

United States of America
v.
U.S. Sugar, et al.

Testimony of Dr. Dov Rothman



ANALYSIS GROUP



Summary and Background



Market Definition



Market Participants, Shares, and Concentration



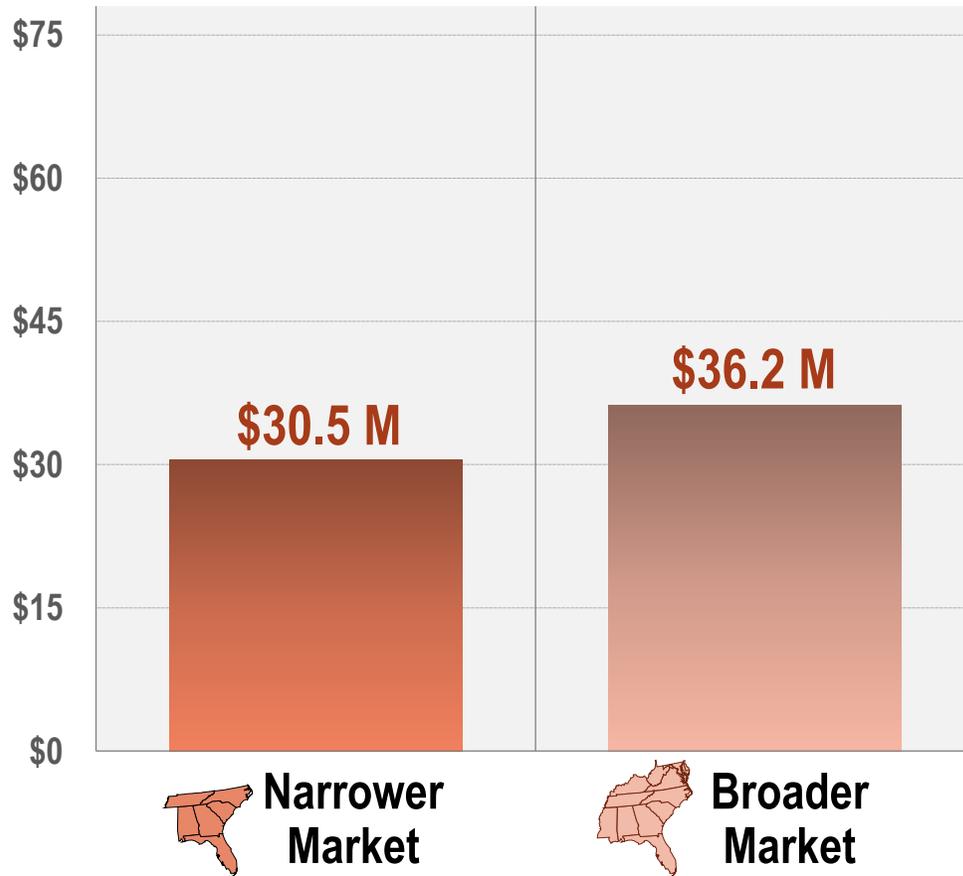
Competitive Effects



Mitigating Factors

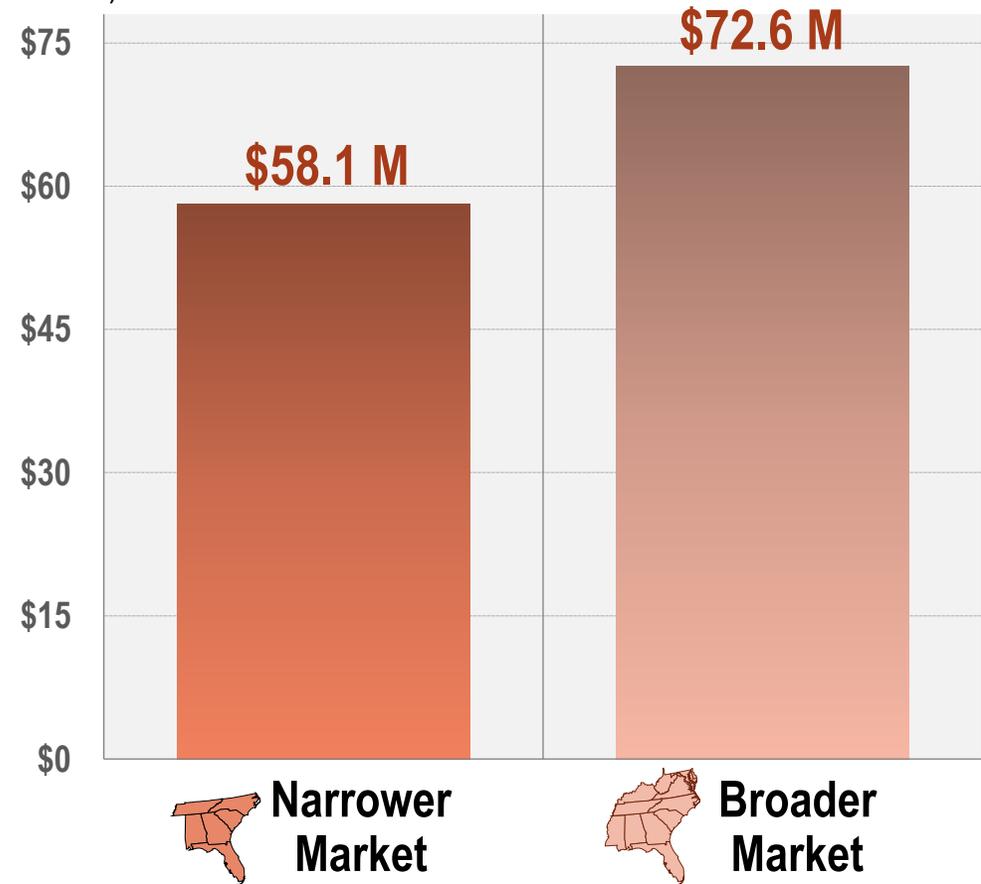
Elimination of Head-to-Head Competition

Annual Harm
(\$ million)



Elimination of Head-to-Head Competition *and* Increased Coordinated Interaction

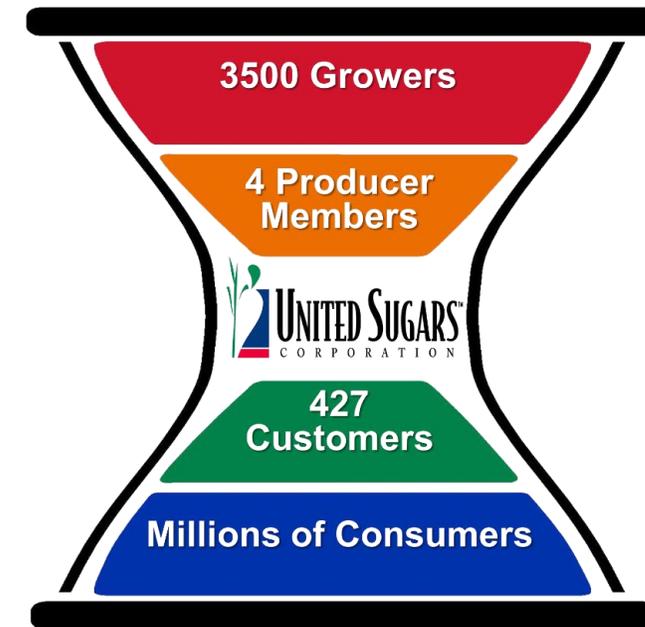
Annual Harm
(\$ million)



United Sugars
Working "Together" for you!



The Power of "One"



As a Capper Volstead cooperative, we enjoy an anti-trust exemption. This allows competitors to act as partners. By pooling your sugar with the sugar produced by 3 other sugar processors, we have a much larger presence in the market.

We like to call this the "Power of One".

Strategic Approach Mission

Discussion Topics

- The Power of One – Matt
- How the Pool Works – Kae
- Strategic Approach – Steve
 - Sell it High! Sell it All!
- Selling together – Dirk
- Distributing together – Stacy
- Margining-UP! – Matt
 - Montgomery

PLAINTIFF EXHIBIT
PTX488
1:21-cv-01644

UNITED-DOJ-0039028

United Sugars exists to:

...sell and deliver all member refined sugar production at the highest possible NSP

“Sell it high! Sell it all!”



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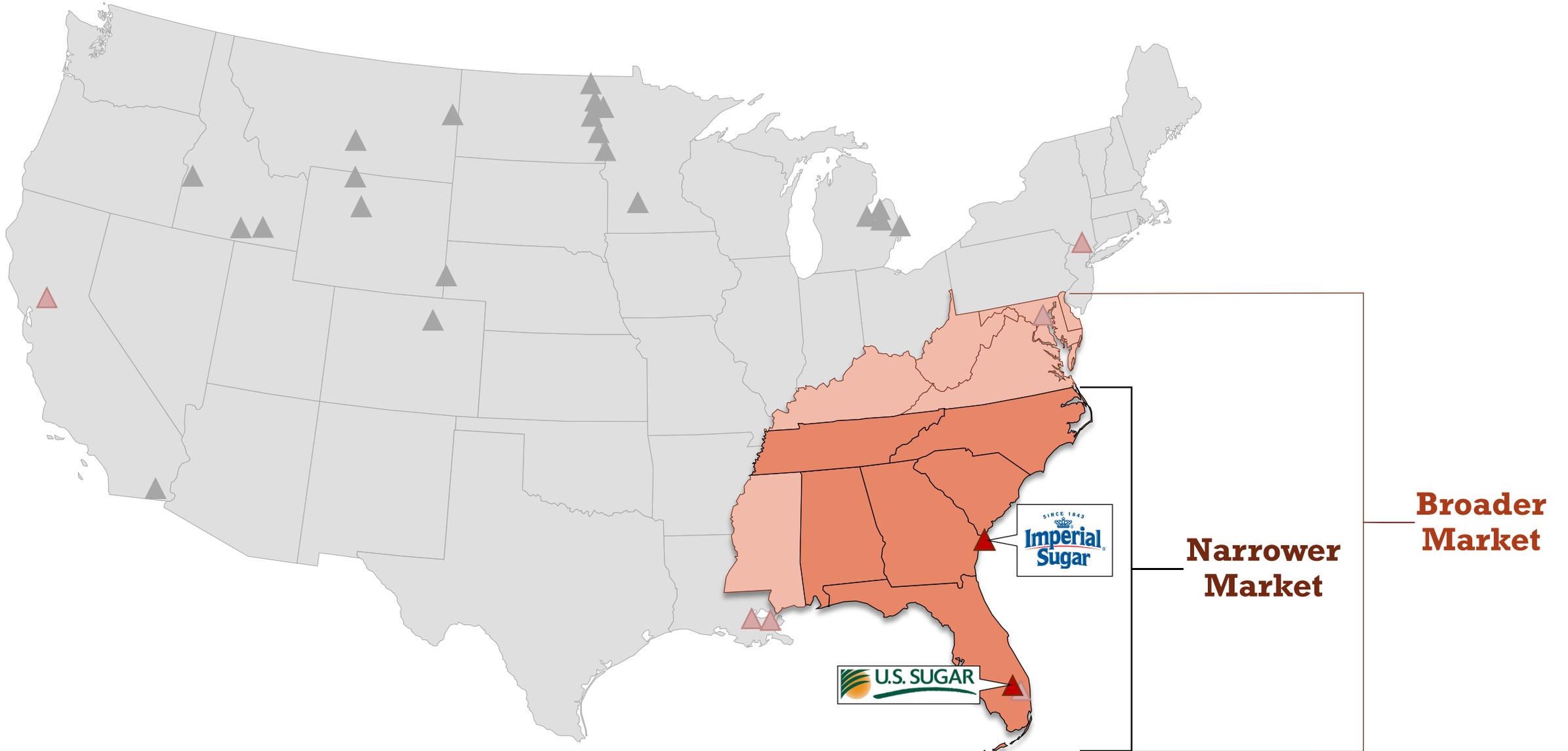
Competitive Effects



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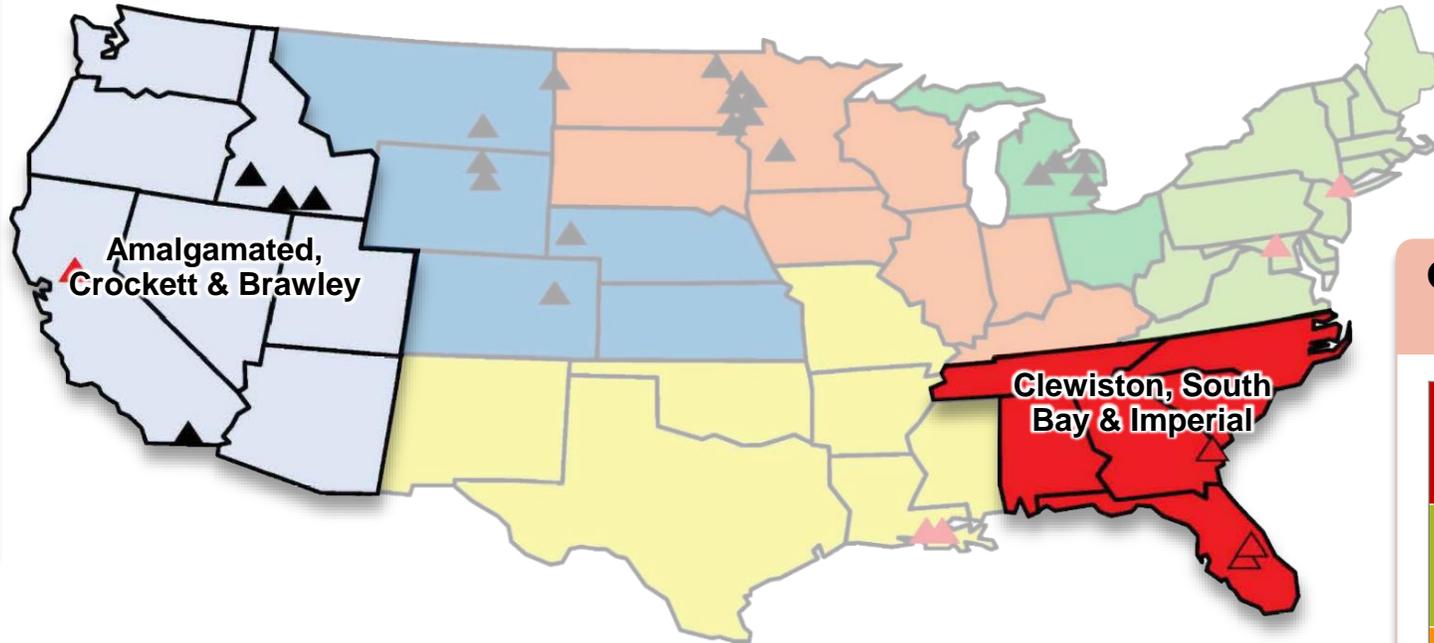
Geographic Market Definition



Geographic Market Definition

Amalgamated, Crockett & Brawley

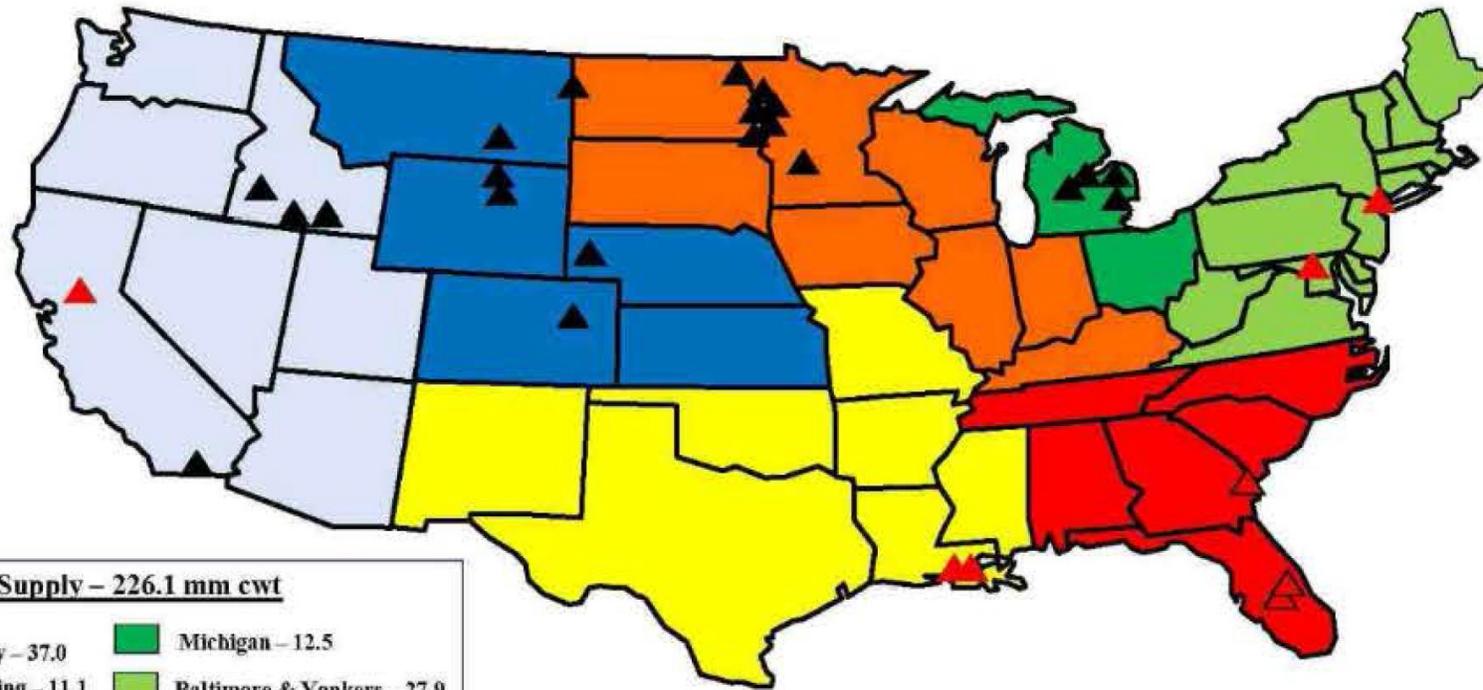
United	4%
Imperial	0%
ASR	31%
NSM	47%



Clewiston, South Bay & Imperial

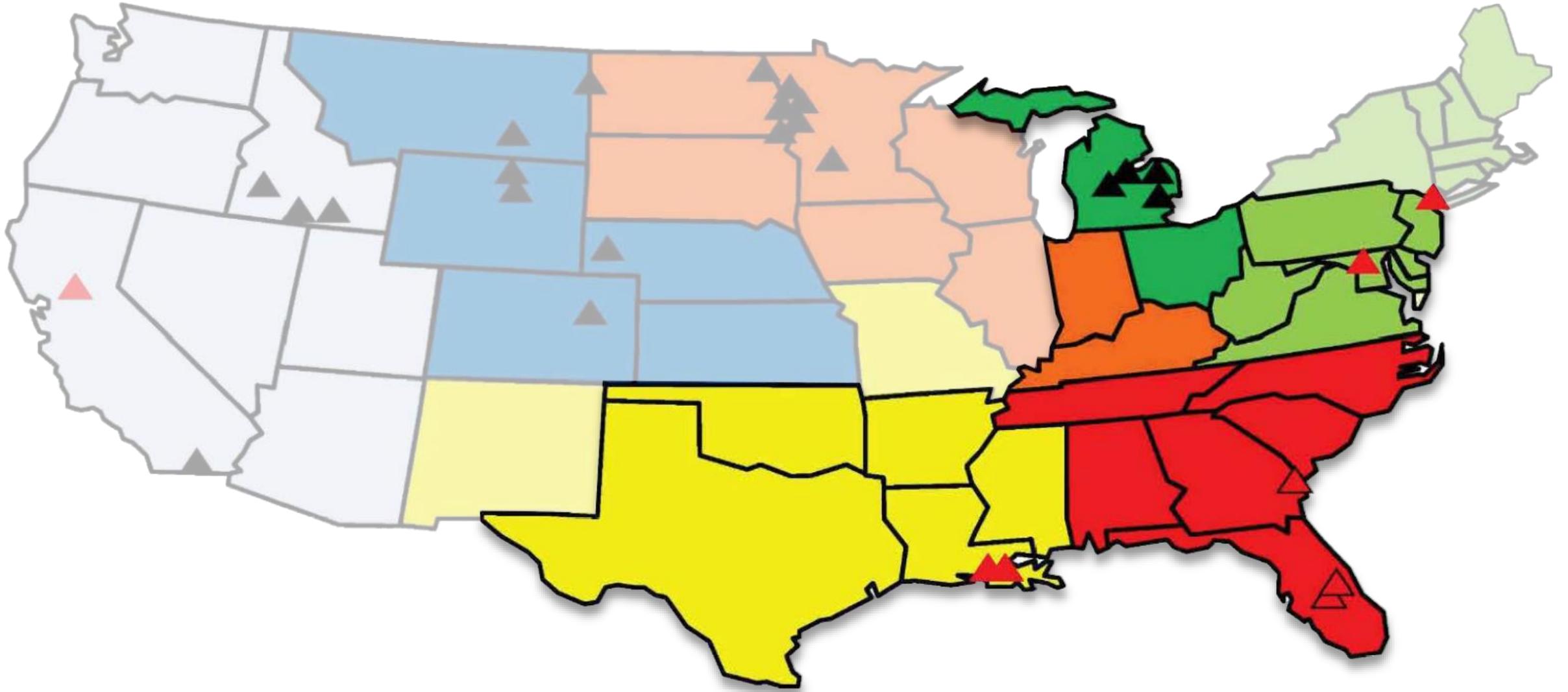
United	34%
Imperial	20%
ASR	25%
NSM	2%

USC Definition (Supplier Backyards)



Total Supply – 226.1 mm cwt

Amalgamated, Crockett & Brawley – 37.0	Michigan – 12.5
Western and Wyoming – 11.1	Baltimore & Yonkers – 27.9
Gramercy & Chalmette – 34.0	Refined Imports and CSC – 19.1
USC RRV and Renville – 52.5	
Clewiston, South Bay and Imperial – 35.0	





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Market Shares of Refined Sugar Producers

Calendar Year 2021

	United	Imperial	ASR	LSR	CSC	NSM	Michigan	Western	Zucarmex	Sucro Sourcing	L&S	Imports
Narrower Market	34%	20%	25%	7%	3%	2%	0%	0%	0%	0%	0%	7%
Broader Market	29%	17%	28%	7%	6%	3%	1%	1%	0%	0%	0%	7%



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	Post-Acquisition HHI	Δ HHI
Narrower Market	3,658	1,393
Broader Market	3,035	1,011



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Mitigating Factors

Head-to-Head Competition Examples



PEPSICO





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Mitigating Factors

From: Rob Sproull [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9703BD2BD68D4EA7B221D07492159D5D-ROB SPROULL]
Sent: 1/8/2020 5:16:05 PM
To: Alan Henderson [Alan.Henderson@asr-group.com]
Subject: RE: [REDACTED] Oct.- Dec. 2020

I think it's really important we signal to the market that there's still going to be tightness. Beets come in with no supply. Some of their supply is already committed as they said they'd replace the 18% from United. We need to signal to the market that we're going to maintain price, especially for the Oct-Dec quarter. And there's not much to lose here. Pure price discovery.

PTX 029

From: Eric Speece [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FF5923AFB7B344879ACF4F144E4A656C-ERIC G. SPE]
Sent: 1/20/2021 8:33:02 PM
To: Dirk Swart [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0a9b0a57fc25490fb3a612c6a0977196-Dirk Swart]; Steven Hanson [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a2c972d22e70498fb0c6c7480dbdb95d-Steven Hans]
Subject: FW: [EXTERNAL] storage, acreage, prices

My real concern is the one beet supplier starting at \$35 net, likely NSM and in my opinion it is not necessary given they have the freight advantage into the Midwest. May want to communicate pricing earlier than the colloquium to send a msg.

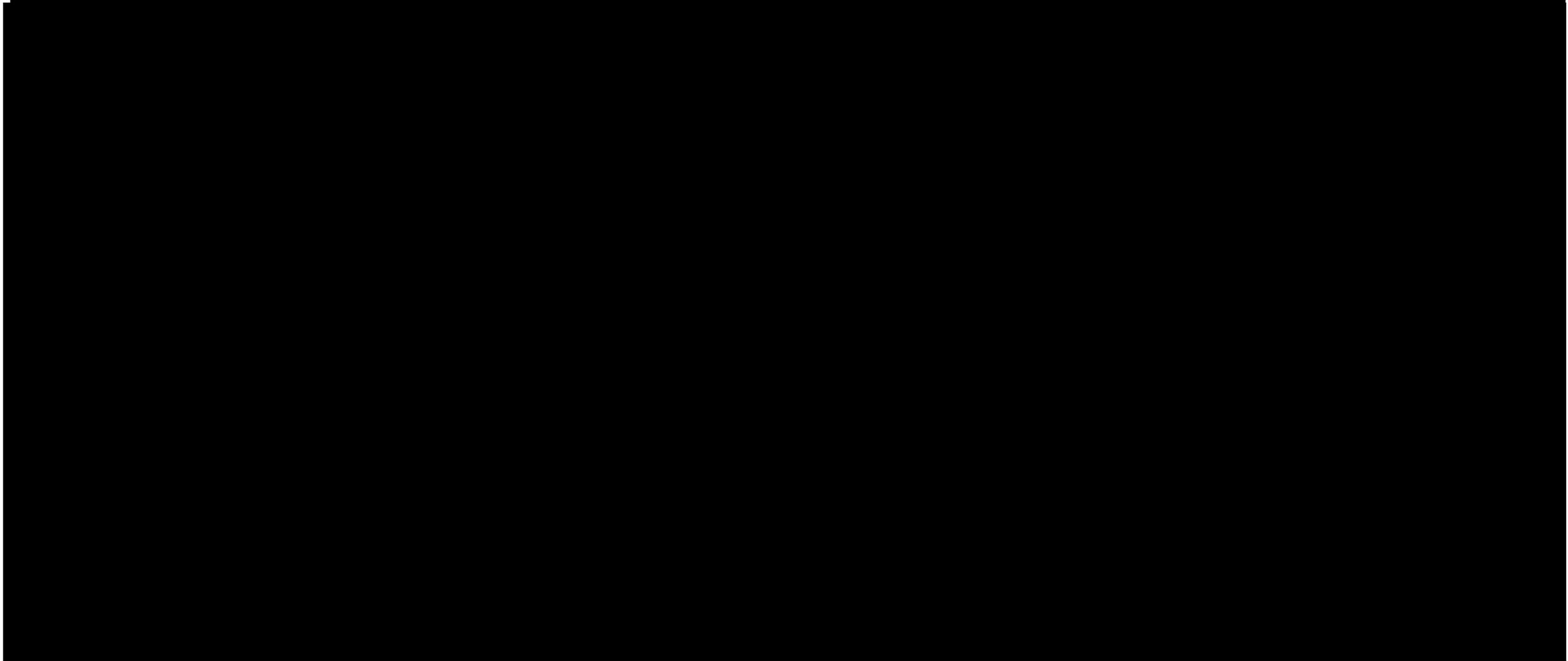
I'll plan on calling him tomorrow as it is always easier than black and white. Let me know if there are any key messages you would like me to relay on. I saw the mail from Dirk and Barth on rail but I have not seen the truck shortages across Ted's an my book.

PTX 426

AG Competitive Effects Example

From: Adam Whittaker [Adam.Whittaker@asr-group.com]
Sent: 6/18/2020 1:46:52 PM
To: Alan M Henderson [Alan.Henderson@asr-group.com]
Subject: RE: [REDACTED] - quote needed

I would love to get aggressive here but Rob S. does not want to lower the bar with [REDACTED] [REDACTED] at this time. We would like to avoid sending a signal out to competitors that we are chasing business and lowering pricing off the standard \$41.00 bulk basis.





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Evidence of Coordinated Interaction



Eric Speece
United



September 21, 2020 – 1:52 PM

Anything new of interest on the pricing front?
Hearing beets well sold, except possible NSM (80-85%?), and prices firm to higher . . .

I hear you folks are also 90+%, and I'd guess still mostly firm at \$36.50 and \$38, correct?

September 21, 2020 – 1:13 PM

We are firm at \$36.50 (no change) and now \$38.50 on cane (an increase of \$0.50/cwt) and yes you heard correctly we are 90+% sold."

September 22, 2020 – 2:29 PM

. . . ASR saying back up to \$40.50 to \$41.



Richard Wistisen
Commodity Information, Inc.

September 21, 2020 – 1:46 PM

Anything new of interest on the pricing front?
Hearing beets well sold, except possible NSM (80-85%?), and prices firm to higher . . .

Where would you put ASR prices, and FY21 or 2021 coverage?

September 22, 2020 – 11:56 AM

North and mid-Atlantic - \$40.50 to 41.00 FOB . . .

September 22, 2020 – 2:30 PM

U.S. Sugar recently increased to \$38.50 . . . Well sold, but for FY21.



Alan Henderson
ASR



Evidence of Coordinated Interaction



Eric Speece
United



November 16, 2020 – 12:04 PM

We remain at \$36.50 and \$38.50 but will probably go higher given our strong sold position.



Richard Wistisen
Commodity Information, Inc.



November 17, 2020 – 10:07 AM

So strange, I can't wrap my head around United's approach. They came up very short on production, and market has firmed, but they're still at \$36.50 RRV and \$38.50 Southeast?!?! But did say they'll probably be taking prices higher given strong sold position . . .



Alan Henderson
ASR



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Mitigating Factors

Second-Score Bidding Model Results

**Table 10. Predicted Price Effects, Second-Score Bidding Model
2021**

	Price Effects		Weighted Average
	United	Imperial	
Narrower Market	3.0%	4.4%	3.6%
Broader Market	2.8%	4.2%	3.3%

Note: See Appendix E for details.

**Table 11. Annual Harm Estimates, Second-Score Bidding Model
2021**

	Annual Harm (\$ million)
Narrower Market	30.5
Broader Market	36.2

Note: See Appendix E for details.



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Competitive Effects



Mitigating Factors

Second-Score Bidding Model Results

**Table 12. Predicted Price Effects, Second-Score Bidding Model
Increased Coordinated Interaction Post-Merger Between United and ASR
2021**

	Price Effects			
	United	Imperial	Weighted Average of United and Imperial	ASR
Narrower Market	5.0%	6.6%	5.7%	2.1%
Broader Market	4.8%	6.4%	5.4%	1.9%

Note: See Appendix E for details.

**Table 13. Annual Harm Estimates, Second-Score Bidding Model
Increased Coordinated Interaction Post-Merger Between United and ASR
2021**

	Annual Harm (\$ million)
Narrower Market	58.1
Broader Market	72.6

Note: See Appendix E for details.



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U.S. Sugar Program



Imperial's Competitive Significance



Entry and Expansion



Claimed Efficiencies

The USDA Has a Dual Mandate To:

1

Manage the supply of sugar to keep sugar prices above loan forfeiture levels so that the U.S. sugar program runs at no cost to the government

2

Manage the supply of sugar to ensure adequate supplies of raw and refined sugar

**Table 14. Market Shares of Refined Sugar Producers by CWT Over Time
2018 - 2021**

	Narrower Market				Broader Market			
	2018	2019	2020	2021	2018	2019	2020	2021
United	35%	37%	28%	34%	33%	31%	23%	29%
Imperial	19%	20%	21%	20%	14%	17%	18%	17%
ASR	27%	26%	28%	25%	33%	30%	31%	28%
LSR	9%	7%	9%	7%	9%	8%	9%	7%
CSC	2%	2%	3%	3%	3%	4%	5%	6%
NSM	1%	1%	1%	2%	1%	1%	2%	3%
Michigan	0%	0%	0%	0%	2%	1%	1%	1%
Western	0%	0%	0%	0%	1%	1%	0%	1%
Zucarmex	0%	0%	1%	0%	0%	0%	0%	0%
Sucro Sourcing	0%	0%	0%	0%	0%	0%	0%	0%
L&S	0%	0%	0%	0%	0%	0%	0%	0%
Imports	6%	6%	10%	7%	6%	6%	10%	7%
Total	100%	100%	100%	100%	100%	100%	100%	100%

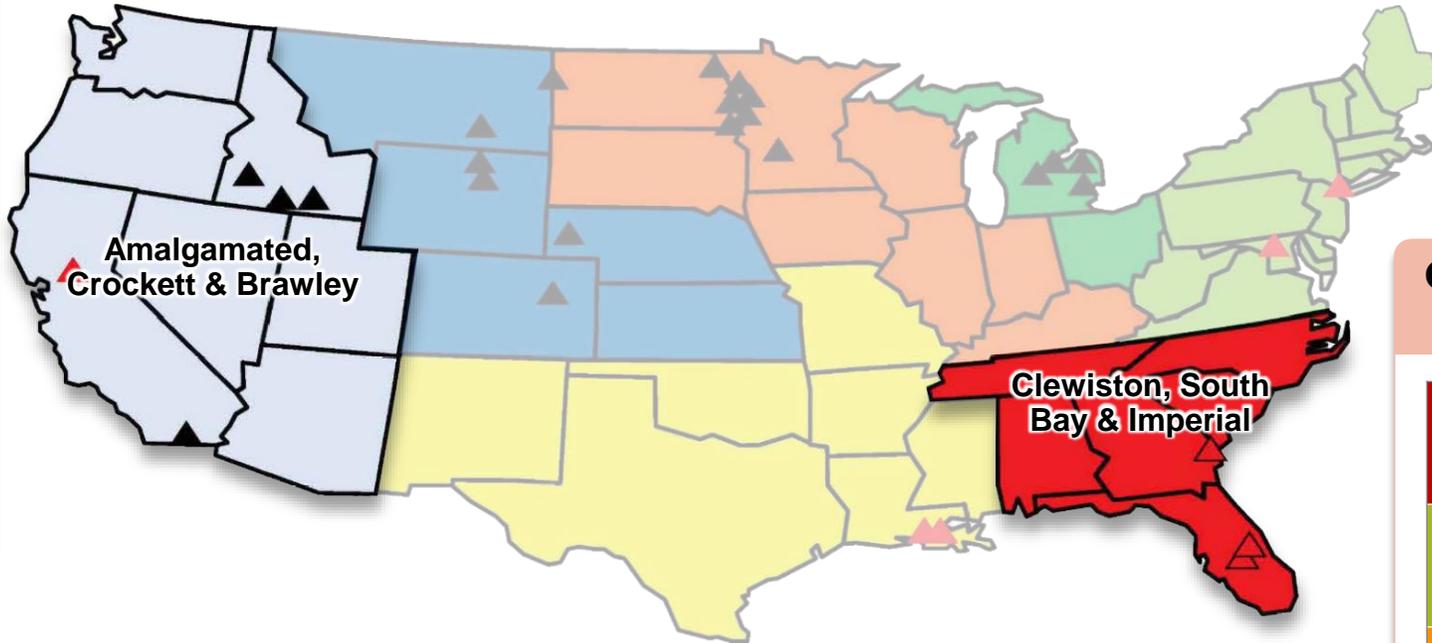
Note: See Appendix E for details.

- The prospect of entry into the relevant market will alleviate concerns about adverse competitive effects only if such entry will **deter or counteract any competitive effects** of concern so the merger will not substantially harm customers.
-
- A merger is not likely to enhance market power if entry into the market is so easy that the merged firm and its remaining rivals in the market, either unilaterally or collectively, could not profitably raise price or otherwise reduce competition compared to the level that would prevail in the absence of the merger. Entry is that easy if entry would be **timely, likely, and sufficient** in its magnitude, character, and scope to deter or counteract the competitive effects of concern.

Purported Expansion and Repositioning

Amalgamated, Crockett & Brawley

United	4%
Imperial	0%
ASR	31%
NSM	47%



Clewiston, South Bay & Imperial

United	34%
Imperial	20%
ASR	25%
NSM	2%

CSC Testified It Does Not Compete with the Merging Parties

**Paul
Farmer**

Founder and CEO

CSC SUGAR

“I would like to say that, to my knowledge, we have not and currently do not ever see or compete with US Sugar or Imperial with any of our customers that I'm aware of. So, you know, although we may – you may look at us in the same territory, to my knowledge, I've never heard that we are competing against them for anything, either one.”

- The Agencies credit only those efficiencies **likely** to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects. These are termed merger-specific efficiencies.

- Efficiency claims will not be considered if they are vague, speculative, or otherwise **cannot be verified** by reasonable means.

- Cognizable efficiencies are **merger-specific** efficiencies that have been verified and do not arise from anticompetitive reductions in output or service.

- The greater the potential adverse competitive effect of a merger, the greater must be the cognizable efficiencies, and the more they must be **passed through to customers**, for the Agencies to conclude that the merger will not have an anticompetitive effect in the relevant market.



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