

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2020

Tuesdays and Thursdays, 3:00-5:00 pm
Dale Collins
wdc30@georgetown.edu
www.appliedantitrust.com

Class 13 (October 13): H&R Block/TaxACT (Unit 9)¹

On Thursday, we will continue our discussion of the market definition in the H&R Block/TaxACT decision. Much of this class will be devoted to the court's examination of the expert testimony in implementing the hypothetical monopolist test (pp. 85-104). Pay close attention to how the court used the facts and the expert testimony in deciding on market definition. The remaining slides in the class notes on market definition should be very helpful in understanding this portion of the opinion and you should study the slides carefully (slides 66-88).

Pay particular attention to the slides on *critical loss* and the *aggregate diversion ratio* at the end of the deck. These concepts come up frequently in the opinions and are becoming two of the standard methods of proving the boundaries of the relevant market. Make sure that you understand all of the examples in the market definition class notes—these illustrate techniques you should know how to apply if given a hypothetical.

We also will examine how the DOJ applied the critical loss methodology—and how the defendants criticized the DOJ's application—in H&R Block/TaxAct, so pay particular attention to pages 90-96 in the Unit 10 reading materials. Finally, we will then at how the court treated the defendants' alternative market definition and supporting evidence (pp. 96-104).

When you finish the market definition reading, you should take a break from the opinion and read the note on expert evidence (pp. 162-69). Expert testimony is essential in antitrust cases in general and merger antitrust cases in particular, which makes familiarity with the rules governing expert testimony equally essential. Then read the Memorandum Opinion and Order Denying Motion in Limine (pp. 147-61) to see how the court handled the DOJ's effort to exclude evidence of the email survey commissioned by the defendants and the portions of Dr. Meyer's testimony that relies on the survey.

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

¹ A reasonably complete set of the most important filings in the litigation (including the trial transcript) may be found [here](http://www.appliedantitrust.com) on AppliedAntitrust.com.