



Merger Challenges Data, Fiscal Years 1999–2003

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The Horizontal Merger Guidelines promulgated by the U.S. Department of Justice and the Federal Trade Commission state that “market shares and concentration data provide only the starting point analyzing the competitive impact of a merger.” Nevertheless, the market share and concentration levels at which the Agencies have challenged mergers are significant. Although large market shares and high concentration by themselves are an insufficient basis for challenging a merger, low market shares and concentration are a sufficient basis for not challenging a merger. To promote transparency in merger enforcement, the Agencies have reviewed their enforcement decisions during fiscal years 1999–2003 and tabulated the market share and concentration levels associated with decisions to challenge mergers. Results of that review are presented in the tables below.

Mergers were deemed to have been challenged by the Commission if it voted to challenge the transaction (either in court or administratively). Mergers were deemed to have been challenged by the Department if a complaint was filed in court or a press release was issued by the Department announcing that the transaction had been abandoned or restructured in response to the Department’s concerns. In addition, mergers involving financial institutions subject to the Bank Merger Acts of 1960 and 1966 or the Bank Merger Holding Company Act were deemed to have been challenged by the Department if the transactions were restructured to satisfy the Department’s concerns, even absent a press release.

The data tabulations employ the two share and concentration measures used by the Guidelines—the Post-Merger HHI and the Change in the HHI. The HHI is the Herfindahl-Hirschman Index of market concentration, which consists of the sum of the squares of the market shares of the competitors in the relevant market. The Change in the HHI measures the impact of a merger in terms of the shares of the merging competitors. It is computed as twice the product of their market shares. If the merger did not itself change any competitors’ market share, the Change in the HHI would indicate the increase in the HHI the merger would cause. The Post-Merger HHI is the Pre-Merger HHI plus the Change in the HHI.

Because market shares and concentration are most significant in evaluating straightforward horizontal competitive effects concerns, omitted from the data are

mergers, or individual relevant markets, in which a challenge was based on other theories of competitive effects. These other theories include those based on vertical control or monopsony power, as well as horizontal competitive effects theories, if the competition eliminated was potential, rather than actual, competition or the competitive concerns stemmed from influence through partial ownership and aspects of corporate governance.

Data for some cases, and some individual relevant markets, are unavailable. In a relative handful of cases, the Agencies never determined both the market shares of the merging firms and the level of market concentration. This is not to say that the Agencies had made no evaluation of the state of competition or competitive roles played by the merging firms, but rather only that such notions were not quantified with the completeness and precision that justifies inclusion in the data.

The data tabulated in Table 1 reflect 173 mergers and 1263 relevant markets. While not explicit from the table, it may also be of interest to note that the lowest Post-Merger HHI for any of these markets is slightly above 1400, and the lowest Change in the HHI is approximately 85.

As indicated by Table 2, most of the mergers were challenged in just one or a few relevant markets, while a small number were challenged in very many relevant markets. The mergers with large numbers of markets tend to be concentrated in particular industries. The Department's merger challenges in the dairy and telecommunications industries account for 396 relevant markets from just 8 mergers. The Federal Trade Commission's merger challenges in the grocery retailing and petroleum industries account for 305 relevant markets from 17 mergers. Data for each of these four industries are separately tabulated in Tables 3–6.

Tables 7–9 contain separate tabulations for the Department's merger challenges in the banking and waste disposal industries, and for the Commission's merger challenges in the chemical/pharmaceutical industry. These industries account for a total of 49 challenged mergers with 229 relevant markets. Finally, Table 10 tabulates the data for all the relevant markets not included in Tables 3–9.

Table 1. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the Agencies Challenged Mergers

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	17	18	19	3	0	0	0	57
1,799–1,999	0	7	5	14	14	0	0	0	40
2,000–2,399	1	1	7	32	35	2	0	0	78
2,400–2,999	1	5	6	18	132	34	1	0	197
3,000–3,999	0	3	4	16	37	63	53	0	176
4,000–4,999	0	1	3	16	34	30	79	0	163
5,000–6,999	0	2	4	16	9	14	173	52	270
7,000+	0	0	0	2	3	10	44	223	282
total	2	36	47	133	267	153	350	275	1263

Table 2. Agency Merger Challenges During Fiscal Years 1999–2003 Categorized by Number of Relevant Markets

Number of Relevant Markets in Challenge	Number of Mergers	Total Relevant Markets
1	76	76
2–4	50	141
5–15	32	239
16–59	10	333
60+	5	474
	173	1263

Table 3. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the U.S. Department of Justice Challenged Mergers in the Dairy Industry

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	0	0	0	0	0	0	0	0
1,799–1,999	0	0	0	0	0	0	0	0	0
2,000–2,399	0	0	0	0	0	1	0	0	1
2,400–2,999	0	0	0	0	0	2	1	0	3
3,000–3,999	0	0	0	0	0	0	9	0	9
4,000–4,999	0	1	0	0	1	0	7	0	9
5,000–6,999	0	0	0	0	0	0	88	1	89
7,000+	0	0	0	0	0	0	0	71	71
total	0	1	0	0	1	3	105	72	182

Table 4. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the Federal Trade Commission Challenged Mergers in the Grocery Industry

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	0	0	0	0	0	0	0	0
1,799–1,999	0	0	0	0	0	0	0	0	0
2,000–2,399	0	0	0	5	5	0	0	0	10
2,400–2,999	1	3	3	5	13	3	0	0	28
3,000–3,999	0	1	1	2	8	10	8	0	30
4,000–4,999	0	0	0	1	2	1	12	0	16
5,000–6,999	0	0	0	0	0	0	5	5	10
7,000+	0	0	0	0	0	0	1	5	6
total	1	4	4	13	28	14	26	10	100

Table 5. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the Federal Trade Commission Challenged Mergers in the Petroleum Industry

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	17	18	17	3	0	0	0	55
1,799–1,999	0	5	5	12	12	0	0	0	34
2,000–2,399	1	0	5	15	23	1	0	0	45
2,400–2,999	0	1	0	4	13	12	0	0	30
3,000–3,999	0	1	1	1	3	11	4	0	21
4,000–4,999	0	0	1	0	0	0	0	0	1
5,000–6,999	0	0	1	0	1	0	5	2	9
7,000+	0	0	0	0	1	2	0	7	10
total	1	24	31	49	56	26	9	9	205

Table 6. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the U.S. Department of Justice Challenged Mergers in the Telecommunications Industry

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	0	0	0	0	0	0	0	0
1,799–1,999	0	1	0	0	0	0	0	0	1
2,000–2,399	0	0	0	0	0	0	0	0	0
2,400–2,999	0	0	0	0	61	0	0	0	61
3,000–3,999	0	0	0	4	3	3	0	0	10
4,000–4,999	0	0	0	9	18	11	8	0	46
5,000–6,999	0	1	2	14	5	3	20	21	66
7,000+	0	0	0	0	0	4	8	18	30
total	0	2	2	27	87	21	36	39	214

Table 7. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the U.S. Department of Justice Challenged Mergers in the Banking Industry

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	0	0	2	0	0	0	0	2
1,799–1,999	0	1	0	2	1	0	0	0	4
2,000–2,399	0	1	2	11	4	0	0	0	18
2,400–2,999	0	0	3	7	8	6	0	0	24
3,000–3,999	0	0	0	4	9	6	7	0	26
4,000–4,999	0	0	1	1	2	2	8	0	14
5,000–6,999	0	0	0	0	0	0	6	3	9
7,000+	0	0	0	0	0	0	0	9	9
total	0	2	6	27	24	14	21	12	106

Table 8. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the Federal Trade Commission Challenged Mergers in the Chemical or Pharmaceutical Industries

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	0	0	0	0	0	0	0	0
1,799–1,999	0	0	0	0	0	0	0	0	0
2,000–2,399	0	0	0	1	1	0	0	0	2
2,400–2,999	0	0	0	1	0	1	0	0	2
3,000–3,999	0	0	0	0	1	2	4	0	7
4,000–4,999	0	0	0	0	3	3	5	0	11
5,000–6,999	0	1	0	0	0	1	4	1	7
7,000+	0	0	0	1	1	0	3	18	23
total	0	1	0	3	6	7	16	19	52

Table 9. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the U.S. Department of Justice Challenged Mergers in the Waste Disposal Industry

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	0	0	0	0	0	0	0	0
1,799–1,999	0	0	0	0	0	0	0	0	0
2,000–2,399	0	0	0	0	0	0	0	0	0
2,400–2,999	0	0	0	1	4	4	0	0	9
3,000–3,999	0	0	1	2	4	6	6	0	19
4,000–4,999	0	0	1	2	2	5	9	0	19
5,000–6,999	0	0	0	0	1	1	8	3	13
7,000+	0	0	0	0	0	0	2	8	10
total	0	0	2	5	11	16	25	11	70

Table 10. Data for Fiscal Years 1999–2003 on Individual Relevant Markets in Cases in which the Agencies Challenged Mergers Not Included in Tables 3–9

Post-Merger HHI	Change in the HHI								
	0–99	100–199	200–299	300–499	500–799	800–1,199	1,200–2,499	2,500+	total
0–1,799	0	0	0	0	0	0	0	0	0
1,799–1,999	0	0	0	0	1	0	0	0	1
2,000–2,399	0	0	0	0	2	0	0	0	2
2,400–2,999	0	1	0	0	33	6	0	0	40
3,000–3,999	0	1	1	3	9	25	15	0	54
4,000–4,999	0	0	0	3	6	8	30	0	47
5,000–6,999	0	0	1	2	2	9	37	16	67
7,000+	0	0	0	1	1	4	30	87	123
total	0	2	2	9	54	52	112	103	334