

## MERGER ANTITRUST LAW

LAWJ/G-1469-05  
Georgetown University Law Center  
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Tuesdays and Thursdays, 3:30-4:55 pm  
Dale Collins  
[dale.collins@shearman.com](mailto:dale.collins@shearman.com)  
[www.appliedantitrust.com](http://www.appliedantitrust.com)

*Links to the required reading and the class notes may be found on the assignments page of Canvas and on the [Merger Antitrust Law](#) page of [AppliedAntitrust.com](#).*

### **Classes 18 (October 31): H&R Block/TaxACT (Unit 4)<sup>1</sup>**

On Tuesday, we will finish H&R Block/TaxACT. As you read through the various subsections of the opinion, I would read the corresponding sections of 2010 DOJ/FTC Horizontal Merger Guidelines (HMG), and the class notes:

1. The plaintiff's prima facie case (pp. 104-07, HMG § 5, and slides 1-26—essentially all review of materials you have seen before).
2. Barriers to entry (pp. 107-14 and slides 87-90)
3. Coordinated effects (pp. 114-121, HMG § 7, and slides 27-51). Just skim the slides on the Cournot model (slides 31-33), which provide some of the theoretical basis for the profit-concentration hypothesis, but you should at least be aware of and understand the last formula on slide 33 even if you do not go through the derivation. Pay some attention to the theoretical and empirical criticisms of the profit-concentration hypothesis (a good antitrust lawyer should know what there are).
4. “Maverick” theory (pp. 118-21, HMG § 2.1.5, and slides 78-84). The court treats this as part of the coordinated effects theory.
5. Unilateral effects (pp. 121-34, HMG § 6, and slides 52-76). Unilateral effects is the primary theory of anticompetitive harm employed by the agencies in their merger investigations. It is hard to find a merger review, much less a litigated case, that did rely on this theory. So it is important that you understand the theory and its application. Try to wade through the math on slides 66-71 so that you can see the difference between the profit-maximizing first order condition for a single firm premerger and the profit-maximizing first order conditions for the combined firm postmerger and how to interpret the terms in the first order condition (bottom of slides 68-69). This is the heart of the unilateral effects theory.

Another tool used in applying the unilateral effects theory the GUPPI, *the gross upward pricing pressure index*. This is very closely related to the UPP (upward pricing pressure) we saw in the history deck in the slides on the 2010 DO/FTC Horizontal Merger Guidelines (you might want to go back and review those). It is important that you study the slides and understand the example (slides 72-75).

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<sup>1</sup> A reasonably set of the most important filings in the litigation (including the trial transcript) may be found [here](#) on AppliedAntitrust.com.

You can skip the two slides on unilateral effects with a competitive fringe (slides 76-77).  
I will talk about this in class.

6. Efficiencies (pp. 80-86, HMG § 6, and slides 91-94).

Enjoy the reading! Email me if you have any questions.

Dale