Horizontal Merger Investigation Data, Fiscal Years 1996-2005

Issued by the
Federal Trade Commission

January 25, 2007

concern was that the transaction would allow the remaining firms to coordinate their conduct, significant competitors have been defined as “required participants in the collusive group.” When the primary concern was that the transaction would result in the exercise of unilateral market power, significant competitors include those firms identified as “close rivals” (even if they may not be close enough to constrain a price increase),[16] as well as those that might reposition or otherwise affect the likelihood of an anticompetitive price increase. Data are available for 747 relevant markets.[17]

Table 4.1 presents information regarding the Commission’s decision to seek relief along with information on the number of significant competitors in the market, both pre- and post-merger, assuming consummation of the transaction. Tables 4.2 through 4.6 present similar information, but separately by industry. Again, the industry-specific tables are limited to data from fiscal years 2001-2005.

HOT DOCUMENTS & CUSTOMER COMPLAINT DATA

Tables 5.1 through 8.2 provide information on the Commission’s decision to seek relief in cases where the staff identified one or more party documents clearly predicting merger-related anticompetitive effects (“hot documents”) or where staff received “strongly credible” customer complaints about the likely anticompetitive effects of the transaction in one or more markets. For these two variables, a subset of the original sample of transactions was reviewed.

---

[16]These firms usually have market shares in excess of 10%, but market shares alone are not determinative of significance. For example, in a particular market, a firm may have a low market share, having just entered the market with an innovative product. Nevertheless, that firm would be considered a significant competitor if it had the ability to constrain the merged firm’s behavior. In other situations, the definition of a significant competitor may rely on a firm’s ability to expand output to defeat a price increase; existing market shares may be a poor predictor of that ability.

[17]Significant competitor information is not available for 229 markets; 199 of these markets are in the oil industry. The computation of the number of significant rivals is not always possible when the merger investigation covers a very large number of overlaps.

Hot Documents

Data on "hot documents"[18] were collected for all fully-investigated transactions involving three or fewer relevant markets. This subset consists of 121 cases, involving 174 markets.[19] Table 5.1 presents the HHI and the Delta, together with the Commission's decision whether or not to seek relief, for markets in which staff identified hot documents. Table 5.2 presents the same information for markets where no hot documents were identified. Tables 6.1 and 6.2 provide information on the number of significant competitors and the decision to seek relief for markets in which staff had or had not identified hot documents, respectively.

Customer Complaints

Data on the strength of customer reaction to the merger are presented in Tables 7.1 through 8.2. Customer reaction has been recorded as a "strong customer complaint" where customers expressed a credible concern that a significant anticompetitive effect would result if the transaction were allowed to proceed. All other customer reactions (i.e., weak or non-credible complaints, no reaction, support for the transaction) have been recorded as "no strong customer complaint."[20]

---

[18]A document is "hot" if it predicts that the merger will produce an adverse price or non-price effect on competition. The most obvious situation involves acquiring party documents that predict a price effect stemming from the merger. The price effect is not necessarily quantified and may be qualified by the use of words such as "likely" or "possible." In a slightly less obvious situation, a document may indicate that the recent entry of the acquired party blocked the incumbent's plans to raise price, instead forcing a small but significant price reduction. On occasion, the evidence relates to non-price competition, for example, when the documents indicate a merger might delay the acquiring firm's need to add capacity. Documentary recognition of close competition between the merging parties is not sufficient to qualify for "hot document" status, because a range of other factors could preclude a price effect.

[19]The number of transactions in this subset represents 64% of the transactions reviewed.

[20]This variable is influenced, but not controlled, by information on customer neutrality toward or support for the transaction. Multiple customers are contacted during an investigation. To the extent that neutral or favorable customer feedback by some customers caused the staff to question the credibility of the concerns by other

Data on whether or not there were “strong customer complaints” were collected for all transactions involving the investigation of three or fewer markets, provided that these markets were not purely retail.[21] This subset consisted of 111 cases, involving 158 markets.[22] Table 7.1 presents HHI and Delta information, together with the decision whether or not to seek relief, for cases where “strong customer complaints” were received. Table 7.2 presents the same information for cases where no “strong customer complaints” were received. Tables 8.1 and 8.2 are the corresponding tables reflecting the number of significant competitors, the Commission’s decision whether or not to seek relief, and whether any “strong customer complaints” were received, respectively.

ENTRY

Table 1

HSR Second Requests During Fiscal Years 1996-2005
Categorized by Nature of Transaction and Theory of Potential Violation

Nature of Transaction	Number of Second Requests
Horizontal Theory	188
Vertical Theory	21
Potential Competition Theory	13
Buyer Power (Monopsony) Theory	9
Joint Venture	3
Miscellaneous	4
Filing Withdrawn by Parties During the Investigation	57
Closed after a Quick Look	31
Total	**326**

Table 2

FTC Merger Investigations During Fiscal Years 1996-2005
Categorized by Number of Relevant Markets

Number of Relevant Markets in the Investigation	Number o

Table 3.1

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
All Markets
FY 1996 through FY 2005

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/14	17/28	19/17	17/9	3/2	0/1	0/0	0/0	***56/71***
	1,800 - 1,999	0/4	5/4	5/5	12/1	12/3	0/0	0/0	0/0	***34/17***
	2,000 - 2,399	1/2	1/5	7/5	24/12	31/8	1/1	0/0	0/0	***65/33***
	2,400 - 2,999	1/1	4/1	6/5	16/4	41/12	25/7	0/0	0/0	***93/30***
	3,000 - 3,999	0/2	2/2	3/2	6/2	16/8	50/16	29/8	0/0	***106/40***
	4,000 - 4,999	0/0	0/2	1/1	3/1	8/2	9/4	45/2	0/0	***66/12***
	5,000 - 6,999	0/0	2/0	3/2	3/1	7/0	10/2	90/14	31/3	***146/22***
	7,000 +	0/0	0/0	1/0	1/0	2/0	6/0	16/1	152/2	***178/3***
	TOTAL	***2/23***	***31/42***	***45/37***	***82/30***	***120/35***	***101/31***	***180/25***	***183/5***	***744/228***

Table 3.2

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
Grocery Markets
FY 2001 through FY 2005

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	1,800 - 1,999	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	2,000 - 2,399	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	2,400 - 2,999	0/0	0/0	0/0	0/1	1/0	0/0	0/0	0/0	***1/1***
	3,000 - 3,999	0/0	0/0	0/0	0/0	0/2	1/0	1/0	0/0	***2/2***
	4,000 - 4,999	0/0	0/0	0/0	0/0	0/0	0/0	0/1	0/0	***0/1***
	5,000 - 6,999	0/0	0/0	0/0	0/0	0/0	0/0	2/0	1/1	***3/1***
	7,000 +	0/0	0/0	0/0	0/0	0/0	0/0	1/0	1/0	***2/0***
	TOTAL	***0/0***	***0/0***	***0/0***	***0/1***	***1/2***	***1/0***	***4/1***	***2/1***	**8/5**

Table 3.4

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
Chemical Markets
FY 2001 through FY 2005

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	1,800 - 1,999	0/0	0/0	0/2	0/0	0/0	0/0	0/0	0/0	***0/2***
	2,000 - 2,399	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	2,400 - 2,999	0/0	0/0	2/1	2/0	0/2	0/0	0/0	0/0	***4/3***
	3,000 - 3,999	0/0	0/0	0/0	0/0	0/1	0/1	1/0	0/0	***1/2***
	4,000 - 4,999	0/0	0/1	0/0	0/0	1/0	1/0	0/0	0/0	***2/1***
	5,000 - 6,999	0/0	0/0	0/1	0/0	0/0	1/0	0/0	1/0	***2/1***
	7,000 +	0/0	0/0	0/0			0/0	2/0	8/0	***10/0***
	TOTAL	***0/0***								

Table 4.1

FTC Horizontal Merger Investigations
Number of Significant Competitors
All Markets
FY 1996 through FY 2005

		Outcome		
		Enforced	**Closed**	***TOTAL***
Significant Competitors	2 to 1	192	5	***197***
	3 to 2	206	34	***240***
	4 to 3	114	44	***158***
	5 to 4	40	26	***66***
	6 to 5	15	24	***39***
	7 to 6	3	13	***16***
	8 to 7	6	7	***13***
	9 to 8	0	5	***5***
	10 to 9	2	1	***3***
	10 +	0	10	***10***
	TOTAL	***578***	***169***	***747***

Table 4.6

FTC Horizontal Merger Investigations
Number of Significant Competitors
"Other" Markets
FY 2001 through FY 2005

		Outcome		
		Enforced	**Closed**	***TOTAL***
Significant Competitors	2 to 1	59	2	***61***
	3 to 2	48	8	***56***
	4 to 3	12	11	***23***
	5 to 4	4	5	***9***
	6 to 5	1	4	***5***
	7 to 6	0	4	***4***
	8 to 7	0	1	***1***
	9 to 8	0	2	***2***
	10 to 9	0	0	***0***
	10 +	0	1	***1***
	TOTAL	***124***	***38***	***162***

Table 5.1

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
All Markets
FY 1996 through FY 2005

Hot Documents Identified

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	1,800 - 1,999	0/0	0/0	0/0	0/0	0/1	0/0	0/0	0/0	***0/1***
	2,000 - 2,399	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	2,400 - 2,999	0/0	0/0	0/0	2/0	1/0	0/0	0/0	0/0	***3/0***
	3,000 - 3,999	0/0	0/0	0/0	0/0	1/1	1/0	2/0	0/0	***4/1***
	4,000 - 4,999	0/0	0/0	0/0	0/0	1/0	0/0	0/0	0/0	***1/0***
	5,000 - 6,999	0/0	0/0	0/0	1/0	0/0	0/1	3/0	1/0	***5/1***
	7,000 +	0/0	0/0	0/0	0/0	0/0	0/0	1/0	8/0	***9/0***
	TOTAL	***0/0***	***0/0***	***0/0***	***3/0***	***3/2***	***1/1***	***6/0***	***9/0***	**22/3**

Table 5.2

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
All Markets
FY 1996 through FY 2005

No Hot Documents Identified

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/0	0/3	1/0	0/3	0/0	0/0	0/0	0/0	***1/6***
	1,800 - 1,999	0/0	0/1	0/0	0/0	0/1	0/0	0/0	0/0	***0/2***
	2,000 - 2,399	0/1	0/1	0/0	3/2	3/3	0/1	0/0	0/0	***6/8***
	2,400 - 2,999	0/0	0/0	0/2	0/1	3/5	2/4	0/0	0/0	***5/12***
	3,000 - 3,999	0/0	0/1	0/2	0/1	1/5	6/2	4/4	0/0	***11/15***
	4,000 - 4,999	0/0	0/2	0/0	1/1	3/1	2/0	8/2	0/0	***14/6***
	5,000 - 6,999	0/0	1/0	1/0	1/0	1/0	2/0	12/2	8/2	***26/4***
	7,000 +	0/0	0/0	1/0	1/0	1/0	1/0	6/0	22/1	***32/1***
	TOTAL	***0/1***								

Table 7.1

Table 7.2

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
All Markets
FY 1996 through FY 2005

No Strong Customer Complaints

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/0	0/3	1/0	0/3	0/0	0/0	0/0	0/0	***1/6***
	1,800 - 1,999	0/0	0/1	0/0	0/0	0/2	0/0	0/0	0/0	***0/3***
	2,000 - 2,399	0/0	0/1	0/0	3/2	1/2	0/1	0/0	0/0	***4/6***
	2,400 - 2,999	0/0	0/0	0/2	0/1	3/5	1/2	0/0	0/0	***4/10***
	3,000 - 3,999	0/0	0/1	0/2	0/1	0/4	2/1	1/4	0/0	***3/13***
	4,000 - 4,999	0/0	0/2	0/0	1/1	1/1	2/0	3/1	0/0	***7/5***
	5,000 - 6,999	0/0	1/0	0/0	2/0	0/0	1/1	2/2	2/2	***8/5***
	7,000 +	0/0	0/0	1/0	1/0	1/0	1/0	0/0	5/1	***9/1***
	TOTAL	***0/0***	***1/8***	***2/4***	***7/8***	***6/14***	***7/5***	***6/7***	***7/3***	***36/49***

Table 8.2

FTC Horizontal Merger Investigations
Number of Significant Competitors
All Markets
FY 1996 through FY 2005

No Strong Customer Complaints

		Outcome		
		Enforced	**Closed**	***TOTAL***
Significant Competitors	2 to 1	12	1	***13***
	3 to 2	10	5	***15***
	4 to 3	10	14	***24***
	5 to 4	1	17	***18***
	6 to 5	2	6	***8***
	7 to 6	1	1	***2***
	8 to 7	0	1	***1***
	9 to 8	0	2	***2***
	10 to 9	0	0	***0***
	10 +	0	2	***2***
	TOTAL	***36***	***49***	***85***

Table 9.1

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
All Markets
FY 1996 through FY 2005

Entry Easy

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/0	0/1	0/0	0/3	0/0	0/0	0/0	0/0	***0/4***
	1,800 - 1,999	0/0	0/1	0/0	0/0	0/1	0/0	0/0	0/0	***0/2***
	2,000 - 2,399	0/1	0/1	0/0	0/1	0/0	0/1	0/0	0/0	***0/4***
	2,400 - 2,999	0/0	0/0	0/1	0/0	0/1	0/3	0/0	0/0	***0/5***
	3,000 - 3,999	0/0	0/0	0/0	0/0	0/3	0/1	0/1	0/0	***0/5***
	4,000 - 4,999	0/0	0/2	0/0	0/1	0/1	0/0	0/1	0/0	***0/5***
	5,000 - 6,999	0/0	0/0	0/0	0/0	0/0	0/1	0/2	0/2	***0/5***
	7,000 +	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	***0/0***
	TOTAL	***0/1***	***0/5***	***0/1***	***0/5***	***0/6***	***0/6***	***0/4***	***0/2***	***0/30***

Table 9.2

FTC Horizontal Merger Investigations
Post Merger HHI and Change in HHI (Delta)
All Markets
FY 1996 through FY 2005

Entry Difficult

Enforced/Closed

		Change in HHI (Delta)								
		0 - 99	**100 - 199**	**200 - 299**	**300 - 499**	**500 - 799**	**800 - 1,199**	**1,200 - 2,499**	**2,500 +**	***TOTAL***
Post Merger HHI	**0 - 1,799**	0/0	0/2	1/0	0/0	0/0	0/0	0/0	0/0	***1/2***
	1,800 - 1,999	0/0	0/0	0/0	0/0	0/1	0/0	0/0	0/0	***0/1***
	2,000 - 2,399	0/0	0/0	0/0	3/1	3/3	0/0	0/0	0/0	***6/4***
	2,400 - 2,999	0/0	0/0	0/1	2/1	4/4	2/1	0/0	0/0	***8/7***
	3,000 - 3,999	0/0	0/1	0/2	0/1	2/3	7/1	6/3	0/0	***15/11***
	4,000 - 4,999	0/0	0/0	0/0	1/0	4/0	2/0	8/1	0/0	***15/1***
	5,000 - 6,999	0/0	1/0	1/0	2/0	1/0	2/0	15/0	9/0	***31/0***
	7,000 +	0/0	0/0	1/0	1/0	1/0	1/0	7/0	30/1	***41/1***
	TOTAL	***0/0***	***1/3***	***3/3***	***9/3***	***15/11***	***14/2***	***36/4***	***39/1***	***117/27***

Table 10.1

FTC Horizontal Merger Investigations
Number of Significant Competitors
All Markets
FY 1996 through FY 2005

Entry Easy

		Outcome		
		Enforced	**Closed**	***TOTAL***
Significant Competitors	2 to 1	0	0	***0***
	3 to 2	0	6	***6***
	4 to 3	0	8	***8***
	5 to 4	0	6	***6***
	6 to 5	0	5	***5***
	7 to 6	0	3	***3***
	8 to 7	0	1	***1***
	9 to 8	0	0	***0***
	10 to 9	0	0	***0***
	10 +	0	1	***1***
	TOTAL	***0***	***30***	***30***

Table 10.2

FTC Horizontal Merger Investigations
Number of Significant Competitors
All Markets
FY 1996 through FY 2005

Entry Difficult

		Outcome		
		Enforced	**Closed**	***TOTAL***
Significant Competitors	2 to 1	51	1	***52***
	3 to 2	36	2	***38***
	4 to 3	22	8	***30***
	5 to 4	2	11	***13***
	6 to 5	5	1	***6***
	7 to 6	1	1	***2***
	8 to 7	0	0	***0***
	9 to 8	0	2	***2***
	10 to 9	0	0	***0***
	10 +	0	1	***1***
	TOTAL	***117***	***27***	***144***