[feature_embed image=”/wp-content/uploads/2018/10/ftc-bldg-400×200.png” meta_icon=”/wp-content/uploads/2017/03/ICLE-icon_News-Type_ICLE-in-the-News.svg” meta_text=”FTC 21st Century Hearings” ]An ICLE Commentary Series.[/feature_embed]

## Comments of the International Center for Law & Economics:

When examining the currently in vogue  (and incorrect) claims that the economy is more concentrated and, therefore, less competitive, three important principles must be understood.

First, there is no rigorous economic support for claims that high concentration levels are a strong indicator of harm to competition, let alone that they trigger a presumption of such harm in antitrust analysis. Instead, such assertions are based on a simple inference of competitive effects from market structures, and the unsupported assumption that an increase in concentration can mean only a reduction in competition. The problem is that no such inference can be made.

Second, parties seeking to challenge mergers often rely substantially on structural presumptions, and notably on claims regarding a deal’s assessment under the Herfindahl-Hirschman Index (HHI). In particular, they often urge consideration of the market’s HHI and the transaction’s purported effect on it, asserting that even the HHI alone counsels against a merger. But, as we note at length in the attached comments, HHIs simply can’t bear the weight put on them.

Finally, it is important to understand the shortcomings of recent empirical research which claims to show that increased concentration does, in fact, lead to higher prices or other competitive harm. One such example that is sometimes relied upon is the recent merger retrospective study by Professor John Kwoka. Unfortunately, Professor Kwoka’s study—and the econometric literature of which it is a part—cannot bear the weight placed upon it.

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