players or competitors) in the market overall. For example, in the Integrated Device Technology, Inc. and PLX Technology, Inc. merger, the FTC found that, even though there were six competitors in the market, Integrated Device Technology and PLX Technology were the only significant competitors. The other competitors were marginal fringe players that:

- Had not yet developed the latest generation of the relevant product.
- Lacked broad product portfolios.
- Had not grown significantly in the prior several years.

Therefore, the FTC found that the merger would lead to a near monopoly in the market (for a summary of this action, search In the Matter of Integrated Device Technology, Inc. and PLX Technology, Inc. (litigated case) in What's Market).

VULNERABILITY TO COORDINATION

The antitrust agencies continue to challenge mergers in markets that are particularly susceptible to coordination, such as where the merger would increase the incentives of the remaining competitors to collude. A market that is vulnerable to coordination can include:

- Transparent pricing.
- Homogenous products.
- Readily available market information on customers and transactions.

For example, the DOJ set out factors that are conducive to coordination in the US Airways Group, Inc. and AMR Corporation complaint, including:

- Few large players that dominate the industry.
- Small transactions.
- Transparent pricing.

- Legacy airlines (Delta, United, US Airways and American) that closely watch the pricing moves of their competitors.
- A history of coordination in the industry, including price telegraphing (monitoring and analyzing each other's fares and implementing strategies designed to coordinate pricing through use of real time access to one another's published fare structures).

(For a summary of this action, search U.S. v. US Airways Group, Inc. and AMR Corporation (litigated case) in What's Market.)

The DOJ noted that coordination becomes easier as the number of major airlines dwindles and their business models converge. Even though Southwest (the only major, non-legacy airline) and other smaller carriers generally do not participate in coordinated pricing or service reductions, that has not deterred the legacy carriers from continuing or even increasing ancillary fees (such as baggage fees) and reducing services.

Conversely, in the FTC's decision to close its investigation into the Express Scripts, Inc. merger with Medco Health Solutions, Inc., the FTC stated that the merger was unlikely to increase coordination. In particular, the FTC found the market for full-service pharmacy benefit manager services to healthcare benefit plan sponsors to be opaque, with complicated pricing components and unknown bidders (for a summary of this action, search Express Scripts, Inc. and Medco Health Solutions, Inc. (decision to close) in What's Market).

LOSS OF A POTENTIAL ENTRANT

The loss of a potential entrant theory is used when either:

- The buyer or target company is an imminent competitor in a market.
- The buyer and target company are competitors in an imminent future market.

This theory is frequently used in pharmaceutical mergers, such as where one of the merging parties is developing a generic pharmaceutical product that would have competed with a generic product sold by the other merging party but for the merger. For example, the FTC alleged that Mylan's proposed acquisition of Agila would reduce potential competition in markets where:

- Both merging parties, as well as three other competitors, held an approved abbreviated new drug application (ANDA) to sell the relevant drug and had facilities capable of making the drug.
- One merging party held an approved ANDA to sell the relevant drug and the other party was already supplying the drug along with three competitors.
- Four companies had drugs on the market, and both merging parties had competing generic products in development.

The FTC argued that entry by either or both Mylan and Agila into these markets would likely increase price competition for the generic drugs. Prices in generic pharmaceutical markets generally decrease as the number of competing generic suppliers increases. The FTC alleged that the merger would enable Mylan to delay or prevent the launch of generic products in development by both parties, further reducing or eliminating the increased price competition that would have resulted from an additional generic supplier (for a summary of this action, search In the Matter of Mylan Inc., Agila Specialties Global Pte. Limited, Agila Specialties Private Limited and Strides Arcolab Ltd. (consent decree) in What's Market).

In the Pinnacle and Ameristar matter, the FTC also alleged loss of a potential entrant. But for the merger, Ameristar's casino in development would have been Pinnacle's closest casino competitor in Lake Charles, Louisiana. The merger eliminated future competition between the merging parties, which would likely have led to lower prices and better services (for a summary of this action, search In the Matter of Pinnacle Entertainment, Inc. and Ameristar Casinos, Inc. (litigated case) in What's Market).

LOSS OF A MAVERICK

The antitrust agencies may argue that a merger can result in a loss of a maverick competitor. A maverick is a disruptive competitor who has consistently constrained price increases or collusion in the market by, for example, pricing below competitors or introducing innovative offerings. Although the DOJ never used the word "maverick" in its complaint seeking injunction of the US Airways and American Airlines merger, it argued that the merger would eliminate US Airways' Advantage Fares (connecting fares that are up to 40% cheaper than other airlines' competing nonstop service). These Advantage Fares are disruptive to the industry's overall coordinated pricing dynamic.

Because US Airways has hubs in cities that generate less revenue from nonstop passengers than the other legacy airlines' hubs, US Airways must gain more revenue from connecting passengers. To achieve this, US Airways offers the much lower Advantage Fares. US Airways gained most of its Advantage Fare value from American, meaning that the Advantage Fares would likely disappear post-merger (for a summary of this action, search U.S. v. US Airways Group, Inc. and AMR Corporation (litigated case) in What's Market).

HOT DOCUMENTS

The antitrust agencies rely heavily on documents in building merger cases. This type of evidence is particularly important in transactions where there are multiple competitors to show, for example, that the merging parties are a customer's next-best choice. When these documents exist, they are known as hot documents.

In particular, the antitrust agencies give great weight to documents created by the merging parties in the ordinary course of business because those documents provide valuable (and unbiased) information about the company's view of:

- The market.
- Its position in the market relative to competitors.

The antitrust agencies often rely on documents that state the merging parties intend to:

- Raise prices.
- Reduce either:

- output or capacity;
- innovation; or
- product quality or variety.
- Eliminate products or delay the sale of new products.

The antitrust agencies also closely review documents that analyze competition between the merging parties. In many merger cases, the antitrust agencies cite to hot documents in the complaint or brief as evidence of the merger's anticompetitive effects. For examples, search the following in What's Market:

- In the Matter of Pinnacle Entertainment, Inc. and Ameristar Casinos, Inc. (litigated case) (documents discussing how the casinos monitor each other's prices and amenities and adjust their own to match).
- U.S. v. US Airways Group, Inc. and AMR Corporation (litigated case) (documents stating that there were too many competitors in the industry, causing an irrational business model, and that the merger was the last major piece needed to fully rationalize the industry).
- F.T.C. v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A. (litigated case) (documents analyzing the market shares for a "Nampa" geographic market).
- U.S. v. Bazaarvoice, Inc. (litigated case) (documents stating that the acquisition would provide relief from price erosion and documents in which Bazaarvoice and PowerReviews referred to each other as their primary or most significant competitor).

MARKET SHARES AND CONCENTRATION

While the 2010 Horizontal Merger Guidelines de-emphasized the importance of defining relevant markets and calculating market shares and market concentration (measured by the Herfindahl-Hirschman Index (HHI)), the antitrust agencies continued to explicitly cite to these factors in both consent decrees and complaints filed in 2012 and 2013. In 12 of the 16 federal merger enforcement actions during that period alleging markets with four or more remaining competitors, the antitrust agencies provided market shares or HHI, or both, in analyzing those markets.

The chart below shows the combined market shares, post-HHI and change in HHI in those enforcement actions where the antitrust agencies specified at least one of those figures in analyzing a market with at least four remaining competitors. The chart excludes information on markets within the same deals that have fewer remaining competitors. With a few exceptions, the markets with specified HHI are all highly concentrated, with HHIs exceeding 2,500. The lowest alleged combined market share in those actions brought in 2012 and 2013 with at least four remaining competitors in a given market was approximately 30%, while the highest was more than 90%.

For detailed summaries of US federal merger enforcement actions, visit the Federal Merger Enforcement Actions database in What's Market at us.practicallaw.com/resources/us-whats-market.

RECENT FEDERAL MERGER ENFORCEMENT ACTIONS

Deal	Combined Market Share	Post-HHI	Change in HHI
In the Matter of Service Corporation International and Stewart Enterprises, Inc. (consent decree) (FTC) (2013)	53% in one market. Greater than 60% in one market. Greater than 70% in one market. Complaint, pages 4-11.	Unspecified in three markets.	Over 1,400 in the market where the market share was greater than 60%. Unspecified in two markets. Complaint, pages 4-11.
In the Matter of Ardagh Group S.A., Saint-Gobain Containers, Inc. and Compagnie de Saint-Gobain (litigated case) (FTC) (2013)	Unspecified in two markets.	3,249.1 in one market. 6,665.8 in one market. Complaint, page 9. Analysis to Aid Public Comment, page 2.	781 in one market. 1069.3 in one market. Complaint, page 9. Analysis to Aid Public Market, page 2.
F.T.C. v. St. Luke's Health System, Ltd. and Saltzer Medical Group, P.A. (litigated case) (FTC) (2013)	Approximately 80%. Findings of Fact and Conclusions of Law, page 17.	6,219. Findings of Fact and Conclusions of Law, page 17.	1,607. Findings of Fact and Conclusions of Law, page 17.
In the Matter of Pinnacle Entertainment, Inc. and Ameristar Casinos, Inc. (litigated case) (FTC) (2013)	Unspecified.	3,514. Complaint, pages 13-14. Analysis to Aid Public Comment, page 3.	1,306. Complaint, pages 13-14. Analysis to Aid Public Comment, page 3.
U.S. v. Bazaarvoice, Inc. (litigated case) (DOJ) (2013)	In excess of 50%. Memorandum Opinion, page 130.	Either 3,915 or 4,590 (depending on basis for calculation). Memorandum Opinion, page 131.	Either 1,241 or 2,226 (depending on basis for calculation). Memorandum Opinion, page 131.

Deal	Combined Market Share	Post-HHI	Change in HHI
In the Matter of Integrated Device Technology, Inc. and PLX Technology, Inc. (litigated case) (FTC) (2012)	85.95%. Complaint, page 9.	7,482. Complaint, page 9.	2,859. Complaint, page 9.
In the Matter of Robert Bosch GmbH (consent decree) (FTC) (2012)	Over 90%. Complaint, page 3. Analysis to Aid Public Comment, page 3.	Unspecified.	Unspecified.
In the Matter of Reading Health System and Surgical Institute of Reading (litigated case) (FTC) (2012)	48.5% in one market. 58.2% in one market. 66.5% in one market. 71.5% in one market. Complaint, pages 13-17.	2,856 in the market where the market share was 48.5%. 4,085 in the market where the market share was 58.2%. 4,585 in the market where the market share was 66.5%. 5,287 in the market where the market share was 71.5%. Complaint, pages 13-17.	978 in the market where the market share was 48.5%. 1,614 in the market where the market share was 58.2%. 2,050 in the market where the market share was 66.5%. 2,001 in the market where the market share was 71.5%. Complaint, pages 13-17.
In the Matter of Watson Pharmaceuticals Inc., Actavis Inc., Actavis Pharma Holding 4 ehf., and Actavis S.à.r.l. (consent decree) (FTC) (2012)	34% in one market. 53% in one market. Complaint, pages 3-4. Analysis to Aid Public Comment, pages 2-3.	3,838 in the market where the market share was 34%. 3,588 in the market where the market share was 53%. Complaint, pages 3-4.	378 in the market where the market share was 34%. 1,380 in the market where the market share was 53%. Complaint, pages 3-4.
Express Scripts, Inc. and Medco Health Solutions, Inc. (decision to close) (FTC) (2012)	Approximately 30% in one market. Approximately 40% in one market. Statement on Decision to Close, pages 3, 8.	Unspecified in two markets.	Unspecified in two markets.
U.S. v. International Paper Company and Temple-Inland Inc. (consent decree) (DOJ) (2012)	Approximately 37%. Complaint, page 6. Competitive Impact Statement, page 5.	Approximately 2,025. Complaint, page 6. Competitive Impact Statement, page 6.	Approximately 605. Complaint, page 6. Competitive Impact Statement, page 6.
In the Matter of Omnicare, Inc. (litigated case) (FTC) (2012)	57%. Complaint, pages 3, 7.	3,253. Complaint, page 7.	1,404. Complaint, page 7.