UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,   )
)
             et al.,   ) Civil Action
) No. 15-256
        Plaintiffs,   )
) Friday, May 8, 2015
        v.   ) 10:45 a.m.
)
SYSCO CORPORATION,   ) Washington, D.C.
)
             et al.,   )
)
        Defendants.   )

DAY 4 - 2nd MORNING SESSION
TRANSCRIPT OF EVIDENTIARY HEARING PROCEEDINGS
(EXCLUDING SEALED PORTION)
BEFORE THE HONORABLE AMIT P. MEHTA,
UNITED STATES DISTRICT COURT JUDGE

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1   **MORNING SESSION, MAY 8, 2015**

2   (10:47 a.m.)

3   THE COURT: Please be seated, everyone.

4   Please continue.

5   MR. MOHR: Thank you, Your Honor.

6   CONTINUED DIRECT EXAMINATION OF MARK ISRAEL

7   BY MR. MOHR:

8   **Q.**   Dr. Israel, I'd like to move next to discussing how you

9   calculated welcome market shares in this matter.

10   **A.**   Sure.

11   **Q.**   Using the demonstrative on slide 16, can you walk us

12   through the specific methodology you used to calculate shares

13   for the sale of broadline distribution services to local

14   customers in a specific market?

15   **A.**   Sure. So we did most of the hard work before, actually,

16   so this is -- the -- as I said before, all of the competitors

17   inside the light gray area, ultimately enter the calculation.

18   The only thing really to add is that, as you recall, each of

19   those competitors, each competitor that came in was pulled in by

20   being part of a circle around a given customer, so that

21   basically for -- you can think about for each customer within

22   that circle I compute the share of sales made by the

23   distributors that are inside that customer circle. And then I

24   just take away -- to group them together into the overall local

25   area I take the weighted average across the customers based on

1   the size of the customers. So that's all for the market shares.

2   That's basically -- all the competitors in the light gray area

3   matter, they were rolled together based on which customer

4   circles they're in, and then they're rolled together into an

5   overall market share.

6   **Q.**   And so, just to summarize here from the discussion

7   before, any distributor located in the dark gray area, they're

8   accounted for in the market shares?

9   **A.**   The dark gray areas, certainly, yes.

10   **Q.**   And any competitor located in the light gray area you

11   take them into account in your market shares?

12   **A.**   Yes. And to be clear, and maybe we'll talk more about

13   this, there are -- I do -- just like with the national shares, I

14   do a number of calculations to make sure the results are stable

15   across different assumptions. Some of those different versions

16   are further expanding the circles, further expanding the light

17   gray area to bring in -- you know, to expand the local area out

18   a bit further to see if the results remain stable and they do.

19   **Q.**   And so can you describe specifically some of the

20   different variations you did on local shares in terms of

21   analyzing different distances?

22   **A.**   Sure. In terms of distances, the picture that's drawn

23   here is the 75 percent draw area that what we talked about. I

24   did a version that used a 90 percent draw area, which pushes the

25   circles farther out. I also did a version, that's described in

1   detail in the report, I'll try to summarize it well here. It

2   uses -- it goes all the way out to a 95 percent dry area, which

3   is actually quite a large distance. But what I do in that case,

4   just as another methodology, is I -- you can think about having

5   rings as you're further away from the area in question, and I

6   just scale those rings down so that farther away rings count

7   less in the calculation. I basically figure out how much of the

8   sales are made within each ring and adjust the weight put on

9   each ring accordingly. But that would take you out

10   substantially farther than this light gray area.

11   Q.   And why did you do calculations using different

12   distances?

13   A.   I mean, again, what's clear to me is that, you know, we

14   wanted to find a geographic market, a local is geographic

15   market, so that defines the geographic area. We know that

16   distance is characteristic of broadline distribution that

17   matters. So just like with any product characteristic, we want

18   to think about how big the distance should be, but I don't want

19   my results to depend on one specific distance, so I want to try

20   different distances to make sure -- and again, the result that

21   ultimately matters is, are the shares and concentrations and

22   changes above the presumption of harm in the merger guidelines.

23   So I just want to make sure that my results are not sensitive to

24   using a specific distance cutoff.

25   I mean, I should note that as I go to broader

1 distances -- I mentioned this earlier, but one thing that

2 happens in many cities in lots of cases, is that you pull in

3 more distributors, but a lot of those distributors are -- you

4 pull in more distribution centers, a lot of those centers are

5 the parties' centers. You're adding -- you're seeing they have

6 a lot of nearby capacity and sales.

7   And so that, you know, drawing a specific area is not in

8 any way cutting off the parties or others more than the other,

9 it's just -- I just want to make sure that different distances

10 lead me to stable results. And I found that across all the

11 distances that I've done, my bottom-line conclusions are not

12 changed at all.

13   THE COURT: And so maybe you'll get to this. Where do the

14 revenue numbers come from that you associated with the geographic

15 markets?

16   THE WITNESS: So that's a good question. It's -- I

17 certainly don't have revenues on everyone. Again, the revenue

18 numbers are from the CID responses where I have it. But in the

19 case of the local markets, I did two other things to -- as other

20 ways to measure market shares in this case, and --

21 BY MR. MOHR:

22 **Q.**   Just be careful not to refer to the specific --

23 **A.**   I can refer to the basis of the calculations.

24 **Q.**   Okay.

25 **A.**   So the two other things that I did were -- the most basic

1   one was, instead of revenue as a measure of the size of each

2   distributor to include in the share calculation, I used the

3   square footage of its distribution center.

4   That's something that the parties had done in

5   presentations to the FTC, was use square footage as a measure,

6   sort of a proxy for the size of that distribution center.

7   I also used a number of sales reps where I had that

8   distribution center as another way of measuring size. So

9   instead of revenue, I used that as the share metric.

10   And then even when I come to revenue, in the cases where

11   I don't observe the revenue, I use a common method in economics

12   called imputation, which is I estimate the relationship between

13   revenue and square footage basically, and where there's a

14   distribution center where I don't know its revenue, I impute

15   that value based on its size and that relationship between size

16   and revenue.

17   So you can think about square footage being a nice

18   measure because, I mean, the parties presented it, and in modern

19   technology you can actually go to Google maps and see the

20   outline of the distribution center in satellite view, and Google

21   itself computes the square footage for you, so it's something

22   you have on every distribution center. Where I had revenue I

23   used that, and where I didn't I used this relationship between

24   revenue and square footage.

25   Q.   So just to make clear here, for some of the distributors

1   located on this map, you may have had their actual revenue

2   numbers, and for others you may have imputed their revenue based

3   on their square footage?

4   **A.**   That's correct. And to be clear, I do my shares three

5   ways. One time I just used the square footage itself and

6   compute basically squares of square footage. Another time I

7   used sales reps where I have that -- if I'm missing the sales

8   reps in that case, I impute it based on square footage. A third

9   calculation is based on revenue, and if I'm missing the revenue

10   I impute it based on square footage. So I do the calculations

11   three ways, but in each calculation, if I'm missing the value I

12   impute it based on square footage.

13   **Q.**   Can you describe how your calculations may have varied

14   between revenue, square footage and sales force when you looked

15   at the results?

16   **A.**   I mean, there were slight variations from city to city,

17   but none of the conclusions on any given area changed as far as

18   comparison to the presumption of merger harm.

19   One thing I show in the report is another way of looking

20   at it, is -- you know, there's lots of local markets, so we need

21   some way to summarize the results. Another way I do is look at

22   things like the median increase in HHI across all local

23   customers, or the 75th percentile increase in HHI, to summarize

24   using these different metrics. And I find that across the

25   different metrics those statistics are quite stable, certainly

1   don't change in any way that would change any substantive

2   conclusion.

3   **Q.**   And did you account for the divestiture at all in

4   calculating your local shares?

5   **A.**   I did. So I -- I computed shares --

6   **Q.**   And if we can blackout the next slide, please.

7   I'm sorry, did you count for the divestiture in your

8   initial calculations?

9   **A.**   I did. So first let me sort of explain that in general

10   terms.

11   THE COURT: Aren't these numbers in your complaint?

12   MR. MOHR: Your Honor, these are divestiture numbers.

13   These were not in the initial complaint.

14   THE COURT: Okay.

15   THE WITNESS: So let me just describe in general terms the

16   way that I accounted for the divestiture before turning to this.

17   The -- when you think about the divestiture for a local market,

18   right, in some cases the -- the divestiture is distribution

19   center specific, and so in some cases the divestiture caused that

20   distribution center to no longer be US Foods, to be PFG.

21   So that -- what that means -- if you remember the whole

22   methodology was to define these overlap areas where Sysco and

23   US Foods have overlapping distribution centers. Basically what

24   the divestiture does when I compute it is make that not an

25   overlap area for the merging parties anymore, right? And so the

1 most fundamental effect of the divestiture was just to take some

2 of the former overlapping areas where there would be local harm

3 and make those no longer overlapping areas.

4 Now, there are reasons to question -- and we'll talk about

5 the divestiture -- whether the divestiture would fully solve the

6 problem in a given local market, but for purposes of the

7 calculation, what I did was just turn off the overlap where the

8 divestiture occurred.

9 The effect that that had was in the -- it reduced -- so in

10 the original calculations the percentage of local customers of

11 the two parties who are in one of these overlapping areas, is

12 over 60 percent. When I account for the divestiture it goes

13 down, but it's still over 50 percent, so it reduces the number in

14 overlapping areas but it's still substantial.

15 As far as the shares and concentration changes within any

16 given overlap area, the divestiture doesn't really change that,

17 right, because if it's an overlapping area and the divestiture

18 didn't spin off that distribution center, we still got the same

19 area on basically the same calculation. So the basic effect of a

20 divestiture was just to reduce the percentage of customers in the

21 overlap areas, but it's still over half.

22 What's shown on the screen are just some examples of

23 CBSAs, which are, you know, large census definitions of cities

24 where, even with the divestiture, the overall share rolling those

25 CBSAs together remains quite high, and the change in HHI is far

1   above the merchant guidelines presumption. So this is just

2   specific examples of cities where there remains, clearly, a

3   presumption of harm, even given the divestiture.

4   MR. MOHR: And, Your Honor, I apologize. I think this

5   slide can be shown, the --

6   THE COURT: Okay. You can put that slide up.

7   THE COURTROOM CLERK: It's delayed, Your Honor.

8   THE COURT: Oh, it's delayed. Okay.

9   BY MR. MOHR:

10   **Q.**   Dr. Israel, for your local market share calculations did

11   you consider any alternative methodologies?

12   **A.**   Um, I mean, I discussed some alternatives that I actually

13   pursued of using different distances, different metrics,

14   et cetera.

15   I mean, certainly, just overall in approaching the

16   problem of computing local market shares, I mean, one question

17   that I ask myself at the beginning of the process is: Would it

18   be possible to just take that dark gray area that we were

19   looking at and get comprehensive measures of sales into those

20   areas from wherever they came from, say sort of ZIP code level

21   data on sales. But I concluded there's no source that gives --

22   that has comprehensive data on sales, say by ZIP code.

23   And in particular, the issue is that the -- you would

24   need -- because we're doing local broadline customers, I would

25   need sales in the ZIP codes that were not by systems

1   distribution centers and that were made to local customers, so

2   there's no source of data that I have.

3   We know that systems facilities distribute much farther

4   than broadline facilities, and so if you can't separate those

5   out you don't have the measure of broadline share.

6   All that that does is it -- the merger guidelines are

7   quite clear. They're sort of two ways people compute local

8   markets and local market shares: Define them by where the

9   customers are; or define them by where the competitors are,

10   because there's no comprehensive data on sales into each

11   customer location. Everything we've been talking about is just

12   this methodology of defining a relevant set of competitors and

13   computing the shares across that set of competitors.

14   **Q.**   And to make that a little more concrete, if a specific

15   distributor was able to provide ZIP code level sales into a

16   local area, you know, why did you decide not to use that in your

17   calculations?

18   **A.**   I mean, there's really two reasons: First is -- I mean,

19   ultimately to compete market shares I need some way to get a

20   denominator to get comprehensive numbers, so if I have it for

21   some set of distributors I can't compute that. And in

22   particular, I always have it for the merging parties, so

23   anything that wasn't comprehensive for everyone else would tend

24   to you -- you know, would only have the merging parties and not

25   everyone else included, so I wouldn't want to compute shares

1   that way.

2   The other point that I raised is, you really would need a

3   breakdown of sales to local broadline customers, and I just --

4   if I have sales from some other distributor I know that sales

5   that travel a longer distance are often system sales. There's

6   testimony from systems distributors indicating that they go much

7   farther. And from firms that do both broadline and systems,

8   indicating that their sales that go farther tend to be systems.

9   So I wouldn't want to -- without that breakdown, I would have no

10 reliable way to compute local broadline shares.

11 Q.   Based on your share calculations and concentration

12 calculations for specific local areas, did you draw any overall

13 conclusions about the likely effects of the proposed merger?

14 A.   I did. Maybe I could summarize everything that we've

15 been talking about. I mean, on the national side I clearly

16 found that shares -- the concentration changes in levels were

17 far above the merger guidelines presumption of harm. The local

18 level, I find that in many local areas the concentration levels

19 and changes are far above the merger guidelines presumption of

20 harm.

21   So based upon the analysis that we discussed to this

22 point, I find that, given the markets that I've defined and the

23 shares that I find, there's a, you know, clear presumption under

24 the merger guidelines that the merger will harm competition and

25 harm consumers.

1   **Q.**   Did you end your analysis in the merger with a

2   calculation of market shares?

3   **A.**   No, definitely not. It's sort of a natural break point

4   to think of the analysis that comes next. I mean, the way that

5   merger guidelines and I approach this problem is, when you get

6   through the shares and concentrations you've define markets and

7   established that the changes in shares in concentrations are

8   such that there's a presumption that the merger is harmful to

9   competition. There's an increase in concentration at a level

10   that the guidelines find leads to a presumption of harm. But

11   certainly we're going to go on and ask whether there are factors

12   that offset that, that would eliminate that.

13   And really there are three that I think we'll talk about.

14   One is: Is it true, the sort of competitive effects analysis

15   that we've discussed? Does it turn out that the parties are

16   actually distant enough from each other and not close

17   competitors, such that even though the shares are high and the

18   concentration changes are high, there wouldn't be a problem?

19   In my view, you'd really need to find, given these high

20   shares, that they're quite distant competitors. As long as

21   they're reasonable close or very close competitors, the shares

22   indicate that there's a problem.

23   Second, I looked at any additional effects of the

24   divestiture or entry over the longer term. And finally, at

25   the -- whether efficiencies from the transaction could offset

1   harms.

2   **Q.**   So let's turn to your --

3   THE COURT: I'm sorry, was the second -- you consider

4   barriers to entries? Is that what you said?

5   THE WITNESS: Yes. But as part of that I also consider,

6   although the calculations I've shown already incorporate the

7   effects of the divestiture, I consider whether there are

8   additional longer term effects. That's sort of an additional --

9   that's kind of another form of entry or expansion that I at least

10   consider as a possibility.

11   BY MR. MOHR:

12   **Q.**   Sir, if we can move to your analysis of effects, first

13   focusing on national customers. Did you perform any work to

14   analyze whether the merger's likely to result in unilateral

15   anticompetitive effects for national broadline customers?

16   **A.**   I did.

17   **Q.**   And can you describe what are unilateral effects, as you

18   analyze them?

19   **A.**   I mean, the issue I'm analyzing here is this question

20   that I discussed before, which is: Although the high shares and

21   concentration levels give a strong reason and a presumption to

22   think there would be harm, unilateral effects is asking how

23   close are these competitors to each other really, and are they

24   doing distant things from each other, such that there wouldn't

25   actually be -- maybe there wouldn't be harm, despite those high

1   shares. And so the question is: How close are they to each

2   other? How much do they compete with each other?

3   I think a useful way to think about this is -- I mean,

4   ultimately -- and this is true in models I presented in my

5   report and things. Ultimately, where competition is harmed the

6   most is in cases where one merging party was the first choice

7   for a customer, and the other merging party was the next best

8   alternative; because the next best alternative is quite

9   important in determining what terms the winner actually has to

10   offer.

11   And so the question -- and shares give us a good

12   indication. If the shares are high in both cases, they're

13   likely competing with each other and causing problems. The

14   question is -- or the loss of competition would cause problems.

15   The question is: Do we have some reason to think that

16   when one of them is number one, the other one wasn't really

17   number two, or vice versa. Shares tell us that probably happens

18   a lot, but is there some reason that they're distant from each

19   other in sort of what they do, such that they're not coming head

20   to head that much.

21   What I find is, in fact, if anything, they're very

22   similar to each other, and even beyond their shares, likely

23   coming head to head with each other quite frequently. So, if

24   anything, it goes the other direction. Certainly no reason to

25   think that they are more distant from one another than the

1   shares would imply.

2   **Q.**   What specific information did you examine in your

3   unilateral effects analysis?

4   **A.**   I mean, again, as -- my answer is in all of these things

5   I looked at the objective characteristics of the firms, sort of

6   what -- and are they similar to each other on important

7   dimensions or are they different? To guide those dimensions

8   that I studied, which dimensions -- you know, there's lots of

9   ways you could look at a firm, what dimensions do I look at to

10   see if they're close to each other or not. I looked at

11   testimony and documents indicating what characteristics matter

12   to some or all national customers. And then, finally, I looked

13   at empirical data to see how often these firms are showing up as

14   competitors with one another.

15   **Q.**   Based on your review of the record, what are the

16   objective characteristics that you observed about the merging

17   parties, as it relates to national broadline customers?

18   **A.**   Yes. So in testimony for, you know, at least some, and

19   many cases many, national customers making up a lot of revenue,

20   I saw at least three dimensions on -- that matter to them in

21   choosing a distributor. I'm sure there are also others, but

22   three that came up a lot. One was just the geographic breadth

23   of the distributor, can the distributor cover a lot of my

24   footprint? Second that came up a lot was, can the

25   distributor -- similar, but related -- can the distributor offer

1   me consistent products across my footprint? Can I get

2   consistent products and services across my footprint? And a

3   third was just breadth of products that I could be offered. Can

4   I get a large number of different products? Can I get a large

5   number of private label products?

6   As I mentioned for many national customers, the

7   hospitality, healthcare, foodservice management customers that

8   make up the bulk of the revenue, they indicate they have

9   widespread menus and frequently changing menus, such that the

10   ability to get a large number of different views and have those

11   views be able to change from week to week is very important to

12   many of those customers.

13   Q.   And you also mentioned that you've reviewed testimony for

14   market participants. Did you review any testimony as it related

15   to whether the merging parties are close or distant competitors

16   for national customers?

17   A.   Yes. I've also ultimately did empirical analysis of that

18   question, but I reviewed all the testimony that's been presented

19   by both sides, and there certainly are a substantial number of

20   customers making up a large amount of revenue who indicate

21   directly that US Foods and Sysco have -- are close competitors,

22   that they see them as the top two options, that they feel that

23   they've benefited from the competition that arises from those

24   two options competing with one another.

25   So, I mean, I -- you know, there are many, you know,

1 GPOs, foodservice management companies, healthcare

2 organizations, hospitality chains. I won't mention specific

3 names here, but who indicate that they see the Sysco and

4 US Foods as top options and they benefit from such competition.

5 Collectively, the testimony I've seen that indicates that makes

6 up a substantial amount of the national revenue.

7 **Q.**   And if we could move on to the empirical analysis that

8 you described, and if we could please blackout the next screen.

9   Dr. Israel, if I can direct your attention to slide 19 of

10 the demonstrative, which contains two figures, which are figures

11 12 and 14 taken from paragraph 175 of your report, PX 09350.

12 Can you describe to the Court what's depicted in these figures

13 and the analysis you conducted?

14 **A.**   Sure. So this goes back to the bidding RFP data we were

15 talking about before where I and my staff went through the --

16 basically the specifications, 16 response of the parties, but

17 the information they provided in various forms indicating when

18 there had been an opportunity to bid or negotiate for a deal

19 with a given national customer. Again, that's multi regional or

20 national. Sort of pour through all that information.

21   In this case, some of that was in the -- you asked a

22 question about length. Some of that here was in the form of

23 data the parties provided, some of that was in the form of

24 documents going through that were describing competitions.

25 Poured through all of that data and came up with -- summarized

1   on here, basically in the situations where there were these

2   bidding opportunities -- this is from the Sysco side -- there

3   was a separate analysis of US Foods. On the Sysco side, on the

4   one hand, in those opportunities how frequently was any given

5   competitor showing up, you know, as a competitor in the

6   opportunity? How frequently were they mentioned as another firm

7   competing for the opportunity?

8   On the right-hand side it is among the cases that Sysco

9   lost, how frequently did these other competitors show up as the

10   winner? I should note one thing that I intentionally -- is not

11   here, and I intentionally did not do and don't do when I analyze

12   data like this, is ask the question: In Sysco's data how

13   frequently did Sysco win? Because we know they're going to have

14   more records of their own wins in their data than they're going

15   to have of other people's. That's what's going to be in their

16   data. So the relevant question from a Sysco data is: Who else

17   are they facing and who else are they losing to, and how does

18   that compare across the forms?

19   I should also note that in these cases we -- this is

20   broadline specific, so these are opportunities that were -- the

21   customers were describing the need for broadline services, since

22   we're now discussing the broadline product market.

23   Q.   Okay. And if I direct your attention just to the next

24   slide, slide 20, it's this -- is this the same analysis, just on

25   the USF data set?

1	**A.** It is. I didn't really summarize the figures from the
2	other one. I mean, they're on both pages. I mean, the bottom
3	line conclusion, you can look at any of the four figures, is
4	that whether you count it by number of times they participate or
5	number of times they win, Sysco showed -- US Foods shows up more
6	in the Sysco data than any other competitor, and, in fact, more
7	than any other competitor combined. The same thing also true in
8	either direction. All right.
9	So again, it's not a close call in terms of what's
10	reflected in these records and their -- the bidding information
11	in the records that were submitted. They show up as each
12	other's competitors more often than everyone else combined. You
13	can see, you know, others show up, DMA, PFG, other firms that
14	we've talked about, but in every case Sysco shows up more for
15	US Foods than everyone else combined. US Foods shows up more
16	for Sysco than everyone else combined.
17	I mean, that's a -- that's certainly a higher standard
18	than I would even need. I mean, this is quite clear that they
19	are particularly close competitors for one another, and
20	certainly no evidence that they're distance in space in any way
21	that would offset the presumption in harm. If anything, they're
22	showing up in each other's data at a very high rate.
23	**Q.** Can you describe how you defined RFP for purposes of this
24	analysis?
25	**A.** I mean, really, a better term than RFP would be a bidding

1   situation.   It was basically any time in the data when there was

2   a record that a given national customer was looking for

3   broadline service and was trying to weigh its options for that

4   broadline service, so that could include, you know, any

5   situation in which a customer was negotiating with a couple

6   parties, was running a formal RFP.   Basically we scoured the

7   data for any situation in which a cust- -- in which there was a

8   record indicating that a customer wants to buy broadline

9   services and is shopping around for those broadline services.

10 Not trying to, in any way, eliminate based on the form of that

11 competition, but just there's a customer looking for broadline

12 service, the parties' data indicates that we're part of a

13 competition to get that business.

14   THE COURT: Does the bidding data come from a different

15 data base than the links system?   Do the companies keep a

16 separate -- well, let me ask you: Is there a separate database

17 for the RFP/bidding information?

18   THE WITNESS: I mean, it's separate, certainly, for me,

19 yes.   I mean, the -- the RFP data are something that I compiled

20 by going through the parties' records and looking for any

21 indication of when they had seen an opportunity to win national

22 broadline business.   LINKS plays a part in it, in the sense of

23 when looking at the US Foods side data, you know, the process was

24 effectively to go through weekly sales reports that the head of

25 national sales at USF gets that indicates what are the current

1   opportunities. But then taking those sales reports, in order to

2   make sure I knew as much as possible about those opportunities, I

3   did cross reference it against LINK as a second source to figure

4   that out.

5   On the Sysco side, again, it was, you know, going through

6   ordinary course documents they have that list current

7   opportunities, checking it against the profitability model that

8   they use to evaluate those opportunities. But to be clear, in

9   each case this was a long process of going through everything

10   that was submitted in response to specification 16 -- which was

11   on this topic -- to look for situations in which the parties

12   described there's an opportunity for business at this customer

13   and to try to collect everything I could find in their records

14   about who else was competing and who won or loss.

15   BY MR. MOHR:

16   Q.   Did you perform any analysis to test whether, you know,

17   RFP observations that you collected, you know, were

18   representative, accurate, against, you know, other sources of

19   information?

20   A.   I did. I mean, I describe at least two things. I mean,

21   one is your explicit question, I also looked at investigational

22   hearing transcripts, I looked at declarations and testimony from

23   customers to try to cross reference to make sure that, where

24   possible, that the information that was in the bidding data was

25   reflected in what people were saying in the customer testimony

1   or in the investigational hearings.

2   I mean, obviously that's not a complete record, not

3   everything is covered, but I cross-checked to make sure the same

4   opportunities were generally showing up when possible.

5   The other thing that I would stress, just as an

6   economist, that I find more -- probably more important is

7   that -- it's what I said before: When you go through ordinary

8   course records of the companies -- right, they are ordinary

9   course records, they're credibly valuable -- they are imperfect,

10   and you have to sort of figure out what you can from the

11   information that's in them.

12   To me, the best -- what you need to do in those

13   situations, and what I do in every case, is look at what you're

14   getting from both sides, look at a couple different sources and

15   make sure that you're getting basically the same picture. The

16   Sysco data set and the USF data set were constructed separately

17   from each other intentionally, such that I could see if I found

18   that they were giving mutually reinforcing pictures of the

19   parties being close competitors. That's what I found.

20   So ultimately, to me, my conclusion also heavily based

21   upon the fact that either side is giving me the same story, and

22   they're mutually showing very similar patterns as far as being

23   each other's closest competitor.

24   Q.   And, Dr. Israel, you referred to specification 16 of the

25   second request a couple of times. Can you just explain a little

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 1   bit, the second request and what specification 16, what type of

 2   information that was seeking?

 3   A.      So the second request, I mean, I'm not a lawyer here, so

 4   I won't get all the words exactly right.  I think of it as a big

 5   CID or subpoena to the parties in the merger investigation

 6   process asking for a large variety of data and documents.  I

 7   don't have the specifications memorized, but specification 16

 8   was a specification asking for information on RFPs and bidding

 9   type situations.

10         And so in response to that specification, as I understand

11   it, the parties submitted some summary spreadsheets that

12   included a small number -- I think the top 20 or something --

13   bidding opportunities from each year.  So that was certainly one

14   input into what I used.  But to go beyond just that list, I also

15   used the other information in specification 16 just to search

16   through it to find bidding opportunities and to find whatever

17   information I could about who was on those and who won.

18         THE COURT:  Will the CID requests be put into evidence?

19         MR. WEISSMAN:  Yes, Your Honor.

20         THE COURT:  Okay.

21         MR. MOHR:  I think they have been, Your Honor.

22         THE COURT:  The specific requests themselves?  In other

23   words, the actual request itself, so if I wanted to see what the

24   wording was of CID number 16, that particular --

25         MR. WEISSMAN:  Okay.  I -- we know the answers have been.
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1   I think within the answers some of the respondents actually

2   restated the questions.

3   THE COURT: Okay.

4   MR. WEISSMAN: So I think in that form, but if not, we

5   certainly -- it's something that's easy for us to do. We will

6   check that after the Court session today and offer it, if it's

7   not already in there in some other form.

8   THE COURT: Okay. All right. Thank you.

9   BY MR. MOHR:

10   **Q.**   Dr. Israel, you mentioned that you kind of created Sysco

11   data set and the USF data set here.

12   Are you aware of any instances where Sysco and USF

13   reported different RFP participants in the same RFP?

14   **A.**   Yes. I mean, it's the sort of thing that happens when

15   you put together these data sets, they're ordinary course

16   records of who was perceived and who each party perceives as

17   competing. I mean, one case in which it happens most frequently

18   is if one of the parties was not one of the top one or two firms

19   in the opportunity. They might just not have as good of records

20   of that opportunity.

21   But there are other cases in which they report different

22   competitors or different winners. The cases in which they

23   actually report different winners were rare here. There weren't

24   a lot of them. And there were actually even some where, I

25   think, you know, one of the parties reported that someone else

1   had won, and it was actually the other party, and so that would

2   have actually increased my numbers.

3   But I -- what I -- I intentionally stick to what's in

4   their ordinary course records, check to see that it's mutually

5   reinforcing. And from my point of view, one way that I think

6   about this exercise is that it's reflecting in this process who

7   the parties are perceiving as their closest competitors on these

8   opportunities. So if they perceive that each other is the

9   participant and the winner in the vast majority of times, that,

10   to me, is a very important measure of the competition that

11   they're facing in the marketplace. So I intentionally don't try

12   to redo what's in the records but just report what their records

13   indicate about their perceptions of the competition that they're

14   facing.

15   **Q.**   And, Dr. Israel, as you said, this is analysis of -- as

16   part of your national unilateral effects analysis.

17   Did you analyzes whether national broadline customers

18   could attempt to defeat a price increasing from the merging

19   parties by splitting up their purchases among multiple

20   distributors, as opposed to contracting with a single

21   distributor?

22   **A.**   Yes. I mean, as I said from the start, my shares and my

23   analyses here don't a priori exclude any particular competitor.

24   My shares compute anything that's gone to a combination of

25   regionals. You know, the winners of any RFP are reported as who

1 they are, so it's -- I'm not excluding a possibility that that

2 competitor could be a set of regionals.

3   I also, to the extent that someone has broken down on a

4 bid, a national customer has broken down bids into separate

5 regional opportunities, those would show up as, potentially,

6 separate winners in my analysis. So if somebody's running six

7 regional RFPs and six different firms win, that would be six

8 different winners counted in my figures.

9 Q.   Dr. Israel, if we could turn from -- focus on national

10 customers to local customers here.

11   A part from calculating local market shares --

12   THE COURT: Mr. Mohr, I'm sorry, just before you move on,

13 let me just make sure I'm clear. With respect to this analysis,

14 the national customer definition, again, is the national customer

15 definition that was given by the parties themselves?

16   THE WITNESS: Yes, although -- it's a good question. I

17 mean, I will say that when you're going through the RFPs there

18 are going to be cases where they're not the winner, and so they

19 don't classify who the -- whether the customer would have been

20 national or not. I mean, so it's not -- and there are just other

21 cases where it's not clear from the documents. So it's not true

22 that in every case I could define -- I could just go to their

23 record.

24   THE COURT: All right.

25   THE WITNESS: I tried to use exactly the same methods,

1 which was see if they're asking for it in multiple regions.

2   One example of where I really tried to use the same method

3 was on the US Foods side. I know that if the opportunity went to

4 their director of national sales, I would consider that a

5 national record. So I basically I was attempting to -- you know,

6 use the same standards. But it's true that in the RFPs, as

7 opposed to just the revenue data, you had to look at the actual

8 observation and determine if it was asking for multi regional or

9 if it was being treated as part of that division.

10   THE COURT: So when the data showed that they didn't win,

11 you had to use some subjective assessment of how they would have

12 treated the customer if they had one?

13   THE WITNESS: Yes. I mean, that's example, yeah. I mean,

14 if you think about -- I mean, ultimately for the purposes of the

15 RFPs, the net effect, if someone ends up on the other side of the

16 line, it'd be one more or one less RFPs in my observation. I'm

17 just doing the best to have the best sample of national RFPs that

18 I can.

19 BY MR. MOHR:

20 **Q.**   All right. So, Dr. Israel, on the local side, apart from

21 calculating local market shares, did you undertake any

22 additional work to analyze whether there'd be any unilateral

23 competitive effects on local broadline customers?

24 **A.**   I did.

25 **Q.**   And what were your conclusions regarding the likely

1   competitive effects of the merger for local broadline customers?

2   **A.**   I mean, again, I did a variety of analyses to see whether

3   the parties, in terms of each other's data, show up as each

4   other's competitor frequently, and I found though they do,

5   again, much more frequently than anyone else. We'll talk about

6   that in more detail.

7   I also did some regression analysis or entry study to see

8   when the parties open a new distribution center near a

9   distribution center of the other party, if that affects prices.

10   And I found, indeed, it does to a significant amount. Again,

11   demonstrating directly the competitive effects that they place

12   on one another.

13   **Q.**   So let's focus on the first one of these analyses, your

14   analysis of the LINK database which you discussed a little bit

15   earlier.

16   First, can you just -- can you -- you described the LINK

17   database for the Court, but can you describe what analysis you

18   performed on the LINK database to analyze effects?

19   **A.**   Sure. So we talked about the LINK database under

20   aggregate diversion, and there I was counting up the number of

21   times that US loses to another broadline firm. For purposes of

22   the unilateral effects analysis, we're no longer talking about

23   broadline in general, right, we're talking about Sysco in

24   particular for unilateral effects. And so I evaluated the

25   number of times that Sysco -- in lost opportunities that Sysco

1   was mentioned as a main competitor. I looked at Sysco in

2   particular and for opportunities where US Foods lost the

3   opportunity, how frequently was Sysco mentioned as the main

4   competitor, a main competitor on that opportunity. So again,

5   for where US Foods is not winning, where are they coming up

6   against Sysco.

7   What I found overall was that Sysco was showing up as a

8   main -- I mean, a substantial number that's summarized in the

9   report on the order of half the time that US Foods was losing,

10   they were naming Sysco in particular as the main competitor.

11   What's shown in the picture that's up right now is broken

12   down -- because this is a local market analysis, broken down

13   into certain CBSAs, where you see, based on number of

14   opportunities or revenue at stake in the opportunity, Sysco's

15   showing up as the main competitor on US Foods' losses in the

16   majority or near majority of the opportunities that US Foods

17   lost. So a simple summary is just when US Foods loses, Sysco

18   shows up a lot as the main competitor.

19   THE COURT: So can I ask: In the database itself, in the

20   competitor field, does it permit the entry of more than one

21   competitor?

22   THE WITNESS: It does. It does.

23   THE COURT: And ultimately, of course, it's up to the

24   individual salesperson as to how many competitors they --

25   THE WITNESS: That's correct.

1   THE COURT: -- input?

2   THE WITNESS: That's correct.

3   THE COURT: All right.

4   THE WITNESS: I don't remember the exact number as I sit

5 here. I think in many cases they list just one competitor, but

6 they can list more than one. And that's why it says on here -- I

7 believe what's up here is -- these are cases in which Sysco is

8 listed in the competitor field, so I believe what's up here,

9 although I'd have to check the details that are in the report, I

10 belive these are any cases in which Sysco was listed as one of

11 the competitors who were listed.

12 BY MR. MOHR:

13 **Q.**   And for the record, this was from table 13, paragraph 326

14 of your report. Did you do any other similar types of analyses

15 on the LINK database in your report?

16 **A.**   Um, I mean, yes, I talked about them. I mean, there are

17 sort of overall summary measures of how frequently Sysco shows

18 up and there are other analyses like these. I mean, the

19 consistent finding was that in cases where US Foods loses, Sysco

20 shows up quite frequently. And I guess another good summary to

21 have is that where as I'm seeing Sysco showing up as a

22 competitor on the order of half the time, the next biggest firm

23 is below 10 percent, right, so no one else is showing up in

24 US Foods' data nearly as often as Sysco.

25   THE COURT: Is this in a particular area, or is this

1   aggregated across the locality?

2   THE WITNESS: The number I just gave you was aggregated

3   across the locality.   The table you're looking at here is -- you

4   know, gives you the Sysco percentage in particular localities.

5   But overall, across the localities, Sysco shows up for more.

6   I mean, I -- I think -- the single thing I probably

7   summarize it with is that the Sysco number is roughly half,

8   right, so Sysco is showing up basically as much as everyone else

9   combined.

10   BY MR. MOHR:

11   **Q.**   Dr. Israel, while conducting your analysis of the LINK

12   data, did you discover any imperfections in the data set?

13   **A.**   I mean, yeah, we talked about some of this earlier.

14   It's -- I mean, customer relationship management data sets are

15   what salespeople enter.   So they are -- from my review of the

16   instructions that US Foods gives its salespeople and the

17   frequently with which the fields in the data set are filled in,

18   this is way above the norm of what I usually see from these data

19   sets.

20   But it is what salespeople -- it's intentionally the

21   normal course record of what salespeople are seeing when they're

22   competing in the field.   So that means that there may be times

23   when fields are not filled in, or there may be times when the

24   salesperson's reporting what their perceiving and that changes.

25   Again, my own view of these situations is that if I'm trying to

1	study the competition that it's faced in the marketplace, the
2	record of what the salesperson is indicating is the key
3	competition in the marketplace is, to me, as good a variable as
4	I have, and so I don't try to change that. I take the
5	salesperson's indication of the competition they're facing as a
6	very good indicator of the competition that they're reacting to
7	in the marketplace.

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4 I have, and so I don't try to change that. I take the

5 salesperson's indication of the competition they're facing as a

6 very good indicator of the competition that they're reacting to

7 in the marketplace.

8 Q.   And you also mentioned that you reviewed requests for

9 incentives used by Sysco's sales force. If I can direct your

10 attention to slide 24 of the demonstrative, which contains table

11 15 taken from paragraph 240 of your report.

12   First, can you describe for the Court what are Sysco

13 requests for incentives?

14 A.   Sure. This is a program that Sysco had. I think it's

15 been discontinued and there's other ways now that determine

16 incentives, as I understand it. But they had it for several

17 years where primarily local sales reps could come and say --

18 turn in a form and say I need to get a discount for this

19 customer, and they would -- among the fields in that request

20 would be a reason: Why do you need a discount?

21   And in the reason field they could list, I need to beat

22 competition from X. That would be an answer for the reason.

23   And then this would go up to, I think, the VPs of sales

24 who would have to sign them. But ultimately what I did here --

25 this is fewer observations than in LINK. This is not this

1   customer relationship management. This is when they turned in

2   these requests for incentives.

3   Nevertheless, this is nice because it's an explicit place

4   in which some Sysco sales rep is saying, I actually need to get

5   a better price, who's putting that pressure on me?

6   And what you see on the picture is that in the vast

7   majority of the times, well -- you know, over two-thirds of the

8   time, basically, that a competitor was listed, it was US Foods

9   who was listed, right? So and if you count it by US Foods being

10   the only competitor who was listed, over 70 percent of the time,

11   it counted -- the total mention's roughly the same number. So

12   US Foods is being listed here far more than any other firm.

13   So again, this is -- those cases in which there was a

14   request for incentive responding to a particular competitor, but

15   as things go, you know, this is a reasonably large sample.

16   There's several hundred of these, and it's just very clear that

17   there's this pattern that US Foods is the motivation for the

18   incentive far more than any other firm.

19   **Q.**   All right. And then, Dr. Israel, you also mentioned that

20   you conducted a formal econometric study to test the price

21   effect of two Sysco entry events.

22   First, can you just describe what an entry event study

23   is?

24   **A.**   Sure. The --

25   THE COURT: Do we need to take a break first?

1   THE WITNESS: So, I mean, it's really pretty simple. I

2 mean, the idea is just one of the firms opens a new distribution

3 center, and you want to say, did that affect the prices of the

4 other guy, and particularly, the other guy at a nearby

5 distribution center.

6   It's -- you can think about it similar to that overlap

7 methodology. This guy opens, and he's now suddenly in the draw

8 area of the -- you know, if Sysco opens a facility, he's now in

9 the draw area of a US Foods distribution center.

10   So the idea is to study what effect that has on prices.

11   The basic methodology that's standard here is something

12 called "difference in differences," but the basic idea is to make

13 sure you're isolating the effect of the entry, you look at the

14 price of the US Foods distribution center that's near by, how it

15 changes after the entry, but you use as a control group other

16 US Foods distribution centers that are not right there, so

17 that you -- to see how they change, right? So the question is:

18 Does the distribution center that's affected by the entry,

19 suppose its price drops, you want to make sure that wasn't just

20 prices went down everywhere. So you compare it to a control

21 group, which is the US Foods' prices at distribution centers more

22 broadly. That's the idea. And then to the extent there is a

23 difference in the effect on that local distribution center,

24 that -- you conclude that that's, you know, the effect of the

25 entry.

1   BY MR. MOHR:

2   **Q.**   And what specific events did you identify in study?

3   **A.**   It was the one issue that I quickly ran into in this

4   case, was that there just hadn't been very many entries to study

5   by Sysco or US Foods. I really wanted an event where there was

6   a new Sysco or US Foods distribution center open, right? And

7   really the only two events that I found that met that criteria

8   were one in Long Island in, I think, in 2012, and one in

9   Riverside, California, I think, in 2013.

10   The other issue, though, that came up almost immediately

11   on this whole study was, those are new distribution centers, but

12   in both cases they're actually not that far away from existing

13   distribution centers, which means they're not really clean of

14   events to study the effects of competition.

15   In the case of Riverside, it was actually only, roughly,

16   30 miles away from an existing distribution center. In the case

17   of Long Island, I think it's roughly double that. So in each of

18   those cases, to be frank, I consider this to be a lower amount.

19   This is not going to catch what would happen if a Sysco

20   distribution facility stepped in against US Foods where there

21   hadn't been any Sysco competition before. This is going to

22   measure the incremental effect of the Sysco competition.

23   For that reason, I actually focused most of my attention

24   on the Long Island event because it was further away, and my

25   understanding is, ultimately served more new business than the

1   Riverside event. But in either case, the main problem I have is

2   these are underestimates of the true competitive effects. Long

3   Island at least gets me somewhat closer to a good estimate

4   because it's farther away from the existing distribution center.

5   **Q.**   And what conclusions did you draw based on your entry

6   study of these two events?

7   **A.**   So I should also note just quickly that a couple other

8   issues that come up in the entry study, one is that in the

9   database in the transactions data, it's not perfect recording of

10   all of the incentives and discounts that are ultimately given;

11   sometimes there's, like, a year-end incentive. So to the extent

12   that competition took the form of an incentive like that, I

13   would miss that in the data.

14   So for those reasons, I really consider what I found here

15   to be a lower bound on the true competitive effects. If you

16   could measure a brand-new Sysco facility opening where there

17   hadn't been one at all before, and you could get all the

18   incentives and discounts and everything rolled in, you would

19   have a cleaner measure, and both of those effects clearly would

20   cause the effect to be bigger.

21   But what I find in my case is that -- what I found with

22   what I can do is that the Long Island event in my -- in the base

23   study, so that's just comparing right around the US Foods center

24   to everywhere else that we talked about, prices at -- US Foods

25   prices went down by 1.4 percent as a result of the Sysco entry.

1   And again, that's compared to the control group. That's the

2   first row of this table.

3   What I wanted to do then, though, is go beyond that. I

4   always like my econometrics to make sure the results make sense

5   and they hold up and they're detecting a stable pattern. So I

6   conducted some other cases on the event study where, for

7   example, I looked at customers -- in row 1 here I looked at

8   customers who are even closer to the facility to see if -- to

9   see if -- if I'm measuring something where the effect should be

10   bigger, and in effect it was. For customers within a 50 percent

11   draw area, that effect went up to 2.6 percent.

12   I also looked at customers that are -- that most fit the

13   category of needing broadline services, which I define as

14   customers who buy more than 100 SKUs per week and use more than

15   the average number of private label SKUs. As expected, the

16   effect was bigger on them.

17   I looked at the effect on private level SKUs alone, which

18   we know is an area where broadline is particularly important.

19   The effect was bigger for private label. And I looked at

20   combinations of those cases.

21   So bottom line, I found that overall 1.4 percent effect,

22   as this lower bound on the competitive effect of Sysco

23   competition on US Foods. I found the effect was consistently

24   bigger in the cases when the facts and theory of the case would

25   indicate it should be bigger, which indicated to me that the

1   results are quite reliable.

2   **Q.**   And, Dr. Israel, you mentioned that when you studied the

3   Sysco entry in Riverside, California, you found the smaller

4   price effect. Does the smaller price effect in Riverside change

5   your opinion about what you saw here from the Long Island entry

6   event?

7   **A.**   No, not at all. I mean, the Riverside event was, again,

8   as I said, even closer to an existing distribution facility.

9   And as I understand, it was really -- that new Riverside

10   facility was basically taking a lot of just -- folding out a lot

11   of existing business, sort of creating new capacity for existing

12   business. So for both of those reasons I think the Riverside

13   event is just even more of a lower bound -- even more an

14   understatement of the true competitive effects. So, in fact, I

15   took the ranking of the Riverside and Long Island effects as one

16   more piece of confirmation that I'm finding sensible numbers.

17   But because the basic econometric problem is that we

18   don't have clean entry of a brand-new area, you know, I wanted

19   to use the best measure I had that it would at least limit the

20   extent of the understatement, and I consider that to be the Long

21   Island event.

22   **Q.**   Dr. Israel, why did you study Sysco entry events rather

23   than studying an exit event, for example?

24   **A.**   Well, there's been some academic literature on this issue

25   of studying entry or studying exit. I mean, one intuition some

1   people have is that an exit sounds more like a merger because

2   something goes away instead of something getting added. I mean,

3   obviously in my view, those are just flip sides of the same

4   coin. So in theory you could study either to measure the

5   effects of competition.

6   The trouble with exist events that this academic paper

7   points to is that there's a reason why exits happen. In

8   general, they happen because someone's not competing very

9   effectively or a distribution center is not as important anymore

10   or doesn't serve customers as well. So this paper finds that

11   when studying exit events -- I think in the paper it's in

12   grocery stores. But in studying exit events you very often find

13   no effect from the exit because, as the paper says, the exit is

14   usually happening because they're closing a store or a facility

15   that wasn't succeeding, wasn't doing very well.

16   So the paper actually concludes that you shouldn't study

17   exit events because they tend to find there's no effect because

18   the exit happens for a reason and entry events are a more

19   reliable measure.

20   Q.   Are you -- without referring to any specific distributor,

21   are you familiar with the study by one of the defendants'

22   experts about an entry event --

23   A.   Yes.

24   Q.   -- in one of these areas?

25   Do the results of that study change your opinion that

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1    Sysco and USF are the closest competitors in many local markets?

2    A.      No.   I mean, describing in general terms, I mean,

3    Dr. Bresnahan, an expert for the defendants, did a study of an

4    entry by a smaller distributor in the Los Angeles area, and he

5    found an effect that is statistically significant:  Decrease in

6    prices, as I would expect if a new broadliner opens.  But it's

7    much smaller than the effect that I found for my Long Island

8    study, so I -- to me, it's consistent with the idea that

9    competition matters but that the smaller distributor had less of

10   an effect.

11       I would note that that smaller distributor had less --

12   even in the case of the smaller district, this was the opening,

13   as I recall, of a distribution facility in Los Angeles when the

14   nearest one prior to that had been, I think, in Phoenix.  So it

15   really was more of a clean entry into a new area, and yet

16   nevertheless, it was -- he found a substantially smaller effect

17   than I found for the Sysco Long Island event.  So it's

18   consist -- I'd expect there to be some effect from an entry, but

19   given that a smaller distributor has less effect on US Foods

20   than Sysco does, I'd expect it to be smaller, and that's exactly

21   what he found.

22   Q.      Based on all of these analyses collectively, and your

23   review of the record here, what are your overall conclusions

24   about effects on local broadline customers?

25   A.      I mean, again, I would start from the market shares that
```

1   I computed and the changes in concentration and say those create

2   a presumption of harm in many local markets. But when I add to

3   that the frequency with which Sysco and US Foods show up as each

4   other's competitor, the mutually reinforcing nature of that

5   finding across the LINK data and the RFI data that I see it both

6   ways, it gives me a lot more confidence. And then the findings

7   from their regression analysis, I conclude that there's -- you

8   know, it reinforces and bolsters my conclusion that the merger

9   is likely to the lead to substantial harm in many local markets.

10 **Q.**   Dr. Israel, I'd like to move to your analysis to entry in

11 the divestiture. Did you perform, besides the market shares in

12 the analysis, to form this opinion as to whether entry or

13 expansion is likely to counteract the competitive effects you

14 just described?

15 **A.**   I did.

16 **Q.**   What are your opinions?

17 **A.**   Yeah. So I -- I mean, considered both the divestiture.

18 And as noted, I mean, my analyses shown thus far has all

19 incorporated the divestiture into my share and concentration

20 calculations, so I've already considered it in that sense.

21   But I also considered more generally whether the

22 divestiture would over time enable PFG to replace the

23 competition that's lost as a result of the transaction, and I

24 concluded for a variety of reasons that it will not.

25   I also separately considered the likelihood and ability

1   of other entry or expansion by other distributors to offset the

2   effects of the transaction. And again, I find that in the

3   language of the guidelines that -- for entry to offset effects

4   it needs to be timely, likely, and sufficient, likely to happen

5   in a timely way, sufficient to offset the transaction's effects,

6   and I find that those conditions are not met.

7   **Q.**   Focusing first on the proposed divestiture to PFG, can

8   you describe generally the work you did to analyze how it would

9   impact the effects you estimate from the proposed transaction?

10   **A.**   Sure. I mean, so as I said, my analysis of shares and

11   concentrations and everything that I've done so far incorporates

12   the divestiture already, so that was step one. I think that's

13   probably the most basic.

14   Step 2 was -- and you can just sort of see that in the

15   basic -- you know, the size that PFG will have post-divestiture,

16   which is just substantially smaller than the -- I think it's

17   like -- it'll grow to be on the order of a total of 10 billion

18   in revenue, whereas US Foods is over 20 and SYSCO's over 30,

19   combined for them would be over 50; so substantially smaller

20   than either an independent firm or the combined firm.

21   But I then went on to think about what about going

22   forward? To me, as an economist, I mean, the best indication I

23   have about going forward -- or one indication I have is, what

24   the parties themselves -- or PFG itself is projecting about

25   where it will get. That's at least one indication.

```
1         And I note that even in --

2         MR. MOHR:  If I could pause you here before you get into

3   specifics.

4         Your Honor, we have about 20 minutes remaining but we're

5   starting to get into details about PFG divestiture and some of

6   the parties' efficiency claims, which may implicate confidential

7   material, so I'd ask -- I'm trying to reserve it all here until

8   towards the end.  If we could seal the courtroom at this time for

9   the remainder of Dr. Israel's direct?

10        THE COURT:  Okay.  How much longer do you think you'll be

11  on direct examination?

12        MR. MOHR:  I think about 20 minutes, Your Honor.

13        THE COURT:  All right.  Why don't I do the following:  Why

14  don't we break for just about five minutes and let people file

15  out.  Why don't you finish your direct examination.  When you're

16  done we'll take our lunch break at that point, and then when the

17  cross-examination begins, we'll start with a public

18  cross-examination, which I assume will take a substantial amount

19  of time, or am I wrong about that?

20        MR. SIMMONS:  The public will take maybe 20 minutes, and

21  then I'll have to go into confidential session, Your Honor.

22        THE COURT:  Okay.  So it will probably make sense, then,

23  to start with the nonpublic -- I'm sorry, the --

24        MR. SIMMONS:  I prefer to start with the public.

25        THE COURT:  Well, I just don't know if --
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         1   MR. SIMMONS: I could start with the confidential, if

         2   that's better.

         3   THE COURT: Why don't we start with the public and see how

         4   long you can go before we have to close the courtroom. All

         5   right. So let's take five minutes, and I'll ask everybody who's

         6   here who is not affiliated with either the plaintiffs, the

         7   defendants, the parties or -- not in this case -- in this case

         8   the witness, but you'll have to please be -- to stay outside the

         9   courtroom for this portion of the proceedings.

        10   (Thereupon, a break was had from 11:47 a.m. until

        11   11:55 a.m.)

        12   THE COURT: All right. Everyone, please be seated. Just

        13   to confirm that everyone in the courtroom is someone who's

        14   allowed to be in the courtroom?

        15   All right. Great.

        16   Ms. White, if you could lock the doors.

        17   THE COURTROOM CLERK: Yes, Your Honor.

        18   Mr. Mohr, you can proceed.

        19   MR. MOHR: Okay. Thank you, Your Honor.

        20   BY MR. MOHR:

        21   Q.   Dr. Israel, we were discussing your --

        22   THE COURT: Oh, I'm sorry. And Mr. Wallace, this portion

        23   will be under seal. Thank you.

        24   **(Thereupon, the following further proceedings were sealed**

        25   **by order of the court:)**

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17   (Thereupon, a luncheon recess was had beginning at

18   12:22 p.m.)

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C E R T I F I C A T E

2

3   I, Scott L. Wallace, RDR-CRR, certify that
the foregoing is a correct transcript from the record of
4   proceedings in the above-entitled matter.

5

/s/ Scott L. Wallace
6   ----------------------------   ----------------
Scott L. Wallace, RDR, CRR   Date
7   **Official Court Reporter**

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1   **I N D E X**

2

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       BY MR. MOHR:
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