

MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2026

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

Submit by email by 11:59 pm ET on Monday, November 2

Send to wdc30@georgetown.edu

Subject line: Merger Antitrust Law: Graded Homework Assignment

Assignment: Calls for a memorandum of law.

INSTRUCTIONS

1. This is an untimed graded homework assignment. Your answer must be submitted to me by email no later than 11:59 pm ET on Monday, November 2, 2026. **Write your answer to the question as a *single Word document*.** Once an assignment is submitted, no amendments or supplements will be permitted or accepted.
2. This assignment is final. No clarifications or corrections will be provided. If you are convinced that there is an error, inconsistency, or omission of an essential fact in the assignment, please identify the problem, explain in a footnote why you believe there was a mistake and provide a correction that is sensible in the context of the hypothetical as a whole. You may then 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 sensible correction, I will accept the correction and grade your paper accordingly.
3. Subject to the above exception, 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.
4. You may not consult with, seek assistance from, or collaborate with any other person regarding the assignment. Otherwise, you may discuss any aspect of the course with others.
5. In completing the assignment, 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.
6. Citations to cases or other primary sources are not required, although you may find reference to a case that we covered helpful at times to make your analysis or boilerplate more compelling. Citations to secondary sources will not be helpful or appreciated, and you should not cite to class materials.
7. When writing the 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 during the assignment. It also

includes AI features in legal research services, such as Westlaw and Lexis, and AI-generated answers or summaries displayed by search engines.

8. Subject to four exceptions listed below, students are prohibited from copying or cutting and pasting any text into their answers.
 - a. You may cut and paste short passages *from materials you have collected in a single document* to introduce or explain a concept, a rule of law, a legal principle, or an economic proposition or formula (what I have called in class the “boilerplate”) into your answer. If these passages include citations to cases, you must cite the cases in proper Bluebook format as you would in a brief. You may continue to add to your boilerplate as you work on the assignment.¹
 - b. You may cut, paste, and edit text from the hypothetical into your answer.
 - c. You may cut and paste formulas (including as pictures) from any course materials into your answer.
 - d. You may use computational tools, such as calculators or spreadsheets (e.g., Excel), to perform calculations or organize presentations of data, and you may cut and paste from these tools into your answer. 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. For each calculation, show the formula and the inputs you used.
9. This 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.
10. Grading will be on the completeness, analytical rigor, coherence, and persuasiveness of your answers to the question presented and not on whether you reach the same conclusion as I did. Ideally, your answer will persuade me that you have correctly identified the issues, properly analyzed them in light 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 an issue, while others of you will equally persuade me to go a different direction on the same issue.
11. 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.” Clear thinking and clear exposition are essential. While there is no page limit for the assignment answer, penalties will be levied for excessive length, verbosity, lack of organization, or the inclusion of irrelevant boilerplate. Do not try to tell me how much you know unless it is relevant to your assignment. Write your analysis as if you were sending it to a partner in a law firm or a senior official in an enforcement agency whom you would like to impress with your legal perspicacity.
12. 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. You may also refer to a table in your answer by the table number in the question.

¹ To be clear, you are permitted to revise and improve your boilerplate while working on this assignment.

13. If you are asked to write a memorandum as an attorney in a law firm at a confidential phase of the transaction, do **not** use code names for the transaction or the parties. This is an exception to the usual rules of practice.
14. You should assume that federal subject matter jurisdiction exists and that it is unnecessary to address any jurisdictional questions in your answers. You should also assume that the transaction in the hypothetical involves the acquisition of stock or assets, so that you do not have to address this Section 7 requirement in your answer.
15. If the hypothetical gives prices or costs for a group of products as an “average” or being “around” a given number, you may treat that number as the arithmetical average with only relatively small variations around the mean. You may also use that number in any formula as if all products in the group had that price or cost. (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.)²
16. In the areas of interest, all demand curves are linear, all marginal costs are constant, and, unless the hypothetical says otherwise, firms maximize their profits.
17. 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.
18. It should go without saying that, outside of this assignment, you should not believe 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.
19. Since this is a graded homework assignment, I will not hold out hope that you find it enjoyable, but I do hope that you find it intellectually stimulating. I have tried to make the question challenging, but you should be well prepared to tackle it.

This assignment consists of fifteen (15) pages, including these three (3) cover pages. Please be sure your assignment is complete.

HONOR STATEMENT

BY SUBMITTING THIS 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 ASSIGNMENT, INCLUDING BUT NOT LIMITED TO ARTIFICIAL INTELLIGENCE TOOLS.

² When the average has only small variations around the arithmetical mean, the formulas work reasonably well in practice using the average.

Refrigerated Pet Food Merger

You are an attorney at the Federal Trade Commission assigned to review the pending acquisition by Pet Foods Corporation (PFC) of Pup Foods, Inc. (Pup), in an all-cash transaction valued at \$700 million. The parties have certified substantial compliance with their respective Second Requests, and your section must submit a memorandum to the Director of the Bureau of Competition recommending a disposition of the investigation.

Elle Woods, your section chief, has asked you to draft this memorandum for her review. She wants the memorandum to recommend whether the Commission should authorize a federal district court action to enjoin the transaction. Consistent with the Commission's current litigation approach for merger challenges, the Commission would litigate the merits in federal district court and not commence an administrative proceeding on the merits. Ms. Woods has asked that you assume that, if litigation commences, the merging parties will stipulate to a temporary restraining order preventing closing until the court enters a final judgment, thereby avoiding the need for the Commission to seek a preliminary injunction. Ms. Woods would like you to assess the strength of the FTC's case, including the relevant product and geographic markets, market shares and concentration evidence, and likely competitive effects; anticipate and respond to the merging parties' defenses; and give your conclusion on the likely outcome of the litigation.

Finally, Ms. Woods would like you to assess whether a divestiture remedy would resolve the Commission's competitive concerns in refrigerated fresh dog food while allowing the remainder of the transaction to proceed. If you conclude that a divestiture remedy would be sufficient, Ms. Woods would like you to identify the assets, rights, personnel, and transitional arrangements that the Commission should require and explain why that remedy should preserve the competition otherwise lost from the acquisition. If you conclude that no divestiture remedy would be sufficient, Ms. Woods would like you to explain why. In either case, she would like you to analyze why PFC has not proposed a divestiture remedy.

Important: For purposes of your memorandum, assume that FTC staff has found that the transaction raises no competitive concern involving refrigerated fresh cat food, shelf-stable wet dog food, or treats, toppers, and supplements, whether in the sale of those products or through any theory linking them to refrigerated fresh dog food (for example, shared refrigerated case space, product bundling, or negotiations covering multiple product lines). Your memorandum should not analyze competition in those products, although they remain relevant to PFC's claimed synergies, the value of the transaction, and the feasibility of a divestiture. This assumption does not limit your analysis of whether dry kibble or shelf-stable wet dog food belongs in the relevant product market for refrigerated fresh dog food, or of diversion to those products.

Here are the facts found in the investigation:

The merging parties

Pet Foods Corporation. PFC is a national manufacturer of pet foods sold through grocery stores, mass merchandisers, and pet specialty retailers. PFC has annual U.S. revenues of approximately \$1.25 billion from four product lines: refrigerated fresh dog food, refrigerated fresh cat food, shelf-stable wet dog food, and pet treats, toppers, and supplements.

PFC's refrigerated fresh dog food products are sold under the Homebowl brand. Homebowl is positioned as a product made from fresh meats, vegetables, and grains and marketed to dog owners willing to pay substantially more than dry kibble or shelf-stable wet dog food for products they perceive as fresher, healthier, and less processed. PFC sells Homebowl nationally through major grocery chains, mass merchandisers, and pet specialty retailers. Its products typically receive substantial space in the refrigerated pet food case.

Table 1 reports PFC's annual U.S. revenues, operating margins, and operating profits by product line.³

Table 1
Pet Foods Corporation
Annual U.S. Revenues and Operating Profits by Product Line
(\$ in millions)

Product line	Annual revenue	Percentage of revenue	Operating margin	Annual operating profit
Refrigerated fresh dog food	\$420	33.6%	22%	\$92.4
Refrigerated fresh cat food	\$180	14.4%	16%	\$28.8
Shelf-stable wet dog food	\$350	28.0%	14%	\$49.0
Pet treats, toppers, and supplements	\$300	24.0%	25%	\$75.0
Total	\$1,250	100%	19.6%	\$245.2

Pup Foods, Inc. Pup is a national manufacturer of fresh pet foods sold through grocery stores, mass merchandisers, and pet specialty retailers. Pup has annual U.S. revenues of approximately \$300 million from three product lines: refrigerated fresh dog food, refrigerated fresh cat food, and fresh pet food toppers, treats, and supplements.

Pup's refrigerated fresh dog food products are sold under the Pupbowl brand. Like PFC's Homebowl, Pupbowl is positioned as a product made from fresh meats, vegetables, and grains and marketed to dog owners willing to pay substantially more than dry kibble or shelf-stable wet dog food for products they perceive as fresher, healthier, and less processed. Pup sells Pupbowl nationally through grocery chains, mass merchandisers, and pet specialty retailers from refrigerated pet food cases. Pup is smaller than PFC but has grown rapidly in recent years.

Table 2 reports Pup's annual U.S. revenues, operating margins, and operating profits by product line.

³ *Operating profit* is revenue minus all operating costs, including fixed costs such as plant overhead, depreciation, and selling and administrative expenses, and *operating margin* is operating profit divided by revenue. Operating margins are therefore lower than *gross margins*, which deduct only marginal cost. Table 5 reports gross margins for dog food meal products. The diversion and price effect analyses use the margins in Table 5, not the operating margins in Tables 1 and 2.

Table 2
Pup Foods, Inc.
Annual U.S. Revenues and Operating Profits by Product Line
(\$ in millions)

Product line	Annual revenue	Percentage of revenue	Operating margin	Annual operating profit
Refrigerated fresh dog food	\$165	55%	15.1%	\$24.9
Refrigerated fresh cat food	\$75	25%	12%	\$9.0
Fresh pet food toppers, treats, and supplements	\$60	20%	20%	\$12.0
Total	\$300	100%	15.3%	\$45.9

The transaction

On March 6, 2026, PFC entered into a definitive agreement to acquire Pup in an all-cash transaction valued at \$700 million. Pup is a publicly traded company with no material debt. Pup negotiated only with PFC, and no other party proposed to acquire Pup. In the 30 days before the commencement of negotiations, Pup's market capitalization averaged approximately \$520 million. The purchase price therefore reflects a premium of approximately \$180 million, or 34.6%, over Pup's unaffected market capitalization. Premiums for comparable public company transactions in packaged foods and pet food products generally range from 22% to 28%, and premiums above 30% are uncommon.

The acquisition is structured as a reverse triangular merger under state corporate law. PFC has formed a wholly owned merger subsidiary that will merge with and into Pup, with Pup surviving the merger as a wholly owned subsidiary of PFC. Pup's board of directors unanimously recommended the transaction, and PFC's board approved it. Pup's shareholders approved the transaction at a special meeting held after the parties mailed the proxy statement.

The parties made their premerger notification filings under the Hart-Scott-Rodino Act shortly after signing. After a preliminary investigation, the FTC issued Second Requests to both parties. The parties have certified substantial compliance with their respective Second Requests and entered into a timing agreement with the FTC staff. It is now mid-October 2026, and the timing agreement expires in 45 days. Because Ms. Woods and the Director of the Bureau of Competition must review your memorandum, and the Commission needs time to consider and vote on a staff recommendation to authorize litigation, Ms. Woods needs your memorandum by the end of the day on Monday, November 2.

All closing conditions other than the antitrust conditions have been satisfied or are expected to be satisfied on the closing date. The only material outstanding conditions are the antitrust conditions: the waiting period under the Hart-Scott-Rodino Act must have expired or been terminated, no federal or state government action seeking to enjoin or otherwise block the closing under federal or state antitrust law may be pending, and no court order or injunction may prohibit the closing. The merger agreement requires PFC to use reasonable best efforts to obtain antitrust clearance. However, the agreement, which PFC and Pup submitted with their HSR filings, specifically excludes any obligation to divest any business, product line, brand, production asset, retailer contract, or other asset, to agree to any conduct remedy, or to litigate against the FTC or any state attorney general to obtain clearance. The merger agreement has an

outside date of March 6, 2027, one year after signing, and does not provide for extending that date. If the transaction is terminated because the antitrust conditions are not satisfied, PFC must pay Pup an antitrust reverse termination fee of \$32.9 million, equal to 4.7% of the purchase price.

The business rationale

PFC's internal business case identifies refrigerated fresh dog food as the fastest-growing dog food meal category and the one with the highest profit per serving. PFC states that the acquisition will add the Pupbowl brand and provide greater scale for advertising, in-store displays, promotions, and brand visibility. PFC's strategy is not to lower refrigerated fresh dog food prices toward dry kibble or shelf-stable wet dog food prices. Instead, PFC says the combined firm can use broader advertising and promotional support, together with more restrained future price increases for Pupbowl, to persuade more dog owners to switch permanently from traditional dog food to refrigerated fresh dog food.

PFC describes Homebowl and Pupbowl as complementary. Homebowl is the larger and more established retail brand, with stronger refrigerated case placement. Pupbowl is smaller but faster growing and appeals more strongly to younger consumers. PFC says it will preserve both brand names while adding a common corporate endorsement, such as "from Pet Foods Corporation," to packaging, advertising, and retailer promotional materials.

PFC's principal claimed cost savings come from manufacturing, procurement, and cold-chain distribution. PFC operates its refrigerated fresh pet food plants at an average utilization of approximately 78% to 82%. In comparison, Pup's refrigerated fresh pet food plants operate at approximately 88% to 92% utilization on average and above 95% during peak promotional periods. Pup has increasingly relied on third-party refrigerated storage, overflow co-packing, and less-than-truckload (LTL) refrigerated shipments. PFC says it can lower Pupbowl costs by buying larger volumes of ingredients and packaging, using available PFC capacity, producing larger lots where demand is predictable, reducing changeovers and startup waste, improving yields, shipping fuller refrigerated trucks, improving route density, and reducing spoilage, out-of-code product, and returns. PFC does not plan to close Pup's production facilities or refrigerated warehouses during the first three years after closing; the only facility consolidation contemplated is eliminating Pup's standalone headquarters and duplicative administrative functions.

PFC and Pup are both multiproduct companies, and PFC's claimed synergies are not limited to refrigerated fresh dog food. PFC also expects savings from fresh cat food, toppers, treats, and supplements; shared procurement, quality control, and packaging purchases; shared consumer research and brand management tools; and elimination of duplicative public company and administrative functions. PFC says it can expand Pupbowl faster than Pup could on its own by using PFC's capital, retailer relationships, available refrigerated capacity, and distribution network.

Table 3 reports PFC's year-three annual run-rate estimates and ten-year present discounted value (PDV) estimates, net of implementation costs. PFC's acquisition evaluation policy values synergies and other transaction benefits over a ten-year horizon and assigns no value to benefits after year ten, which PFC considers too uncertain to forecast reliably. PFC's board relied on the Table 3 estimates in approving the purchase price.

Table 3
PFC Estimated Synergies and Other Transaction Benefits
(\$ in millions)

Claimed synergy or transaction benefit	Year 3 annual run-rate	Ten-year PDV, net of implementation costs
Fresh dog food operating savings	\$12	\$56
Other product line operating savings	\$7	\$35
Marketing/consumer data savings	\$4	\$17
Corporate/public company overhead savings	\$7	\$34
Incremental operating profit from demand expansion, advertising, promotion, and cross-selling	\$4	\$19
Total estimated synergies and transaction benefits	\$34	\$161

The fresh dog food line in Table 3 includes lower ingredient and packaging costs, reduced manufacturing waste, lower refrigerated freight and handling, lower spoilage and returns, and reduced use of outside cold storage, co-packing, and LTL freight. PFC's workpapers do not allocate these savings between Homebowl and Pupbowl or separate savings that vary with output from fixed cost savings. Much of the reduction in outside storage, co-packing, and LTL freight depends on moving Pupbowl overflow volume into PFC's underused plants; Pup's ordinary course plans contemplated adding its own production capacity, but Pup had not committed to a specific project or timetable. Other product line savings come from similar initiatives in product lines other than refrigerated fresh dog food. The marketing and consumer data line includes consolidated consumer research, media buying, and brand management tools; these savings are largely fixed and shared across the combined firm's products, and PFC has not allocated them among product lines. The demand expansion line reflects projected incremental operating profit from growth in refrigerated fresh dog food sales, mainly Pupbowl's, including cross-selling Homebowl and Pupbowl to retail accounts that carry only one of the two brands. It is net of the associated incremental costs and reflects revenue growth rather than cost reductions. These incremental profits exclude the savings reported in the other rows.

PFC calculated the PDV estimates in Table 3 using a ten-year projection period and a 10% risk-adjusted discount rate, net of implementation costs. PFC has provided integration workpapers and supplier, freight, spoilage, utilization, consumer research, and marketing records, but FTC staff has not completed independent verification, and PFC has not committed to reduce wholesale prices or list prices after closing.

The dog food industry

Dog food is sold in three meal product formats: dry kibble, shelf-stable wet dog food, and refrigerated fresh dog food.⁴ Dry kibble is stored at room temperature, has a long shelf life, and is typically the least expensive form of dog food per serving. Shelf-stable wet dog food is sealed and heat-processed, stored at room temperature until opened, and typically priced above dry kibble but below refrigerated fresh dog food. Refrigerated fresh dog food must be kept cold before sale and use, has a shorter shelf life, and is marketed as fresher, less processed, and closer to human food than traditional dry or shelf-stable wet products.

⁴ Other formats exist, but for purposes of this hypothetical assume that these are the only three.

Refrigerated fresh dog food is sold through grocery stores, mass merchandisers, and pet specialty retailers from refrigerated pet food cases. Manufacturers sell refrigerated fresh dog food at wholesale to these retailers. No manufacturer sells refrigerated fresh dog food directly to consumers in material volume, and the revenues reported in Tables 1, 2, and 4 are manufacturers' net wholesale revenues from sales to retailers. Retailers decide which refrigerated fresh products to authorize, how much case space each product receives, and what promotions and in-store displays to support.

Most traditional dog food is sold by large multiproduct pet food companies that offer dry kibble, shelf-stable wet dog food, treats, and other pet products. Refrigerated fresh dog food is sold by both those larger firms and smaller companies that specialize in fresh pet food. Table 4 reports estimated annual U.S. revenues for dog food meal products by manufacturer and product category. The table excludes cat food, treats, toppers, and supplements.

Table 4
Estimated Annual U.S. Dog Food Revenues by Manufacturer and Product Category
(\$ in millions)

Manufacturer	Dry kibble	Shelf-stable wet dog food	Refrig. fresh dog food	Total dog food revenue shown
PFC	\$0	\$350	\$420	\$770
Pup	\$0	\$0	\$165	\$165
Bigpet	\$7,500	\$2,600	\$60	\$10,160
Chowco	\$6,200	\$2,100	\$70	\$8,370
Chillpet	\$0	\$0	\$210	\$210
Naturetray	\$0	\$0	\$110	\$110
Tailbox	\$0	\$0	\$85	\$85
Store-brand suppliers	\$1,500	\$750	\$30	\$2,280
All other manufacturers	\$8,800	\$2,200	\$50	\$11,050
Total	\$24,000	\$8,000	\$1,200	\$33,200

Dry kibble and shelf-stable wet dog food account for most dog food sales. Refrigerated fresh dog food is much smaller, but it has grown faster than traditional dry and shelf-stable wet products during the last five years. Industry participants generally track refrigerated fresh dog food separately from dry kibble and shelf-stable wet dog food because it requires refrigeration, different manufacturing and distribution practices, different retail merchandising, and different consumer marketing. At the same time, all three formats are used to feed dogs, and some consumers mix products or shift spending among them when household budgets, dog health needs, or feeding routines change.

Manufacturing processes

Dry kibble is made in high-volume extrusion plants: ingredients are ground, mixed, cooked under pressure, extruded, dried, coated, and packaged for ambient storage and distribution. Shelf-stable wet dog food is made by mixing ingredients, sealing them in containers, and using retort or similar heat-processing to make the product shelf-stable. Shelf-stable wet dog

food has more moisture than dry kibble and some feeding claims similar to refrigerated fresh dog food, but it uses different packaging, sterilization, storage, and distribution processes.

Refrigerated fresh dog food is made in chilled facilities using fresh meats and other perishable ingredients. Products are cooked or processed in batches, rapidly chilled, portioned and packaged, coded for shorter shelf lives, and moved into refrigerated storage. A manufacturer of dry kibble or shelf-stable wet dog food entering refrigerated fresh dog food would need refrigerated production or co-manufacturing capacity, perishable input sourcing, temperature-control systems, spoilage forecasting, retailer case authorization, and refrigerated distribution capabilities.

Distribution, cold-chain logistics, and retailer category management

Retail sales of refrigerated fresh dog food require refrigerated shelf space. Large grocery chains, mass merchandisers, and pet specialty retailers generally place dry kibble and shelf-stable wet dog food in standard pet food aisles and refrigerated fresh dog food in a separate refrigerated pet food case. Refrigerated case space is limited, expensive to install and maintain, and often shared among only a few suppliers. Retailers require suppliers to meet food safety, temperature control, inventory rotation, and recall requirements before authorizing products for those cases.

Retailer category managers told FTC staff that they consider all three formats part of the overall dog food category, but evaluate refrigerated fresh dog food as a separate subcategory for many merchandising decisions. They track its sales growth, spoilage rates, case-space productivity, promotion performance, and household penetration separately from dry and shelf-stable products. Several retailers also stated that refrigerated fresh dog food attracts consumers willing to pay substantially higher prices for products perceived as fresh, less processed, and healthier, although some of those consumers buy dry or shelf-stable wet dog food for convenience, travel, boarding, or budget reasons.

Large retailers have some leverage: they allocate case space, demand promotions and allowances, change facings, impose delivery and spoilage guarantees, and sometimes sponsor store-brand refrigerated fresh products. Retailers told FTC staff, however, that case space is constrained and successful sets usually need recognized national brands. Several said Pupbowl's growth improved their leverage with PFC and losing Pup would weaken it.

The principal refrigerated fresh suppliers sell nationally. PFC, Pup, Chillpet, Naturetray, and Tailbox use national brands, national advertising, and national or chain-wide negotiations with major retailers. PFC and Pup use national wholesale price lists, subject to account-specific promotions and allowances. FTC staff found no materially different competitive conditions by region, retail channel, or retailer.

Prices, margins, and diversion

Tables 5 and 6 report figures used by FTC staff for the quantitative analyses. Price means the supplier's net wholesale revenue per standard serving, net of ordinary trade promotions and allowances. Individual brands, recipes, package sizes, retailers, and promotions vary, and staff did not treat products within a category as identical. The figures for dry kibble, shelf-stable wet

dog food, and all other refrigerated fresh dog food (including Chillpet, Naturetray, and store brands) are category averages; the Homebowl and Pupbowl figures are brand-specific averages.⁵

Table 5
Average Prices and Marginal Costs for Dog Food Meal Products
(\$ per standard serving, except gross margin)

Product category or brand	Average net price	Estimated marginal cost	Contribution margin⁶	Gross margin⁷
Dry kibble	\$0.90	\$0.55	\$0.35	38.9%
Shelf-stable wet dog food	\$1.65	\$1.00	\$0.65	39.4%
Homebowl refrigerated fresh dog food	\$3.00	\$2.15	\$0.85	28.3%
Pupbowl refrigerated fresh dog food	\$3.55	\$2.50	\$1.05	29.6%
All other refrigerated fresh dog food	\$3.25	\$2.30	\$0.95	29.2%

During the last two years, Pupbowl increased average net prices before Homebowl in each annual price cycle. Over that period, Pupbowl’s average net prices increased 8%, while Homebowl’s increased 3%. Pup’s pricing documents state that Pupbowl’s core consumers are “less promotion driven” and “more committed to fresh feeding.” PFC’s pricing documents take a more restrained approach, warning that refrigerated fresh dog food remains expensive relative to traditional dog food and that larger Homebowl price increases could slow trial and household conversion from dry kibble and shelf-stable wet dog food.

Retailers and consumer survey respondents reported that consumers considering refrigerated fresh dog food consistently ranked the alternatives in the same order. Those consumers most often compared one refrigerated fresh dog food product with another refrigerated fresh dog food product. Shelf-stable wet dog food was the next most frequently considered alternative, especially for consumers who used refrigerated fresh dog food as a topper or occasional meal. Dry kibble was considered less frequently as a substitute for refrigerated fresh dog food, except when consumers were focused on household budgets, travel, boarding, or convenience. Consumers who used refrigerated fresh dog food as their dog’s primary diet reported the least willingness to switch to dry kibble or shelf-stable wet dog food in response to a small price increase.

FTC staff also found no evidence that Bigpet, Chowco, store-brand suppliers, or other dry and wet dog food manufacturers changed their dry kibble or shelf-stable wet dog food prices, promotions, or package sizes in response to refrigerated fresh dog food price changes. Those manufacturers monitor refrigerated fresh dog food as a growth trend, but their ordinary course

⁵ For the quantitative analyses, assume linear residual demand, constant marginal costs, and premerger prices that maximize each brand’s standalone profits. Measure unit sales in standard servings and use the Table 5 margins of the products to which sales are diverted. Assume that none of the diversion to shelf-stable wet dog food or dry kibble goes to products sold by PFC or Pup. The diversion estimates measure supplier unit sales responses to changes in net wholesale prices, accounting for downstream retailer and consumer responses, and may be used with the prices and margins in Table 5.

⁶ *Contribution margin* is price minus marginal cost, in dollars per standard serving.

⁷ *Gross margin* is (price – marginal cost)/price, or contribution margin divided by price.

pricing documents focus on other dry and wet dog food brands, input costs, retailer promotional calendars, and private-label competition.

Prices, package sizes, shelf tags, promotions, and case placements are visible, and major fresh suppliers repeatedly meet with the same national retailers for category reviews. Documents from PFC, Pup, Chillpet, and Naturetray refer to monitoring promotions and maintaining price architecture. But brands are differentiated, promotions and allowances are account-specific, and rapid growth rewards winning new households.

FTC staff conducted a consumer survey, analyzed retail scanner data and the parties' wholesale price and shipment data, and reviewed retailer loyalty card data. Table 6 shows where lost Pupbowl unit sales would divert if Pupbowl raised its prices by 5% while all other dog food prices remained unchanged. At that price increase, Pupbowl would lose approximately 16.9% of its original unit sales.

Table 6
Diversion of Lost Pupbowl Unit Sales After a 5% Price Increase

Destination for lost Pupbowl unit sales	Share of lost unit sales
Homebowl refrigerated fresh dog food	39%
Chillpet and Naturetray refrigerated fresh dog food	24%
Other refrigerated fresh dog food, including store brands	13%
Shelf-stable wet dog food	10%
Dry kibble	6%
No purchase or reduced feeding	8%
Total	100%

Table 6 matches the ordering of alternatives described above. Of lost Pupbowl unit sales, 76% would divert to other refrigerated fresh dog food products, including Homebowl, Chillpet, Naturetray, and store brands. Another 10% would divert to shelf-stable wet dog food, 6% to dry kibble, and 8% to no purchase or reduced feeding. Staff's analysis found that after a 5% Homebowl price increase, 17% of lost Homebowl unit sales would divert to Pupbowl. PFC's and Pup's ordinary course documents frequently compare Homebowl and Pupbowl and identify differences in price and brand positioning. PFC regularly tracks Pupbowl's pricing, promotions, and retail authorizations.

PFC says its postmerger strategy would be to moderate future Pupbowl price increases and use advertising, promotion, and broader retail visibility to grow refrigerated fresh dog food volume. Apart from the inflation cap described below, PFC has not made any binding commitment to maintain any current price, promotion level, package size, or brand positioning strategy after closing.

Entry, expansion, and repositioning

FTC staff investigated the expansion plans of existing refrigerated fresh suppliers, asking each how much additional annual sales it could add within two years. Chillpet estimated it could add \$35 million by increasing output at its current plants and obtaining additional retailer authorizations; Naturetray estimated \$20 million. Tailbox estimated it could add about \$25 million by securing additional retail accounts and increasing the number of stores carrying

its products within existing accounts, but only if it obtained the necessary retailer authorizations in each of the next two annual category review cycles. Store-brand suppliers estimated \$15 million, but retailers said store brands mainly fill lower-price case space and draw more budget-oriented refrigerated fresh shoppers than Homebowl or Pupbowl.

Bigpet and Chowco have large dry and wet dog food businesses, national retailer relationships, and small refrigerated fresh lines. Neither identified any material increase in its refrigerated fresh sales within two years, and their ordinary course plans do not call for national refrigerated fresh expansion within that period. Bigpet's refrigerated plant has unused capacity, described below, but Bigpet attributes its small refrigerated fresh sales to limited case space and consumer demand for its fresh brand, not to production capacity. Their internal documents state that national refrigerated fresh expansion would require additional production assets or co-manufacturing, cold-chain logistics, spoilage forecasting, case space, and fresh-feeding credibility.

FTC staff did not identify any firm that plans to begin selling refrigerated fresh dog food in the United States within the next two years.

The merging parties' defenses

PFC and Pup contend that the relevant product market includes all dog food meal products: dry kibble, shelf-stable wet dog food, and refrigerated fresh dog food. In their view, every format serves the same end use: feeding a dog a complete meal. They point to mixed feeding, noting that many households that buy refrigerated fresh dog food also buy dry kibble or shelf-stable wet dog food, and that many fresh-food customers use it only as a topper or an occasional meal. They argue that households move among formats as their budgets, travel and boarding needs, convenience, and dogs' health needs change, and that retailers themselves treat all three formats as part of a single dog food category. They also emphasize that shelf-stable wet dog food is marketed for many of the same feeding occasions as refrigerated fresh dog food and makes some similar feeding claims. They argue that differences in manufacturing and cold-chain distribution reflect how the products are made and delivered, not how consumers choose among them.

PFC and Pup contend that the acquisition would produce neither unilateral nor coordinated anticompetitive effects. On unilateral effects, they argue that Homebowl and Pupbowl are not especially close substitutes. They emphasize that most lost Pupbowl sales would go somewhere other than Homebowl—to Chillpet, Naturetray, and other refrigerated fresh suppliers, to shelf-stable wet dog food and dry kibble, or to no purchase or reduced feeding—and that diversion from Homebowl to Pupbowl is lower still. They describe the brands as positioned differently: Homebowl is the larger, more established brand with stronger case placement, while Pupbowl is higher-priced and appeals more strongly to younger consumers; its core consumers, in Pup's words, are "less promotion driven" and "more committed to fresh feeding." They also argue that PFC has no incentive to raise prices because its strategy depends on converting households from traditional dog food. They note that PFC's own pricing documents warn that larger price increases could slow trial and household conversion, and that PFC intends to moderate Pupbowl's future price increases, which have run well above Homebowl's. On coordinated effects, they argue that the market is ill-suited to coordination: brands, recipes, and package sizes are differentiated; promotions and allowances are negotiated account by account; rapid growth gives every supplier an incentive to win new households and case space rather than

accommodate rivals; and large retailers can discipline any supplier that raises prices by shifting case space, facings, and promotional support.

PFC and Pup also rely on traditional rebuttal evidence. On entry and expansion, they point to the combined expansion plans of Chillpet, Naturetray, Tailbox, and store-brand suppliers, and to Chillpet's available manufacturing capacity, described below. They argue that Bigpet and Chowco—each with billions of dollars in dog food sales, national retailer relationships, and existing refrigerated fresh lines—could expand quickly if the combined firm raised prices. On buyer power, they argue that large retailers control case space and facings, demand promotions and allowances, impose delivery and spoilage guarantees, and sponsor store-brand refrigerated fresh products, and that retailers would use those tools to defeat any price increase. On efficiencies, they rely on the synergies and other transaction benefits in Table 3. They stress three in particular: the fresh dog food operating savings, which they say would lower Pupbowl's costs by relieving its capacity constraints and moving overflow production into PFC's underused plants; the marketing and consumer data savings; and the demand expansion benefits, which they say would bring refrigerated fresh dog food to more households.

PFC also contends that its willingness to accept a consent decree capping the combined company's wholesale price increases for refrigerated fresh dog food at inflation for five years, described below, would protect retailers and consumers from any adverse price effects of the transaction. PFC argues that the cap would give the Commission enforceable assurance that wholesale prices for both Homebowl and Pupbowl will rise no faster than inflation, and that the cap aligns with its stated strategy of restraining price increases to grow the category.

Settlement remedies

As part of its investigation, FTC staff learned that Pup's Pupbowl refrigerated fresh dog food business is separable from the rest of Pup's business as a commercial line of business, but not with a standalone set of production assets. Pup maintains separate financial records for Pupbowl revenues, margins, production volumes, retailer authorizations, promotional plans, and account performance. Pupbowl also has its own brand name, trademarks, recipes, package designs, quality control specifications, consumer research, demand forecasts, and ordinary course business records. Pup's sales and marketing organization includes personnel who work principally on Pupbowl.

Pupbowl's production operations, however, are integrated with Pup's other refrigerated fresh products. Pupbowl is produced in the same refrigerated facilities, using many of the same production employees, sanitation procedures, quality control personnel, cold-storage areas, procurement systems, scheduling systems, warehousing, and logistics functions used for Pup's refrigerated fresh cat food and fresh pet food toppers, treats, and supplements.

FTC staff concluded from the merger agreement, the parties' ordinary course documents, and the organization of Pup's production operations that PFC would not be willing to include a production facility in any divestiture sale, so that a divestiture designed to preserve Pupbowl as an independent competitor likely would require a divestiture buyer with the production capability and expertise to manufacture the divested product.

Several dog food companies, however, told FTC staff, without prompting, during the investigation that they would be interested in acquiring the Pupbowl business if a divestiture were required. Chillpet told staff that it operates refrigerated fresh dog food facilities with

available capacity, has cold-chain distribution experience, and could manufacture Pupbowl products using its own facilities if it received the Pupbowl brand, recipes, quality control specifications, packaging designs, retailer authorizations, account records, ordinary course data, and key sales and marketing personnel. Chillpet explained that the \$35 million estimate for expanding its own brand reflects the time needed to build consumer demand and obtain additional retailer authorizations, not a limit on available manufacturing capacity. Chillpet recently completed a plant expansion, and its existing facilities have enough available capacity to manufacture Pupbowl's current volume, plus Chillpet's planned own-brand production, after recipe transfer and production qualification.

Bigpet told staff that it has relationships with national retailers, substantial financial resources, and a small refrigerated fresh dog food business. Its existing refrigerated plant has available capacity for about 40% of Pupbowl's current volume. Bigpet estimated that adding a production line to manufacture the remaining volume would take 12 to 18 months after it acquired the Pupbowl business, and that until then PFC would need to supply the remaining volume under a transitional supply agreement. Bigpet would also need transition services for recipe conversion, quality-control transfer, and retailer onboarding.

A store-brand refrigerated fresh supplier also expressed interest but said it would need financing, additional production capacity, retailer assurances, and a longer transition period before it could support Pupbowl as a national branded product. The supplier told staff that it was not confident it could replace Pup's competitive role in the market and would be hesitant to try.

PFC has not offered to divest Homebowl, Pupbowl, or any other PFC or Pup business, brand, assets, contracts, or personnel. PFC has indicated it would accept a consent decree limiting the combined company's wholesale price increases for refrigerated fresh dog food to the relevant measure of inflation for five years after closing.