

## MERGER ANTITRUST LAW

LAWJ/G-1469-05  
Georgetown University Law Center  
Fall 2018

Tuesdays and Thursdays, 3:30-4:55 pm  
Dale Collins  
[dale.collins@shearman.com](mailto:dale.collins@shearman.com)

### **Class 8 (September 20): Hertz/Avis Budget/Dollar Thrifty (Unit 7)**

With this class we begin our first major case study: the multiyear contested takeover battle between Hertz and Avis Budget to acquire Dollar Thrifty. This will take us through Class 11. As befits a four-class unit, the reading materials are somewhat voluminous, so if you print them out you may want to do so class by class.

We will go through the transaction from beginning to end in some detail. We will explore

- the reasons why Hertz and Avis Budget each wanted to acquire Dollar Thrifty,
- the antitrust obstacles perceived in each transaction,
- the ways each bidder sought to assuage Dollar Thrifty that their respective deals could close despite these perceived antitrust problems,
- Dollar Thrifty's strategy to balance a high purchase price with obtaining protections in the contract to assure (with some acceptable probability) the certainty of closing,
- the possible restructuring of the transactions through consent decree relief to eliminate the likely antitrust concerns of the investigating agency and allow the deal to close without litigation,
- why Dollar Thrifty ultimately chose Hertz as the winning bidder, and
- finally, the consent decree that the FTC entered in 2014 that required Hertz to divest certain assets to eliminate the FTC's competitive concerns and allow the Hertz/Dollar Thrifty deal to close.

In this first class, we will examine the first stage in this saga: the original 2010 merger agreement pursuant to which Hertz would acquire Dollar Thrifty. We will focus on the motivations of each of the parties to enter into the deal. The deal rationale of the parties is a critical element in the merger antitrust analysis. Parties enter into merger transactions to make money and not out of the goodness of their heart. Each of the parties will have their own model of how they will make money through the transaction. A central antitrust question is what are the implications of these models for postmerger exercise of market power to the detriment of various groups of customers.

To set the stage, first read the brief overview of the rental car market environment in which the agreement was reached (pp. 8-14). Next, read the Hertz news release announcing the deal as well as the Hertz investor presentation explaining its deal rationale (pp. 14-24). Dollar Thrifty gives its perspective in a letter to its employees and in some talking points (pp. 25-27).

Finally, read the observations on the 2010 Hertz/Dollar Thrifty deal (pp. 28-41). These materials will give us the opportunity to examine various types of deal structures, the often observed tendency of the target stock price to increase in the period prior to the deal announcement, some thoughts about how deal prices are determined and the forms the consideration may take, why acquisitions of control almost always require the acquiring firm to pay a "deal premium" above

the market price for the target's stock, and why the price of the acquiring firm's stock often falls with the deal announcement. As we will see, contrary to the usual situation, the price of the Hertz stock actually increased with the announcement of the Dollar Thrifty deal. We will examine why this happened and what this indicated about the possibility of a competing bidder emerging.

You may consider this the "investment banking" portion of the class. There will be little, if any, discussion of antitrust. That will wait for Class 9. In reading the materials for this class, keep in mind the following questions (you will meet them again in class):

In 2007, what were the major rental car companies in the United States and in which segments of the business did they focus?

How do rental car companies make money? (Look at both the output they sell and the inputs they buy.)

Why were rental car company consolidations becoming increasingly attractive?

Why did Dollar Thrifty consider putting itself up for sale in late 2007?

Why did Dollar Thrifty call off negotiations with Hertz in early 2009?

What did Hertz do after the Dollar Thrifty negotiations ended and why did it do it?

When negotiations between Hertz and Dollar Thrifty resumed in late 2009, why did Dollar Thrifty not approach Avis Budget to try to get a bidding war started?

What were the financial terms of the 2010 Hertz/Dollar Thrifty deal?

Why did Hertz pay a "merger premium" (sometimes called a deal premium) for Dollar Thrifty and, if so, how much was it and how was it calculated? How could Hertz afford to pay a premium above Dollar Thrifty's market price?

How did Hertz believe that it would make money from this deal?

How did Dollar Thrifty believe it would make money from the deal?

When did Hertz expect to close the deal?

What needed to happen before Hertz could close the deal?

How was the combination to be legally effected (i.e., what was the legal structure of the deal)? What alternative structures were available to the parties? Why did the parties pick the one they picked?

Was there a run-up in Dollar Thrifty's stock price prior to the announcement of the merger agreement? If so, why do you think that happened?

Was there a run-up in Hertz's stock price prior to the announcement of the merger agreement? If so, why do you think that happened?

What happened to the Dollar Thrifty and Hertz stock prices after the announcement?

What are the implications from the postannouncement price behavior of the two stocks?

What is the *winner's curse*?

There are no class notes for this class. If you have any questions or comments, send me an e-mail.

Dale