MERGER ANTITRUST LAW

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

Tuesdays and Thursdays, 3:30-4:55 pm
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CLASS 19 WRITTEN ASSIGNMENT

Instructions

Submit by email by 3:30 pm on Thursday, November 1
Send to dale.collins@shearman.com
Subject line: Merger Antitrust Law: Assignment for Class 19

Assignment

Calls for a memorandum.

Coca-Cola and Fresh OJ have made a presentation to the staff on their defenses and the staff has undertaken some additional investigation, both to confirm the facts stated by the merging parties and to find additional evidence relevant to the parties' defenses. Melissa Brown, your section chief at the FTC, has asked you to revise your memorandum on whether the FTC can make out a prima facie case in court that the Coca-Cola/Fresh OJ merger, if consummated, would violate Section 7. In particular, Ms. Brown has asked you to update your memorandum with any new facts pertinent to the FTC's ability to establish a prima facie Section 7 violation and to add a section that assesses the merits of the parties' defenses. Ms. Brown also would like your conclusion as to whether the FTC will prevail on a Section 7 challenge in court.

In the meeting with the staff, Coca-Cola argued that the merger will produce substantial cost savings in the following areas:

1. A reduction in annually recurring overhead costs by consolidating management, back office, and sales operations and eliminating almost all of the corresponding Fresh OJ operations.
2. A reduction in operating costs by consolidating all production in the Coca-Cola plants and closing and dismantling all of the Fresh OJ plants, which were running at 65% capacity. The Coca-Cola plants, which were running at 60% of capacity and which postmerger will run at full capacity, will be able to produce 87.1% of the output of the two companies premerger. While this will result in a production shortfall of 45 million gallons compared to the combined output of the merging firms premerger, Coca-Cola expects with the anticipated decline in aggregate demand in the coming years, it will again have excess capacity in a year and a half or so. In the meantime, Tropicana has more than enough excess capacity to increases its production and cover the shortfall, so consumers will experience no shortage.

After the meeting, the staff developed the following information on capacity utilization in the production of orange juice in the current year along with a postmerger projection based on Coca-Cola postmerger plans:

Orange Juice	Premerger			Postmerger		
	Gallons (millions)	Capacity (millions)	%util	Gallons (millions)	Capacity (millions)	%util
Tropicana	291	416	70%	291	416	70%
Coca-Cola	136	227	60%	227	227	100%
Fresh OJ	136	209	65%	--	--	--
OJ Natural	46	46	100%	46	46	100%
Others (6)	38	38	100%	38	38	100%
	648	936	69%	602	727	83%

Moreover, the staff found that over the last three years, OJ Natural and the "Others" have maintained a 100% utilization of their production capacity, while the "Big Three" have been reducing their orange juice production by about 5.4% in response to falling demand.

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.