

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
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Tuesdays and Thursdays, 3:30-5:30 pm
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CLASS 14 WRITTEN ASSIGNMENT

Instructions

Submit by email by 3:30 pm on Tuesday, October 22
Send to dale.collins@shearman.com
Subject line: Merger Antitrust Law: Assignment for Class 14

Assignment

Part A. Calls for a memorandum to a partner (which may be sent to a client). I anticipate that this will take only a couple of paragraphs.

John Clark, a partner in Able & Baker LLP with whom you work, has asked you to prepare a short memorandum explaining the role of the *Brown Shoe* factors in product market definition. He is planning to send the memorandum to the general counsel of a client, so he would like the memorandum to address why courts define markets in Section 7 cases, what is the judicial test for product market definition, and how the *Brown Shoe* factors are used in applying this test.

This memorandum is limited to the *Brown Shoe* factors. You do not have to address the use of the hypothetical monopolist test under the Horizontal Merger Guidelines (although you can anticipate that this assignment is coming).

Part B. Calls for answers to the following problems. Show your work.¹

There are red cars, blue cars and green cars. The cars are essentially homogenous except for their color. There are several manufacturers of each color of car. Consumers have preferences for colors, which are captured by the residual demand curve for various product groups. Blue cars are the closest substitute for red cars and green cars are the second closest substitute. Here are the variables for current market conditions:

¹ Feel free to submit an Excel worksheet if you like.

	Red cars	Blue cars	Green cars
Price per car	1000	1000	1000
Current sales	3000	2500	1000
Fixed costs	0	0	0
Marginal costs (constant)	700	700	700

The residual demand curves (assuming the price of other cars do not change) are:

$$q_{blue} = 8500 - 6p_{blue}$$

$$q_{red} = 8000 - 5p_{red}$$

$$q_{green} = 4000 - 3p_{green}$$

$$q_{blue+red} = 9500 - 4p_{blue+red}$$

Each hypothetical describes an independent scenario:

1. Two blue car manufacturers are going to merge. Are blue cars a relevant market under the hypothetical monopolist test using a 5% SSNIP?
2. Two red car blue car manufacturers are going to merge. Are red cars a relevant market under the hypothetical monopolist test using a 5% SSNIP?
3. Two green car blue car manufacturers are going to merge. Are green cars a relevant market under the hypothetical monopolist test using a 5% SSNIP?
4. A blue car and a red car manufacturer are going to merge. Are blue cars and red cars a relevant market under the hypothetical monopolist test using a 5% SSNIP? ²

If you have any questions, send me an e-mail. See you in class.

² As we will discuss, the hypothetical monopolist test comes in two varieties: (1) whether the hypothetical monopolist *could* profitably raise its price by a SSNIP (profitability), and (2) whether the hypothetical monopolist *would* raise its price by a least a SSNIP (profit maximization). It is possible that a hypothetical monopolist could increase its profits by raising its price by a SSNIP, but that the profit-maximizing price increase is least that a SSNIP. In this situation, the HMT would be satisfied under the profitability standard, but would fail under the profit-maximizing standard. The 1982 and 1992 Merger Guidelines and most courts use profitability; the 2010 Merger Guidelines uses profit maximization. For this problem, use the profitability standard.