

Mergers Found Unlawful in Litigated Merger Cases Decided on the Merits, with the U.S. Government as a Party: 1993-2013							
Case	Product Market(s)	Geographic Market(s)	Combined Share	Pre-acquisition HHI	Post-acquisition HHI	Delta	Outcome
18 U.S. v. Bazaarvoice, Inc., 13-cv-00133- WHO (N.D. Cal., Jan. 8, 2014)	Provision of Ratings and Reviews platforms ("R&R") to companies involved in e-commerce	United States	68% (IR500 customer count) 56% (IR500 customer rev) 83% (Fortune 500 customer count, of those that use R&R) 59% (of a random sample of actual and prospective R&R customers)	2674 (customer revenues) 2365 (customer count)	3915 (customer revenues) 4590 (customer count)	1241 (customer revenues) 2225 (customer count)	District Court held that the transaction violated Section 7; Bazaarvoice agreed to divest all of the assets of Power Reviews
17 FTC v. ProMedica Health Sys., 2011 U.S. Dist. LEXIS 33434 (N.D. Ohio 2011)	General acute-care ("GAC") inpatient hospital services sold to commercial health plans	Lucas County, OH	58.30%		4,391	1,078	District Court entered preliminary injunction; ALJ and full FTC held that transaction violates Section 7
	Inpatient obstetrical ("OB") services sold to commercial health plans	Lucas County, OH	80.50%		6,854	1,323	
16 FTC v. OSF Healthcare Sys., 852 F. Supp. 2d 1069 (N.D. Ill. 2012)	General acute care inpatient services ("GAC") sold to commercial health plans	30-minute drive-time radius from Rockford, IL	59.4% (patient admissions) 64.2% (patient days)	3,411 (admissions) 3,353 (days)	5,179 (admissions) 5,406 (days)	1,767 (admissions) 2,052 (days)	District Court entered preliminary injunction
	Primary care physician services ("PCP")	30-minute drive-time radius from Rockford, IL	District Court did not analyze PCP market				
15 Polypore Int'l, Inc. v. FTC, 686 F.3d 1208 (11th Cir. 2012)	Polyethylene ("PE") separators for deep cycle batteries	North America	100%		10,000	1,891	ALJ held that transaction violated Section 7 and ordered divestiture of Microporous assets; Full FTC held that Microporous was not a participant in the UPS market but upheld violation of Section 7 in other three markets and divestiture; 11th Cir. upheld full FTC
	PE separators for motive power batteries	North America	100%		10,000	1,663	
	PE separators for uninterruptible power source ("UPS") batteries	North America	Daramic had 100%				
	PE separators for starter, lighting, and ignition ("SLI") batteries	North America	Daramic had 52%	5,005			
14 United States v. H&R Block, Inc., 833 F. Supp. 2d (D.D.C. 2011)	Digital do-it-yourself tax preparation products ("DDIY")	Worldwide	28.40%	4,291	4,691	400	District Court entered preliminary injunction
13 FTC v. CCC Holdings, Inc., 605 F. Supp. 2d 26 (D.D.C. 2009)	Estimatics software	United States	Overall - 69% Repair facilities - 73.8% Insurance segment - 61.5%	3,650	5,685	2,035	District Court entered preliminary injunction
	Total loss valuation software	United States	65%	>4,900	5,460	545	
12 FTC v. Whole Foods Market, Inc., 548 F.3d 1028 (D.C. Cir. 2008)	Premium natural and organic supermarkets ("PNOS")	An area as small as approximately five or six miles in radius from PNOS's or as large as a metropolitan area	100% in 17 of 18 markets		10,000 in 17 of 18 markets		District Court denied the preliminary injunction; DC Circuit reversed; Parties reached a consent order to sell 32 Wild Oats stores in 17 markets

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11 Chicago Bridge & Iron Co. v. FTC, 534 F.3d 410 (5th Cir. 2008)	Liquified Natural Gas storage tanks	United States	100%	5,044	10,000	4,956	The ALJ and full FTC held that the transaction violated Section 7, and the Fifth Circuit upheld
	Refrigerated Liquid Petroleum Gas storage tanks	United States	91.20%	4,470	8,380	3,910	
	Liquid nitrogen, oxygen, and argon storage tanks	United States	72.80%	3,210	5,845	2,635	
	Large thermal vacuum chambers	United States	100%	5,000	10,000	5,000	
10 <i>In re</i> Evanston Nw. Healthcare Corp., 2007 FTC LEXIS 210 (Aug. 6, 2007)	General acute care inpatient services sold to managed care organizations	The area encompassing seven hospitals in the Chicago area	35%	2,355	2,739	384	The ALJ and full FTC held that the transaction violated Section 7
9 U.S. v. UPM-Kymmene Oyj, No. 03 C 2528, 2003 WL 21781902 (N.D. Ill. 2003)	Pressure sensitive label stock for VIP applications	North America	24%	2,960	3,250	290	District Court entered preliminary injunction
	Pressure sensitive label stock for prime labeling applications	North America	20%	2,800	2,990	190	
8 FTC v. Libbey, Inc., 211 F. Supp. 2d 34 (D.D.C. 2002)	Food service glassware	United States		-2,740	3,329	589	District Court entered preliminary injunction
7 FTC v. H.J. Heinz Co., 246 F.3d 708 (D.C. Cir. 2001), <i>rev'g and remanding</i> 116 F. Supp. 2d 190 (D.D.C. 2000)	Jarred baby food	United States	32.80%	4,775	5,285	510	District Court denied the preliminary injunction, but the D.C. Circuit reversed and remanded for entry of a preliminary injunction
6 FTC v. Swedish Match, 131 F.Supp.2d 151 (D.D.C. 2000)	Loose leaf chewing tobacco	United States	60%	3,219	4,733	1,514	District Court entered preliminary injunction
5 United States v. Franklin Electric Co., 130 F. Supp. 2d 1025 (W.D. Wis. 2000)	4" submersible turbine pumps for use in retail gasoline stations	United States	Merger to monopoly				District Court entered preliminary injunction
4 FTC v. Tenet Health Care Corp., 186 F.3d 1045 (8th Cir. 1999), <i>rev'g</i> 17 F. Supp. 2d 937 (E.D. Mo. 1998)	Delivery of primary and secondary inpatient hospital care services	FTC alleged a 50-mile radius around Poplar Bluff; Cir. Ct. found this was not a proper relevant market	FTC alleged 84%, but in the market that the Circuit Court held was improper				District entered preliminary injunction, but Court of Appeals reversed
3 FTC v. Cardinal Health, Inc., 12 F. Supp. 2d 34 (D.D.C. 1998) (mergers of Cardinal with Bergen and McKesson with AmeriSource)	Wholesale drug market	The United States and the regions surrounding Los Angeles, San Francisco, and Seattle	Drug Wholesale Market: Cardinal-Bergen: 39.9% McKesson-Amerisource: 37.2% Sales to independent pharmacies: Cardinal-Bergen: 23% McKesson-Amerisource: 41%	Wholesale Market: 1,648 Sales to hospitals/institutions: 1,774 Sales to independent pharmacies: 1,341	Wholesale Market Cardinal alone: 2,450 McKesson alone: 2,277 Both mergers: 3,079 Hospital and institutional drug wholesale market: 3,507 Independent pharmacy wholesale market: 2,224	Wholesale Market Cardinal alone: 802 McKesson alone: 629 Both mergers: 1,431 Hospital and institutional drug wholesale market: 1,733 Independent pharmacy wholesale market: 883	District court entered preliminary injunction
2 FTC v. Staples, Inc., 970 F. Supp. 1066 (D.D.C. 1997)	The sale of consumable office supplies through office supply superstores	42 metropolitan areas		3,597-6,944	5,003-10,000	Average increase = 2,715	District Court entered preliminary injunction
1 Community Publishers, Inc. v. Donrey Corp., 139 F.3d 1180 (8th Cir. 1998) (DOJ's case was consolidated with private parties' case)	Local daily newspaper	Northwest Arkansas, encompassing Benton and Washington counties	84% of circulation and 88% of advertising revenue				The District Court held that the acquisition violated Section 7 and ordered rescission of the agreement; the Eight Circuit affirmed