

Merger Efficiencies, Heinz

220B, spring 2008

Heinz

- “3 to 2” among major baby food suppliers
 - Gerber biggest, and everywhere
 - H, B mostly separately side-by-side vs G
- Competition to be 2nd brand?
 - Barriers to entry/expansion?
 - Is trade spending a barrier?
- Limited competition: access limits?
 - Contrary to usual “anyone can easily compete”

Bigness

- “Big is bad” fallacy
- “Big is good”?
- Shape of size/effect relationship?
- Share and access
 - Compare the Demsetz critique generally
- Changing the game: “coordinated” effects?

What about Efficiencies

- “Efficiencies offense”—wrong concept of “dominance” or hard-to-test dynamic
- Total surplus standard?
 - Williamson: even moderate rectangle outweighs triangle
 - Not really a triangle: Propane
- Consumer surplus standard?
 - Seems to be US law
 - Why?

Core-seeking view of antitrust

- Blocking coalitions
- Thwarting of blocking coalition?
- When is a merger a blocking coalition relative to the status quo?
- Apparently firms like it; consumers?
- Other rationales for CS standard

Are efficiencies merger-specific?

- H's production facilities, B's recipes
 - Are recipes really so hard? Apparently, for H
 - Could B build own modern plant? Would it?
- Why would synergy take a merger?
 - Because they compete?
 - Other contracting difficulties?
 - Would a contract limit competition as much as a merger?

How big do efficiencies have to be?

- For unilateral-effect analysis: Compare MC efficiencies vs cannibalization term
 - Supreme Ct “not defense against illegality”—meaning?
 - Heinz gross margin (pre- or post-merger?)
 - Diversion ratio
- Robustness of this test: oligopoly conduct; unilateral
- Given shut-down of Heinz, is it enough if BeechNut price won't rise?
 - Whole Foods, Oracle

Estimating Efficiencies

- Merger-specific estimate or “standard deduction”?
 - Posner, Bork, Easterbrook
 - Heinz case: specific claims
- Inference if competitive effect small
 - (Calculating as if no efficiencies)
 - MC vs FC efficiencies

Pass-Through

- If (we somehow knew) the effects stopped at supermarket level, would that matter?
- What if don't know?
- Are they likely to?
 - “fixed” payments??
 - Pass-through mechanisms
 - Entry/exit
 - Multi-product pricing; quasi-Ramsey

Pass-Through Analytics

- Slope of MR curve
 - Curvature of demand
 - Not enough to say elasticity is high... but...
- If so elastic, was p close to MC? What about expansion through price cut?
- Consistency: PT of efficiencies and OC

FTC Process

- Bureau-level staff recommended no challenge
- Commission voted to challenge
- Timing and preparation?
- Rationale for wanting hawkish staff

Next

- Beyond Mergers:
 - Kodak
 - American Airlines
 - Microsoft
- Any order is fine: volunteers?

“Monopolization”

- Distinguished from “monopoly”
 - Skill, foresight and industry
 - Bad acts (intent, “nature”, smell, extrapolation)
 - Gray area
- “Raising rivals’ costs”
 - Footrace analogy: run hard vs trip rival up
 - Often, same conduct does both, or could do

If time today...

- Did we finish on MCI?
- “Naked exclusion”