

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2021

Tuesdays and Thursdays, 3:00-5:00 pm
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CLASS 14 WRITTEN ASSIGNMENT

Instructions

Submit by email by 3:00 pm on Tuesday, October 19

Send to wdc30@georgetown.edu

Subject line: Merger Antitrust Law: Assignment for Class 14

I encourage you to work in groups on this assignment

Assignment: Calls for answers to questions (not in a memo form)

1. Products A and B are being tested as a candidate market. The market price for each unit of either product is \$300. Each type of product has a constant marginal cost of \$160 per unit and aggregate sales of 1000 units. When the price for both products is increased by \$15, each firm loses 100 units to products other than A and B. What is the critical loss for the candidate market of products A and B? Do A and B constitute a relevant market under the hypothetical monopolist test using critical loss analysis and SSNIP of 5%?
2. In *FTC v. Occidental Petroleum Corp.*, No. 86-900, 1986 WL 952 (D.D.C. Apr. 29, 1986), the FTC challenged the pending acquisition by Occidental Petroleum, a major producer of polyvinyl chloride (“PVC”), of Tenneco’s PVC business. Both companies produced PVC in plants in the United States. The parties agreed that the relevant product markets were suspension homopolymer PVC and dispersion PVC, and the PI proceeding focused mainly on the relevant geographic market. The FTC alleged that the relevant geographic market was the United States for both types of products; the merging parties argued that the relevant geographic market was worldwide. In the Section 13(b) proceeding for a preliminary injunction, the evidence showed that if the price of all suspension homopolymer PVC produced in the United States was increased by 5%, U.S. customers would divert about 17% of their purchases to imports from foreign suppliers (who were ready to serve these customers). The evidence also showed that if the price of all dispersion PVC produced in the United States was increased by 5%, U.S. customers would divert about 12% of their purchases to imports from foreign suppliers (again, who were ready to serve these customers).¹ The evidence in the hearing also showed that the percentage gross margins for homopolymer PVC and dispersion PVC were 28% and 45%, respectively. Was the FTC correct that the relevant geographic market was the United States using the hypothetical monopolist test and a SSNIP of 5%?
3. Premium ice cream sells at \$4.00/pint and has a constant marginal cost of \$2.25/pint. The own-elasticity of aggregate demand for premium ice cream is -1.9, with almost all diversion going to regular ice cream. Two premium ice cream manufacturers proposed to merge. Is

¹ I have made up some of the facts here, but the hypothetical is consistent with the results in the case.

premium ice cream a relevant product market under the hypothetical monopolist test under a 5% SSNIP, or should the market be expanded to include regular ice cream?

4. Consider again digital-do-it-yourself (DDIY) tax products, this time with some different (made up) data. Do H&R Block and TaxACT by themselves constitute a relevant product market under the 2010 Merger Guidelines for a 5 percent SSNIP? Do TurboTax, H&R Block, and TaxACT constitute a relevant product market for the same SSNIP? If the DOJ wants to challenge the merger, what market definition should it allege (all things considered) and why?

Here is the data the investigation revealed:

Prevailing conditions

| | TT | H&R | TaxAct | |
|---------------|---------|---------|---------|---------------------------|
| Price | 55 | 25 | 11 | |
| %Margin | 0.5 | 0.4 | 0.2 | |
| Marginal cost | 27.5 | 15 | 8.8 | (constant marginal costs) |
| Quantity | 1,131 | 624 | 855 | |
| %SSNIP | 5% | 5% | 5% | |
| %Actual loss | -10.00% | -12.50% | -25.00% | |

Diversion ratios (for single-product SSNIPs)

| From: | TT | To : H&R | TaxACT | Total Recapture |
|-----------|-------|-------------|--------|--------------------|
| TT | x | 30.0% | 9.0% | 39.0% |
| H&R Block | 30.0% | x | 26.8% | 56.8% |
| TaxAct | 25.0% | 27.7% | x | 52.7% |

If you have any questions, send me an email. See you in class.