

Dynamic Merger Policy: Comments

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Disclaimer

Views are mine, and do not represent
Commission or any Commissioner

One-at-a-Time Merger Policy

- *Assess this proposed merger*
 - Focus also of most of the econ literature
- N&W: Why do that?
 - N&W 2008: When would that be optimal?
 - Reject “enough is enough” intuition
 - N&W 2010: Opportunity cost is an alternative merger

Opportunity Cost

- But-for world
 - Counterfactual
- Coordination?
- Another merger?

Enough is enough?

- PCS mergers
- N&W 2008
 - As in F&S 1990, MC efficiency $> p - c$
 - Technical sense in which $D = 1$
 - Hence strategic complementarity of good mergers
- ???

Proposition 1 and Actual Policy

- N&W Prop. 1: optimal policy
 - demands no loss in CS from smallest merger;
 - demands more gain in CS from bigger merger
- Actual policy
 - Courts plausibly more apt to comply with agency request to block bigger merger
 - System (perhaps agency) looks for more (other) assurance of no harm to CS in bigger merger
 - Demands more (other) proof of harm to block smaller merger
- Similar?

N&W as Antitrust Optimists

- N&W 2008: Only mergers that expand output and benefit consumers are allowed
- N&W 2010: Agency “should” (can) block mergers that don’t benefit consumers by enough
- What if agencies face more skeptical environment?
- What’s the evidence?

Merger Retrospectives

- Many retrospectives find price increases
 - Focus more on marginal/controversial mergers,
 - but all mergers studied went through...
- Some find mixed or inconclusive results
- Few clearly find that merger increased output and benefited consumers
 - Focarelli and Panetta (2003), Breen (2004)

A Less Optimistic Perspective

- Some mergers expected to benefit consumers
- Some expected to harm consumers, and can likely be blocked
- Some expected to harm consumers, but agency plausibly cannot block them
- Negotiate on remedies, not always from very strong position

What is next from N&W?

- 2008: permission to be myopic
- 2010: permission to be a bit hostile to size
- 2012:....?

A different ambitious agenda

- Confident and convincing predictions
 - Green lights
 - Red lights