Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 3, 2015. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see :// . . / /
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Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction and Background

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Order'') from Dollar Tree, Inc. (''Dollar Tree'') and Family Dollar Stores, Inc. (''Family Dollar''), (collectively, the ''Respondents''). On July 27, 2014, Dollar Tree and Family Dollar entered into an agreement whereby Dollar Tree would acquire Family Dollar for approximately $9.2

[2] The list of cities in which stores will be divested is attached as Appendix A. The list of stores to be divested is attached to the Decision and Order as Schedule A.

[3] The term ''dollar stores'' as used here includes stores operated by Respondents, Dollar General, 99 Cents Only, and Fred's Super Dollar. Independently-owned retailers that sell discounted merchandise at the $1 or multi-price point in substantially smaller stores are not included.

[4] The term ''supermarkets'' as used here includes traditional supermarkets such as Kroger and Publix, as well as supermarkets included within hypermarkets such as SuperTarget or Kroger's Fred Meyer banner. The term ''pharmacies'' includes national retail drug stores such as CVS, Rite Aid, and Walgreens. The term ''mass merchandisers'' includes retailers such as Target and K-Mart. The term ''discount specialty merchandise retail stores'' includes retailers such as Big Lots and Aldi.

competing discount general merchandise retail stores, the collective presence of these other retailers acts as a more significant price constraint on the discount general merchandise retail stores operating in the area.[5]

Thus, the relevant line of commerce in which to analyze the Acquisition is no narrower than discount general merchandise retail stores. In certain geographic markets, the relevant line of commerce may be as broad as the sale of discounted general merchandise in retail stores (*e.g.,* discount general merchandise retail stores as well as supermarkets, pharmacies, mass merchandisers, and discount specialty merchandise retail stores). Whether the relevant line of commerce is discount general merchandise retail stores or discounted general merchandise in retail stores depends on the specifics of the geographic market at issue, such as population density and the density and proximity of the Respondents' stores and competing retailers.

The relevant geographic market varies depending on the unique characteristics of each market, including the local road network, physical boundaries, and population density. A strong motivation of consumers shopping at discount general merchandise retail stores is convenience. As with grocery shopping, the vast majority of consumers who shop for discounted general merchandise do so at stores located very close to where they live or work. The draw area of a dollar store, which varies depending on whether it is located in an urban, suburban, or rural area, may range from a couple of city blocks to several miles. Other market participants, such as supermarkets and retail pharmacies, may have similar, although somewhat broader draw areas. Walmart's stores, particularly Walmart Supercenters, tend to have a considerably broader draw area. In highly urban areas, the geographic markets are generally no broader than a half-mile radius around a given store. In highly rural areas, the geographic market is generally no narrower than a three-mile radius around a given store. In areas neither highly urban nor highly rural, the geographic market is generally within a half-mile to three-mile radius around a given store.

Respondents are close competitors in terms of format, customer service, product offerings, and location in the relevant geographic markets. With regard to pricing, product assortment, and a host of other competitive issues, Respondents typically focus most directly on the actions and responses of each other and other dollar stores, while also paying close attention to Walmart. In many of the relevant geographic markets, Dollar Tree and Family Dollar operate the only dollar stores in the area or the vast majority of conveniently-located discount general merchandise retail stores. Absent relief, the Acquisition would increase the incentive and ability of Dollar Tree to raise prices unilaterally post-Acquisition in the relevant geographic markets. The Acquisition would also decrease incentives to compete on non-price factors, including product selection, quality, and service.

Entry into the relevant geographic markets that is timely and sufficient to prevent or counteract the expected anticompetitive effects of the Acquisition is unlikely. Entry barriers include the time, costs, and feasibility associated with identifying and potentially constructing an appropriate and available location for a discount general merchandise retail store, the resources required to support one or more new stores over a prolonged ramp-up period, and the sufficient scale to compete effectively. An entrant's ability to secure a viable competitive location may be hindered by restrictive-use commercial lease covenants, which can limit the products sold, or even the type of retailer that can be located, at a particular location.

IV. The Proposed Consent Order

The proposed remedy, which requires the divestiture of 330 Family Dollar stores in the relevant markets to Sycamore Partners (''Sycamore''), will restore fully the competition that otherwise would be eliminated in these markets as a result of the Acquisition. Sycamore is a private equity firm specializing in consumer and retail investments. The proposed buyer appears to be a highly suitable purchaser and is well positioned to enter the relevant geographic markets and prevent the likely competitive harm that otherwise would result from the Acquisition. Sycamore's proposed executive team has extensive experience operating discount general merchandise retail stores.

The proposed Consent Order requires Respondents to divest 330 stores to Sycamore within 150 days from the date of the Acquisition. If, at any time before the proposed Consent Order is made final, the Commission determines that Sycamore is not an acceptable buyer, Respondents must immediately rescind the divestitures and divest the assets to a different buyer that receives the Commission's prior approval.

The proposed Consent Order contains additional provisions to ensure the adequacy of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will be issued at the time the proposed Consent Order is accepted for public comment. The Order to Maintain Assets requires Family Dollar to operate and maintain each divestiture store in the normal course of business through the date the store is ultimately divested to Sycamore. Because the divestiture schedule runs for an extended period of time, the proposed Consent Order appoints Gary Smith as a Monitor to oversee Respondents' compliance with the requirements of the proposed Consent Order and Order to Maintain Assets. Mr. Smith has the experience and skills to be an effective Monitor, no identifiable conflicts, and sufficient time to dedicate to this matter through its conclusion.

* * * * *

The sole purpose of this Analysis is to facilitate public comment on the proposed Consent Order. This Analysis does not constitute an official interpretation of the proposed Consent Order, nor does it modify its terms in any way.

Appendix A

	City	Number of stores divested
Alabama	Montgomery	1
Arizona	Lake Havasu	1
Arizona	Tucson	1
California	Farmersville	1
California	Fresno	1
California	Inglewood	1
California	Lemoore	1
California	San Bernardino	1
Colorado	Aurora	1
Colorado	Colorado Springs.	3
Colorado	Denver	1
Colorado	Federal Heights	1
Colorado	Lakewood	1
Connecticut	Bloomfield	1
Connecticut	Bridgeport	1
Connecticut	Groton	1
Connecticut	Meriden	1
Connecticut	New Haven	1
Connecticut	West Hartford	1
Delaware	Wilmington	1
Florida	Dania	1
Florida	Deltona	2
Florida	Hollywood	1
Florida	Homestead	1
Florida	Jacksonville	2
Florida	Kissimmee	3
Florida	Miami	3
Florida	Miami Gardens	1
Florida	Plantation	1

[5] Online retailers are not participants in the relevant product market. The primary appeal of dollar stores is the combination of value and convenience they offer consumers. Given the time required to process and ship items ordered online, Internet retailers are less convenient shopping options for consumers looking to make an immediate purchase on a fill-in trip.

Number

City

Statement of the Federal Trade Commission

The Federal Trade Commission has accepted a proposed settlement to resolve the likely anticompetitive effects of Dollar Tree, Inc.'s proposed $9.2 billion acquisition of Family Dollar Stores, Inc.[1] We have reason to believe that, absent a remedy, the proposed acquisition is likely to substantially lessen competition between Dollar Tree and Family Dollar in numerous local markets. Under the terms of the proposed consent order, Dollar Tree and Family Dollar are required to divest 330 stores to a Commission-approved buyer. As we explain below, we believe the proposed divestitures preserve competition in the markets adversely affected by the acquisition and are therefore in the public interest.

Dollar Tree operates over 5,000 discount general merchandise retail stores across the United States under two banners which follow somewhat different business models. In its Dollar Tree banner stores, Dollar Tree sells a wide selection of everyday basic, seasonal, closeout, and promotional merchandise—all for $1 or less. At its Deals banner stores, Dollar Tree sells an expanded assortment of this merchandise at prices that may go above the $1 price point but are generally less than $10. Family Dollar operates over 8,000 discount general merchandise retail stores. Family Dollar sells an assortment of consumables, home products, apparel and accessories, seasonal items, and electronic merchandise at prices generally less than $10, including items priced at or under $1.

Dollar Tree and Family Dollar compete head-to-head in numerous local markets across the United States. They are close competitors in terms of format, pricing, customer service, product offerings, and location. When making competitive decisions regarding pricing, product assortment, and other salient aspects of their businesses, Dollar Tree and Family Dollar focus most directly on the actions and responses of each other and other ''dollar store'' chains, while also paying close attention to Walmart. In many local markets, Dollar Tree and Family Dollar operate stores in close proximity to each other, often representing the only or the majority of conveniently located discount general merchandise retail stores in a neighborhood.

To evaluate the likely competitive effects of this transaction and identify the local markets where it may likely harm competition, the Commission considered multiple sources of quantitative and qualitative evidence. One component of the investigation involved a Gross Upward Pricing Pressure Index (''GUPPI'') analysis. As described in the 2010 Horizontal Merger Guidelines, this mode of analysis can serve as a useful indicator of whether a merger involving differentiated products is likely to result in unilateral anticompetitive effects.[2] Such effects can arise ''when the merger gives the merged entity an incentive to raise the price of a product previously sold by one merging firm'' because the merged entity stands to profit from any sales that are then diverted to products that would have been ''previously sold by the other merging firm.'' [3] Using the value of diverted sales as an indicator of the upward pricing pressure resulting from the merger, a GUPPI is defined as the value of diverted sales that would be gained by the second firm measured in proportion to the revenues that would be lost by the first firm. If the ''value of diverted sales is proportionately small, significant unilateral price effects are unlikely.'' [4]

The Commission's investigation involved thousands of Dollar Tree and Family Dollar stores with overlapping geographic markets. A GUPPI analysis served as a useful initial screen to flag those markets where the transaction might likely harm competition and those where it might pose little or no risk to competition. As a general matter, Dollar Tree and Family Dollar stores with relatively low GUPPIs suggested that the transaction was unlikely to harm competition, unless the investigation uncovered specific reasons why the GUPPIs may have understated the potential for anticompetitive effects. Conversely, Dollar Tree and Family Dollar stores with relatively high GUPPIs suggested that the transaction was likely to harm competition, subject to evidence or analysis indicating that the GUPPIs may have overstated the potential for anticompetitive effects.

While the GUPPI analysis was an important screen for the Commission's inquiry, it was only a starting point. The Commission considered several other sources of evidence in assessing the transaction's likely competitive effects, including additional detail regarding the geographic proximity of the merging parties' stores relative to each other and to other retail stores, ordinary course of business documents and data supplied by Dollar Tree and Family Dollar, information from other market participants, and analyses conducted by various state attorneys general who were also investigating the transaction. After considering all of this evidence, the Commission identified specific local markets where the acquisition would be likely to harm competition and arrived at the list of 330 stores slated for divestiture.

In his statement, Commissioner Wright criticizes the way that the Commission used the GUPPI analysis in this case and argues that GUPPIs below a certain threshold should be treated as a ''safe harbor.'' [5] We respectfully disagree.

As an initial matter, Commissioner Wright mischaracterizes the way that the GUPPI analysis was used in this case. Contrary to his suggestion, GUPPIs were not used as a rigid presumption of harm. As explained above, they were used only as an initial screen to identify those markets where further investigation was warranted. The Commission then proceeded to consider the results of the GUPPI analysis in conjunction with numerous other sources of information.[6] Based on this complete body of evidence, we have reason to believe that, without the proposed divestitures, the acquisition would substantially lessen competition in each of the relevant local markets.

Our market-by-market review showed that the model of competition underlying the GUPPI analysis was largely consistent with other available evidence regarding the closeness of competition between the parties' stores in each local market. For example, stores with high GUPPIs were generally found in markets in which there were few or no other conveniently located discount general merchandise retail stores. The GUPPI analysis did have some limitations, however. For example, there were Family Dollar stores with relatively low GUPPIs in markets that were nevertheless price-zoned to Dollar Tree stores, which meant that if Dollar Tree stores were

[1] This statement reflects the views of Chairwoman Ramirez and Commissioners Brill, Ohlhausen, and McSweeny.

[2] U.S. Dept. of Justice and Fed. Trade Comm'n, Horizontal Merger Guidelines § 6.1 (2010), :// . . / / / / / - /100819 . .

[3] .

[4] .

[5] Statement of Commissioner Joshua D. Wright Dissenting in Part and Concurring in Part, , . , ., File No. 141–0207.

[6] As Joseph Farrell and Carl Shapiro have noted, ''[r]eal-world mergers are complex, and our proposed test, like the concentration-based test, is consciously oversimplified. . . . In the end, the evaluation of any merger that is thoroughly investigated or litigated may come down to the fullest feasible analysis of effects.'' Joseph Farrell & Carl Shapiro, : , 10 B.E. J. Theoretical Econ. 1, 26 (2010).

[7] Commissioner Wright cites the Albertson's/Safeway transaction as another recent case in which a GUPPI analysis was used. Wright Statement at 2 n.6. To be precise, the Commission analyzed that transaction using diversion ratios, not GUPPI scores, but in any event, Commissioner Wright himself voted to accept the consent order in that case.

[8] Marginal cost efficiencies, as well as pass-through rates, also will vary from industry to industry and from firm to firm. The pass-through rate will determine the magnitude of the post-merger unilateral price effects.

[9] Joseph Farrell & Carl Shapiro, P P : , CPI Antitrust J. 1, 6–7 & n.15 (Feb. 2010); Farrell & Shapiro, , note 6, at 13–14.

[10] Wright Statement, note 5, at 8 & nn.23 & 24 (citing commentators' concerns and criticisms regarding the use of GUPPI analysis generally). Such concerns and criticisms, if valid, would apply equally to the wisdom of using GUPPIs to recognize a safe harbor.

[11] ., P ., . v. P , ., 551 U.S. 877, 886–87 (2007) (''As a consequence, the rule is appropriate only after courts have had considerable experience with the type of restraint at issue, . . . and only if courts can predict with confidence that it would be invalidated in all or almost all instances under the rule of reason, . . .''); . ' v. , 526 U.S. 756, 781 (1999) (''The object is to see whether the experience of the market has been so clear, or necessarily will be, that a confident conclusion about the principal tendency of a restriction will follow from a quick (or at least quicker) look, in place of a more sedulous one.''); P ., . v. , 749 F.3d 559, 570, 571 (6th Cir. 2014) (noting that ''the strong correlation between market share and price, and the degree to which this merger would further concentrate markets that are already highly concentrated—converge in a manner that fully supports the Commission's application of a presumption of illegality'' but also noting that ''the Commission did not merely rest upon the presumption, but instead discussed a wide range of evidence that buttresses it'').

[12] Carl Shapiro, 2010 : , 77 Antitrust L.J. 701, 729 (2010) (''The value of diverted sales is an excellent simple measure for unilateral price effects, but it cannot capture the full richness of competition in real-world industries. Indeed, as stressed above, all of the quantitative methods discussed here must be used in conjunction with the broader set of qualitative evidence that the Agencies assemble during a merger investigation.''); Farrell & Shapiro,

[2] . § 6.1 (emphasis added); *see* Steven C. Salop, Serge X. Moresi & John Woodbury, CRA

[14] Majority Statement, note 7, at 3.

[15] ., C. Frederick Beckner III & Steven C. Salop, , 67 Antitrust L.J. 41 (1999); James C. Cooper, Luke M. Froeb, Dan O'Brien & Michael G. Vita, P P , 23 Int'l J. Indus. Org. 639 (2005); Frank H. Easterbrook, , 63 Tex. L. Rev. 1 (1984); Isaac Ehrlich & Richard A. Posner, , 3 J. Legal Stud. 257 (1974); David S. Evans & A. Jorge Padilla, P : - , 72 U. Chi. L. Rev. 27 (2005); Keith N. Hylton & Michael Salinger, P : , 69 Antitrust L.J. 469 (2001); Geoffrey A. Manne & Joshua D. Wright, , 6 J. Comp. L. & Econ. 153 (2010).

[16] Broad. Music, Inc. v. Columbia Broad. Sys., Inc., 441 U.S. 1, 19–20 (1979) (''More generally, in characterizing this conduct under the rule, our inquiry must focus on . . . whether the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output.'').

[17] Andrew I. Gavil, William E. Kovacic & Jonathan B. Baker, Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy 104–05 (2d ed. 2008); Barry Wright Corp. v. ITT Grinnell Corp., 724 F.2d 227, 234 (1st Cir. 1983) (''Rules that seek to embody every economic complexity and qualification may well, through the vagaries of administration, prove counter-productive, undercutting the very economic ends they seek to serve. Thus, despite the theoretical possibility of finding instances in which horizontal price fixing, or vertical price fixing, are economically justified, the courts have held them unlawful per se, concluding the administrative virtues of simplicity outweigh the occasional 'economic' loss.''); Herbert Hovenkamp, The Antitrust Enterprise: Principle and Execution 50 (2005) (''[N]ot every anticompetitive practice can be condemned.''); Thomas A. Lambert, Book Review, Tweaking Antitrust's Business Model, 85 Tex. L. Rev. 153, 172 (2006) (''Hovenkamp's discussion of predatory and limit pricing reflects a key theme that runs throughout : That antitrust rules should be easily administrable, even if that means they must permit some anticompetitive practices to go unpunished.'').

[18] Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 226 (1993); see also Barry Wright Corp., 724 F.2d at 234 (''Conversely, we must be concerned lest a rule or precedent that authorizes a search for a particular type of undesirable pricing behavior end up by discouraging legitimate price competition. . . . [A] price cut that ends up with a price exceeding total cost—in all likelihood a cut made by a firm with market power—is almost certainly moving price in the 'right' direction (towards the level that would be set in a competitive marketplace). The antitrust laws very rarely reject such 'birds in hand' for the

[23] Joseph J. Simons & Malcolm B. Coate, *P* *P* : *P*, 6 Eur. Competition J. 377, 389 (2010) (the upward pricing pressure screen ''identifies as potentially problematic far more mergers than would be challenged or even investigated under the enforcement standards that have existed for more than twenty years''); Lambert, note 8, at 13 (''In the end, the agencies' reliance on the difficult-to-administer, empirically unverified, and inherently biased GUPPI is likely to generate many false condemnations of mergers that are, on the whole, beneficial.'').

[24] Dennis W. Carlton,

For these reasons, I dissent in part from and concur in part with the Commission's decision.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES