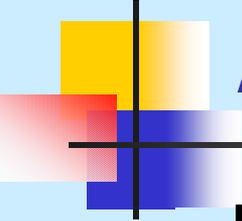


Should Innovation Have A Role In Merger Policy?

DOJ/FTC Hearings on Competition and
Intellectual Property Law and Policy in the
Knowledge-Based Economy

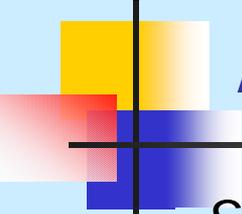
Richard Gilbert
University of California at Berkeley

February 25, 2002



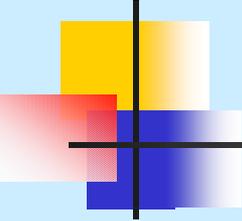
Arguments for:

- Importance of innovation for market performance
- Anecdotal evidence that competition promotes innovation
 - DR-DOS and MS-DOS; Netscape and Internet Explorer
 - Intel – AMD microprocessor races
 - U.S. auto industry's response to foreign competition
 - Telecom industry's response to deregulation



Arguments against:

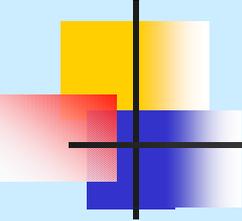
- Schumpeterian argument that monopoly promotes innovation
 - Appropriation, scale economies, cash flow
 - But incremental benefit from innovation can be low (Arrow)
- Can be difficult to identify sources of innovation
 - R&D typically secret
 - Innovations can come from unexpected sources
- Link between R&D and innovation can be weak
- Little empirical evidence supporting link between competition and innovation
 - But few “natural experiments”



Merger Enforcement

Jan 1, 1990 – Dec 31, 1994

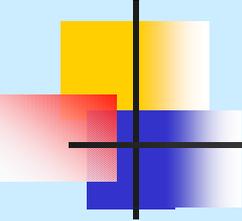
	DOJ	FTC	TOTAL
Merger Challenges	64	71	135
Challenges Alleging Innovation Effects	2	2	4
Percentage of Challenges	3%	3%	3%



Merger Enforcement

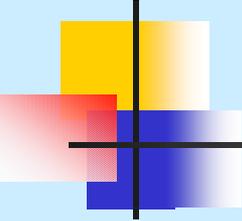
Jan 1, 1995 – Dec 31, 1999

	DOJ	FTC	TOTAL
Merger Challenges	121	148	269
Challenges Alleging Innovation Effects	13	36	49
Percentage of Challenges	11%	24%	18%



The Numbers Overstate Innovation's Role In Merger Policy

- Of the 49 merger challenges alleging innovation effects from Jan 95 – Dec 99:
 - About 35 could have been challenged based solely on effects in markets for existing goods and services.
 - Another 5 could have been challenged based on a theory of “one-sided” potential competition.
- Leaves 6-8 “real” innovation cases
 - “two-sided” potential competition



Some Conclusions

- Innovation issues are clearly important and should play a role in merger analysis
- Despite rhetoric, actual role of innovation concerns has been limited in merger cases
- Most innovation cases appear sound, but need for further study