

## MERGER ANTITRUST LAW

LAWJ/G-1469-05  
Georgetown University Law Center  
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Tuesdays and Thursdays, 3:30-4:55 pm  
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### CLASS 18 WRITTEN ASSIGNMENT

#### Instructions

Submit by email by 3:30 pm on Thursday, October 30  
Send to [dale.collins@shearman.com](mailto:dale.collins@shearman.com)  
Subject line: Merger Antitrust Law: Assignment for Class 18

#### Assignment

Calls for a memorandum.

You are an attorney at the FTC and your group is reviewing Coca-Cola's pending acquisition of Fresh OJ. Coca-Cola is the owner of the Simply Orange and Minute Maid brands and the second largest producer of ready-to-serve orange juice behind Tropicana. Fresh OJ, which only produces ready-to-serve orange juice, is the number three national brand of ready-to-serve orange juice. Melissa Brown, your section chief, has asked you to prepare a short memorandum analyzing whether the FTC can make out a prima facie case in court that the merger, if consummated, would violate Section 7. In particular, Ms. Brown wants your analysis of the dimensions of the relevant market and whether the evidence is sufficient to allow the court to conclude (in the absence of any defenses) that the merger is likely to result in an anticompetitive effect in the relevant market.<sup>1</sup>

Ready-to-serve juices are juices in liquid form that may be served directly from the bottle. The juice business consists primarily of ready-to-serve orange juice and ready-to-serve apple juice; other ready-to-serve juices are trivial in size in comparison and have not played a role in the investigation. Similarly, the same is true for concentrated frozen fruit juices of all types, which also have played no role in the investigation. As a result, the investigation has focused exclusively on ready-to-serve orange juice and ready-to-serve apple juice. For convenience, we will refer to ready-to-serve fruit juices simply as fruit juices.

The investigation revealed the following industry structure:

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<sup>1</sup> The margining parties are scheduled to present their defenses on the downward pricing pressures the merged firm will face on Tuesday next week. You may anticipate that you will be asked to evaluate those defenses after the defense presentation.

Orange Juice				Apple juice			
	Revenues	Production	Share		Revenues	Production	Share
	(\$millions)	(million gal.)			(\$millions)	(million gal.)	
Tropicana	1457	291	45.0%	Motts	400	67	36.4%
Coca-Cola	680	136	21.0%	Minute Maid	150	25	13.6%
Fresh OJ	680	136	21.0%	Nestle	80	13	7.3%
OJ Natural	230	46	7.1%	Tropicana	70	12	6.4%
Others (6)	191	38	5.9%	Others (10)	400	67	36.4%
	3238	648	100.0%		1100	183	100.0%

Orange juice has an acidic taste and is consumed largely by adults and older children. Given the acidic taste, babies do not like orange juice. Apple juice, on the other hand, has a sweet taste and is the juice drink of choice for babies. Apple juice only has a small following among adults. All of the name brands of orange juice and apple juice listed in the above table are sold nationally by their respective manufacturers, although some of the “others” in each case are large regional producers.

The investigation revealed that the fruit juice business is undergoing shifting demand. Although fruit juices were once widely regarded as “healthy” drinks, a barrage of news reports in recent years that fruit juice has little nutritional or health value and instead is simply a tasty high calorie drink has caused the demand for fruit juice to drop by 5% over each of the last three years for both orange juice and apple juice. The demand for these juices is expected to continue to fall at a similar rate into the foreseeable future. As a result of the reduction in demand, the industry today is operating at only about 71% capacity. The marginal cost of production for orange juice and apple juice is \$3.00 and \$3.60 per gallon, respectively.

Manufacturers sell orange juice and apple juice for \$5.00 and \$6.00 per gallon, respectively, throughout the country regardless of the size of the bottle in which they are packaged. These prices have remained stable over the last three years. The economic analysis undertaken by the FTC staff economists shows that the own-elasticity for orange juice today is -1.1 (which implies that a 5% price increase across all orange juice products will cause about 55 out of 1000 customers to switch away from orange juice), and that the own-elasticity of apple juice is -1.4.

For the most part, orange juice and apple juice are produced in different plants using different production technologies and there is no production substitution between them. The exception is Motts, which has a “swing” plant that would allow it to switch to producing orange juice very quickly and without any material switching costs. Although Motts could swing 100% of its capacity to producing orange juice, it has a great brand name in apple juice and needs to protect that position. As a result, if the price of orange juice was to increase by 5% while the price of apple juice stayed constant, Motts, which is currently producing at capacity, would switch only 20% of its production capacity to the production of orange juice.

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*Note 1:* You may assume that Ms. Brown is familiar with the facts, so that you do not need to include a statement of facts in the memorandum. Just cite to the facts as you do the analysis.

*Note 2: All demand is linear in all prices and quantities of interest.*