

The Future of BE: Analysis of Effects

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FTC:

The views expressed herein are not purported to reflect those of the Federal Trade Commission, nor any of its Commissioners

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Outline

- Antitrust: The Movement from Form- to Effects-based analysis
 - Horizontal
 - Vertical
- Consumer Protection: The Movement from Form- to Effects-based analysis

Changes in Legal Policy Towards Analysis of Effects

- Horizontal Mergers
 - 1960's and 1970's market share analysis
 - 1992 HMG Revision brought competitive effects analysis to the fore
 - 1997 HMG Revision gave efficiencies more weight
- Vertical Restraints
 - From per-se condemnation of various forms
 - To analysis of their effects (Sylvania)

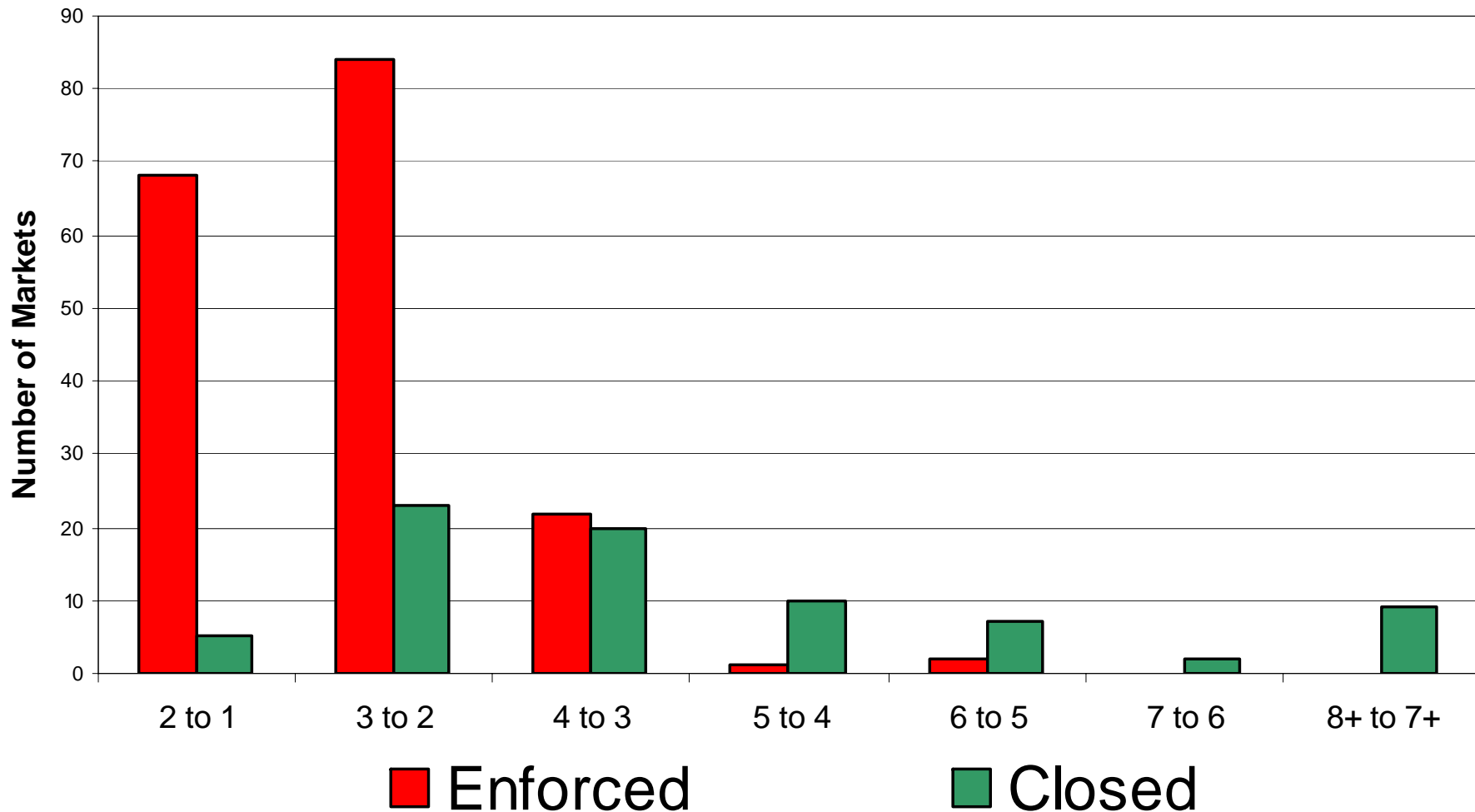
Parallel Changes in EC under Mario Monti

- Mergers
 - Merger Guidelines → Substantial Impediment to Effective Competition (SIEC).
- Vertical
 - Article 81 Block Exemption: Analysis of effects, including efficiencies
- Procedural
 - Best Practices;
 - Chief Economist

Economists Trained to Estimate Effects

- What would have happened
 - absent the merger?
 - absent the vertical restraint?
- Natural experiments
 - Only as good as the data
- Structural models
 - Driven by behavioral assumptions
- Enforcement R&D: How can we improve?

FTC Merger Enforcement Data 1996-2003, "Other Industries"



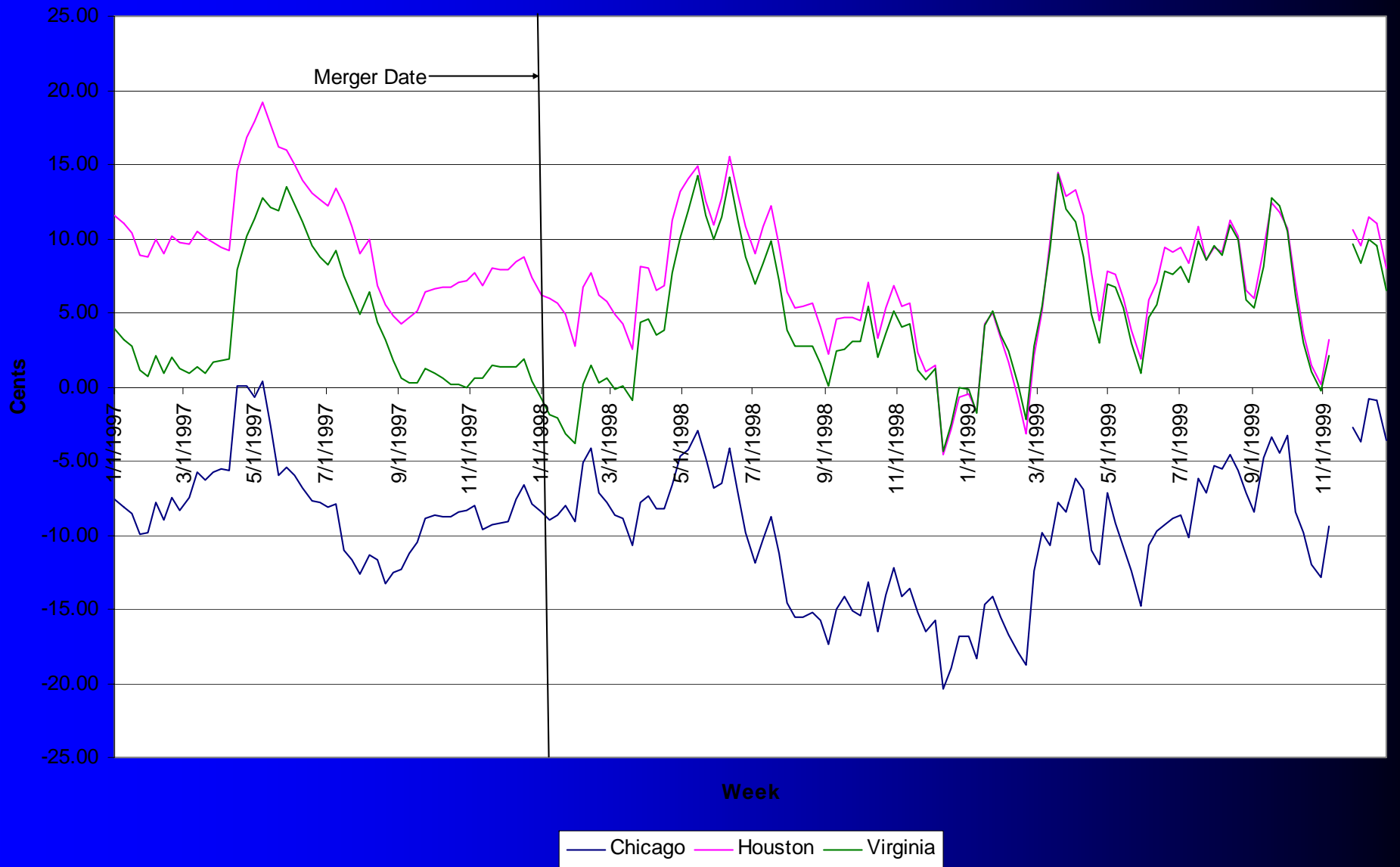
Merger Retrospective: Marathon/Ashland Joint Venture

- Combination of marketing and refining assets of two major refiners in Midwest
- First of recent wave of petroleum mergers
 - January 1998
- Not Challenged by Antitrust Agencies
- Change in concentration from combination of assets *less* than subsequent mergers that were modified by FTC

Merger Retrospective (cont.): Marathon/Ashland Joint Venture

- Examine pricing in a region with a large change in concentration
 - Change in HHI of about 800, to 2260
- Isolated region
 - uses Reformulated Gas
 - Difficulty of arbitrage makes price effect possible
- Prices did *NOT* increase relative to other regions using similar type of gasoline

Difference Between Louisville's Retail Price and Control Cities' Retail Price



Evidence on Vertical Integration

- Natural Experiment across US States with and without “divorcement laws”
 - Gasoline “divorcement” laws restrict vertical integration of gasoline refiners and retailers.
- Experimental group (with divorcement)
 - Six states (Hawaii, Connecticut, Delaware, Maryland, Nevada, Virginia), and DC
- Control Group (without divorcement laws)

Evidence on Vertical Integration (continued)

- Divorcement raises the price of gasoline by about 2.7¢ per gallon (loss of \$100 million in consumers' surplus annually).
- → Vertical integration REDUCES price
- Michael Vita (FTC), "Regulatory Restrictions on Vertical Integration ...," J. of Regulatory Economics," 18 (2000), 217-33).

Consumer Protection: Information R&D

- Information Regulations Adopted to Protect Consumers
 - By Prohibiting Harmful Information
 - By Requiring Helpful Information Disclosures
- Empirical Research Needed to Determine Effects of Regulation
 - Health Claims (prohibiting information)
 - Mortgage Disclosures (requiring information)

Health Claims Encourage Product Innovation & Healthful Dietary Choices

- Manufacturers make healthful product improvements when product-specific health benefits can be advertised (Ippolito & Mathios, 1989)
- Consumers eat more fiber and less saturated fat when product health effects can be advertised (Ippolito & Mathios, 1989, 1996)

Mandated Info. Disclosures can Harm Consumers

- Regulators Proposed Requiring
 - Mortgage brokers to disclose any compensation, including any yield spread premium (YSP) for loans with above par interest rates
 - Direct lenders, such as retail banks, would not be required to make the disclosure
- FTC staff thought the disclosure would confuse consumers and distort mortgage choices
- FTC staff conducted a study to test the validity of concerns (Lacko and Pappalardo, 2004)

Results from “Copy Testing”

- Without disclosure,
 - 90% identified less expensive loan
- With disclosures,
 - 70% identified less expensive loan
- With two loans that cost the same,
 - disclosures caused bias against broker loans
- → Cost of mistaken loan choices
 - hundreds of millions of dollars per year