

SA 010

Federal Trade Commission



MERGER ENFORCEMENT IN THE 1990'S

A CHANGE IN FASHION?

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before the

with the beginning of the 1990's we have seen a significant increase in M&A activity in Washington, particularly with this administration, particularly in particular reference to mergers and acquisitions. I would like to forecast with particular regard to the number of cases for the year ahead.

I hope today to provide an overall perspective on merger costs for maneuvering these transactions. Moreover, I will demonstrate repeatedly that no amount of prior investigation can provide secure and certain insights on whether a given transaction will pass.

What I have in mind is not to tell you what must be done to provide easy predictability but rather to help you avoid inefficient and possibly unnecessary travel and perhaps even the wrong travels and perhaps to keep you from straying down paths at together.

the disclaimer that the views I

This is a good time to make express today are my own and not

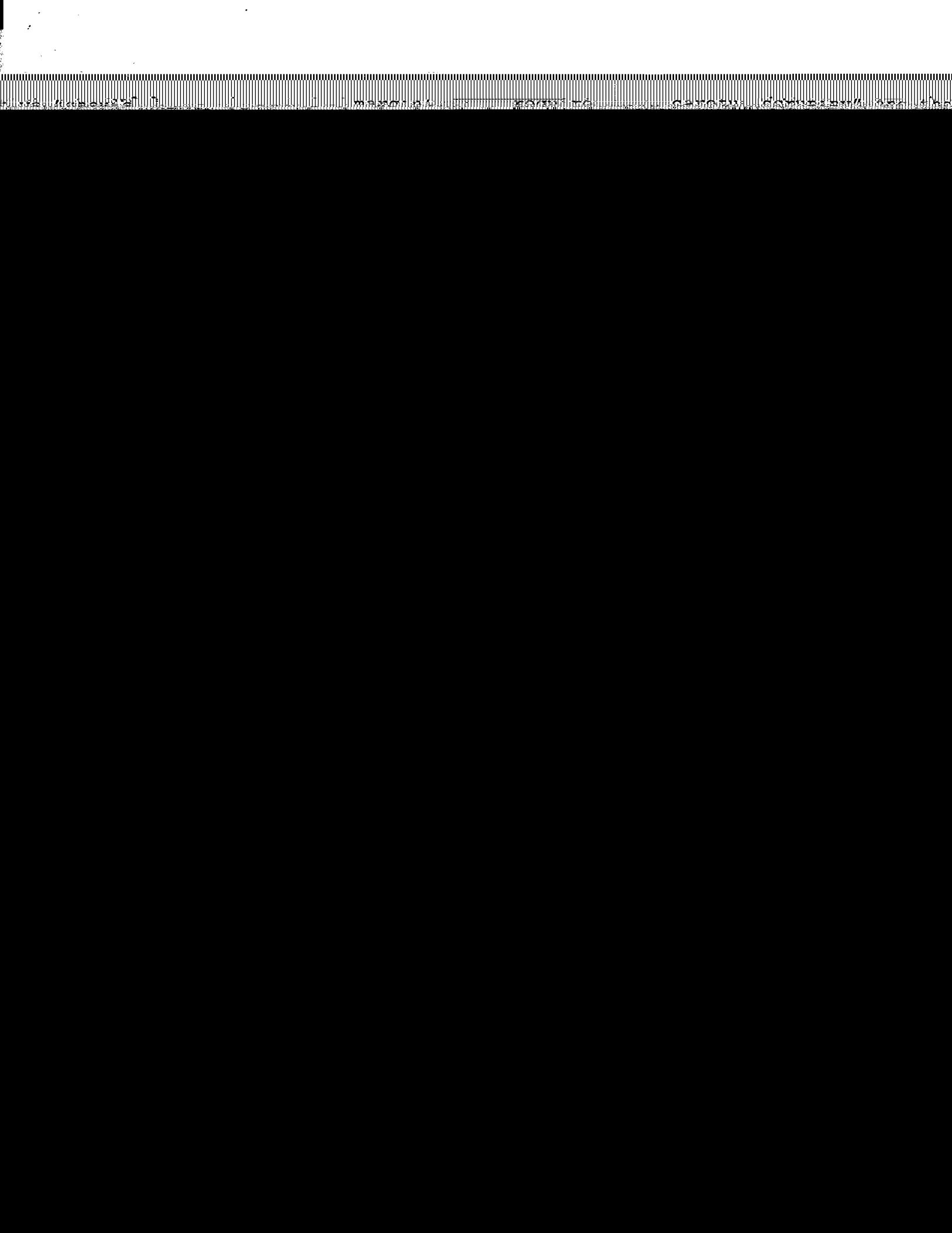
and that the views expressed by one of our voices on the commission, enhanced perhaps by the FFC's own views, might provide

perspective. To begin with a somewhat brief and dogger with a showing in red, first please let me apologize and this is near complete in that there was a communication error on my part. I have stopped wearing Adam Smith ties. You all remember Adam Smith, the great English economist who wrote the *Wealth of Nations*. He believed in a free market economy. Smith is a economist who also believed in the best government is the least government. You also may remember the Adam Smith tie, a regular business necktie adorned with a neatly spaced pattern of the Adam Smith portrait. Adam Smith

the public school reform movement has been
the center of political debate. The government's position
is that it is not responsible because it does not control the
funds or the teachers. The message is that there is no one same
model that works for every community. The
conversation ends in some contrivance to raise prices.¹²

His observation remains credible today, and the question
now is how to move forward. His articulated understanding of antitrust
has developed in some quarters that antitrust
has been a necessary development. This is a welcome development.

Antitrust enforcement is unfortunate. The focus
of the investigation is on the market share of the
industry. This is not the problem. The problem
is the perception of the



Some of the criticism of our enforcement record apparently stems from a misunderstanding of how we have defined antitrust markets in particular cases and, in light of this, the

we seek to identify the smallest group of products for which a colossus's price increase would be profitable. The task of product-market definition is extremely fact intensive and the

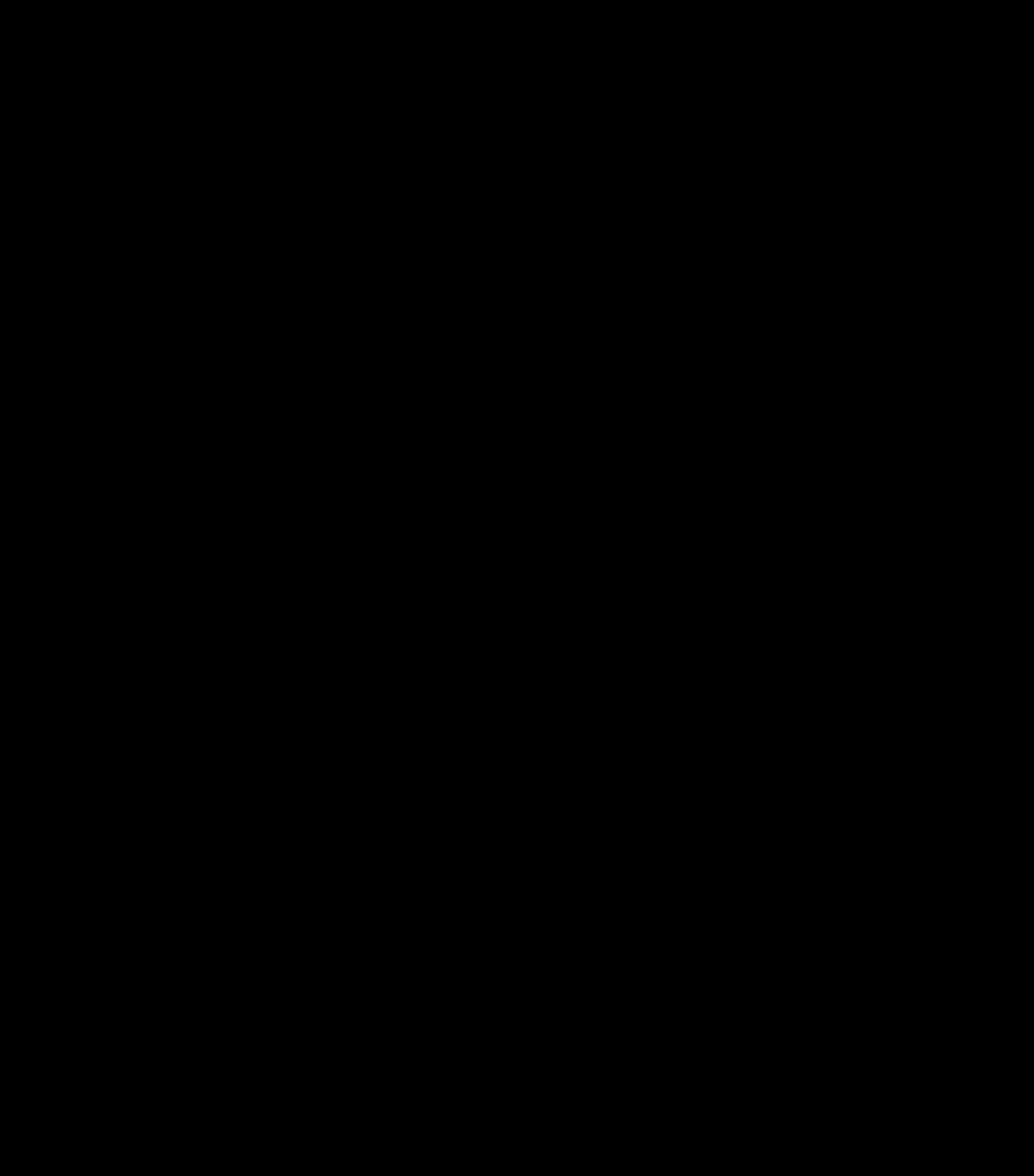
may reflect different levels

Concentrations can also

and concentration that the antitrust analysis

markets may have been

Second. Geographical interpretation: behavior of the giant clam



1000 ppm, it is unclear that there can be a threshold, because the concentration interacts with initial mass to determine the final concentration. Local assumptions based on the ¹⁰concentration data remain important in Section 7 cases. High concentration may be a

and other factors in reaching about the same conclusion. The percentage seems to suggest that the Commission has been more inclined to accept efficiencies asserted by the parties than efficiencies asserted by the Commission itself.

It is certainly true that we look for and are receptive to well-documented efficiencies. The research methodology described in the Commission's 1981 Report on Mergers and兼併¹ does not focus on efficiencies that are relevant to Section 7. Instead, it focuses on efficiencies that are relevant to antitrust analysis. It is not unusual for the Commission to conclude that efficiencies asserted by the parties do not justify the proposed merger. Some asserted efficiencies may reduce overall overhead, for example, but may not be merger-specific. Other efficiencies may increase costs or reduce revenues. Of course, if efficiencies are large enough, they can still be merger-specific.

The efficiencies that count in our analysis are those that are likely to be achieved through the proposed merger. Some asserted efficiencies may reduce overall overhead, for example, but may not be merger-specific. Other efficiencies may increase costs or reduce revenues. Of course, if efficiencies are large enough, they can still be merger-specific.

Some asserted efficiencies might be achieved by less anticompetitive means, such as internal expansion, contract or a joint venture. In some instances, efficiencies can be very important to the success of a merger. Some asserted efficiencies may reduce overall overhead, for example, may be credible but may not be merger-specific.

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Under common ownership does not necessarily achieve economies of scale. Scale economies are related to the output from a single plant and not to the firm. It could be a different story if the products of the two plants were to be combined in some cost-effective way. Of course,

recently, we have insisted on provisions in our contracts that give our clients more control over their assets. More recently, we have insisted on provisions in our contracts that give our clients more control over their assets. More recently, we have insisted on provisions in our contracts that give our clients more control over their assets. More recently, we have insisted on provisions in our contracts that give our clients more control over their assets.