

## MERGER ANTITRUST LAW

LAWJ/G-1469-05  
Georgetown University Law Center  
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Tuesdays and Thursdays, 3:00-5:00 pm  
Dale Collins  
[wdc30@georgetown.edu](mailto:wdc30@georgetown.edu)  
[www.appliedantitrust.com](http://www.appliedantitrust.com)

### **Class 14 (October 19): H&R Block/TaxACT (Unit 9)<sup>1</sup>**

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 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 help you understand what is going on behind this portion of the opinion and you should study the slides carefully (slides 79-135).

*Diversion ratios, critical loss, one-product SSNIP tests, uniform SSNIP tests, and the aggregate diversion ratio test* come up with some regularity in modern court opinions and have become part 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. These slides can be challenging but will be well worth the investment of your time to understand them.

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 then will look 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.

I have added a short excerpt from *FTC v. Tronox* on critical loss (pp. 182-83). It is short and does a nice job of explaining basic critical loss. Please feel free to skim it.

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

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<sup>1</sup> 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.