



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

**Prepared Opening Remarks of Chairman Joseph J. Simons¹
Hearings on Competition and Consumer Protection in the 21st Century
Merger Retrospectives
April 12, 2019**

Good morning, and welcome to our hearing on merger retrospectives. One of the primary reasons for holding our Hearings on Competition and Consumer Protection in the 21st Century is to see if we are doing merger enforcement the right way, and if not, how to fix it. Achieving this purpose could also have the important effect of refreshing the strong bipartisan consensus on merger enforcement that has existed for the past two decades or so. My belief is that merger retrospectives can play a critical role in making sure our merger enforcement approach is on the mark and done with a strong bipartisan consensus.

In instances where merger retrospective studies are feasible, we can directly test whether a decision not to seek relief was appropriate, and whether remedies were effective in those cases where we did obtain relief. We can also use retrospectives to test the tools that antitrust agencies use in analyzing potentially anticompetitive mergers – such as GUPPIs and merger simulations. That our methods of analysis make sense in theory is important, but if they do not enable us to make reliable predictions in practice, what good are they? We need to understand whether our tools reliably predict merger outcomes or whether they result in too many false positives or negatives.

¹ These remarks reflect my own views. They do not necessarily reflect the views of the Commission or any other individual Commissioner.

In addition, merger retrospective studies can be an important asset in persuading courts to block anticompetitive mergers. There are two ways that merger retrospectives can assist merger challenges. First, merger retrospectives can help validate prospective merger review tools. Testing the efficacy of these tools can demonstrate to the courts that these tools are effective at identifying anticompetitive mergers. Second, retrospective studies can provide an empirical basis for a merger challenge. For example, these studies can help to persuade a court that a merger is anticompetitive by showing that similar mergers in the past resulted in anticompetitive outcomes.

I see merger retrospectives as critical to ensuring the success of our merger enforcement program. Consistent with our tradition of self-examination, the FTC has been at the forefront of conducting retrospective studies. FTC economists have authored or coauthored more than twenty-five studies that have estimated the effects of mergers on competition.²

Merger retrospective studies have previously demonstrated their value to the Commission's past enforcement efforts. In the 1990s, the government lost a large number of hospital merger cases in a row, and the agencies considered whether to give up on hospital merger enforcement. The Commission did not. Instead, under the direction of then Chairman Muris, the Bureau of Economics conducted empirical economic studies that demonstrated the anticompetitive effects of certain past hospital mergers. These retrospective studies were critical in subsequent hospital merger challenges.

But, despite prior successes, merger retrospective studies raise a number of methodological and feasibility questions, and there are questions about what an optimal merger retrospectives program should look like.

² See https://www.ftc.gov/system/files/attachments/press-releases/ftc-announces-agenda-14th-session-its-hearings-competition-consumer-protection-21st-century/list_of_be_retrospective_studies.pdf.

There is also a practical challenge in performing a large number of merger retrospective studies that may be needed to understand fully the effects of our merger enforcement policies. Merger retrospective studies are time consuming. They require significant resources and data. So we need to understand how best to allocate our available resources in this area. In particular, we should consider whether and how the Commission can work with outside researchers on retrospective studies.

Today's hearing will address many of these issues. The hearing will feature four panels addressing distinct sets of questions.

The first panel will focus on what have we learned from existing merger retrospectives. This panel will address questions of what are the requirements of successful retrospective studies, which industries are good candidates for such studies, and what types of questions may be effectively answered with merger retrospective studies.

The second panel will focus on the use of merger retrospectives in prospective merger analysis. This panel will discuss how we can use merger retrospective studies to test the efficacy of economic tools used to forecast merger outcomes. The panel will examine what has already been done to test our economic tools and also discuss potential approaches for further testing of these tools. In addition, the panel will discuss how merger retrospective studies could use both quantitative and qualitative analyses in studying merger effects.

The third panel will address the question of how the findings from merger retrospectives should influence merger policy. It will also discuss how retrospective studies should influence the case law.

And, finally, the fourth panel will focus on what should the FTC's retrospectives program be over the next decade.

I hope we will have a lively, thought-provoking, and informative discussion today. It is only through vigorous debate and exchange of ideas that we can help to build consensus on antitrust policy. And that goal is much easier to achieve if we have good quantitative evidence to rely on.

Before I leave, I want to welcome all those attending the hearing from outside the FTC. I also would like to recognize the efforts of the staff of the FTC, notably the Bureau of Economics, Office of Policy Planning, Office of Public Affairs, and Office of the Executive Director. My fellow FTC Commissioners and I are grateful to all of the people who have contributed to producing this impressive event, including and especially our speakers.

Thank you all for attending, and I hope you enjoy the program.