

MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2024

Tuesdays and Thursdays, 3:30 pm - 5:30 pm
Dale Collins
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GRADED WRITTEN ASSIGNMENT

Instructions

Submit by email by 8:00 pm on Wednesday, November 20
Send to wdc30@georgetown.edu
Subject line: Merger Antitrust Law: Graded Homework Assignment

Assignment

Calls for a reasoned memorandum of law.

INSTRUCTIONS¹

1. This is a GRADED HOMEWORK ASSIGNMENT.
2. This untimed assignment will be available beginning at 8:30 pm ET on Friday, November 8, 2024, and must be submitted by email by 8:00 pm on Wednesday, November 20.
3. ~~This exam is final. No clarifications or corrections will be provided. If you are convinced that there is an error, inconsistency, or omission in the exam, please identify the problem, give your reasons why you believe there was a mistake, provide what you believe the correct information should be, and write your answer accordingly. If you have good reasons for believing there was a mistake in the problem (even if I disagree) and provide a sensible correction in the context of the hypothetical as a whole, I will accept the correction and grade your paper accordingly.~~

This homework assignment is final. Do not expect any clarifications or corrections. If you believe there is an error or inconsistency in the problem, please state your assumptions about the issue in your discussion of that issue. You may email me if you wish, but I will either not respond or respond to the class as a whole. *For this reason, and more importantly, because we will continue working on cases that may further illuminate concepts relevant to the homework assignment, I suggest you wait until shortly before the due time to submit your answer.*

¹ These instructions are modeled on the instructions I intend to use (subject to the approval of the Registrar's Office) for the final exam. They have been modified to reflect that this is a graded homework assignment and not a final exam. Strikeouts indicate instructions that will apply to the final exam but not to the graded homework assignment.

4. ~~Exams at the Law Center are graded on an anonymous basis. The Student Disciplinary Code provides that the “unauthorized breach of anonymity in connection with a blind-graded examination” is a disciplinary violation. Therefore, be sure that you do not reveal your identity as the author of an examination in your answers themselves, in any communications with the professor, or otherwise discuss the substance of the exam with your professor(s) or with any other student from the time the exam is first administered until after grades are published.~~
5. You may consult any written source, including the reading materials, class notes, cases, outlines (commercial or otherwise), books, treatises, the Internet, Westlaw, and Lexis-Nexis. You may use Ctrl-F or search engines on your computer. Citations to cases or other primary sources are not required or particularly desired, although you may find reference to a case that we covered helpful at times to make your analysis more compelling or to shorten the exposition. Citations to secondary sources will *not* be helpful or appreciated. You may use calculators or spreadsheets as well as any spreadsheet templates you have prepared in advance.
6. ~~During the exam,~~ you may not use any artificial intelligence or large language model tools (including but not limited to ChatGPT, Claude, Microsoft Copilot, Google Gemini, and Perplexity.ai) to research, prepare, draft, or edit your answer. This prohibition includes AI features that may be built into word processors or other software you use ~~during the exam~~ in writing your answer.
7. As we discussed in class, you may cut and paste short passages *from materials you have collected in a single document* to introduce a concept, a rule of law, a legal principle, or an economic proposition or formula (“boilerplate”). You may include quotes from cases in the materials you create for this purpose, but if you do so, prepare the quote and cite the case (in proper Blue Book form) as you would in a brief. ~~Before starting the exam,~~ you may use artificial intelligence or large language model tools to research, prepare, draft, or edit your boilerplate, but be aware of the propensity of these tools to hallucinate and provide wrong responses especially in complex areas such as antitrust law. You are prohibited from copying/cutting and pasting any other prewritten text (~~written before starting your exam~~) into your ~~take-home exam~~ response, regardless of who authored the text.²
8. ~~Students who elect to print out take-home exam questions must destroy all exam documents after they have submitted their exam responses.~~
9. This homework assignment consists of one question. The question presents a hypothetical fact situation that you are asked to analyze from a particular perspective (e.g., a special assistant to the Assistant Attorney General making a recommendation on the disposition of an investigation, a private practitioner providing advice on the antitrust risks and likely

² To be clear, you may cut-and-paste passages into your boilerplate while you work on the assignment and then cut-and-paste those passages from the boilerplate into your answer, but you may not cut-and-paste passages not in the boilerplate into your response. If you cut-and-paste anything into your answer, it must come from your boilerplate.

outcome of a proposed transaction, a law clerk preparing an initial analysis of the application of the law to the evidence for a judge). Be sure that you write from the assigned perspective *and* answer the question(s) asked.

10. Grading will be on the completeness, coherency, and persuasiveness of your answers to the question presented and not on whether you reach the same conclusion as I did. Ideally, your answer to the question will persuade me that you have correctly identified the issues, properly analyzed them in the context of the prevailing legal standards and the facts presented, and advised a sensible course of action. I have no doubt that some of you will persuade me to go one way on a question, while others of you will equally persuade me to go a different direction on the same question.
11. Present your analysis in a well-organized, linear, and concise manner. Think about your answers before writing. *Remember Pascal's apology*: "I am sorry that this was such a long letter, but I did not have the time to write you a short one." Clarity of thinking and exposition are much more important than throwing in the kitchen sink. While there is no page limit for the graded homework answer, penalties will be levied for excessive length, verbosity, lack of organization, or the inclusion of irrelevant boilerplate.
12. If asked to write a memorandum in any capacity, you may start the answer with the first sentence of the memorandum. There is no need to include a privilege legend, "To" and "From" lines, or a subject line. Also, you may refer to a table in your answer by the table number in the question.
13. If you are asked to write a memorandum as an attorney in a law firm at a confidential phase of the transaction, it is *not* necessary or desirable to use code names for the transaction or the parties. This is an exception to the usual rules of practice.
14. You should assume that federal subject matter jurisdiction exists and that it is unnecessary to address any jurisdictional questions in your answers. Also, in the areas of interest all demand curves are linear and all marginal costs are constant.
15. If the hypothetical gives prices or costs for a group of products as an "average" or being "around" a given number, you should treat that number as the arithmetical average with only relatively small variations around the mean, and use that number in any formula. (This instruction is designed to simplify the math and substitutes for the less realistic assumption that all prices have coincidentally converged to the same number, notwithstanding their differentiation.)³
16. If there is an inconsistency between a number given in a table and a number given in the text, use the number in the table.
17. It should go without saying that, outside of this assignment, you should not believe everything (or anything) in the statement of any hypothetical fact situation. I have taken considerable liberties in fashioning the problems and have totally ignored reality whenever it

³ When the average has only small variations around the arithmetical mean, the formulas work reasonably well in practice using the average.

was convenient. It will be in your best interest to unlearn the “facts” in the question as soon as possible after you finish the ~~examination~~ assignment.

18. The hypothetical facts should be complete in the sense that they present what is known at the time the analysis is requested. As in life, some information you would like to have may simply not be available. Analyze the facts as they are presented in the question.
19. Since this is a graded homework assignment, I will not hold out hope that you find it enjoyable, but I do hope that you find it intellectually stimulating. I have sought to make the question challenging, but you should be well-prepared to tackle it.

This assignment consists of twelve (12) pages, including these four (4) cover pages. Please be sure your ~~exam~~ assignment is complete.

WILTON GROCERY STORE MERGER

You are an attorney in the Antitrust Section of the Connecticut Attorney General's Office. The Section has completed its review of HarvestMart's pending \$6 million acquisition of Sam's Market, two traditional supermarkets in Wilton, CT.

Joyce Davenport, the section chief, has asked you to draft a memorandum of law analyzing the likelihood of success if the Attorney General files a complaint in federal district court alleging that the acquisition, if consummated, would violate Section 7 of the Clayton Act.¹ In particular, Ms. Davenport wants your analysis to address how the state might present its case most persuasively, anticipate and respond to defenses the merging parties might raise, discuss the type of injunction the state should seek in its complaint, and give your conclusion of how the court would rule.

If you conclude that the Section 7 claim is likely to be upheld by the court, Ms. Davenport also would like you to address whether the Attorney General should exercise his prosecutorial discretion and not challenge the acquisition or settle the matter with a consent decree. If you recommend a consent decree, your memorandum should include a detailed proposal of the specific terms and conditions that the Attorney General should demand to address the competitive concerns raised by the acquisition.

Here are the facts found in the investigation:²

Wilton, CT. Wilton, Connecticut, is a town in Fairfield County with a population of approximately 35,000 and about 14,000 households. Originally a farming community, Wilton has evolved into an affluent suburb known for its colonial charm and meticulously maintained open spaces, including nearly 1,000 acres of protected recreational land. To preserve its quaint, residential atmosphere, Wilton's zoning regulations limit retail establishments to the town center, ensuring that most of the town retains a quiet, village-like character. Despite this, Wilton hosts several corporate headquarters in secluded, wooded areas, adding economic vitality to its predominantly family-oriented setting. The town's attractive qualities continue to draw new residents and businesses, and its population is projected to grow by 30% over the next decade, increasing demand for retail and residential development.

Wilton's grocery stores. Today, Wilton is served by four grocery stores. Three of these stores are traditional supermarkets—HarvestMart, Nature's Pantry, and Sam's Market—all located close to one another in the town center. The fourth store is MaxMart, a club membership store located on CT Route 33 between Wilton and Ridgefield.

Traditional supermarkets, including HarvestMart, Nature's Pantry, and Sam's Market, prioritize variety, depth of selection, and convenience and provide an extensive assortment of products and

¹ **Note to students:** While Connecticut has an antitrust law, it does not have a provision that is analogous to Section 7. Therefore, it is likely that the Connecticut Attorney General would challenge a merger in federal district court under Section 7 to take advantage of the wealth of precedent rather than to sue under a more general provision in the state statute.

² **Note to students:** For purposes of this problem, assume that online grocery shopping and delivery services have not yet become established in the Wilton-Ridgefield area. While such services are increasingly important in many markets, this simplifying assumption allows you to focus on competition between physical grocery stores.

services designed to meet diverse daily needs in a single visit. Traditional supermarkets are large retail stores, which average 38,000 square feet, designed to provide a convenient one-stop shopping experience. Supermarkets are typically designed to facilitate convenience and make shopping enjoyable. They offer a wide selection of food and household items, with 30,000 to 50,000 stock-keeping units (SKUs) across numerous product types, package sizes, and brands. Supermarkets typically include a range of food categories such as fresh produce, dairy, meats, seafood, frozen and refrigerated goods, and shelf-stable items like canned goods, dry groceries, and condiments. They are also known for their extensive non-food sections, which carry household supplies, health and beauty products, and, where permitted, alcoholic beverages. A distinguishing feature of supermarkets is their variety of specialized service departments, such as in-store bakeries, butcher counters, delis, prepared meal sections, and floral departments. Supermarkets also emphasize enhanced customer service, which may include personalized assistance, loyalty programs, or community-oriented initiatives. These additional services, along with the deep inventory and diverse product offerings, position supermarkets as comprehensive shopping destinations capable of fulfilling most or all of a shopper's food and household needs in a single trip. Like other supermarkets in the state, the Wilton supermarkets operate with a gross margin of around 32%, reflecting the balance between their extensive offerings and operational costs.

Both HarvestMart and Nature's Pantry are established regional supermarket chains operating throughout the Northeast. HarvestMart operates 85 stores across New England and New York, supported by two modern distribution centers—one in Hartford, Connecticut, and another near Albany, New York. Nature's Pantry, with 65 stores in Connecticut, Massachusetts, and Rhode Island, operates from a single large distribution center in central Connecticut. Both chains have invested heavily in efficient inventory management and distribution systems, allowing them to minimize costs and maintain consistent product availability. Their sophisticated logistics networks enable them to negotiate favorable terms with suppliers and quickly respond to changes in consumer demand. Sam's Market, in contrast, operates as a single independent store and must rely on wholesale suppliers, resulting in higher costs of goods sold and less efficient inventory management.

Club stores such as Costco, Sam's Club, BJ's Wholesale, and MaxMart emphasize cost efficiency and bulk sales, offering fewer items at lower prices per unit and catering to customers looking to stock up on essential goods. They operate on a membership-only model and require customers to pay annual fees for access. Club stores typically feature a limited assortment of products, with a stronger emphasis on selling items in larger quantities at lower per-unit prices. These stores operate in a no-frills, warehouse-style layout with wide aisles and high-stacking shelves, prioritizing efficient use of space over product variety. Club stores offer fewer SKUs overall, focusing on high-turnover items, and typically stock a narrower selection of brands and product variations. In addition to food and household goods, club stores also feature non-food items like electronics, furniture, and seasonal products, making them appealing to customers seeking value across multiple categories. The bulk format, combined with their large packaging sizes and focus on cost savings, makes club stores particularly popular with businesses and large families. Club stores like Costco, Sam's Club, and MaxMart operate with gross margins ranging around 15%, reflecting their focus on high-volume, low-margin sales strategies that prioritize cost efficiency and bulk purchasing. Customers who shop for groceries at a club store also shop at a traditional supermarket to buy items that the club store does not carry or are available only in quantities too large for the customer's needs.

Besides the three traditional supermarkets and the one club store, the Wilton area has no other grocery retailers, such as discount stores like Walmart, specialty food stores like Trader Joe’s, convenience stores, or drugstores like CVS.

Ridgefield grocery stores. Ridgefield, CT, is the closest town to Wilton, located about 8 miles from Wilton’s town center—a roughly 15-minute drive under normal traffic conditions. The two towns are connected by CT Route 33, making Ridgefield easily accessible for Wilton residents. Ridgefield, with a slightly larger population than Wilton, supports four traditional supermarkets: Select Grocer, Sunrise Market, Grand Market, and Town & Country Market. Although some Wilton residents choose to buy groceries in Ridgefield, less than 5% of all groceries purchased by Wilton residents are purchased in Ridgefield supermarkets. Many Ridgefield residents also shop at MaxMart, which serves both Wilton and Ridgefield.

Table 1 summarizes some key data for grocery stores in the Wilton-Ridgefield area.

Table 1
Grocery Stores in Wilton and Ridgefield

	Type of store	Sq. Footage	Annual Revenues	Annual Trips	Annual Spend/Trip	Percentage Margin
Wilton grocery stores						
HarvestMart	Traditional	40,000	\$40,000,000	280,702	\$142.50	35.00%
Nature’s Pantry	Traditional	30,000	\$40,000,000	266,667	\$150.00	30.00%
Sam’s Market	Traditional	50,000	\$20,000,000	140,351	\$157.50	25.00%
Between towns						
MaxMart	Club	45,000				
	Wilton customers		\$20,000,000	250,000	\$80.00	15.00%
	Ridgefield customers		\$30,000,000	375,000	\$80.00	15.00%
Ridgefield grocery stores						
Select Grocer	Traditional	50,000	\$60,000,000	413,793	\$145.00	37.00%
Sunrise Market	Traditional	35,000	\$30,000,000	222,222	\$135.00	30.00%
Grand Market	Traditional	40,000	\$30,000,000	200,000	\$150.00	30.00%
Town & Country Market	Traditional	35,000	\$30,000,000	187,500	\$160.00	35.00%

Consumer purchasing behavior. The investigating staff obtained point-of-sale scanner data from all eight grocery stores in the Wilton-Ridgefield area covering the past three years. This data provided detailed insights into shopping patterns, including the annual number of household trips to each store (measured by checkout transactions) and the average purchase amount per trip, as summarized in Table 1. Additionally, the staff obtained loyalty card data, which enabled tracking of individual customer shopping patterns over time.

Analysis of this data revealed that the seven traditional supermarkets sold similar product types in consistent proportions despite distinct branding, reflecting the demographic and shopping homogeneity in Wilton and Ridgefield. MaxMart, by contrast, offered a more limited range of items in larger quantities, consistent with its club store format. Interviews with grocery store experts and consumer surveys further highlighted strong store loyalty among consumers, with

most customers exclusively shopping at a single supermarket. When customers switched stores, they tended to do so completely, maintaining similar purchasing patterns but adjusting total spending according to each store's pricing. Transaction data from customer zip codes confirmed that less than 5% of Wilton residents' grocery spending occurs at Ridgefield supermarkets.

Competition. Competition in the Wilton-Ridgefield area shows distinct patterns in consumer spending, loyalty, and price sensitivity, as summarized in Table 1. Average spend per trip differs among grocery stores based on each store's unique differentiation and strategy. For example, HarvestMart's average spend per trip in Wilton is \$142.50, about 5% lower than Nature's Pantry's \$150, consistent with HarvestMart's value positioning. Meanwhile, Sam's Market's average spend is \$157.50—about 5% higher than Nature's Pantry and 10% higher than HarvestMart—reflecting its efforts to cover its higher operating costs. Likewise, the average spend per trip to supermarkets in Ridgefield varies from \$135 to \$160, again depending on each store's differentiation and business strategy.³

The investigation revealed that Nature's Pantry has attempted to exercise price leadership through several price increases over the past three years, typically raising prices 3-5% above the general cost-driven price increases that all stores implemented in response to inflation. However, HarvestMart maintained only its cost-based price increases without matching Nature Pantry's additional markup attempts, prompting Nature's Pantry to roll back its premium increases to avoid losing sales. Meanwhile, Sam's Market, hampered by higher operating costs and deteriorating conditions, has maintained prices 10% above HarvestMart's levels, contributing to its declining market share.

The investigation found distinct patterns in how customers respond to price changes. Overall, the aggregate demand for groceries nationwide is very inelastic with a demand elasticity of about -0.3 , so an increase of 5% in all prices would reduce grocery consumption by only 1.5%. However, the demand elasticity for a given geographic area depends on the realistic alternatives available outside the area. If all three Wilton supermarkets increased their prices by 5%, they collectively would lose 10% of their Wilton customers to Ridgefield supermarkets if the Ridgefield supermarkets maintained their original pricing.

However, even if all three Wilton supermarkets increased their prices by 5%, no customers would divert to MaxMart, as the investigation found that Wilton residents who find MaxMart an attractive shopping venue already shop there. The investigation found that MaxMart's inability to attract additional customers following price increases at traditional supermarkets reflects fundamental differences in shopping patterns. While MaxMart offers significantly lower prices per unit, shopping there requires paying an annual membership fee, buying in bulk quantities, and accepting a limited selection of brands and package sizes. The investigations consumer surveys revealed that Wilton residents generally fall into two distinct groups: those who find MaxMart's bulk-buying model attractive and already split their grocery shopping between MaxMart and traditional supermarkets for different needs, and those who strongly prefer the broader selection, smaller quantities, and more convenient shopping experience of traditional supermarkets regardless of price differences. Even when facing higher prices at traditional supermarkets, this second group of consumers indicated they would not switch to MaxMart's

³ **Note to students:** So that there will be no confusion you can use average spend per trip as the "price" and the annual number of trips to the store as the "quantity" in any formula.

bulk-buying model, preferring instead to switch to a different traditional supermarket if they found their regular store's prices too high.

For individual store price increases, diversion is significant but localized. As shown in Table 2, a unilateral 5% price increase results in notable customer shifts: HarvestMart loses 14.29% of customers, Nature's Pantry 16.67%, and Sam's Market 20%. All these diverted customers switch to other Wilton supermarkets rather than stores in Ridgefield or MaxMart. The specific pattern of customer switching varies significantly among stores, as shown in Table 2's diversion ratios. These differences reflect how stores are differentiated by their pricing, product selection, customer experience (including factors like inventory availability, store layout, and checkout efficiency), and customer service levels.

Table 2
One-Product 5% SSNIP Percentage Losses and Diversion Ratios

	%Loss	Diversion Ratios				
	(5% SSNIP)	HM	NP	SM	MaxMart	Ridgefield
HarvestMart	14.29%	—	86.03%	13.97%	0.00%	0.00%
Nature's Pantry	16.67%	45.00%	—	55.00%	0.00%	0.00%
Sam's Market	20.00%	30.00%	70.00%	—	0.00%	0.00%

Sale of Sam's Market. While HarvestMart and Nature's Pantry are thriving, Sam's has been declining over the years. Owned by 80-year-old Sam Easten, Sam had hoped to have turned over the store to his children to operate years ago, but none of them had any interest. Over the last ten years, Sam himself has lost interest in running the supermarket and now devotes almost all his time and energy to his extensive—and costly—stamp collection. Rather than investing in maintaining and improving the store, Sam has used almost all of the store's net income (about \$500,000 per year) to support his lifestyle, allowing the store to deteriorate significantly over the last decade. The investigation showed that it would take about \$200,000 annually to maintain the store and a one-time investment of at least \$2 million to modernize it.

While Sam's Market currently shows a 25% gross margin, the investigation showed that this level is increasingly unsustainable. The store's steadily declining market share and lack of investment have created a downward spiral in its financial performance. Its deteriorating facilities have led to higher maintenance and energy costs, while its aging equipment frequently breaks down, causing inventory spoilage and lost sales. Customer service has suffered from high employee turnover and inadequate training. Moreover, its declining sales volume means fixed costs are spread across fewer transactions, while its smaller purchase volumes result in less favorable terms from suppliers. Industry analysts interviewed during the investigation predicted that without significant investment, Sam's Market's gross margin would likely fall to below 20% within two years, a level that would still allow the store to remain profitable and cover its expenses, but with steeply declining earnings. The store's current net income of about \$500,000 per year would likely fall to less than \$200,000 within two years, barely enough to fund essential operations.

Given his lack of interest in the store, its declining condition, and Sam's desire to invest more money in his stamp collection, Sam decided to sell Sam's Market. Although Sam aggressively sought buyers, only two companies bid on the store: Urban Furnishings, a chain of upscale furniture stores, and HarvestMart.

Urban Furnishings, which bid \$3 million, would demolish the supermarket and replace it with a large new furniture store to serve Wilton and the surrounding areas. Urban Furnishings valued only the real estate and placed no value on Sam's Market as an ongoing supermarket business. The company could close on the sale immediately, after which it would immediately shut down Sam's Market and begin construction. Urban Furnishings estimates that the new store would be operational 12-16 months after closing on the purchase.

HarvestMart bid \$5 million, which Sam accepted. HarvestMart plans to continue operating Sam's Market as a supermarket but rebrand it as a second HarvestMart location. The acquisition of Sam's Market would address HarvestMart's pressing capacity constraints at its existing Wilton store, which currently serves about 30% more customers per square foot than the average HarvestMart location. This overcrowding has created a significantly compromised shopping experience, with customers facing difficulty parking, congested aisles, long checkout lines, and frequent stock-outs as the store struggles to restock quickly enough to meet demand. HarvestMart's consumer surveys indicate that approximately 25% of Nature's Pantry's consumers would prefer to shop at HarvestMart given its lower prices but are deterred by these overcrowding issues, particularly during peak shopping hours.

HarvestMart says it will invest \$3 million to renovate Sam's Market into a modern HarvestMart store, with renovations to be completed within one year of closing. The renovated store could accommodate about \$40-45 million in annual sales, comparable to HarvestMart's existing location and Nature's Pantry. This expanded capacity would be sufficient to serve Sam's current customers (\$20 million in sales), accommodate customers who prefer HarvestMart but currently shop elsewhere due to overcrowding (approximately \$10 million in potential sales), and capture a significant share of the new demand from Wilton's growing population. Since HarvestMart cannot expand its existing store due to site constraints, HarvestMart views the acquisition as its only option for addressing current demand and future growth.

HarvestMart says it will maintain consistent pricing between both Wilton locations after the acquisition, with prices at the renovated Sam's Market location matching those at HarvestMart's existing Wilton store. Given that both stores would operate under the same HarvestMart banner and trade dress, the company could not practically charge different prices at stores less than a mile apart without damaging customer goodwill. This means customers at the former Sam's Market location would see prices decrease from current levels to match HarvestMart's lower price points, effectively passing through some of the operational cost savings to consumers.

HarvestMart is confident that the acquisition would generate significant operational efficiencies. Currently, Sam's Market must purchase through wholesalers who add their own markup to cover their costs and earn a profit. The investigation found that integrating Sam's Market into HarvestMart's network would reduce that store's costs of goods sold by approximately 22% compared to Sam's Market's current costs. This reduction would come from three sources: eliminating the wholesaler markup (accounting for roughly 10% of the reduction), obtaining lower prices from suppliers through HarvestMart's greater purchasing power (roughly 7%), and reducing distribution costs by integrating the store into HarvestMart's efficient Hartford warehouse and delivery system (roughly 5%). This cost reduction would allow HarvestMart to reduce prices at the acquired store by 10% while still achieving a 35% gross margin, matching the gross margin at its existing Wilton store. The investigation also found that operating the former Sam's Market location as a second HarvestMart store would generate additional savings of approximately 3% at that location through shared local management, combined advertising,

and the ability to optimize staff scheduling and inventory between the locations. The existing HarvestMart store’s costs would remain unchanged. HarvestMart has achieved similar cost reductions when acquiring other independent supermarkets in the region.

HarvestMart also plans to increase staffing at the renovated store, projecting a need for 65 to 70 full-time employees compared to the current 45. This expansion represents a net increase in local employment, and HarvestMart has committed to offering positions to current Sam’s employees, providing training on its modern systems and procedures. The acquisition, therefore, promises to benefit Wilton residents through competitive pricing, improved shopping experience, and increased local employment.

Old Mill Grocery. Old Mill Grocery, a regional supermarket chain operating 45 stores across the Northeast, has been drawn to Wilton by its demographics, Sam’s Market’s decline, and the town’s projected population growth. Specializing in premium offerings, Old Mill stores are known for a carefully curated selection of organic, gourmet, and artisanal items, with prices typically 15-20% higher than conventional supermarkets.

Old Mill’s extensive market research shows a strong demand for premium grocery options in Wilton. The company has secured an option on a 2.5-acre parcel—the last undeveloped land in Wilton’s town center suitable and zoned for a large supermarket. Their business plan, which the investigation obtained, calls for constructing a new 35,000 square foot store. The company anticipates an average customer spend per trip of \$175, approximately 17% higher than Nature’s Pantry and 23% higher than HarvestMart. Old Mill anticipates a 40% gross margin on revenues.

Based on its experience in similar markets, Old Mill projects that 30% of Wilton households currently shopping locally would become exclusive Old Mill customers within a year of opening. Old Mill also anticipates capturing 20% of Wilton residents who currently shop in Ridgefield. Table 3 below outlines Old Mill’s projections for current and future trips and revenues for Wilton supermarkets, showing changes one year after Sam’s Market closes and Old Mill opens.

**Table 3
Old Mill’s Business Plan Projections**

Current		
	Trips	Revenues
HarvestMart	281,000	\$40,000,000
Nature’s Pantry	265,000	\$40,000,000
Sam’s Market	130,000	\$20,000,000
Old Mill		
TOTAL	676,000	\$100,000,000

One year after Sam’s Closure and Old Mill’s Entry		
	Trips	Revenues
HarvestMart	281,000	\$40,042,500
Nature’s Pantry	195,000	\$29,250,000
Sam’s Market		
Old Mill	207,000	\$36,225,000
TOTAL	683,000	\$105,517,500

The investigating staff notes that Old Mill's projections are based on market intelligence, which may not fully align with actual data gathered through subpoenas. As a result, minor discrepancies may exist between Tables 1 and 3.

Old Mill anticipates, and the investigation confirms, that Old Mill's entry into Wilton is unlikely to change the pricing of either HarvestMart or Nature's Pantry because of the considerable difference in Old Mill's offerings. Wilton customers who preferred premium products shopped at Wilton's traditional supermarkets because no premium supermarket was available. Once Old Mill opens, they will switch and not return to a traditional supermarket even if prices at the premium store increase by 5% or 10%.

Moreover, as Table 3 shows, Old Mill anticipates that even if some current HarvestMart customers switch to Old Mill, their spots will be filled by Nature's Pantry customers who have always preferred HarvestMart but avoided shopping there due to HarvestMart's overcrowded conditions. The upshot is that after Old Mill's entry, HarvestMart will continue to serve about the same number of customers, while Nature's Pantry will see its customer numbers materially decline.

Before Sam's Market was listed for sale, Old Mill announced plans to build a new 35,000 square foot store on the optioned Wilton property within three years. This announcement played a significant role in Sam's decision to sell Sam's Market and was a key reason other supermarket chains showed limited interest in acquiring it. After HarvestMart announced its pending purchase and renovation plans, Old Mill suspended plans to enter the Wilton market. However, if HarvestMart's acquisition is blocked and Urban Furnishings instead acquires Sam's Market, Old Mill plans to move forward with the development immediately. With land secured and site studies underway, Old Mill expects to complete permitting within 6-8 months and construction in an additional 12-14 months, allowing the store to open within approximately two years.

Current status. Sam Easten has signed a definitive agreement to sell Sam's Market to HarvestMart for \$5 million. The agreement obligates the parties to litigate if the deal is challenged on antitrust grounds and has a termination date seven months from now. HarvestMart has told the staff that it will litigate if the Attorney General seeks to block the deal.

Sam Easten told the investigating staff he was committed to selling Sam's Market. If he cannot sell to HarvestMart, he will seek to sell Sam's Market to Urban Furnishings. Urban Furnishings has told the staff that it remains interested in buying Sam's Market if the deal with HarvestMart falls through (although it is considering offering a significantly lower price than in its original bid).