Retrospective Analyses of Mergers, Merger Control, and Remedies: What Have We Learned? What Should We Do Next?

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Merger Retrospectives

• Comprehensive survey finds 60 qualifying studies of horizontal transactions
  – Mergers, joint ventures, code shares
  – Have extracted price outcomes from each

• Analysis of policy requires information on agency actions and remedies
  – Have added this information for all transactions

• Result is “end-to-end” data on 48 distinct mergers and related transactions
Findings on Price Outcomes

• For all 48 transactions, postmerger prices rose by average of 6.0%  
  – 36 cases resulted in price increases  
    • 19 of them were in excess of 5%  
    • 13 transactions exceeded 10%  
  – 12 cases of decreases  
• For 41 mergers, average was 7.4% increase  
  – 34 involved price increases  
• For 7 joint ventures and code-shares, average was decrease of 2.2%  
• Implication: Mergers are key concern
Agency Actions Regarding Mergers

- Agencies challenged 14 of 41 studied mergers
  - Explicitly cleared 5 mergers, implicitly cleared another 22
  - Implies 34% rate of challenge of these mergers
- Is that too high, or too low?
  - Where agency acted, 13 of 14 mergers later resulted in price increases
    - 93% of actions correctly targeted at anticompetitive mergers
  - Of 7 mergers without price increases, agencies cleared 6
    - 86% were correctly cleared
- But of 34 mergers resulting in price increases, agencies challenged only 13, or 38%
  - Implies that agencies fail to challenge many mergers that prove to be anticompetitive
For the Data-Inclined

<table>
<thead>
<tr>
<th>Mergers</th>
<th>Agency Acted</th>
<th>No Action</th>
<th>Total</th>
<th>Percent of Cases with Correct Response</th>
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</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>14</td>
<td>27</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Price Increases</td>
<td>13</td>
<td>21</td>
<td>34</td>
<td>38%</td>
</tr>
<tr>
<td>Price Decreases</td>
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<td>6</td>
<td>7</td>
<td>86%</td>
</tr>
<tr>
<td>Percent of Actions</td>
<td>93%</td>
<td>22%</td>
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<td>46%</td>
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<td>correctly taken</td>
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</table>
Findings on Remedies

• In all 14 cases where agencies acted, prices nonetheless rose by average of 8.3%
  – In 27 cleared cases, prices rose by 7.0%
  – These control for all other influences

• Implies that agency actions and remedies are not generally adequate
  – Further analysis finds that conduct remedies are distinctly less effective than structural/divestiture remedies (ALJ, 2013)
Where To Go From Here

• Can extract useful insights from analysis of past mergers and merger policy
• Underscores need for agency program of systematic data collection for mergers subject to investigations