



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Healthcare Mergers

When healthcare organizations merge, complicated issues arise among patients, providers, and insurers. Such mergers involve complex empirical analyses to assess competitive effects, including questions related to bargaining, quality of care, risk-sharing, and efficiencies.

Addressing High-Stakes Economic Issues

AGENCY EXPERIENCE

Our consultants and affiliated experts have experience working at or consulting for enforcement and regulatory agencies, including the Department of Justice, the Federal Trade Commission, the U.K. Competition Commission, the Federal Communications Commission, and other agencies around the world.

COMPETITION ISSUES

Our staff and experts are at the forefront of using sophisticated econometric demand models and merger simulation tools to analyze the likely competitive effects of a merger and any proposed divestitures. We draw on qualitative and quantitative evidence from multiple sources to provide understandable, coherent, and robust descriptions of relevant geographic and product markets, competitive effects, and other factors.

REAL-WORLD EVIDENCE

Econometric models reinforced by qualitative evidence such as ordinary course of business documents and fact witness testimony can provide a basis for credible and persuasive expert testimony. Our experts are adept at incorporating such evidence, helping to ensure that their analyses are consistent with industry realities and the way the merging parties think about how their consumers make choices.

BIG DATA AND SURVEY ANALYSIS

Cornerstone Research staff and experts regularly work with datasets containing billions of records. Clients frequently rely on us to compile large datasets from disparate sources and incompatible formats to address the economic issues that arise in mergers. We also have extensive experience in constructing surveys, analyzing market-based data, and critiquing survey methodologies.

ACCOUNTING ISSUES

Our staff and experts with financial statement or accounting expertise can provide valuable input in merger challenges where parties assert efficiency claims or “failing firm” defenses. Such analyses can include assessment of merger specificity and verifiability of claimed efficiencies. Our experts have been asked to assess a target firm’s financial condition, the risk of its key assets leaving the market absent the merger, and whether the firm has made good-faith efforts to elicit reasonable alternative offers.

Antitrust Support in All Phases of the Merger Review Process

Cornerstone Research works with merging parties, third parties, and enforcement agencies at all stages of the merger review process in the United States and internationally.

PRE-SCREENING

Before a deal comes before the agencies, we provide merging parties with assessments of antitrust risks and strategies to address potential agency concerns. Consulting while the deal is being structured can help parties avoid costly and disruptive reviews.

ENFORCEMENT AGENCY REVIEW

For merging parties, it is important to understand the agency's concerns and educate the agency on how the specific industry or market operates. If an agency is sufficiently concerned about harm to competition at the end of the initial review period to proceed to a second request, Cornerstone Research works with merging parties to respond to agency requests, including assisting with data and document production as well as providing analytical support for expert white papers or presentations to the agency.

Our credibility with the agencies enables us to communicate effectively on behalf of merging parties. We are also frequently retained by the agencies to offer independent opinions about whether a merger raises antitrust concerns.

TRIAL EXPERIENCE

On behalf of merging parties and U.S. government agencies, Cornerstone Research has supported testifying experts in some of the highest-profile merger review cases in recent years. We have the experience and skills to help counsel seamlessly transition to litigation and meet the compressed deadlines common in merger litigation.

INTERNATIONAL EXPERIENCE

With offices across the United States and in the United Kingdom, Cornerstone Research provides the expertise and capabilities to assist in mergers being reviewed internationally. Our affiliated experts have advised parties in merger proceedings before enforcement bodies throughout the world, including Europe, the United Kingdom, and China.

Healthcare Mergers

PROPOSED MERGER OF AETNA AND HUMANA ENJOINED

Retained by the U.S. Department of Justice Antitrust Division and the Plaintiff States

After a thirteen-day trial, the U.S.D.C. for the District of Columbia enjoined the proposed merger of health insurers Aetna and Humana. In accepting the plaintiffs' arguments, the court relied on the analyses and rebuttal critiques of Cornerstone Research experts and senior advisors Aviv Nevo of the University of Pennsylvania and Christine Hammer, CPA. Following the ruling, the parties abandoned the merger.

The court's opinion relied on Professor Nevo's testimony in multiple areas.

Professor Nevo analyzed the likely effects of the proposed merger on competition involving Medicare Advantage plans and plans sold on the Affordable Care Act exchanges. He testified in the plaintiffs' case in chief and as a rebuttal witness. The court's opinion relied on Professor Nevo's testimony in multiple areas.

- **Relevant Market.** "Professor Nevo has performed a battery of tests that all point to the same conclusion: the sale of individual Medicare Advantage plans satisfies the hypothetical monopolist test and thus is a relevant product market. That result generally holds up whether Nevo uses a critical loss analysis or a merger simulation, and whether he uses his own estimates, [the defendants' expert's], or those from the academic literature."
- **Competitive Effects.** "Nevo's (largely uncontroverted) analysis suggests that there is substantial competition between Aetna and Humana. Given Nevo's analysis, it is not surprising to find significant evidence of head-to-head competition between Aetna and Humana throughout the country."

- **Entry: Not Likely.** "Hence, based on the expert analysis that the Court finds persuasive [Nevo's analysis]...entry is not likely enough to allay these concerns." **Not Timely.** "The Court finds Nevo's critique of [the defendants' expert's] model for equilibrium and timely entry to be persuasive." **Not Sufficient.** "[Nevo's] analysis is persuasive, and alone is enough to conclude that entry is not likely to be sufficient."

The court found that Ms. Hammer raised valid issues regarding "several categories of claimed efficiencies."

Ms. Hammer evaluated whether the defendants' efficiency claims were verifiable and merger-specific, among other areas. The court found that Ms. Hammer raised valid issues regarding "several categories of claimed efficiencies" as well as "the companies' analyses...that serve to further undermine the reliability of the efficiency claims."

- **Verifiability.** "Hammer supported her analysis [of the defendants' efficiency claims relating to drug rebates] with a series of illustrative examples that, in the Court's view, raise real concerns about the reliability of the companies' pharmacy rebate maximization efficiencies."
- **Merger Specificity.** "On balance, the Court is unpersuaded that the efficiencies generated by the merger will be sufficient to mitigate the transaction's anticompetitive effects for consumers in the challenged markets."

CIGNA'S ACQUISITION OF EXPRESS SCRIPTS

Retained by Paul, Weiss, Rifkind, Wharton & Garrison

Counsel for Cigna retained Cornerstone Research in the review of this \$67 billion vertical merger by federal and state regulators. The merger involved one of the largest health insurers and one of the largest pharmacy benefit managers in the United States.

The parties completed a \$67 billion merger after receiving clearance from the U.S. Department of Justice and state departments of insurance.

Under the direction of antitrust experts Aviv Nevo of the University of Pennsylvania and Nathan Miller of Georgetown University, Cornerstone Research analyzed the competitive effects of the merger, including both upstream and downstream aspects.

Cigna announced the proposed acquisition in March 2018 and received clearance from the U.S. Department of Justice in September 2018 and from regulators at state departments of insurance. The merger was completed on December 20, 2018.

USA V. CABELL HUNTINGTON HOSPITAL INC. AND ST. MARY'S MEDICAL CENTER INC.

In its review of the merger of two local hospitals, the West Virginia Health Care Authority was “persuaded by the common sense opinions” of Gautam Gowrisankaran of the University of Arizona.

The West Virginia Health Care Authority agreed with Professor Gowrisankaran.

The Authority approved the merger and extended state action immunity to the deal. The FTC subsequently dropped its challenge of the transaction.

MERGER OF HEALTH INSURANCE PROVIDERS

Cornerstone Research worked with counsel for a large health insurance provider that had completed an acquisition of another health insurer. At the time of this acquisition, both providers were creating pharmacy networks for the newly introduced Medicare Part D, and both had negotiated separate contracts with the plaintiff, an institutional pharmacy. The plaintiff claimed that the defendants conspired to coordinate their Medicare Part D negotiations, and to use a contract that was less favorable to the plaintiff after the merger closing.

Summary judgment was granted in favor of our client on all claims.

Cornerstone Research and a law professor with expertise in mergers and acquisitions analyzed the terms of the merger agreement. A comparison of the language at issue in the merger agreement to language in comparable merger agreements demonstrated that the merger agreement at issue was not unusually restrictive, and thus, it was unlikely to have been structured intentionally to have the alleged anticompetitive effects. Summary judgment was granted in favor of our client on all claims.

IN THE MATTER OF OTTO BOCK HEALTHCARE NORTH AMERICA INC.

Retained by the Federal Trade Commission

The FTC issued a complaint related to the acquisition of Freedom Innovations (Freedom) by Otto Bock HealthCare North America Inc. (Otto Bock) in September 2017. The FTC retained Cornerstone Research and Christine Hammer, a certified public accountant and senior advisor with Cornerstone Research.

Ms. Hammer analyzed the parties' claims relating to their "failing firm" defense and alleged merger-specific efficiencies.

In a hearing before the chief administrative law judge (ALJ), Ms. Hammer provided testimony related to:

- **Whether** Freedom qualified as a "failing firm" as defined by the Department of Justice and FTC Horizontal Merger Guidelines.
- **What**, if any, efficiencies were likely to result from Otto Bock's acquisition of Freedom and be cognizable under the Merger Guidelines.

Ms. Hammer concluded that Freedom did not meet any of the three circumstances to be considered a failing firm under the Merger Guidelines. She found that Freedom would have been able to meet its financial obligations in the near future and there was no evidence that Freedom initiated or seriously considered a Chapter 11 reorganization. She also determined that Freedom did not make good-faith efforts to elicit reasonable alternative offers during the sales process.

With regard to alleged merger-specific efficiencies, Ms. Hammer opined that Otto Bock had not presented any verifiable efficiency claims. Because Otto Bock only presented ambiguous assertions, it was not possible to evaluate the merger specificity of the claims. The efficiencies as alleged were therefore not cognizable under the Merger Guidelines.

In an April 2019 decision, as a remedy, the ALJ ordered Otto Bock to fully divest Freedom to a FTC-approved acquirer, with limited potential exceptions to a complete divestiture of all of Freedom. The ALJ cited Ms. Hammer's expert report and testimony throughout his decision.

In November 2019, the FTC issued its opinion, stating "We hold that, to fully restore the competition lost from the Acquisition, Respondent must divest Freedom's entire business with the limited exceptions granted by the ALJ. We enter an order consistent with this Opinion."

Selected Experts



Laurence C. Baker

Professor of Health Research and Policy, Chair, Department of Health Research and Policy, School of Medicine, Stanford University; Senior Advisor, Cornerstone Research

Laurence Baker is an expert in the areas of antitrust, health insurance markets, medical services pricing, and the effects of regulation on healthcare markets. He has consulted and testified on matters related to healthcare prices and costs, as well as competition issues, including mergers between hospitals and physician groups. In his research, Professor Baker has examined the relationship between physician practice characteristics and competition and healthcare delivery, prices, and outcomes. He was awarded the ASHEcon Medal for his significant contributions to the field of health economics, and has twice been honored for excellence in teaching.

Laurence Baker is an expert in the areas of antitrust, health insurance markets, medical services pricing, and the effects of regulation on healthcare markets.



M. Kate Bundorf

J. Alexander McMahon Distinguished Professor of Health Policy and Management, Sanford School of Public Policy, Core Faculty Member, Duke-Margolis Center for Health Policy, Duke University

Kate Bundorf is an expert on health insurance markets, and the economics of healthcare systems and healthcare delivery. Professor Bundorf has analyzed the determinants and effects of consumer choices, the impact of regulation, the interaction of public and private systems, incentives for insurers to improve healthcare quality, and the organization of provider markets. She has served as an expert witness on healthcare matters, including cases with allegations of False Claims Act violations, reimbursement disputes, and has testified at deposition.

Kate Bundorf is an expert on health insurance markets.



Mark Duggan

Wayne and Jodi Cooperman Professor of Economics;
Trione Director, Stanford Institute for Economic
Policy Research; Stanford University

Mark Duggan is an expert in health economics. His research areas include Traditional Medicare, Medicare Advantage, Medicaid, disability insurance, the Affordable Care Act, pharmaceutical and hospital pricing, and health insurance pricing. He has consulted and testified on matters related to the False Claims Act, reimbursement disputes between payors and providers, healthcare competition, pharmaceutical pricing, and pharmaceutical competition. Professor Duggan served from 2009 to 2010 as the senior economist for healthcare policy at the President’s Council of Economic Advisers and was the 2010 recipient of the ASHEcon Medal for his contributions to the field of health economics.

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Mark Duggan is an expert in health economics.
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Greg Eastman

Vice President, Cornerstone Research

Greg Eastman analyzes complex economic and accounting issues related to healthcare. As a testifying expert, Dr. Eastman has addressed profitability, cost efficiencies, class certification, valuation and damages, and unjust enrichment issues. Dr. Eastman has been retained as a testifying expert to assess merger-specificity and verifiability of claimed efficiencies in multiple industries. He helped to estimate the profitability of the individual commercial health insurance business in the enjoined Aetna/Humana merger. Dr. Eastman has also been retained to perform profitability analyses and to assess whether firms are failing and their assets are likely to exit the relevant market.

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Greg Eastman analyzes complex economic and accounting issues related to healthcare.
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Gautam Gowrisankaran

Professor of Economics, Columbia University;
Senior Advisor, Cornerstone Research

Gautam Gowrisankaran is an authority on the competitive effects of mergers, acquisitions, and the economics of industrial organization. A particular focus of his research is healthcare, including hospitals, accountable care organizations, and healthcare insurers. Professor Gowrisankaran has testified in competition matters in numerous venues, and submitted testimony to the Federal Trade Commission in *USA v. Cabell Huntington Hospital Inc. and St. Mary's Medical Center Inc.*

Gautam Gowrisankaran is an authority on the competitive effects of mergers, acquisitions, and the economics of industrial organization.



Christine M. Hammer

Certified Public Accountant;
Senior Advisor, Cornerstone Research

Chris Hammer is a certified public accountant with expertise in merger efficiencies, failing firm defense, lost profits, and cost accounting. She has served as an expert in cases involving alleged anticompetitive practices under both federal and California law. She has addressed issues related to merger efficiency claims, alleged predatory pricing, and lost profit damages in industries such as healthcare, pharmaceuticals, and telecommunications. Ms. Hammer was an efficiencies expert for the Department of Justice in the enjoined Aetna/Humana merger.

Chris Hammer is a certified public accountant with expertise in merger efficiencies, failing firm defense, lost profits, and cost accounting.



C. Scott Hemphill

Moses H. Grossman Professor of Law, School of Law,
New York University

Scott Hemphill provides expert testimony on antitrust matters, in which he has addressed such topics as merger effects, monopsony, industry regulation, vertical restraints, and exclusionary conduct. He has particular expertise with matters involving complex economic models of liability. Professor Hemphill has testified before Congress on various issues, including pharmaceutical competition and innovation. A lawyer and economist by training, he has served as antitrust bureau chief for the New York Attorney General, and as a law clerk for the U.S. Court of Appeals for the Seventh Circuit and for the U.S. Supreme Court.

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Daniel P. Kessler

Professor of Political Economy,
Stanford Graduate School of Business;
Professor of Law, Stanford Law School;
Professor (by courtesy) of Health Research and Policy,
Stanford School of Medicine;
Senior Fellow, Hoover Institution and Stanford Institute
for Economic Policy Research, Stanford University;
Senior Advisor, Cornerstone Research

Daniel Kessler’s research focuses on health policy, healthcare finance, and antitrust law and economics. He has consulted and testified for hospitals, physician groups, integrated delivery systems, and insurers on cases involving antitrust law, billing and contracting disputes, fraud and abuse litigation, and insurance regulation. He has also served as a consultant to trade associations, foundations, pharmaceutical manufacturers, and the Federal Trade Commission.

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Jonathan Kolstad

Associate Professor, Economic Analysis and Policy Group,
Haas School of Business,
University of California, Berkeley

Jonathan Kolstad analyzes issues at the intersection of health economics, industrial organization, and public economics. His work focuses on how incentives and access to information affect healthcare markets. Specifically, he has analyzed how consumers choose insurance plans, the impact of patient cost sharing on prices and demand for health services, and the determinants of physician and hospital performance. Professor Kolstad is a recipient of the 2018 ASHEcon Medal, awarded every two years by the American Society of Health Economists to the economist age 40 and under in the United States who has made the most significant contributions to the field of health economics.

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Jonathan Kolstad analyzes issues at the intersection of health economics, industrial organization, and public economics.
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Darius Lakdawalla

Quintiles Chair in Pharmaceutical Development and Regulatory Innovation, Professor, School of Pharmacy, Professor, Sol Price School of Public Policy, Director of Research, Leonard D. Schaeffer Center for Health Policy and Economics, University of Southern California

Darius Lakdawalla’s research focuses on topics related to health economics and health policy, including the value and determinants of medical innovation, the economics of health insurance and risks to health, and the industrial organization of healthcare markets. Professor Lakdawalla has served as a consulting expert in life sciences and healthcare litigation in both state and federal courts, where he addressed liability and damages issues. He has quantified the impact of pharmaceutical marketing on drug sales, analyzed irreparable harm due to patent infringement, and estimated damages related to Medicare Part D reimbursement and optimal use of medical services.

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Darius Lakdawalla’s research focuses on topics related to health economics and health policy.
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Nathan Miller

Saleh Romeih Associate Professor,
McDonough School of Business,
Georgetown University

Nathan Miller is an antitrust expert who consults on high-stakes merger investigations. His research covers industrial organization, finance, and regulation, with a focus on merger investigations, cartels, tacit coordination, and price discrimination. Professor Miller analyzed the competitive effects, including upstream and downstream aspects, in the \$67 billion acquisition of Express Scripts by Cigna. As a former staff economist for the Antitrust Division of the Department of Justice, Professor Miller assessed an array of complex mergers, notably Bazaarvoice/PowerReviews, AT&T/T-Mobile, and Ticketmaster/Live Nation. *Who's Who Legal* has recognized him as a "definite future leader" in the competition field.

Nathan Miller is an antitrust expert who consults on high-stakes merger investigations.



Aviv Nevo

Professor of Economics and Marketing,
The Wharton School and Department of Economics,
University of Pennsylvania;
Former Deputy Assistant Attorney General for
Economic Analysis, Antitrust Division,
U.S. Department of Justice;
Senior Advisor, Cornerstone Research

Aviv Nevo is a pioneer in using sophisticated econometric and merger simulation tools to analyze competition policy issues. He has been retained as an expert by the Department of Justice, the Federal Trade Commission, and private firms in cases related to antitrust merger review, regulatory review of dominant firms, and other antitrust matters. Professor Nevo testified as the U.S. government's economic expert in the enjoined Aetna/Humana merger, and was retained by the merging parties in Cigna/Express Scripts.

Aviv Nevo is a pioneer in using sophisticated econometric and merger simulation tools to analyze competition policy issues.



Ariel Pakes

Thomas Professor of Economics,
Harvard University;
Senior Advisor, Cornerstone Research

Ariel Pakes is recognized globally as a leader in industrial organization. He has served as an economic consultant and provided expert testimony in court and through depositions. Professor Pakes has conducted research on pricing, profits, consumer welfare, and productivity in numerous industries, including healthcare, automotive, personal computers, and telecommunications equipment. He has developed methods for analyzing market responses to changes in policy and in business conditions, such as mergers.

Ariel Pakes is recognized globally as a leader in industrial organization.



Matthew C. Weinberg

Associate Professor, Economics,
The Ohio State University

Matthew Weinberg specializes in industrial organization, with a focus on antitrust analysis of mergers and the economic effects of regulation. Professor Weinberg's merger-focused research covers competitive effects, coordinated behavior among competitors, enforcement, and the accuracy of merger simulations. His research has involved a variety of industries, including healthcare and pharmaceuticals. Professor Weinberg is also a former visiting scholar and staff economist at the Federal Trade Commission.

Matthew Weinberg specializes in industrial organization, with a focus on antitrust analysis of mergers and the economic effects of regulation.

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