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**Consumers' Research Comment on Federal Trade Commission Docket ID:** FTC-2018-0074

Consumers' Research[1] is a 501(c)(3) organization advocating for the general interests of consumers. This comment does not represent the views of any affected party or special interest group. It is intended to present a consumer-oriented discussion of competition and consumer protection in the 21st century.

The FTC's review of competition and consumer protection in the 21st century is welcome and timely. While not universally accepted, consumer welfare is broadly regarded as the primary purpose of antitrust law and practice.[2] This comment will concentrate on when and how promoting competition, especially by limiting mergers, serves consumer welfare in the 21st century.[3]

## Consideration of consumer welfare should not be limited to a short-run price analysis

In any price analysis, complex factors which contextualize the final sticker price of goods or services must be considered. Longer-lasting or more-rugged products are worth more to the consumer because they are less likely to need replacing. As

[1] Founded in 1929, Consumers' Research is the nation's oldest consumer affairs organization. Consumers' Research aims to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding.

[2] This represents a change in the interpretation of antitrust law that took place in the 1970's and 1980's. Prior to that time, there was more emphasis on prevention of concentration of economic power, irrespective of proof of any economic harm to consumers, as a social and economic objective.

[3] Note that this discussion is strictly limited to consumer protection from injury stemming from the state of the competitive market, and does not touch on the FTC's role in consumer protection against fraud, misleading advertising, dangerous products, or failure of products to meet normal minimum standards.

frequently advertised, an energy-efficient product may have a higher price tag upfront but cost less over its lifecycle than its predecessor. While such factors are included in any competent pricing analysis, they illustrate the complexity of correlating sticker price to consumer welfare over the long run.

Furthermore, products of different price and quality appeal to and serve different sets of consumers. High-quality products, which garner higher price tags, often serve individual consumers better than their cut-rate counterparts. However, high-quality products may be inaccessible to low-income consumers. Therefore cheap, lower-quality products also have their place in accounting for consumer welfare as they provide access to lower-income consumers. While qualitative regulation of products is necessary to avoid outright harm to consumers, it should not be so stringent as to price low-income consumers out of the market.

Finally, a product's price tends to fall over time as markets expand and as innovation increases production efficiency, granting access to less affluent consumers. Cellular phones, once affordable only to the wealthy, have dropped in price such that even low wage earners can now purchase them.

The difficulty in taking complex factors into account in a price analysis, the distribution of high- and low-quality products among different sets of consumers, and the natural adjustment of prices over time all call into question the wisdom in using price as the primary metric for assessing consumer welfare.

**In some instances, larger, merged companies may have the resources to provide new and better consumer choices**

Larger, merged companies often have more available resources to invest in infrastructure and new product development. Such combined resources include complementary existing patents, increased production capacity and technical skills, and (in areas such as telecommunications) more licenses. When a merger effectively combines resources from multiple firms, consumers will likely benefit from new, greater, or more expedient access to products and services, mitigating temporarily price increases due to reduced competitive pressure in the short run.

Not only can merged companies become more efficient in their own markets, they can extend themselves into new ones, creating fresh competition. Although its size does not result primarily from mergers, Amazon is an example of an extraordinarily large corporation that has increased competition outside its native territory. Amazon's 2017 acquisition of Whole Foods enabled the grocery chain to compete with larger chains such as Kroger and Walmart — as evidenced by a dip in Kroger and Walmart stock prices following the acquisition announcement.

As they consider mergers, regulators ought to weigh factors such as qualitative benefits to consumers and new competition in other markets against possible price increases. Merging parties should bring forward evidence that their merger will provide a net benefit to consumers. Meanwhile, the FTC can place mitigating conditions on such mergers to minimize reductions to competition.

**Toward a broader standard of consumer welfare**

Current consumer welfare standards focus on the short-run consumer efficiency of economic arrangements, placing particular emphasis on the role competition plays in reducing consumer prices and limiting increases to consumer prices. The current standards seek to maximize consumer surplus — that is, how much the utility of a purchased good or service exceeds its cost. This model is too narrow in two ways. First, it does not take into account the potential for long-term drops in consumer prices due to efficiency gains. And second, the focus on price, while important, is too narrow.

The FTC should take the following into account:

**(1) Long-term pricing effects of a newly merged company may be very different from immediate effects**

Mergers are commonly regarded as a threat to competition and, therefore, to low prices. But while large companies with inordinate market power can lead to price spikes in the short term, they can also work to keep prices low in the long term. Mergers enable companies to produce at higher levels of efficiency, keeping prices low in the long run. Walmart is an excellent example of a large company whose size drives its efficiency, allowing it to procure goods at lower prices and pass on its savings to consumers.

Merged companies also act as vigorous competitors that use their resources to expand into new markets and create new competition — leading to price reduction in unexpected places. Amazon started as an online bookseller. It revolutionized that market, making more books easier to find and purchase. As Amazon has grown, it has broken into a plethora of markets. Because of its size, Amazon can and does accept losses in the initial years of breaking into new markets, trusting that its innovativeness will make it profitable over time. Amazon's expansions have strengthened competition in more markets and brought consumers a combination of greater availability, more convenience, and lower prices.

**(2) A stronger, merged company can focus on investment in new and greatly improved goods and services that separate competitors may not have had the resources to develop**

Larger, merged companies may have the capacity to increase their investment in research and innovation, enabling them to bring completely new and improved products more quickly to market. Innovation, even more than price, leads to the greatest gains in consumer welfare. Information once accessible only through lengthy research at a library now can be accessed in moments with only a few finger swipes on a smart phone. Transportation across long distances, once both dangerous and expensive, has become progressively more safe and affordable through innovation. While revolutionary new products are still developed by small companies or individuals, large companies — with their massive advantage in resources — now drive the most significant new product developments.

The development of fifth generation wireless (5G) technology brings this fact into focus. 5G is technology that requires massive infrastructure investment and a combination of spectrum and existing equipment. These resources are available only to very large competitors. 5G promises to multiply data speeds 10 fold, opening the way for new consumer services and notably expanding the range and quality of consumer choices. But this technological development will only be made through companies with the vast resources necessary to deploy 5G.

## Conclusion

Mergers should not be judged primarily on their short-term price impact. Regulators should consider whether a merger will result improve overall consumer welfare through long-term lower prices, broader consumer choices, and better quality products or services. Product quality is harder to calculate in the appraisal of consumer benefits than a straightforward computation of short-term price changes. It is even more difficult to ascertain the likelihood that a strong, merged company will bring breakthrough innovations to market. Yet, it is those breakthroughs that promise the greatest consumer welfare gains.

Despite the difficulty of such calculations, the FTC should adopt a standard that looks beyond the number of competitors in a market to determine the likely effects on longer-term prices. Furthermore, it should consider the innovative potential of mergers. Evidence that a merged company will have the corporate culture, commitment, and resources to engage in innovation should count favorably toward a proposed merger.

Long-run consumer welfare benefits under these broader standards are significantly harder to ascertain than short-run effects on prices. Accordingly, it is reasonable and desirable that the FTC require merger applicants to make arguments that their merged company's prospective long-term efficiency and innovation will offset any short-term price increases that may seem likely as a result of its merger.

Sincerely,

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