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**INVESTIGATIVE TECHNIQUES WORKSHOP:  
MERGERS AND ACQUISITIONS**

**Group Leader's Guide**

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**United States Department of Justice  
Antitrust Division**

**and**

**United States Federal Trade Commission**

**Group Leader-s Guide**

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## Introduction

These materials are intended to assist the group leaders in preparing useful sessions in the Investigative Techniques Seminar. Issues that should be covered in each of the eight sessions are identified. Suggestions about how to cover this material and to use the hypothetical case are included.

**Fact-rich Hypothetical.** The hypothetical case is, we hope, full of more facts than can realistically be used in the time available. This should allow group leaders to tailor their presentations to the groups of participants, which have different levels of experience in antimonopoly enforcement. It is also intended to parallel the real world of investigations, in which selection of the important and relevant facts from a jumble of unimportant and irrelevant facts is a key skill. Leaders should use this opportunity to take their groups through the process of selecting important facts and of discussing unimportant or irrelevant facts to illustrate the process of differentiating.

**Discussion and Interaction, rather than Lectures Alone.** The materials are prepared to be used in active sessions; lectures on various topics should be worked into the program as appropriate. The hypothetical case method is suited for a mix of interactive discussions, demonstrations by leaders, role playing, and small group problem-solving. Each pair of leaders will prepare their own specific sessions, and adapt them to their groups as they go along; the accompanying session-by-session guide identifies the main points to be covered and suggested methods for covering them. The principle is that participants will learn much more from working through a problem than from lectures alone.

**Focus on Investigative Techniques.** The focus of this seminar is on investigative techniques. That is, the materials are not designed to teach "why define a relevant product market," but rather "what facts (that you could actually find) tend to prove that a product does or does not constitute a relevant product market." On the other hand, some lectures will be essential. In the materials, we generally have attempted simply to provide the analytical framework rather than to derive it. This should allow us to get quickly to the investigative techniques issues.

**Materials.** You should have already received:

1. Background Materials for Trainees -- Hypothetical Case (to be distributed in advance of seminar)
2. Additional Course Materials - Hypothetical Cases to be distributed at the end of Session 6 of the seminar for
  - Scenario A
  - Scenario B
3. The Interview Materials to be distributed during the seminar for
  - Pedro Fillol (Session 1)
  - Juana Olguin (Session 2)
  - Eduardo Galvan (Session 2)
  - Maria Passarella (Session 2)
  - Elizabeth Tarantini (Session 2)
  - Esteban Ardiles (Session 2)
  - Felipe Gallego (Session 3)
  - Ana Kempes (Session 3)
  - Jose Bertoni (Session 3)
  - Enrique Luque (Session A)
  - Francisco Ortiz (Session B)
  - Pablo Houseman (Session B)
4. Sample Document Materials
  - Candaro Sales Data (Session 2)
  - Martucha Document.1 (Session 3)
  - Martucha Document.2 (Session 3)
  - Martucha Document.3 (Session 3)
5. Additional Participant Materials
  - Market Share Analysis (Session 4)

**Sessions.** The seminar is planned for eight sessions - - six to cover the basic case and two supplemental sessions with special issues. Depending on the time available, it could be conducted in more or fewer sessions -- the material is organized sequentially and breaks can be made as needed.

**This Guide.** This Group Leader's Guide consists of materials to aid in each of the planned eight sessions. For each session, there is a Session Plan. It lists the goals for the session - - investigative and analytical skills that should be covered in the session. Then it lists possible activities, which are aimed at the goals. Group leaders may choose from among the activities or develop other activities. For some sessions, there are also additional materials to aid in the activities or to aid in interpreting the hypothetical case.

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**Overview of the Seminar**

<b><u>Session</u></b>	<b><u>Scheduled Event</u></b>	<b><u>Participant Materials</u></b>
Pre-seminar		Course Materials
Session 1	Develop Investigative Plan	Interview Materials: Pedro Fillol
Session 2	Initial Investigative Interviews	Interview Materials: Juana Olguin Eduardo Galvan Maria Passarella Elizabeth Tarantini Esteban Ardiles Sample Document: Candaro Document
Session 3	Analyzing Documents Substantive Interviews	Sample Documents: Martucha Document 1 Martucha Document 2 Martucha Document 3 Interview Materials: Felipe Gallego Ana Kempes Jose Bertoni
Session 4	The Government's Case	Market Share Analysis
Session 5	The Defendant's Case	
Session 6	Hearings	Additional Course Materials for Parts II & III

**Additional Course Materials – Scenario A**

Session A	Failing Firm Defense
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**Additional Course Materials – Scenario B**

Session B      Product Differentiation

## Session 1

### Plan

#### Goals:

1. Identify Issues
2. Develop Investigative Strategy
  - a. Identify Potential Sources
  - b. Develop Order for Addressing Issues
3. Develop Approach for Early Interview - - Production
4. Develop Interview Skills
  - Focus: the talkative, non-responsive person

#### Possible Activities:

1. Discussion of Relevant Laws
2. Mini-lecture on Principles of Merger Analysis
3. Group Issue Spotting (ask group to identify relevant issues and create list)
  - Guidance: accompanying Issue Spotting list
4. Group Discussion of Preparing Investigative Plan
  - Guidance: accompanying Investigative Plan
5. Role Playing: Initial Interview of Merging Firm - - Production
  - Pedro Fillol, Production Manager

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### Issue Spotting

- I. Market Definition
  - A. Product Market
    - 1. Is tomato sauce separate from:
      - a. other foods?
      - b. other pasta sauces?
    - 2. What is a "substitute" based on:
      - a. characteristics?
      - b. price?
      - c. intended use?
    - 3. Is tomato sauce other than Ogorco-style tomato sauce (e.g. Northern, imported) in the market?
    - 4. Is home-made tomato sauce in the market?
  - B. Geographic Market/Market Participants
    - 1. Are all 3 companies in the same market?
    - 2. Are Northern producers in the market [transportation costs]?
    - 3. Are foreign producers in the market?
- II. Concentration
  - A. What measure best reflects competitive significance?
    - 1. Capacity
    - 2. Units produced
    - 3. Sales
    - 4. Bids
  - B. What is the most accurate measurement based on available information?
  - C. Can producers of similar food products quickly switch into producing tomato sauce?
- III. Effect on Competition
  - A. Will the merger create or enhance market power (i.e., ability profitably to maintain prices over competitive levels for a significant period of time)?
    - 1. Can the combined entity profitably raise prices after the merger?
    - 2. After the merger, is coordinated interaction (express or tacit) more likely?
  - B. Will entry deter or counteract any competitive effect from the merger?
    - 1. Who are likely entrants?
    - 2. Are there entry barriers?
    - 3. How much time would it take to enter?
    - 4. How likely is entry? Will it be sufficient?
- C. Efficiencies

1. Are there merger-specific efficiencies?

### **Investigative plan**

#### **Market definition/Market participants**

1. Product market

interview customers for anecdotal evidence about switching, substitution, price, competitive effect.

strategic documents describing competitors and competition

marketing documents that describe product, compare it to others, Aposition@ product in market

marketing or sales documents that describe attempts to sell to customers or lost business

2. Geographic market

interview customers for anecdotal evidence about switching, substitution, alternatives available to them.

strategic documents describing competitors and competition

documents/questions about transportation costs

interview other firms about 1) whether they are selling or can sell in the possible geographic market, 2) transportation costs, 3) other costs/barriers to entry

#### **Market concentration**

Obtain capacity, production, sales, and bid data from merging firms

Interview competitors for capacity, production, sales, and bid data

#### **Effect on competition**

Interview customers:

-to see if they are concerned about the merger

-past examples of competition between merging firms (or between one of them and other firms)

Determine if characteristics of product are conducive to coordinated pricing

Economist analysis of market

Interview merging firms and other firms to determine if the effect of other firms switching to tomato sauce production is likely to be substantial

### **Entry**

Interview customers to determine their likely acceptance of new entrant

Interview merging firms to obtain their description of process of entry

Interview possible entrants to determine how long it would take to enter, whether they are likely to enter, and on what scale

### **Efficiencies**

Interview merging firms to obtain description of any claimed merger-specific efficiencies

**Session 2****Plan****Goals:**

1. Develop Approach for Early Interviews
2. Develop Interview Skills
3. Develop Approach for Obtaining Documents

**Possible Activities:**

1. Group Discussion of Competitor Interview Content and Strategy
  - Guidance: Investigative Plan (Session 1)
2. Role Playing: Initial Interview with Competitor
  - Juana Olguin, Candaro
  - Eduardo Galvan, Norco
3. Group Discussion of Customer Interview Content and Strategy
  - Guidance: Investigative Plan (Session 1)
4. Role Playing: Initial Interview with Customer
  - Maria Passarella
  - Elizabeth Tarantini
5. Group Discussion of Supplier Interview Content and Strategy
  - Guidance: Investigative Plan (Session 1)
6. Role Playing: Initial Interview with Supplier
  - Esteban Ardiles
5. Preparation of Document Request
  - Guidance: accompanying document request
  - Discussion of appropriate use of document requests (e.g., tailoring requests to obtain the information the competition agency needs to complete its merger investigation and take any necessary enforcement action, avoiding the imposition of unnecessary or unreasonable costs and burdens on merging parties and third parties, willingness to consider modifications proposed by parties, etc.) See *International Competition Network Recommended Practices for Merger Notification and Review Procedures*, IV, 5.

### Document Request

Document Requests to the Conglom/Martucha and Sanfor Tomato Sauce Companies.

Pursuant to the authority of the Panagra Competition Law, submit the following documents:

1. All documents related to the merger agreement, including the agreement itself, all amendments, addenda, schedules, attachments, and other documents that form any part of the transaction agreement or procedure for implementing it.

*For items 2 through 5, provide all relevant documents for the past two years.*

2. All planning or analysis documents about the tomato sauce business, such as strategic plans, reports, marketing plans, etc.
3. All documents that discuss competition in the tomato sauce business, including memoranda, reports, notes of meetings, etc.
4. All documents that discuss pricing in the tomato sauce business.
5. All documents that discuss the possibility of building new facilities for the tomato sauce business or modifying or improving existing facilities.

### Session 3

#### Plan

##### Goals:

1. Develop Document Review Skills
2. Develop Approach for Detailed, Substantive Interviews
3. Further Develop Interview Skills
4. Develop Skills for Using Documents in Interviews

##### Possible Activities:

1. Group Discussion of Two Martucha Documents
2. Group Discussion of Customer Interview Content and Strategy
  - Guidance: Investigative Plan (Session 1)
3. Role Playing: Interview with Customer
  - Felipe Gallego
4. Group Discussion of Merging Party Interview Content and Strategy
  - Guidance: Investigative Plan (Session 1)
5. Role Playing: Interview with Merging Party
  - Ana Kempes
  - Jose Bertoni

## Session 4

### Plan

#### Goals:

1. Develop Government's Best Arguments for Blocking Merger
2. Integrate Factual Proof to Support Arguments

#### Possible Activities

1. Mini-lecture on Appropriate Measures for Market Shares
  - Distribute: Market Share Chart
2. Group Discussion of Best Arguments
  - Guidance: Accompanying Sales Data Chart
  - Guidance: Issue Spotting List (Session 1)
3. Group Preparation of Outline of Proof
  - Guidance: Accompanying Agency's Outline of Proof

**Sales Data --- GROUP LEADERS= VERSION****Martucha**

<b>Year</b>	<b>Bids Submitted</b>	<b>Bids Accepted</b>	<b>Barrels sold</b>	<b>Cases Sold</b>	<b>Liters Sold</b>	<b>Revenue*</b>	<b>Barrel price</b>
1999	-	-	3005	34036	708932	3251529	<b>2.91</b>
2000	26	12	2926	32956	688072	3369821	<b>3.11</b>
2001	53	19	2985	32487	688344	3223782	<b>2.99</b>
2002 (full year)	49	18	3109	35034	731308	3178736	<b>2.76</b>

**Sanfor**

<b>Year</b>	<b>Bids Submitted</b>	<b>Bids Accepted</b>	<b>Barrels sold</b>	<b>Cases Sold</b>	<b>Liters Sold</b>	<b>Revenue*</b>	<b>Barrel price</b>
1999	7	3	3147	34527	729024	3315729	<b>2.90</b>
2000	24	11	3094	34056	718072	3481639	<b>3.09</b>
2001	66	38	3876	37583	838596	3610857	<b>2.80</b>
2002 (full year)	45	26	3562	33031	752572	3159596	<b>2.75</b>

**Candaro**

<b>Year</b>	<b>Bids Submitted</b>	<b>Bids Accepted</b>	<b>Barrels sold</b>	<b>Cases Sold</b>	<b>Liters Sold</b>	<b>Revenue*</b>	<b>Barrel Price</b>
1999	not known	6	3876	30068	748416	3205680	<b>2.89</b>
2000	36	12	3809	29032	729284	3308440	<b>3.07</b>
2001	48	25	3563	27684	688508	3011112	<b>2.95</b>
2002 (full year)	63	24	4037	31563	782456	3170108	<b>2.73</b>

\* In constant currency, i.e., adjusted for inflation.

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**Competition Agency's Outline of Proof:**

- I. The proposed acquisition of Sanfor by Conglom violates the Panagra Competition Act.
  - A. The deal will result in Conglom having over a 60% share of the Southern Panagran tomato sauce market and only one competitor.
  - B. As a result of the merger, competition in the market will be significantly impeded and consumers will have to pay higher prices for tomato sauce.
  
- II. Both companies compete in the market for tomato sauce in Southern Panagra.
  - A. The product market is tomato sauce
    1. Martucha, Sanfor and Candaro all compete against each other in selling tomato sauce
      - a. Strategic Plan document
      - b. Memo from Ana Kempes
      - c. Testimony of Felipe Gallego
    2. Homemade tomato sauce is not in the market
      - a. Testimony of Pedro Fillol
      - b. Testimony of Elizabeth Tarantini - too expensive
    3. Other food products are not in the market
      - a. Testimony of Elizabeth Tarantini - customers rarely switch
      - b. Testimony of Felipe Gallego - cannot switch
  - B. The geographic market for tomato sauce consists of Southern Panagra
    1. The transportation costs of shipping tomato sauce into Southern Panagra are too expensive for companies outside Southern Panagra to compete.
      - a. Juana Olguin
      - b. Strategic Plan document
      - c. Eduardo Galvan - transportation costs add 10%
    2. Customers only have the option of purchasing tomato sauce made by Martucha, Sanfor and Candaro
      - a. Felipe Gallego
  
- III. The transaction will result in a Conglom's control of a significant portion of the market for tomato sauce in Southern Panagra.
  - A. The transaction will result in Conglom controlling 63% of the market.
    1. Sales data provided by the parties
  - B. Conglom's position will not be eroded by new entry
    1. The barriers to entry are high
      - a. Testimony of Pedro Fillol
      - b. Juana Olguin
  
- IV. Conglom will be able to impede competition significantly, resulting in higher prices

charged to consumers

- A. By acquiring Sanfor, Conglom will facilitate collusion with the one remaining firm in the market.
  - 1. The tomato sauce market is conducive to collusion
    - a. Complaints of price fixing and market allocation
    - b. Fungible product, similar firms, publicly listed prices
  - 2. By creating a market with only two players, Conglom greatly facilitates the ability to collude.
- B. The combined entity will be able to profitably raise prices after the deal.
  - 1. Sanfor and Martucha will no longer have to worry about losing customers to each other if they raised prices, so the only company they could lose customers to is Candaro.
  - 2. Candaro is operating at close to capacity and could not accommodate additional customers.
    - a. Testimony of Juana Olguin
    - b. Memo by Ana Kempes
  - 3. Thus, after the deal, Conglom will be able to profitably charge higher prices to consumers
- C. Any efficiencies are not sufficient to reverse the merger's potential to harm consumers.

## Session 5

### Plan

#### Goals:

1. Develop Defendant's Best Arguments for Allowing Merger
  - Value of anticipating defendant's arguments
2. Integrate Factual Proof to Support Arguments

#### Possible Activities

1. Mini-lecture on Entry: Significance and How to Evaluate
2. Group Discussion of Best Arguments
3. Group Preparation of Outline of Proof
  - Guidance: Accompanying Outline of Proof

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**Defendant's Outline of Proof:**

- I. The acquisition of Sanfor by Conglom does not violate the Panagra Competition Act.
  - A. The deal will not result in any significant increase in concentration in any market in Southern Panagra.
  - B. Even if there were a market only for tomato sauce, the concentration would not enhance Conglom's ability to raise prices or reduce output.
  - C. Even if Conglom could somehow gain a dominant position, the result would still not be that competition in a so-called "tomato sauce market" would be significantly impeded and there is no evidence that consumers would have to pay higher prices.
  
- II. Both Conglom and Sanfor compete in the market for food products in Panagra.
  - A. Both Conglom and Sanfor provide food to Panagran customers. While the different kinds of food may have unique or different characteristics, consumers consider a wide variety of alternatives and sources for each of the items they purchase.
    1. All food provides nourishment and taste, in varying amounts and types.
    2. Chicken recipes, vegetable soup & stews - Strategic Plan
  - B. Just because the companies both sell tomato sauce and compete against each other does not mean that they do not compete against other food items.
    1. The Agency makes much of two documents they obtained from Conglom.  
However:
      - a. The documents were prepared by an inexperienced employee at Martucha as part of a request for information from Conglom. There is no evidence that anything said in these documents is truly representative of the food industry.
      - b. The Agency selectively focuses on competition where it wants to find competition. However the documents were written to analyze a small section of competition in the overall food market. And even as part of that analysis, the documents still mention other food items against which Martucha competes.
    2. In fact, Conglom considers itself to compete against many different kinds of food producers.
      - a. Testimony of Ana Kempes
      - b. Testimony of Jose Bertoni
  
- III. Even if there was a so-called "tomato sauce market," the Agency is wrong in claiming that Conglom would control over 60% of it. Furthermore, even if Conglom did have 60% of this "tomato sauce market," the merger will not result in higher prices.
  - A. The Agency has focused only on the three largest tomato sauce manufacturers in

determining the market shares in this supposed market. In fact, there are hundreds of other tomato sauce producers.

1. People make their own tomato sauce for home consumption. Many people have family recipes for making their own tomato sauce. These people often believe their own tomato sauce is much better than those made by large factories.
    - a. Testimony of Elizabeth Tarantini
  2. There are other sources of tomato sauce in Southern Panagra: Norco, foreign importers, and small grocery stores that make their own.
- B. Even if we were to imagine a scenario in which there was a "tomato sauce market" and even if it were the case that Conglom would have over 60% of the market, Conglom could still easily demonstrate that the merger will not result in higher prices.
1. There are virtually no significant barriers to entry
    - a. The Agency makes much of the Ogorco-style recipe. The fact is that almost every family in Panagra has their own tomato sauce recipe.
    - b. The Agency has completely ignored the fact that Norco has tried to expand its tomato sauce sales many times in Southern Panagra and has considered opening an additional factory.
    - c. The Agency also ignores the fact that there are some 500 tomato sauce companies in the world and any of them could open a factory in Southern Panagra.
    - d. Finally, it is not that expensive to open a new factory and any entrepreneur could raise the capital and open a factory within a year and a half of starting.
  2. Even if there were barriers to entry and Conglom's supposed market share was likely to remain constant, Conglom's customers would not tolerate a price increase. Customers would rather just not buy tomato sauce rather than pay higher prices for them. Tomato sauce is not a necessity, but an option.
- IV. Even if the Agency were correct in each of its other assumptions and Conglom somehow does have a significant post-merger share of the tomato sauce market, there is still no basis for believing that the merger would impede competition and result in higher prices.
- A. The Agency makes much of the fact that the Conglom and Candaro could collude and raise prices. But even if they could, their activity then would be illegal. The Agency can prosecute the companies then. On the other hand, if the parties do not decide to break the law, there will still be at least two strong competitors in the supposed "tomato sauce market." B. The Agency also makes much of Candaro's claim that it is operating at capacity and could not fill more orders if

Conglom raised prices after the deal. However, Candaro has a clear incentive to lie and, more importantly, the objective evidence does not support Candaro's assertion.

1. Candaro is not worried about Conglom raising prices and sending more customers to Candaro. Candaro is worried about Conglom becoming a stronger competitor and forcing it to be more competitive. It is precisely because the transaction will actually strengthen competition that Candaro is now complaining.
  2. Candaro has asserted that it is operating at capacity. Its capacity is 910,000 liters. The most that it has ever sold is 782,000 liters
- C. The Agency disregards all of the benefits that Conglom has demonstrated that the transaction will create. Conglom will be able to lower its costs dramatically by coordinating the operations of the two factories. This will make Conglom more competitive in exporting tomato sauce. Also, Conglom will have more money to spend on innovating new tomato sauce making techniques.

## Session 6

### Plan

#### Goals:

1. Develop Oral Advocacy Skills
2. Use Facts to Support Arguments

#### Possible Activities

1. Role Playing: Proceeding Before Competition Tribunal
  - Assign roles to class: Agency, Defense, Tribunal
  - a. Competition Agency Argument
  - b. Defense Argument
  - c. Critique by Tribunal
2. Critique by Class

## **Session A**

### **Additional Course Materials - Scenario A**

#### **Plan**

#### **Goals:**

1. Analyze Failing Firm Issues
2. Develop Investigative Plan
3. Develop Best Arguments for Agency and Defense

#### **Possible Activities**

1. Mini-lecture on Failing Firm Issues
2. Group Issue Spotting (Ask Group to Identify Relevant Issues and Create List)
  - Guidance: Accompanying Issue Spotting List
3. Group Discussion of Preparing Investigative Plan
  - Guidance: Accompanying Investigative Plan
4. Role Playing - Interview of Firm Claimed to Be Failing
  - Enrique Luque
5. Role Playing: Proceedings Before Competition Tribunal

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**Issue Spotting**

- I. Is Sanfor really failing?
  - A. What financial obligations does it have and can it meet them?
    1. To what extent is the information provided by the companies reliable?
    2. What other kinds of information about Sanfor's troubles are reliable?
      - a. Historical information about the tomato sauce industry
      - b. Current information about similar industries
      - c. Evidence from creditors
  - B. Will Sanfor really exit the market?
    1. Beyond financial obligations that Sanfor cannot meet, are there reliable indications that Sanfor is not profitable?
    2. If Sanfor is still operating at some kind of profit, is there any way to reliably tell whether or not Sanfor will exit the market?
      - a. What profit margin is too small to expect Sanfor to continue?
    3. Will the productive assets exit? Or will someone else use them to make tomato sauce after buying them cheaply?
- II. If Sanfor really is failing, why does Martucha want to buy them?
  - A. Are their unique advantages that Martucha can realize from buying Sanfor that other firms cannot?
    1. Can Martucha gain anything from acquiring:
      - a. Sanfor's physical assets?
      - b. Sanfor's contracts with customers and suppliers
      - c. Any special manufacturing techniques that Sanfor has developed?
- III. Has Sanfor made a good faith but unsuccessful effort to sell the company to someone else?
  - A. What has Sanfor done to try to sell the company to another purchaser? At what point has Sanfor made a good faith effort?
  - B. If there are other potential buyers, how has Sanfor approached them and negotiated with them?

## **Investigative plan**

### **Interview Sanfor**

Ask for any information that would indicate that Sanfor is incapable of remaining in the market. Get detailed information (both past and present) about the firm's financial obligations, revenues, costs, and profit margins. Also obtain information that will provide an estimate of the net worth of the company to use in determining whether Sanfor has been offered a fair price by another company.

Question Sanfor about its attempts to find a buyer. Find out who else Sanfor contacted, whether or not Sanfor received any other bids, and the length of time that Sanfor has been searching for a buyer. Also question Sanfor about its contacts with Martucha. Find out who initiated discussions, at what point in the process the discussions commenced, and the degree to which Sanfor continued discussions with other potential purchasers.

### **Interview Candaro**

Find out if Sanfor contacted Candaro and the degree to which Sanfor had discussions with Candaro. Get information about Candaro's opinion of the deal.

### **Interview Potential Buyers**

Find other companies in the industry that may be interested in entering the tomato sauce market (for instance other food companies). Find out whether or not Sanfor contacted them and whether they were interested in purchasing Sanfor.

## **Session B**

### **Additional Course Materials - Scenario B**

#### **Plan**

#### **Goals:**

1. Analyze Product Differentiation Issues
2. Develop Investigative Plan
3. Develop Best Arguments for Agency and Defense

#### **Possible Activities**

1. Mini-lecture on Product Differentiation Issues
2. Group Issue Spotting (Ask Group to Identify Relevant Issues and Create List)
  - Guidance: Accompanying Issue Spotting List
3. Group Discussion of Preparing Investigative Plan
  - Guidance: Accompanying Investigative Plan
4. Role Playing: Interview of Customers
  - Francisco Ortiz
  - Pablo Houseman
5. Role Playing: Proceedings Before Competition Tribunal

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**Issue Spotting/Sample Questions**

- I. What is the market?
  - A. Is there a separate market for premium tomato sauce?
  - B. Are all tomato sauces in the market?
    1. Cordillera?
    2. Candaro?
- II. What is the market concentration?
- III. What evidence is there that Sardinia and Martucha are each other's next best substitute?
  - A. What other products would Sardinia customers turn to if Sardinia raised its prices?
  - B. What other products would Martucha customers turn to if Martucha raised its prices?
  - C. Are there customers who would just stop buying tomato sauce if faced with an increase in the price of their favorite tomato sauce?
    1. Is the percentage of customers who would not switch to another brand of tomato sauce significant?
- IV. If some customers do have a unique preference for only Martucha and Sardinia, what is it about those two products that make them unique?
  - A. What qualities distinguish Martucha and Sardinia from the other tomato sauce products?
    1. Quality
    2. Appearance
    3. Price
    4. Marketing
    5. Reputation
    6. Brand loyalty
  - B. Could another company reposition its product so that it had similar qualities?
    1. Cordillera?
      - a. Is it conceivable that Cordillera could reposition itself?
      - b. If it is, how long would it take?
    2. Sanfor?
      - a. Is it conceivable that Sanfor could reposition itself?
      - b. If it is, how long would it take?
    3. Candaro?
      - a. Is it conceivable that Candaro could reposition itself?
      - b. If it is, how long would it take?

V. Competitive Effects

- A. Would the deal have the result of creating or strengthening Conglom's market power (i.e., the ability profitably to maintain prices over competitive levels for a significant period of time)?
- B. How does product differentiation affect the competitive analysis?
  - 1. Would the combined entity be able to profitably raise the price of one of the products knowing that the customers it lost would switch to the other product they now own?
    - a. How many customers could the combined entity afford to lose to other tomato sauce producers before the increase in price is unprofitable?

## **Investigative plan**

### **Interview Merging Parties**

Question companies about the special characteristics of their tomato sauce. Try to obtain information that describes characteristics unique to Sardinia and Martucha. Where such characteristics are identified, obtain information about the costs of duplicating those characteristics.

### **Request Documents from Merging Parties**

Get sales data and capacity to determine the market share of the companies.

Get any market surveys as well as other promotional and strategic documents done by the company which may describe consumers preferences.

Get any records that may describe lost customers.

Get data on recent price movements and sales movements .

### **Interview Customers**

Get information about switching behavior. Specifically, try to find customers with a preference to Sardinia and Martucha (especially past customers who have gone somewhere else).

With these customers, try to obtain not only information about their next best choice but also qualitative information about the products.

Get information from customers about their feelings about the transaction. Also get information about past examples of competition between the two companies

### **Interview Competitors**

Get sales data from competitors for market shares.

Question competitors about the differences between their tomato sauces and those of the merging parties. Obtain information about whether the competitor has ever tried to position its product closer to the merging parties=. If the competitor has, obtain information about the costs of trying to do so and the degree of success of the competitor. If the competitor has not, obtain information about the factors that discouraged the competitor from trying.