

The structural presumption in the 2023 US Merger Guidelines

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Abstract: The Trump Administration has signaled its intention to continue reliance on the 2023 US Merger Guidelines. One important change in the Guidelines relative to their 2010 predecessor is the switch to a stronger structural presumption of anti-competitive harm. In this paper, we evaluate whether the new structural presumption improves the ability of US antitrust agencies to distinguish anti-competitive and benign mergers. Using simulated merger data, we find that the 2023 Guidelines may significantly increase the number of mergers flagged for review, reducing the false-negative rate but dramatically raising the false-positive rate. Alternative presumptions based solely on changes in the Herfindahl–Hirschman Index may outperform the 2023 Guidelines in detecting unilateral price effects. We also show that a stricter structural presumption does not appear to enhance the detection of coordinated effects.

Keywords: Merger Guidelines, Structural presumption, Unilateral effects, Coordinated effects, Merger simulation, HHI thresholds

1. Introduction

The 2023 US Merger Guidelines appear to be here to stay. Despite derision from the political right,¹ Trump-appointed Federal Trade Commission (FTC) Chair Andrew Ferguson reasoned that the Guidelines “work best when there’s some stability” and that “wholesale rescission and reworking of guidelines is time consuming and expensive.”² This decision solidifies the changes made in the 2023 Guidelines, written jointly by the FTC and Department of Justice (DOJ),³ from the previously released 2010 Horizontal Merger Guidelines. One such important change is a switch to a stricter structural presumption.⁴ Since the release of the Guidelines, the lower levels of Herfindahl–Hirschman Index (HHI) required to trigger the presumption have been a topic of considerable controversy. For example, the defense’s economic expert in the Kroger–Albertson’s merger said

the new presumption thresholds are “unreasonably low” and instead relied on the thresholds in the 2010 Merger Guidelines, while the Court disagreed.⁵ The 2023 Guidelines state that “the Agencies consider the [new] HHI thresholds to better reflect both the law and the risks of competitive harm suggested by market structure.”⁶ The Guidelines support the first part of this claim with copious references to case law but do not point to economic evidence to support the second part of the claim. In this article, we evaluate this latter claim.

We do this by evaluating whether the 2023 Guidelines presumptions are better than the 2010 Guidelines presumptions at predicting anti-competitive harm. We find that the new presumptions greatly increase the number of mergers that are screened, with many newly screened mergers being unlikely to cause substantial unilateral price effects. We then show that the FTC and DOJ can improve

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1 See, e.g., Justin Wise, ‘GOP FTC Commissioner Says She’d Consider Undoing Merger Guidance’ (*Bloomberg Law*, 30 October 2024) <<https://news.bloomberglaw.com/antitrust/gop-ftc-commissioner-says-she-consider-repealing-merger-rules>> (FTC Commissioner Holyoak said late last year she had “a lot of concerns” with the 2023 Guidelines and “would strongly consider rescinding or revising them.”)

2 Andrew N Ferguson, ‘Merger Guidelines’ (*Memo to FTC Staff*, 18 February 2025) <https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-memo-rem-merger-guidelines.pdf>.

3 These are the two government bodies chiefly responsible for antitrust enforcement in the US. We refer to them jointly as “the Agencies.”

4 The structural presumption is a rebuttal indicator of whether a merger may substantially lessen competition. The Agencies use the structural presumption both to build a *prima facie* case that a merger is anti-competitive and as an initial screen to inform internal decisions about which mergers require further scrutiny.

5 “Encouraged by the fact that other courts have found the presumptions to be useful, persuasive authority when considering market concentration, the Court sees no reason to reject the 2023 Merger Guidelines in favor of a previous edition.” Opinion & Order, *Federal Trade Commission v Kroger and Albertsons*, No 3:24-cv-00347-AN3, 10 December 2024 <<https://assets.bwbx.io/documents/users/ijjWbBFdfxIU/rvoehkLNrWPE/v0>>.

6 US Department of Justice and Federal Trade Commission, ‘Merger Guidelines’ (18 December 2023) <https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf>.

Table 1 Structural presumptions in 2010 and 2023 Merger Guidelines

	2010 Guidelines	2023 Guidelines
Post-merger HHI	2,500+	1,800+
Δ HHI	200+	100+
Combined party shares	N/A	30%+ and a Δ HHI of 100+

efficacy (that is, the ability to detect anti-competitive mergers without wasting resources on beneficial mergers) with an alternative presumption that focuses only on the change, not level, of HHI. Further, we show that the 2023 structural presumption does not appear to improve, and may worsen, the Agencies' ability to detect coordinated effects.

2. Evaluating the structural presumption

While the HHI is a simple measure that fails to capture many things relevant to competition, the presumption has proved useful due to (1) legal precedent,⁷ (2) a desire to efficiently screen for mergers with potentially anti-competitive effects at the budget-constrained Agencies,⁸ and (3) empirical findings that the likelihood of consumer harm generally increases with market concentration.⁹ An effective structural presumption should be commensurate with the likelihood of anti-competitive harm and identify anti-competitive mergers that warrant further review without screening mergers that are likely to benefit consumers.

Table 1 shows the structural presumption in the 2010 and 2023 Guidelines.¹⁰ We refer to mergers that are screened by the 2023 Guidelines, but not the 2010 Guidelines, as "newly screened." There are no mergers that were screened by the 2010 Guidelines, but not by the 2023 Guidelines.

To determine the effectiveness of the 2010 and 2023 presumptions, we simulate data using a set of randomly drawn values with distributions supported by economic research. We then conduct merger simulations on the drawn mergers to generate the "true" effects of the merger against which we can compare the efficacy of the presumptions. We follow the below methodology:

1. Begin with 30,000 markets, with each market being composed of between four and nine single-product firms. Randomly draw quantities for each firm on a log-normal distribution.¹¹ Assume the price of each product is one and randomly select two firms to merge.
2. To allow for variation in product elasticities, randomly draw elasticities for each market on a uniform distribution between 0.1 (very inelastic) and 2.5 (very elastic).
3. To provide sufficient data to solve the system, draw the price-cost margin of a single firm on a uniform distribution between 0.25 (a low margin firm) and 0.75 (a high margin firm).
4. To allow for (small) cost savings achieved by the merger, draw efficiencies for the merged entity from a uniform distribution between 0% and 5% of marginal costs.

Once we have drawn the above, we apply assumptions on the nature of demand and competition between firms to recover additional parameters (product-specific marginal costs and the degree of substitutability between products) needed to describe each market. In our main results, we assume that products are differentiated, that firms compete by setting prices, and that consumers choose a single product and follow diversion patterns proportional to the share of each firm.¹² With this information, we can completely describe competitive conditions in the market and evaluate how a merger affects

7 Courts routinely cite HHI thresholds in decisions. See, e.g., *Chicago Bridge & Iron Co. N.V. v FTC*, 534 F.3d 410, 431 (5th Cir. 2008); *FTC v H.J. Heinz Co.*, 246 F.3d 708, 716 (D.C. Cir. 2001); *FTC v Univ. Health, Inc.*, 938 F.2d 1206, 1211 (11th Cir. 1991).

8 The FTC, for instance, is notified of 35–50 transactions each week but challenges only a small number each year. See Andrew N Ferguson (n 2).

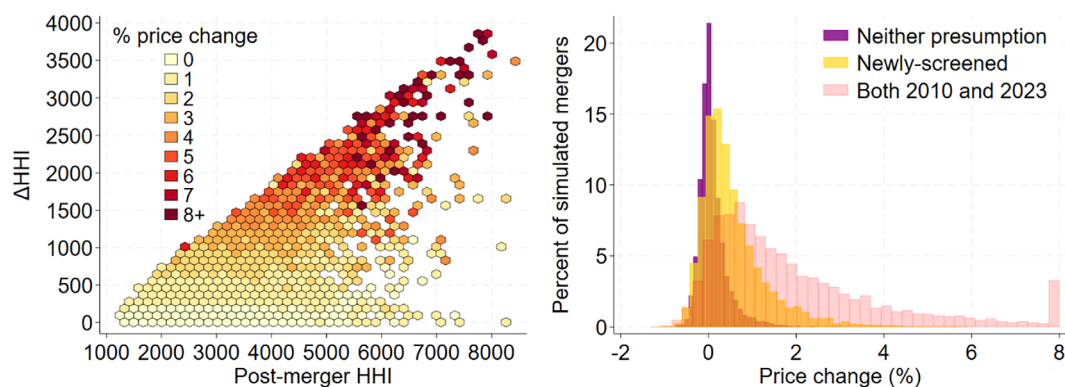
9 Two authors of the 2023 Merger Guidelines have written an overview of the academic research supporting a connection between concentration and the likelihood of harm. See Susan Athey and David Lawrence, "The 2023 Merger Guidelines: Lessons in the Importance of Incipency, Modern Economics, and Monopsony", Competition Policy International Antitrust Chronicle (4 December 2024) (forthcoming) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4813045&download=yes>.

10 To illustrate, consider a market with two identically sized competitors. The HHI is $(50\% + 50\%)^2 = 5,000$. If the two firms merge the HHI is $(100\%)^2 = 10,000$. The Δ HHI is $(10,000 - 5,000) = 5,000$. Note that the HHI decreases with both the number of firms in a market and the degree of symmetry between them.

11 To replicate the set of mergers Agencies are likely to encounter, the number of firms in each market and standard deviation of the distribution of quantities are calibrated based on data from Affeldt et al (2021), who construct a census of mergers notified to the European Commission from 1998 to 2018. Similar data were not available for the US, though we do not expect US concentration levels to differ substantially. Pauline Affeldt et al, 'Market Concentration in Europe: Evidence from Antitrust Markets' (January 2021) CESifo Working Paper No. 8866, Munich <<https://www.cesifo.org/en/publications/2021/working-paper/market-concentration-europe-evidence-antitrust-markets>>.

12 The appropriate set of assumptions depend on the features of the market being evaluated. The Bertrand model with logit demand described here is very commonly used in merger simulation and has been recently employed in high-profile litigated mergers (for example, by the DOJ in *Aetna-Humana* and by the merging parties in *Sprint-T Mobile*).

Memorandum Opinion, *United States of America v Aetna Inc*, et al, No 16-1494 (JDB), 23 January 2017 <<https://www.justice.gov/opa/press-release/file/930361/dl>>.



Note: The graph on the left shows the average price effect of simulated mergers at different levels of concentration. Where more than one merger is included in a hexagon, the average price effect is calculated. Mergers with negative price effects are included in the 0-price effect category. No mergers are included in our sample in regions without hexagons. The graph on the right shows the distribution of price effects for simulated mergers by the structural presumption triggered. The area under the curve of each presumption curve equals one. For visualization, price effects are capped at 8%.

Figure 1 Average price change by concentration level, Bertrand competition with logit demand

equilibrium prices.¹³ From the firm quantities generated in step 1, we can also compute HHIs so the simulations give us post-merger, market average price changes at various levels of concentration.

3. Unilateral effects

Figure 1 summarizes the results. On the left, we show the average market price effect at various levels of concentration. Mergers with small (and in some cases negative) price effects are shaded in light gray (tan in the digital edition), while mergers with large price effects are shaded in dark gray/dark red. We observe that the risk of large price effects increases as concentration increases, but there are remarkably few mergers with large positive price effects when changes in HHI are small, even if post-merger levels are high.¹⁴ Since these are average values at given levels of concentration, they obscure significant variation in price effects driven by elasticities and efficiencies. To further illustrate, in the figure on the right, we transform these concentration levels to show the distribution of price effects by presumption. The price effects for mergers in unconcentrated markets that exceed the presumptions in neither Guideline (shaded in dark gray/purple) are tightly centered around 0, with a significant number of mergers having net negative price effects.¹⁵ By contrast, the price effects for mergers that meet the presumption in both Guidelines (shaded in medium gray/pink) are widely

dispersed and on average positive, though there is a small fraction of mergers even in highly concentrated markets with negative price effects. Newly screened mergers with Δ HHI values between 100 and 200 and post-merger HHI values between 1,800 and 2,500 or meeting the 30% merged party threshold are shaded in light gray/gold and have, on average, small but positive (1%–2%) price effects. To sum up, the 2010 presumption screened some benign mergers but did a good job of screening for the mergers with the largest price effects. The newly screened mergers have lower (but still positive) average price effects.

From these results, we can find the change in merger screening efficacy from the 2023 Guidelines. While identifying mergers that are likely to have positive price effects is one goal of the structural presumption, this goal must be balanced against the costs of inadvertently screening too many transactions that are not likely to be anti-competitive. By “screening,” we do not mean that a merger is necessarily blocked, but rather that it is flagged for further scrutiny, potentially resulting in a Second Request for further analysis or litigation. A screened merger is more costly to the Agencies, more burdensome to the merging parties, and less likely to close. We consider this to be a negative outcome when actual price effects are negative. We define a false positive as a merger that is screened by the presumption but has negative price effects (i.e. it lowers the market price and benefits consumers) and a false negative as a merger that

John Asker and Michael Katz, ‘The Sprint T-Mobile Merger’ in John Kwoka, Jr, Tommaso Valletti and Lawrence White (eds), *Antitrust Economics at a Time of Upheaval* (Competition Policy International, Chicago 2023).

13 We remove from our data markets whose combination of drawn parameters results in unreliable results (by creating convergence issues or failing to pass the Hypothetical Monopolist Test).

14 Large changes in HHI are not possible for mergers with low values of post-merger HHI, and the top left section of the figure is blank for this reason.

15 A merger with net negative price effects is one where the cost efficiencies outweigh the anticompetitive effects of the merger and reduce market wide prices.

Table 2 Error rates by presumption, Bertrand competition with logit demand

Presumption	False positive %	False negative %	Enforcement ratio	% of mergers screened
2010 Guidelines	14.5	2.7	5.3	38.5%
2023 Guidelines	53.1	0.03	1,558	77.7%
$\Delta\text{HHI} > 200$	32.8	0.00	-	58.2%

Note: The enforcement ratio is calculated as false positive %/false negative %. Since there are no false negatives under the presumption where $\Delta\text{HHI} > 200$, the enforcement ratio is undefined.

is not screened but increases the market price by at least 2%. We choose this threshold to reflect that the budget-constrained Agencies pursue cases that substantially lessen competition. Past behavior suggests the Agencies are most interested in challenging mergers with large expected price effects.¹⁶ We treat mergers with market average price effects between 0% and 2% as an intermediate case that creates neither false negatives nor false positives – the costs and benefits of flagging these mergers may be approximately equal.¹⁷ The false-positive rate is the percentage of all pro-competitive mergers that are screened by the presumption, while the false-negative rate is the percentage of all anti-competitive mergers that are not screened. The Agencies probably should not weigh these false positives and false negatives equally, as they can clear a false-positive merger following further investigation but may not be able to investigate a false-negative merger after clearing it. We define the “enforcement ratio” as the relative tolerance of these two error types (false-positive rate/false-negative rate) implied by each presumption.

The 2023 Guidelines are unlikely to miss mergers with price effects of 2% or more but with the cost of screening more than half of all pro-competitive mergers

The resulting error rates are shown in Table 2. The structural presumption in the 2010 Guidelines had a

false-positive rate of 14.5% and a false-negative rate of 2.7%, implying that the Agencies’ enforcement ratio was 5.3. With the 2023 Guidelines, the false-positive rate increases to 53.1% while the false-negative rate falls to 0.03%, increasing the implied enforcement ratio to 1,558. That is, the new presumption is 1,558 times more likely to commit a false positive than it is a false negative. This means that the 2023 Guidelines are unlikely to miss mergers with price effects of 2% or more but with the cost of screening more than half of all pro-competitive mergers. The percentage of the sample that is screened also increases dramatically with the 2023 Guidelines from 38.5% to 77.7%.

We also include in Table 2 the error rate of an alternative presumption based on the change in concentration alone where mergers with ΔHHI greater than 200 are screened, regardless of the level of post-merger HHI.¹⁸ This hypothetical presumption outperforms the 2023 Guidelines in both the false-positive rate and the false-negative rate. In fact, in our sample, this alternative presumption commits no false negatives. This suggests that an alternative presumption based on the change in concentration alone could accommodate stricter merger scrutiny while decreasing the number of beneficial mergers screened.

The accuracy of merger simulation depends on the validity of the assumptions made. To ensure our results are robust, we replicate this exercise under the alternative assumption of Cournot competition. While the Bertrand model is usually used in merger litigation when product differentiation plays an important role, the Cournot model may be more apt when the market consists of a homogeneous product or capacity constraints are relevant.¹⁹

In Table 3, we summarize the efficacy of each presumption when we assume that firms compete a la Cournot and face linear demand.²⁰ Here again, the 2023

16 See, e.g., Vivek Bhattacharya, Gastón Illanes and David Stillerman, ‘Merger Effects and Antitrust Enforcement: Evidence from US Consumer Packaged Goods’ (April 2023) NBER Working Paper 31123, Cambridge, MA <<https://www.nber.org/papers/w31123>> (“Through a model of enforcement, we find that agencies challenge mergers they expect would increase prices more than about 4%–8%.”)

17 When we instead use 1% price increases to define false negatives, our results are qualitatively similar.

18 The exact level of ΔHHI shown here is arbitrarily chosen for illustration.

19 For example, the FTC’s expert used a Cournot model in the Tronox–Cristal litigation in the titanium dioxide industry. Memorandum Opinion, *Federal Trade Commission v Tronox Limited et al*, No 1:18-cv-01622 (TNM), 12 September 2018 <https://www.ftc.gov/system/files/documents/cases/tronox_pi_opinion_redacted.pdf>.

20 Here we assume the existence of a homogeneous product. Price-cost margins in this setting are implied by each firm’s share and the market elasticity, so we do not use the margin drawn for the Bertrand model.

Table 3 Error rates by presumption, Cournot competition with linear demand

Presumption	False positive %	False negative %	Enforcement ratio
2010 Guidelines	5.2	8.1	0.6
2023 Guidelines	29.6	1.1	28.0
$\Delta\text{HHI} > 200$	8.1	0.9	9.4

Note: The enforcement ratio is calculated as false positive %/false negative %. The mergers screened by each presumption are not affected by the assumptions on competition, so the “% of mergers screened” column is not repeated here.

Guidelines improve the false-negative rate in our sample relative to the 2010 Guidelines (from 8.1% to 1.1%) at the cost of increasing the false-positive rate (from 5.2% to 29.6%). As in the logit results, the $\Delta\text{HHI} > 200$ presumption improves both the false-positive and false-negative rates relative to the 2023 Guidelines.²¹

4. Coordinated effects

Up to this point, we have only evaluated the structural presumption for its ability to detect unilateral merger effects and have shown that a $\Delta\text{HHI} > 200$ screen is more effective in our sample than the presumptions in both the 2010 and 2023 Guidelines. We are not the first to highlight the efficacy of a ΔHHI -only screen. Nocke and Whinston (2022), in advocating for such a screen, caveat that “screening based on the level of post-merger concentration might be justified by concerns over coordinated effects.”²² Indeed, the Agencies motivate the use of the structural presumption for its ability to predict both unilateral and coordinated effects: “when exceeded, these concentration metrics indicate that a merger’s effect may be to eliminate substantial competition between the merging parties and may be to increase coordination among the remaining competitors after the merger.”²³ Any claim about the efficacy of the structural presumption would, therefore, be incomplete without testing for coordinated effects. To test whether the 2023 presumption enhances the Agencies’ ability to detect coordinated effects, we use the unilateral effects results and a common model of coordination incentives.²⁴

Consider a model in which firms interact repeatedly and base their pricing decisions on those of their rivals in previous periods. Firms begin in the first period by pricing their product at the price that a hypothetical monopolist with control over all products in the market would set. We consider this the coordination price, and the resulting profits for each firm are denoted with π^C . Each firm chooses in each period whether to continue with this coordination price or undercut their rivals and set the deviation price that maximizes their profits, π^D . Firms continue setting the coordination price as long as all rivals continue to do so. Once one firm deviates, all firms set prices at the competitive level in future periods and earn the competitive (i.e. punishment) profits, π^P . We can obtain values for each of these profit variables from the simulations in the unilateral effects section.

We further assume firms discount the value of future profits by a factor, δ . We can express the condition under which a firm has an incentive to continue coordinating as $\frac{\pi^C}{1-\delta} > \pi^D + \frac{\delta\pi^P}{1-\delta}$. In words, each firm evaluates whether the present value of profits from coordinating exceeds the present value of profits from deviation (which are higher for one period) plus the present value of profits in the punishment phase in all subsequent periods (which are lower than the coordination profits). If the inequality does not hold, the firm has an incentive to deviate. If no firm has an incentive to deviate, the model predicts coordination may be the outcome. Importantly, the sustainability of coordination requires that all firms have an incentive to participate. We assume only that δ is bound between 0 and 1 and solve for the range of (externally determined) discount factors at which coordination can be sustained. This range of values implies that firms value future profits, but they value current profits more. We say that a merger has coordinated effects if the range of discount factors, δ , under which coordination may be sustained increases.²⁵

Post-merger, there is one fewer firm whose inequality must hold for coordination to be sustained. All else equal, this would suggest mergers tend to enhance the incentive to coordinate by removing one firm whose potential defection could collapse coordination. However, the merger can also affect payoffs. As shown in Figure 1,

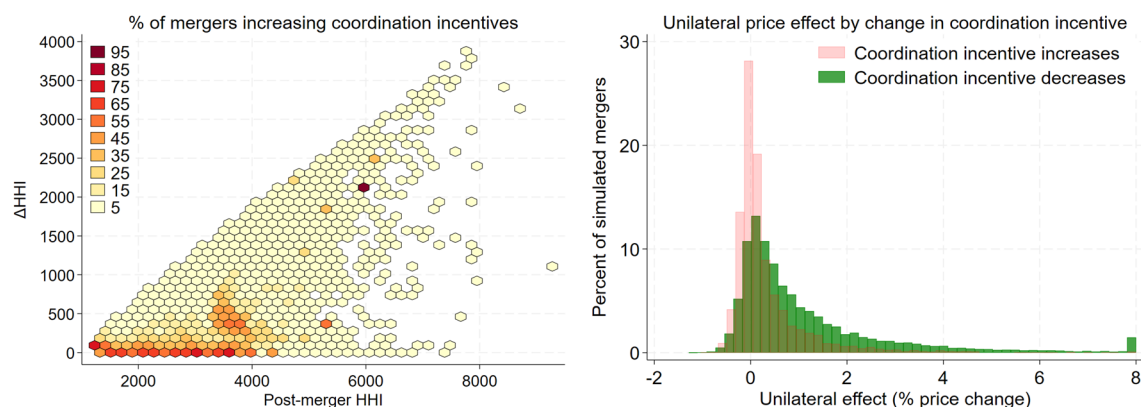
21 We also replicated this exercise in three additional settings: second score auctions with logit demand, Bertrand competition with almost ideal demand, and Cournot competition with log linear demand. Each set of assumptions yields different price effects, but the same set of takeaways holds in each and we do not report their results here. These results are available to interested readers upon request.

22 Volker Nocke and Mike Whinston, ‘Concentration Thresholds for Horizontal Mergers’ (June 2022) 112(6) *American Economic Review* 1915–48 <<https://www.aeaweb.org/articles?id=10.1257/aer.20201038>>.

23 See US Department of Justice and Federal Trade Commission (n 6).

24 The model described is usually attributed to Friedman (1971) and underlies much academic work on collusion. James Friedman, ‘A Non-cooperative Equilibrium for Supergames’ (1971) 38(1) *The Review of Economic Studies* 1–12 <<https://academic.oup.com/restud/article-abstract/38/1/1/1519477>>.

25 This analysis is limited to the incentive to coordinate, though a merger may also affect the ability of firms to tacitly coordinate. In principle, a merger that changes a firm’s finance structure could also affect its discount factor, δ .



Note: The graph on the left shows the percentage of simulated mergers enhancing incentives to coordinate at different levels of concentration. No mergers are included in our sample in regions without hexagons. The graph on the right shows the distribution of price effects under unilateral effects by whether the merger increases or decreases coordination incentives. Unilateral price effects are larger on average for mergers that decrease these incentives. The area under the curve of each presumption curve equals one. For visualization, price effects are capped at 8%.

Figure 2 Coordinated effects by concentration level, Bertrand competition with logit demand

mergers tend to increase the competitive price by softening competition, thereby increasing π^p . For the outside firms that are not a party to the merger, coordination and deviation profits are not affected, so this change to π^p is the only change in the model.²⁶ The merging party now considers the coordination profits from both firms and sets a new deviation price that maximizes profits for both firms. In general, these effects imply that outside firms are less willing to coordinate post-merger while the merging firms are more willing.

Whether the merger enhances coordinated effects for the market as a whole depends on the position of the merging firms pre-merger. If the merging firms had relatively strong incentives to coordinate pre-merger, the weaker incentives for outside firms post-merger imply that coordination is now less sustainable. If the merging firms were the least likely to coordinate pre-merger, the effect of the merger may be to increase their incentive to coordinate and therefore to increase the likelihood of coordination for the market as a whole.

Figure 2 summarizes coordinated effects in our sample.²⁷ On the left, we show the proportion of mergers that are harmful at each level of concentration. Light gray (tan in the digital version) areas have few mergers with coordinated effects, while dark gray/red areas have many. As hinted above, a merger is most likely to enhance

coordinated effects when it is between small firms with difficult-to-satisfy discount factors pre-merger. This produces the counterintuitive result that mergers tend to decrease the risk of coordination, except where the merging firms are small and the change in concentration is low. Indeed, the graph on the right shows that the unilateral price effect is greater for mergers that decrease coordination incentives (in dark gray/green) than those that increase them (in light gray/pink) – the concern for coordinated effects generally increases as the concern for unilateral effects decreases.

This connects with the concept of “maverickness” often discussed in horizontal merger review.²⁸ A single firm, usually with a small share and with incentives that differ from its rivals, can compete particularly aggressively and thereby increase the intensity of competition in the market. Our results suggest that the concerns for the elimination of a maverick are more relevant than the structural presumption and are especially acute when both the acquiring and acquired firms are mavericks.

The HHI, which increases with the asymmetry between firms, is a poor proxy for detecting coordinated effects

26 The presence of efficiencies for the merging parties complicates this description but does not materially affect the results, so we do not discuss it here.

27 Here we show results using Bertrand competition with logit demand.

28 “A merger that eliminates a maverick or significantly changes its incentives increases the susceptibility to coordination.” US Department of Justice and Federal Trade Commission (n 6).

The mechanism through which firms tacitly coordinate is an unsettled area of research, and our results are generated from a particular model of coordination. Still, the result that a merger is more likely to increase coordination incentives if it increases the symmetry between firms is more general and suggests that the HHI, which increases with the *asymmetry* between firms, is a poor proxy for detecting coordinated effects.²⁹

5. Conclusion

The Trump Administration has signaled its intent to continue relying on the 2023 Merger Guidelines, which

feature a stricter structural presumption. Practitioners and policymakers should be aware of how this presumption relates to the risk of anticompetitive harm. We show that the change from the 2010 to 2023 presumption resulted in many more screened mergers, which has lowered the average price effect of screened mergers. The Agencies could improve *both* their false-negative and false-positive rates by switching to a presumption based only on the change in concentration. We also show that the present structural presumption should not be justified based on the risk for coordination and that alternative tools may be necessary to evaluate coordinated effects.

29 The finding that the risk of coordination increases with the symmetries between firms is described in the context of cross-market contact by B Douglas Bernheim and Michael D Whinston, 'Multimarket Contact and Collusive Behavior' (Spring 1990) 21(1) The RAND Journal of Economics 1-26 <<https://www.jstor.org/stable/2555490>>.