

MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2025

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
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GRADED HOMEWORK ASSIGNMENT

Instructions

Submit by email by 5:00 pm on Monday, October 27, 2025
NOTE THAT THE RETURN DATE IS THE DAY BEFORE CLASS
Send to wdc30@georgetown.edu
Subject line: Merger Antitrust Law: Graded Homework Assignment

Assignment: Calls for a memorandum of law.

INSTRUCTIONS

1. This homework assignment is final. No clarifications or corrections will be provided. If you are convinced that there is an error, inconsistency, or omission in the assignment, please identify the problem, explain 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 correction that is sensible in the context of the hypothetical as a whole, I will accept the correction and grade your paper accordingly.
2. This homework assignment is strictly individual work. Unlike other homework assignments, you may not discuss the assignment, the hypothetical, or your draft answers with classmates, other students, colleagues, or any third parties until after the deadline for the submission of the assignment. All analysis, reasoning, and writing must be your own.
3. You may consult any written source, including the reading materials, class notes, cases, outlines (commercial or otherwise), books, treatises, the Internet, Westlaw, and LexisNexis. 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.
4. When working on the homework assignment, 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 when writing the answer.
5. You may use computational tools, such as calculators or spreadsheets (e.g., Excel), to perform arithmetic or to organize calculations. These tools are permitted solely to facilitate the numerical work required by the hypothetical. They may not be used to

generate analysis, draft text, or otherwise substitute for your own reasoning, although you may prepare templates in advance for use in the assignment.

6. 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 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.
7. 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 do not 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.
8. 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 answer, penalties will be levied for excessive length, verbosity, lack of organization, or the inclusion of irrelevant boilerplate.
9. 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.
10. 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.
11. You should assume that federal subject matter jurisdiction exists and 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.
12. If the hypothetical gives prices or costs for a group of products, including as an "average" or being "around" a given number, you should treat that number as the arithmetic mean 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.)¹

¹ When the average has only small variations around the arithmetical mean, the formulas work reasonably well in practice using the average.

13. The facts in the hypothetical present what is known when 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. **Caution:** Adding facts not in the hypothetical to embellish your answer will negatively affect your grade, even if the added facts do not change the conclusion you would have otherwise reached.
14. If there is an inconsistency between a number given in a table and supposedly the same number in the text, use the number in the table.
15. It should go without saying that you should not believe everything (or anything) in the hypothetical fact situation. I have taken considerable liberties in fashioning the problem and have ignored reality whenever it was convenient. It will be in your best interest to unlearn the “facts” in the question as soon as possible after you finish the assignment.
16. I will not hold out hope that you find this homework assignment 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.

HONOR STATEMENT

BY SUBMITTING THIS GRADED HOMEWORK ASSIGNMENT, I AFFIRM ON MY HONOR THAT I AM AWARE OF THE STUDENT DISCIPLINARY CODE AND (I) HAVE NOT GIVEN NOR RECEIVED ANY UNAUTHORIZED AID TO/FROM ANY PERSON OR PERSONS, AND (II) HAVE NOT USED ANY UNAUTHORIZED MATERIALS IN COMPLETING MY ANSWERS TO THIS GRADED HOMEWORK ASSIGNMENT, INCLUDING BUT NOT LIMITED TO AI CHATBOTS SUCH AS CHATGPT.

RTE CEREAL MERGER

You are an attorney at the Federal Trade Commission assigned to review the proposed acquisition by Kiddos Cereal Company of GrainWell Foods Corporation in an all-cash transaction valued at \$3.5 billion. Both firms manufacture and sell nationally branded breakfast cereals. The parties certified substantial compliance with their respective Second Requests on September 23, 2025, and the timing agreement preventing the merging parties from closing their deal will expire on November 21, 2025.

Elle Woods, your section chief, has asked you to prepare a memorandum analyzing whether she should recommend that the Commission seek a preliminary injunction in federal district court to block the transaction pending resolution of the merits in an administrative trial. In particular, Ms. Woods would like you to assess the strength of the FTC's prima facie case and whether the FTC can defeat the parties' defenses. Ms. Woods also would like you to address how the court is likely to balance the equities and the public interest, as well as the likely outcome of a preliminary injunction proceeding. Finally, Ms. Woods would like you to assess why Kiddos has not proposed a consent decree divesting Jungle Rings. Ms. Woods notes that, with an appropriate divestiture package and acceptable buyer, a Jungle Rings divestiture should resolve the Commission's competitive concerns. What accounts for Kiddos' failure to advance such a proposal, and what implications does your explanation have, if any, for the analysis of the competitive effects of the unstructured transaction?

The merging parties

Kiddos Cereal Co. is a national manufacturer focused exclusively on children's cereals. With \$5.43 billion in annual wholesale revenue, it is the largest producer in the segment by a wide margin. Its portfolio includes a range of high-sugar, cartoon-branded cereals, such as Dino Bombs and Frosty Critters, which are widely distributed across grocery chains, mass merchandisers, and club stores. The company is known for its brand strength, product appeal to children, and long-standing relationships with national retailers. Kiddos emphasizes flavor variety and has a history of frequently introducing products, supported by advertising and in-store promotions. Its products typically command premium shelf placement in the children's cereal aisle. Kiddos has no presence in the adult or health/diet segments and currently has no plans to enter either segment except through acquisition. Its internal strategic planning documents focus exclusively on competition within the children's cereal segment and make no reference to adult or health/diet cereals as meaningful substitutes.

GrainWell Foods is a national cereal manufacturer with \$3.71 billion in annual wholesale revenue, driven primarily by its leading position in adult cereals. It is the largest producer in the adult segment, with more than \$2.8 billion in sales—nearly four times the revenue of its next-largest competitor. GrainWell's adult brands, such as GrainWell Multigrain and OatClarity, emphasize whole grains, fiber, and other attributes marketed to general adult consumers. In the health and diet segment, GrainWell ranks third, behind NutraLife and FitStart, with approximately \$400 million in sales. Until recently, GrainWell had no presence in the children's cereal segment. In 2024, it entered the category with Jungle Rings, a sweetened, cartoon-branded cereal that has quickly gained traction but remains a distant fourth in segment revenues.

The transaction

On January 9, 2025, Kiddos entered into a definitive agreement to acquire GrainWell in an all-cash transaction valued at \$3.5 billion. In the 30 days prior to the commencement of negotiations, GrainWell's market capitalization averaged approximately \$2.6 billion, implying that the purchase price reflects a premium of about \$900 million, or roughly 34.6%. Deal premiums for comparable packaged-foods transactions are often reported in the low-to-mid-20% to low-30% range, depending on the measurement window, suggesting Kiddos places substantial value on anticipated postmerger benefits.

The acquisition is structured as a two-step transaction: Kiddos will commence a tender offer to acquire all outstanding GrainWell shares, followed by a short-form merger to acquire any shares not tendered. The tender offer is conditioned on at least 90% of shares being tendered, allowing Kiddos to complete the short-form merger without a shareholder vote under Delaware law. Both Kiddos and GrainWell are incorporated in Delaware.

GrainWell's board of directors has unanimously recommended the offer, and Kiddos' board has approved the transaction. Based on the board's recommendation and the premium offered, the parties estimate that well over 90% of GrainWell shares will be tendered. On September 23, 2025, both merging firms certified substantial compliance with their respective Second Requests, and Kiddos commenced the tender offer on the same day. The parties expect to complete the tender offer immediately after all of the antitrust conditions in the merger agreement are satisfied and the short-form merger shortly thereafter.

The merger agreement includes a reverse termination fee of \$225 million (representing 6.4% of the purchase price), payable by Kiddos if the transaction is terminated due to a failure to obtain antitrust clearance. The termination date is December 1, 2025. There is no provision for extending the deadline if the antitrust conditions in the merger agreement are not satisfied by the termination date (although the parties are always free to negotiate one).

Business rationale

Kiddos has set out its rationale in investor presentations, SEC filings, and a presentation to FTC staff. Kiddos argues the transaction combines complementary product portfolios, opens access to new segments, and yields significant cost savings. Kiddos is a leading manufacturer of children's cereals—high-sugar, cartoon-branded products such as Dino Bombs and Frosty Critters—but has no presence in adult or health-oriented cereals. GrainWell is a prominent competitor in those adult and health segments, with brands like GrainWell Multigrain, OatClarity, and FitStart, and has only recently entered the children's category. According to Kiddos, the merger would allow it to expand into adjacent segments and operate as a full-line national competitor across major ready-to-eat (RTE) cereal categories. Kiddos reports that it explored de novo entry into the adult and health segments but found it costly, slow, and uncertain due to brand-building demands and limited shelf space.

The parties project substantial cost savings from operational consolidation. Kiddos operates four plants, three of which are aging, while GrainWell operates two modern facilities with substantial unused capacity and advanced automation. By closing one older Kiddos plant and shifting production to GrainWell's facilities, the parties expect to achieve approximately \$65 million in annual fixed-cost savings. GrainWell's newer production lines are projected to reduce marginal costs by \$35 million annually, primarily through lower direct labor and energy costs per unit.

The combined entity would also eliminate overlapping R&D, sales, and administrative functions, yielding another \$50 million in annual savings. In total, the parties project recurring annual efficiencies of approximately \$150 million. Using Kiddos' 10% discount rate over a ten-year horizon, the present value of these recurring savings is approximately \$922 million.

Kiddos estimates one-time integration and transition costs of approximately \$75 million. Separately, external advisory and deal expenses (e.g., banking, legal, regulatory, consulting) are projected at approximately \$77.5 million, bringing aggregate transaction-related outlays to about \$152.5 million.

Kiddos' internal documents suggest the merger is also motivated by a desire to eliminate competitive disruption in the children's cereal segment. GrainWell introduced Jungle Rings in mid-2024 as its first and to date only product targeted at children, supported by aggressive pricing, national advertising, and approximately \$65 million in promotional spending and slotting allowances. The brand quickly gained traction, securing shelf placement in most major grocery chains and achieving an estimated 5% share of the children's cereal segment within its first year. According to GrainWell's internal documents, the company planned to continue this aggressive competitive strategy for at least two more years absent the merger, with the goal of further building brand recognition and expanding shelf presence. Internal projections assumed that Jungle Rings' revenue and EBITDA margins would remain relatively stable over the next three years, contingent on continued promotional support at current levels. Kiddos, by contrast, is a long-established incumbent in the children's cereal segment, with strong brands, extensive retailer relationships, and a leading market position. Internal Kiddos memos describe the transaction as a way to "bring discipline to the children's cereal aisle" and reduce "short-term promotional chaos."

The RTE cereal industry

Ready-to-eat (RTE) breakfast cereals are a staple of the American diet and represent one of the largest categories in the packaged food industry. U.S. consumers spend \$20 billion annually on RTE cereals, which are typically consumed with milk as a quick and convenient breakfast option.

Industry participants and market analysts typically divide the RTE cereal category into three broad segments based on ingredients, branding, and target demographics:

1. *Children's cereals*, which tend to be sweeter, more colorful, and heavily branded with cartoon imagery than other categories
2. *Adult cereals*, which include traditional grain-based products aimed at general adult consumers, often emphasize taste, fiber, or satiety
3. *Health/diet cereals*, which include low-carb, high-protein, and specialty formulations marketed to fitness-conscious or restricted-diet consumers

Table 1 reports annual U.S. revenues for leading manufacturers of ready-to-eat breakfast cereals, disaggregated by product segment as found by staff in the investigation. Figures are in millions of dollars. Data reflect wholesale revenues and represent national sales across all primary distribution channels.

Table 1
The U.S. Cereal Industry
Annual Revenue by Product Segment (in millions):

Manufacturer	Children	Adult	Health/Diet	Total
CerealCorp	\$3,220	\$600	\$200	\$4,020
Kiddos	\$5,430	\$0	\$0	\$5,430
GrainWell	\$500	\$2,810	\$400	\$3,710
FitStart	\$0	\$700	\$1,210	\$1,910
NutraLife	\$0	\$300	\$1,310	\$1,610
SunnyMorn	\$200	\$400	\$100	\$700
Store Brands	\$620	\$900	\$200	\$1,720
Other	\$300	\$500	\$100	\$900
	\$10,270	\$6,210	\$3,520	\$20,000

Store-brand and other smaller competitors together account for approximately \$2.62 billion in annual wholesale revenue, with participation across all three segments. These products are typically positioned as low-cost alternatives and are sold under retailer-controlled labels or through regional discount chains. Most large supermarket chains and many regional grocers carry their own store-brand cereals, often contracting with third-party manufacturers to supply them. While store brands have a presence in most retail outlets, they tend to compete on price rather than brand identity and rarely engage in national advertising. The remaining firms, categorized as “Other,” include niche brands, regional players, and new entrants with limited distribution. Despite their aggregate sales, these firms face substantial challenges in gaining national shelf space or building consumer loyalty, and they generally do not constrain the pricing or promotional strategies of the major branded manufacturers.

The three RTE cereal segments differ not only in the product characteristics and consumer appeal noted above, but also in how they are priced, produced, and marketed. Established children’s cereals have an average wholesale price of approximately \$3.70 per box, with marginal costs of \$2.90. Established adult cereals are priced around \$3.10 with marginal costs of \$2.19. Established health and diet cereals have the highest average price, approximately \$4.25, with marginal costs of \$2.83. These pricing and cost differences shape how firms position products, allocate marketing budgets, and compete for shelf space. Children’s cereals are typically shelved at child eye level and promoted through national television, colorful packaging, and character branding. Adult cereals occupy standard shelf height and use muted branding and more traditional messaging. Health and diet cereals are often placed in separate “natural” or “healthy eating” sections and promoted through digital campaigns, nutrition claims, and influencer endorsements.

New brands typically launch at average wholesale prices below those of established brands, resulting in thinner dollar margins during the build phase. Jungle Rings, for example, has an average wholesale price of approximately \$3.40 per box. Its marginal cost is the same as established children’s brands (\$2.90), yielding a dollar margin of \$0.50.

The investigation indicates high within-segment substitution when the price of a single product increases, with similar behavior for both established and new brands. With a 5% price rise for one product (while the prices of other products remain constant), most diverted sales shift to other products in the same segment. In children's cereals, a 5% price increase in one brand would cause that brand to lose 23.13% of its unit volume, of which 91% would stay within the segment, 6% would divert to adult or health/diet cereals, and 3% to non-cereal breakfast options (e.g., granola bars, toaster pastries, yogurt). In adult cereals, a 5% price increase in one brand would cause that brand to lose 17.00% of its unit volume, with 88% remaining within the segment, 8% shifting to health/diet, and 4% to non-cereal options. In health/diet cereals, a 5% price increase in one brand would cause that brand to lose 15.00% of its volume, with 84% remaining within the segment, 10% shifting to adult products, and 6% to non-cereal products.

The investigation also examined diversion patterns for specific brands within the children's cereal segment. When Jungle Rings' price increases by 5% (other prices held constant), Jungle Rings loses approximately 23% of its volume, of which 55.6% diverts to Kiddos products, 33.0% to CerealCorp, and the remainder to other children's cereals and products outside the segment. When Kiddos raises the price of its children's cereals by 5%, Kiddos loses approximately 23% of its volume, of which 66.5% diverts to CerealCorp, 10.3% to Jungle Rings, and the remainder to other competitors.

When the price of all products in a segment is increased uniformly by 5%, there is no recapture within the segment and diversion outside the segment becomes more substantial. For children's cereals, a 5% uniform price increase in the segment would cause that segment to lose 10.00% of its unit volume, of which 63.16% would divert to other RTE cereal categories and 36.84% to non-cereal breakfast products. For adult cereals, a 5% uniform price increase in the segment would cause that segment to lose 7.50% of its unit volume, of which 66.67% would shift to health and diet cereals and 33.33% to outside options. For health and diet cereals, a 5% uniform price increase in the segment would cause that segment to lose 6.50% of its unit volume, of which 64.29% would divert to adult cereals and 35.71% to other breakfast alternatives.

Production, Distribution, and Retail Access

Ready-to-eat cereals are manufactured in large-scale, capital-intensive facilities that combine grain processing, cooking, flavoring, drying, and packaging operations. Most national manufacturers operate two to five production plants strategically located across the country. These facilities exhibit significant economies of scale, and plants operating below approximately 150-200 million units annually face materially higher per-unit costs due to under-absorption of fixed costs and reduced bargaining power with ingredient suppliers. As a result, regional-only production is rarely viable for branded products, and scale economics reinforce the need to serve national accounts.

While production line changeovers between product segments are feasible, qualifying a new or repurposed line for a branded SKU (stock-keeping unit) typically takes 8 to 16 weeks due to cleaning requirements, allergen controls, and quality-assurance protocols. Industry participants often dedicate specific lines or plants to children's, adult, or health/diet cereals, depending on ingredient requirements and processing methods. Greenfield builds or major retrofits required to support national supply generally have 12-24 month lead times from capital-expenditure approval through equipment ordering, installation, and validation. Repositioning an adult or

health cereal brand into the children's segment often requires reformulation and new label approvals, triggering a fresh qualification cycle.

Because cereals are lightweight and have a long shelf life, they are distributed nationally primarily through shipments to retailer distribution centers using common carriers and third-party logistics providers. Major retail accounts expect national service levels, including on-time, in-full delivery metrics; failures to meet these standards can trigger penalties or lost shelf facings. Purely regional rollouts rarely secure or retain premium placements across major chains. Even successful regional pilots cannot be rolled out quickly enough to exert competitive discipline on pricing, as expansion to chainwide placement is gated by annual category reset cycles. Available co-packing capacity that meets national-brand quality standards is limited and typically covers less than 10% of a single major brand's national volume, making third-party manufacturing an inadequate solution for timely new entry or step-change expansion by existing competitors.

Shelf space in the cereal aisle is highly constrained and competitively allocated. Large national retailers typically carry 80-120 SKUs of ready-to-eat cereal, divided among multiple segments and brands.¹ The top five retail chains account for approximately 65% of U.S. cereal sales, and securing placement with at least three to four of these accounts is necessary for national viability. This retail concentration creates substantial buyer power and advantages established brands with proven performance records. Shelf positioning—particularly eye-level placement for children's cereals—is negotiated during annual category resets and tied to slotting fees (payments to retailers for premium placement), promotional allowances (discounts or incentives offered to retailers to boost sales), and other trade terms. Continued facings depend on meeting retailer velocity thresholds (sustained units-per-store-per-week targets). Established brands with proven velocity and long-standing retail relationships are typically given priority. A substantial share of new SKUs that fail to meet velocity thresholds are delisted within 12-18 months, and maintaining placement generally requires sustained promotional intensity; reductions in trade spend commonly lead to rapid share loss.

Brand-building requirements

Brand-building in cereals is costly and time-consuming. Established national brands routinely spend \$80-120 million annually on advertising to maintain awareness and loyalty. New entrants face launch-phase advertising budgets that often exceed \$100 million over the first 18-24 months. Even with substantial investment, achieving consumer recognition sufficient to support sustainable retail velocity typically requires 2-3 years of sustained promotional activity and in-store support. The children's segment presents particular challenges due to strong brand preferences shaped by packaging, character licensing, taste familiarity, and repeat purchase patterns. New cereal brands typically require 3-5 years to achieve positive EBITDA, with cumulative cash requirements during the ramp-up often exceeding \$150-200 million when capital expenditures, working capital, trade spend, and advertising are aggregated.

¹ An SKU ("Stock Keeping Unit") is a unique identifier assigned to each distinct product variant for inventory management and retail tracking purposes. In the breakfast cereal industry, different package sizes, flavors, or formulations of the same brand constitute separate SKUs. For example, Cheerios 12 oz, Cheerios 18 oz, and Honey Nut Cheerios 12 oz would each have their own SKU code.

Of five nationally advertised children’s cereal launches between 2020 and 2024, only one—GrainWell’s Jungle Rings—achieved national distribution and remains in market as of this investigation. The four unsuccessful launches collectively invested an estimated \$200+ million in launch costs before withdrawal. NutraMorning, a health-focused startup backed by private equity, exited the children’s cereal market within two years. Despite a well-capitalized launch supported by national advertising and premium slotting fees, the company cited limited retail access, weak consumer uptake, and unsustainable promotional costs. FitStart, a mid-sized manufacturer with an established presence in adult and health cereals, piloted FitStart Kids in two regional test markets in 2023 but withdrew the product after four months due to poor sales and brand misalignment. MorningJoy, a European cereal firm with a strong presence in health-oriented products abroad, has filed U.S. trademarks for three cereal brand names and leased warehouse space outside Chicago but has not secured grocery shelf access or committed to production investments; executives told staff that U.S. entry would require “multi-year investment with uncertain returns” and that “shelf access remains the primary gating factor.”

The merging parties’ arguments

The merging parties advance several arguments in support of the transaction. First, they contend that the relevant product market is substantially broader than the children’s cereal segment and includes either all RTE cereals or all ready-to-eat breakfast products. Second, they argue that remaining competitors—particularly CerealCorp, along with private labels and non-cereal breakfast alternatives—will continue to constrain pricing postmerger. Third, they assert that Jungle Rings exerts only a marginal competitive constraint due to its small share and limited brand strength. Fourth, they contend that Jungle Rings is not a sustainable brand and would likely have been discontinued absent the merger. Fifth, they argue that entry, expansion, and repositioning by other competitors remain timely, likely, and sufficient to prevent durable anticompetitive effects. Finally, they claim that the transaction will generate substantial, merger-specific efficiencies that will benefit consumers and outweigh any competitive concerns. The parties contend that these considerations, taken together, demonstrate that the transaction should be permitted to proceed.

Market definition. The merging parties argue that the relevant product market is substantially broader than any single cereal category. At a minimum, they contend, the market includes all RTE cereals—children’s, adult, and health/diet products combined. Alternatively, they argue the market extends further to encompass packaged, ready-to-eat breakfast alternatives, including granola bars, toaster pastries, yogurt, and other convenient breakfast items.

The parties emphasize that the investigation’s own data demonstrates meaningful substitution across product categories. When all products of a given cereal type increase price uniformly by 5%, approximately 63-67% of lost volume diverts to other RTE cereal categories, demonstrating that cereal segments constrain one another. Moreover, approximately one-third of lost volume shifts to non-cereal breakfast alternatives, demonstrating that cereal manufacturers also face competitive pressure from outside the RTE cereal category. The parties cite consumer purchasing patterns showing that many households regularly buy products across multiple categories and substitute between options based on price promotions, nutritional preferences, or time constraints.

The parties further contend that manufacturers compete for the same scarce retail shelf space in the breakfast aisle, negotiate with the same retail buyers, and face the same annual category reset

cycles regardless of product type. Retailers allocate shelf space based on overall breakfast category performance rather than rigid product-type boundaries. In the parties' view, pricing and advertising strategies are developed with this broader competitive context in mind, and firms face continuous substitution pressure across the entire breakfast category.

Remaining competitive discipline. The parties argue that the transaction will not diminish competitive discipline in the children's cereal segment because other competitors will continue to constrain pricing behavior postmerger. They note that pricing in the cereal category remains dynamic, with frequent promotional campaigns and ongoing product introductions. In the children's segment in particular, they contend that CerealCorp will continue to exert substantial influence on pricing behavior postmerger, given its significant share, extensive retail relationships, and long-standing brand recognition. CerealCorp's share is approximately 31% of children's cereals by revenue—nearly six times Jungle Rings' share—and the parties state that CerealCorp has the capability and incentive to respond aggressively to competitive opportunities. They further point to the presence of private-label cereals (about 6% of the children's segment) and to non-cereal breakfast alternatives (e.g., granola bars, toaster pastries, yogurt) as sources of price pressure that, in their view, would continue to discipline postmerger pricing. According to the parties, these competitors would make sustained price increases or reduced promotional intensity unprofitable for the combined firm.

Jungle Rings' competitive insignificance. The parties further contend that the transaction does not materially alter competitive dynamics because GrainWell's role in children's cereals is limited. They emphasize that Jungle Rings has a small current share—approximately 5% of children's cereal revenues and about 2.5% of total RTE cereal revenues—and lacks the scale, established consumer base, or brand equity to function as a significant pricing constraint. Jungle Rings was launched in mid-2024 and remains a distant fourth in the children's segment, trailing behind Kiddos, CerealCorp, and store brands in terms of revenue and market presence. The parties' economic studies report that when Kiddos raises the price of its children's cereals by 5% (other prices held constant), Kiddos loses approximately 23% of its volume (consistent with staff's estimate), and, of these diverted units, approximately 66.5% flow to CerealCorp and 10.3% to Jungle Rings. In the parties' view, this asymmetry indicates that the merger would eliminate only a marginal constraint and would not materially change the segment's prevailing competitive dynamics.

Jungle Rings' unsustainability. The parties contend that the merger does not eliminate a viable or enduring competitive constraint because Jungle Rings is not a sustainable product. GrainWell launched Jungle Rings only recently, and internal analyses describe its early performance as modest and costly to maintain. The brand has yet to develop durable consumer recognition and depends heavily on high levels of advertising and slotting payments to preserve shelf space. According to board-level documents prepared before the merger, GrainWell had already begun evaluating exit options and was considering reallocation of promotional resources to more profitable products. While earlier internal planning documents projected continued promotional support for at least two years, the parties argue that subsequent assessments cast growing doubt on the brand's long-term viability. In their view, even without the merger, Jungle Rings would likely have been discontinued, and its elimination cannot reasonably be attributed to the transaction.

Entry/expansion/repositioning. The parties argue that any competitive effects would not be durable because new entry, brand extensions, and output expansion remain timely, likely, and sufficient to constrain postmerger pricing. They assert that the cereal market continues to evolve, with manufacturers regularly introducing new products, repositioning existing brands, and testing cross-segment extensions. As illustrations, they cite GrainWell's Jungle Rings launch, FitStart's pilot of a children's cereal, and MorningJoy's ongoing U.S. market exploration, which, in their view, show that even firms without an established presence in a segment can obtain shelf placement and initial consumer trial. The parties particularly emphasize that Jungle Rings itself demonstrates the viability of timely and successful entry: within approximately 15 months of launch, Jungle Rings achieved national distribution, secured shelf placement in most major grocery chains, and captured 5% of a \$10 billion segment—evidence that barriers, while substantial, are not insurmountable for well-capitalized entrants with appropriate strategies. While acknowledging that not all efforts succeed, the parties contend that firms with existing retail relationships or access to third-party manufacturing can seek to scale more rapidly than de novo entrants. They argue that private-label suppliers provide ongoing price pressure and that category management at annual resets can allocate space to new or repositioned products that meet consumer demand. The parties further note that the children's cereal segment's size—over \$10 billion in annual wholesale revenues—is large enough to attract and sustain additional national competitors at an efficient scale, particularly if postmerger pricing creates profit opportunities. In the parties' view, these dynamics would enable timely, likely, and sufficient entry or expansion that would constrain pricing power and prevent any postmerger effects from becoming durable.

Efficiencies. The parties argue that the transaction will generate substantial, merger-specific efficiencies that would be unattainable absent the combination. They project approximately \$150 million in recurring annual cost savings from three sources: (i) \$65 million in fixed-cost savings from consolidating production into GrainWell's more modern facilities, which they state offer substantial unused capacity and superior automation; (ii) \$35 million in marginal-cost efficiencies from lower labor and energy costs per unit on more efficient production lines; and (iii) \$50 million in recurring savings from eliminating duplicative R&D, sales, and administrative functions. Using Kiddos' 10% discount rate over a ten-year horizon, the parties calculate a present value of approximately \$922 million and contend that this figure exceeds the \$900 million acquisition premium, demonstrating (in their view) substantial procompetitive benefits. They further assert that extending the evaluation horizon beyond ten years would increase the present value of these recurring savings even more.

The parties further contend that these efficiencies are merger-specific and cannot be achieved through less restrictive means. They assert that Kiddos' aging facilities lack the automation and capacity utilization necessary to achieve comparable cost reductions independently. Additionally, they argue that consolidation eliminates duplicative R&D, sales, and administrative functions that exist only because the firms operate separately. According to the parties, the estimates are verifiable and supported by detailed internal analyses produced during the Second Request; they also state that the projections are consistent with the rationale presented in investor materials and staff briefings and are likely to be realized in the near term.

The parties also note that none of the claimed efficiencies depends on retaining Jungle Rings or any specific brand. They assert that the cost savings derive from operational consolidation—

plant closures, production shifting, and administrative rationalization—and would be fully realized even if Jungle Rings were divested to address any competitive concerns.

Finally, the parties assert that the combination will create a more efficient national distribution footprint and leave the combined firm better positioned to compete against CerealCorp by offering a broader product portfolio and leveraging lower per-unit costs. They claim that the resulting cost reductions will be passed through to retailers and consumers. With marginal costs declining by \$35 million annually and fixed costs per unit falling due to improved capacity utilization, the parties argue that the combined firm will have both the ability and the competitive incentive to reduce wholesale prices and increase promotional support, particularly given continued competitive pressure from CerealCorp, private labels, and adjacent product categories. In the parties' view, these benefits will strengthen competition and ultimately flow through to consumers in the form of lower prices, improved product availability, and enhanced promotional flexibility.

The merging parties contend that, taken together, these considerations demonstrate that the transaction will enhance—not diminish—competition in the U.S. cereal market and that the Commission should close the investigation without taking enforcement action.

Staff observation on a Jungle Rings divestiture

Although the merging parties have not proposed any structural remedy, staff has independently assessed the economic implications if Kiddos were to divest Jungle Rings through a consent order to resolve the competitive concerns. Staff agrees that, with an appropriate divestiture package and acceptable buyer, a Jungle Rings divestiture should resolve the Commission's competitive concerns about this transaction.

Based on internal valuation materials produced by Kiddos during the investigation, staff estimates Jungle Rings' standalone going concern value at approximately \$420 million, reflecting an EBITDA multiple consistent with the broader valuation of GrainWell's branded cereal business.

Any divestiture to resolve antitrust concerns would almost certainly occur at a substantial discount to going concern value. A suitable buyer would need to possess sufficient manufacturing capacity, retail distribution, and marketing capabilities in the children's cereal segment, and the divestiture itself must not raise its own antitrust concerns. Based on past experience with consent decree divestitures in comparable transactions, staff believes a 40% discount to Jungle Rings' going concern value is a reasonable benchmark, implying a likely sale price of approximately \$252 million. Staff has not investigated whether a suitable buyer would be interested in acquiring Jungle Rings.

On this basis, staff estimates that divesting Jungle Rings would reduce the overall value of the transaction to Kiddos by approximately \$168 million (the difference between the \$420 million going concern value if retained and the \$252 million fire sale price), exclusive of any additional frictional losses or transition-related risks. Staff further notes that none of the \$150 million in claimed recurring annual efficiencies advanced by the merging parties depends on the combined firm retaining Jungle Rings. Typical transaction costs associated with implementing such a divestiture—such as incremental investment banking and legal fees—are likely to be minimal or absorbed by existing advisory relationships and are not included in this estimate.