

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2019

Tuesdays and Thursdays, 3:30-5:30 pm
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CLASS 16 WRITTEN ASSIGNMENT

Instructions

Submit by email by 3:30 pm on Tuesday, October 29

Send to dale.collins@shearman.com

Subject line: Merger Antitrust Law: Assignment for Class 16

Assignment

Part A. Calls for a memorandum to a partner (which may be sent to a client)

Dianne Lockhart, a partner in Able & Baker LLP with whom you work, is working on a merger in a oligopolistically structured market. Ms. Lockhart understands that the federal antitrust enforcement agencies have a theory of anticompetitive harm that they can apply in some circumstances to mergers in this type of market, but she is not familiar with the details.

Ms. Lockhart would like you to prepare a brief memorandum, which she may send to the client, explaining the coordinated effects theory of anticompetitive harm under the 2010 Horizontal Merger Guidelines. She also would like you to address what factors the agencies consider in deciding whether a merger is anticompetitive under the coordinated effects theory.

Part B. Calls for answers to the following questions

These problems ask questions about the HHI analysis in various merger scenarios. For Problems 1-3, please answer the following questions:

- a. What is the combined share of the merging firms?
- b. What is the HHI contribution of each firm in the market?
- c. What is the premerger HHI?
- d. What is the delta?
- e. What is the postmerger HHI?
- f. Where does the merger fall in the 2010 Merger Guidelines?
- g. Where does the merger fall under case law precedent?
- h. Looking only at the HHI analysis, should the merger be challenged? Why?

Problem 1: Firms A and C merge

	<u>Share</u>
Firm A	33%
Firm B	25%
Firm C	23%
Firm D	19%
	<u>100%</u>

Problem 2: Firms A and D merge

	<u>Share</u>
Firm A	53%
Firm B	15%
Firm C	8%
Firm D	4%
Others (4)	20%
	<u>100%</u>

Problem 3: Firms A and B merge, but sell a plant to Firm C accounting for 10 percentage points of market share in a "fix-it-first"

	<u>Share</u>
Firm A	70%
Firm B	25%
Firm C	5%
	<u>100%</u>

Problem 4: Firms A and B merge, but are willing to sell a plant to Firm C in a "fix-it-first" to solve any antitrust concerns

	<u>Share</u>
Firm A	35%
Firm B	30%
Firm C	14%
Firm D	5%
Others (4)	16%
	<u>100%</u>

Does it matter whether the divested plants come from Firm A or Firm B?
What do you recommend as the minimal share point divestiture--
a. Under the 2010 Merger Guidelines (to be in a safe harbor"? Why?
b. Under the case law? Why?

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