Hearing #13 on Competition and Consumer Protection in the 21st Century

Federal Trade Commission

Headquarters

April 12, 2019

Welcome

We Will Be Starting Shortly

Welcome

Bruce Kobayashi

Federal Trade Commission

Bureau of Economics

Introductory Remarks

Joseph J. Simons, Chairman

Federal Trade Commission

What Have We Learned from Existing Merger Retrospectives?

Session moderated by:

Daniel J. Greenfield
Federal Trade Commission
Bureau of Economics

What Have We Learned from Existing Merger Retrospectives?

Merger Retrospectives in the Health Care Sector

Leemore S. Dafny

Harvard University

National Bureau of Economic Research

Hospital Mergers are Well-Studied

- Many analyses, both of specific transactions and of large samples of transactions
  - Most recently, Garmon (2017) and Cooper et al (2019)
- Strong evidence that mergers of close rivals tend to lead to price increases; quality effects also generally negative
- Research confirms that merger reviews should consider effects of insurance plan design and insurer competition
  - Gowrisankaran, Nevo & Town 2015; Ho & Lee 2017)
- Recent evidence that cross-market mergers tend to lead to price increases as well (Lewis and Pflum 2017; Dafny, Ho & Lee 2019), and cost reductions (Schmitt 2017)

Research on other Providers, Insurers, and Pharmaceuticals is Growing

- Mergers in other provider sectors also tend to lead to higher prices
  - Physicians (horizontal – e.g. Koch and Ulrick 2017; vertical – e.g. Capps et al. 2018)
  - Dialysis facilities (Dafny et al; Wollman 2018/19; Eliason et al 2019)
- Insurer merger retrospectives document higher premiums (notwithstanding lower wages to healthcare professionals)
  - Commercial insurance (Dafny et al 2012; Guardado et al 2013)
- Pharmaceutical merger evaluations emphasize impacts on innovation; PBM mergers not studied
  - Recent examples: Ederer et al (2018); Richman and Shulman (2017)

Merger Retrospectives To Date Focus on Price Effects of Horizontal Transactions

- Other key outcomes are understudied, e.g. QALYs, clinical outcomes, patient experience, technology adoption, and product/service variety
  - ➢ Some exceptions include Garmon and Kmitch forthcoming; Koch et al. 2018 working paper on clinical quality following hosp-physician mergers
- Studies of vertical combinations are rare (so far), with hospital-physicians a notable exception
- Academic studies focus on large samples; more detailed case studies likelier to be undertaken by DOJ/FTC economists

What Have We Learned from Existing Merger Retrospectives?

Non-Price Effects of Mergers

Jeff Prince
Indiana University
Kelley School of Business

Identifying Causal Effects of Mergers

- Methods
  - Diff-in-diff
    - Most common, e.g., Prince & Simon (2017)
  - Matching
    - Unobservables due to politics, not outcome-influencing factors (e.g., Gaynor et al. 2012)
  - Instrumental variables
    - E.g., Colocation as instrument (Dafny, 2009)

Identifying Causal Effects of Mergers

- Methods (cont'd)
  - Focusing on rivals, rather than merging firms (Eckbo 1983)
  - Structural model with ex post assessment (Hosken & Weinberg 2013)
- Price vs. Non-price Effects
  - Rationale for using rivals as control may be greater for non-price effects

Notable (Non-Price) Findings Thus Far

- Hospital mergers
  - Evidence of price increases (e.g., Dafny 2009)
  - Mixed, and often small, quality effects (IQI, PSI, etc.)

- Airlines
  - Again substantial price effects (e.g., Kim & Singal 1993)
  - Some evidence on quality impacts…

Non-Price Findings for Airlines

- On-time (OTP) performance is often a focus
  - We find initial worsening followed by longer-term improvements
    - Consistent with coordination challenges followed by efficiency gains

- Other measures of interest
  - Routing quality, cancellations, lost baggage, etc.
    - Other work shows worsening on some dimensions (Chen & Gayle 2019)

Non-Price Findings for Airlines

- We also find OTP largely worsens in response to LCC entry (and threats)

- Speaks to ambiguity in relationship between quality and competition / market power (both theoretically and empirically)
  - Contrast this with price

Quality Measurement Challenges

- With increased data and measurement, the range of quality metrics to consider is growing
  - Healthcare (wide range of health outcomes)
  - Technology (smartphone features)

- Key issue: What (subset of) quality measures to examine?
  - Theory is even more complicated for multi-dimensional quality competition
  - Concern about data mining / cherry picking results / p-hacking

Main Takeaways

- Retrospective merger findings for non-price outcomes is quite mixed
- Highlights the importance of careful, disciplined industry analysis when assessing merger impact, particularly for non-price outcomes
  - In contrast to price, the lack of a clear tie between market power and non-price variables (quality) likely contributes to the ambiguity in findings to date

What Have We Learned from Existing Merger Retrospectives?

Merger Retrospectives in the Petroleum Industry

Christopher T. Taylor

Federal Trade Commission

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Views expressed are the speaker's, not necessarily those of the Federal Trade Commission or any of its Commissioners

Petroleum Merger Retrospectives

- Three types of mergers reviewed:
  - Merger of refineries (bulk suppliers) - horizontal
  - Merger of distribution/retailing assets - horizontal
  - Merger of refinery and distribution/retailing - vertical

Petroleum Merger Retrospectives by FTC staff

- Seven FTC studies covering nine transactions (examples)
  - Taylor and Hosken (2007) – Journal of Industrial Economics
  - Simpson and Taylor (2008) – Journal of Law and Economics
  - Hosken et al (2011) – American Economic Review
  - Greenfield, Kreisle and Williams (2015) BE WP # 327
  - Ongoing research agenda
- Studies by BE Staff do not find consistent evidence of a increase in retail price.
  - Mixed results on available wholesale data.
- FTC Technical Report Replicating GAO (2004)
  - Available on FTC website

Petroleum Merger Retrospectives by GAO

- Two reports by the GAO (2004) and (2009)
  - GAO (2004) results partially available in Karikari et al (2006)
  - GAO (2009) results partially available in Kendix and Walls (2010)
  - Both studies examine wholesale prices in many cities covering multiple transactions.
- GAO(2004) examined eight petroleum mergers between 1994 and 1999.
  - Provided 28 estimated effects. Found 16 positive effects, seven negative effects, five no effect.
  - FTC technical report (2004) replicated and did robustness checks of various assumptions.
    - Merger results were very sensitive to the identification assumptions and omitted data.
  - One transaction in GAO(2004) was also reviewed in Taylor and Hosken (2007)
    - Found no consistent retail price effect.

U.S. Petroleum Retrospectives (cont.)

- GAO (2009) reviewed seven transactions
  - Found two positive wholesale price effects, one negative effect and four with no effect.
  - Used different identification strategy from GAO(2004)
  - One transaction with a price increase was examined in Silvia and Taylor (2013)
    - No retail price effect of that transaction.
- Hastings (2004) and Hastings and Gilbert (2005)
  - Both papers review changes in vertical integration in California
  - Both papers found price effects from changes in vertical integration.
  - The transactions in these studies were reviewed in Taylor et al (2010) and Hosken et al (2011)
    - No consistent retail price effect of these transactions.

Non U.S. Petroleum Merger Retrospectives

- Multiple studies in Canada, Australia.
  - E.g. Hyde (2002), Sen & Townley (2010), Houde (2012)
- Study of Argentina – Coloma (2002)
- Multiple Studies in Europe
  - E.g. Spain Jimenez & Perdigueo (2018), Netherlands Soetevent et al (2014)

Conclusions of Non U.S. Studies

- Studies generally find price effects of the transactions.
  - In some cases, a lack of effects was due to pre-existing collusion.
- The levels of concentration in the industry in these countries are generally much higher than in the United States.
- Some of these countries have regulations that effect entry or competition.

Lessons Learned About Retrospectives
Merger retrospectives sound simple but...

- Studies need clear, well documented hypotheses and identification strategies.
  - Need to describe the assets involved in the transaction and the anticompetitive theory
  - Need to examine prices of final goods (retail price)
  - Market definition (geographic) is crucial and sometimes difficult
  - Reviewing many markets and multiple transactions within one study is difficult

Lessons Learned About Retrospectives(cont.)

- Study needs sufficient documentation and data availability for replication and robustness checks.
  - Multiple studies on the same transaction are useful.
  - Part of Replication/Robustness is decomposing effects.
- Link results and anticompetitive theory so results can be generalized.
  - Clear description of assets, markets, concentration.
  - Mechanism by which change in market(s) results in price/output change.

What Have We Learned from Existing Merger Retrospectives?

John E. Kwoka, Jr.

Northeastern University

Department of Economics

What Have We Learned from Existing Merger Retrospectives?

Panel Discussion:

Leemore S. Dafny, Jeff Prince,
Christopher T. Taylor,
John E. Kwoka, Jr.

Moderator: Daniel J. Greenfield

Break

10:45-11:00 am

How Can Merger Retrospectives Be Used to Improve Prospective Merger Analysis?

Session moderated by:

Daniel S. Hosken

Federal Trade Commission

Bureau of Economics

How Can Merger Retrospectives Be Used to Improve Prospective Merger Analysis?

Hospital Merger Retrospectives and Prospective Merger Analysis

Christopher Garmon
University of Missouri – Kansas City
Henry W. Bloch School of Management

Hospital Merger Enforcement

- Hospital Merger Retrospectives Project
  - Non-profit hospital mergers can be anticompetitive
  - Anticompetitive mergers can occur in urban areas
- Recent merger challenges used first-order screens (diversions, UPP, WTP) along with structural measures
  - ProMedica/St. Luke’s, Pinnacle/Hershey, Advocate/NorthShore
- Are these screens accurate in predicting post-merger price effects?

Accuracy of Hospital Merger Screening Methods

- Garmon (2017): Comparison of screens to price changes for 28 consummated mergers of competing hospitals
  - All screens constructed with data usually available in initial investigation
    - Based on predictions of discrete choice demand models
  - Price estimated using method of Dafny (2009)
  - Price change measured relative to synthetic control
    - Change in operating cost per adjusted admission also measured relative to synthetic control

Selection Based on Thresholds

Excluding Mergers with Variable Cost Savings

	Correct Prediction	False Positive	False Negative	Mean Relative Price Change for Flagged Mergers
HHI (HRR Bed Shares) Guidelines	12	0	5	28.4%
HHI (HSA Disch Shares) Guidelines	9	8	0	16.2%
HHI (WSA Disch Shares) Guidelines	12	4	1	20.3%
Minimum Change in WTP > 6%	13	2	2	23.3%
Minimum UPP > 4%	13	4	0	20.6%

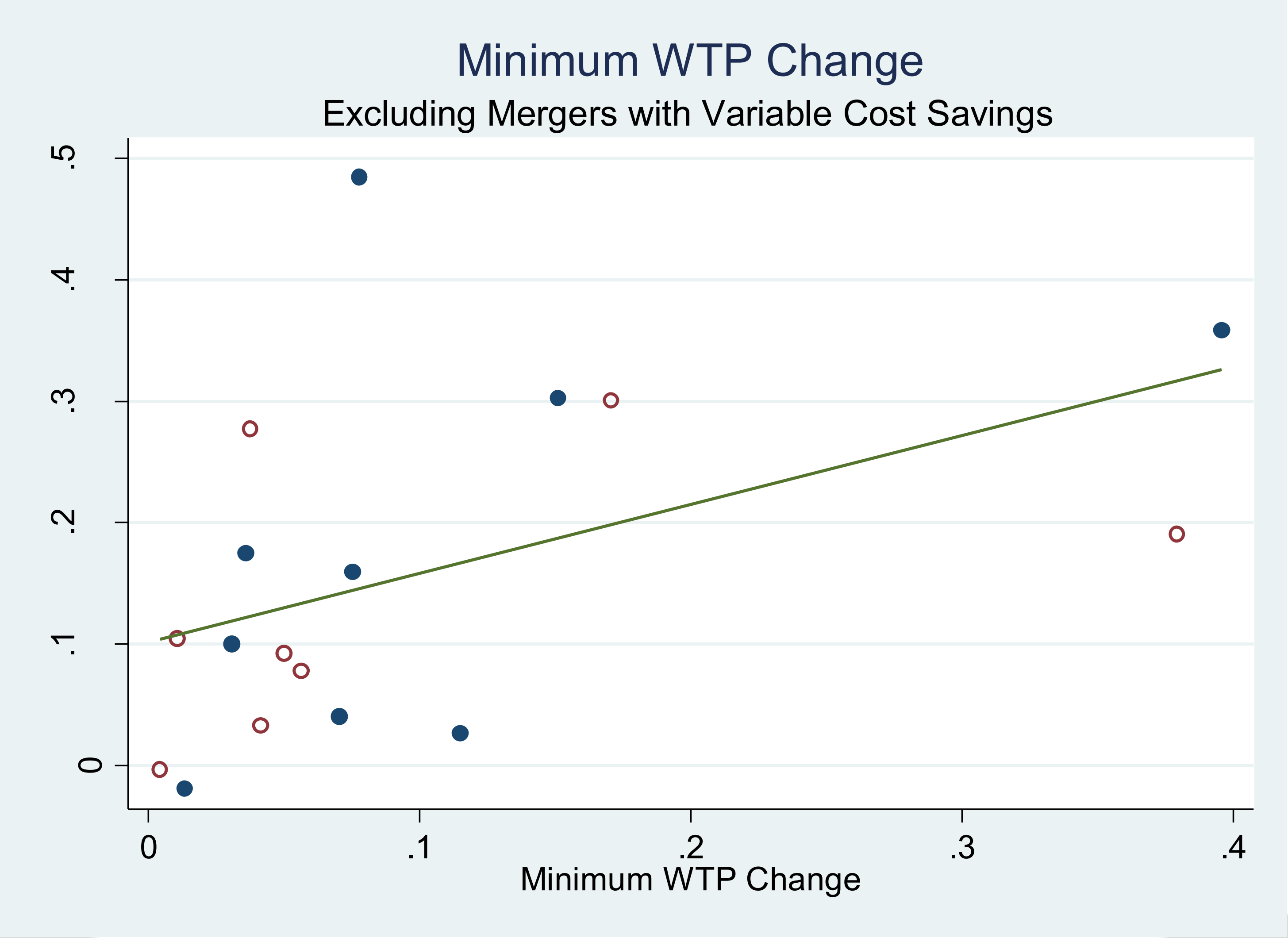
Correct Prediction = (Flagged merger as problematic and merger associated with statistically significant relative price increase) or (Did not flag merger as problematic and merger not associated with statistically significant relative price increase)

False Positive = Flagged merger as problematic and merger not associated with statistically significant relative price increase

False Negative = Did not flag merger as problematic and merger associated with statistically significant relative price increase

Guidelines = Horizontal Merger Guidelines thresholds = Post-Merger HHI > 2500 and HHI Delta > 200

WTP Change vs. Price Change



Hollow dots = North Carolina/Missouri

Limitations

- Selection bias due to active antitrust enforcement (Carlton (2009))
- Post-merger changes affecting price unrelated to competition
- Theory/simulation necessary for evaluation
  - Balan and Brand (2018) "Simulating Hospital Merger Simulations" FTC Working Paper #334

How Can Merger Retrospectives Be Used to Improve Prospective Merger Analysis?

Frank Verboven

KU Leuven

Department of Economics

Merger retrospective: GSK-AZT in Swedish analgesics market – background

- Large merger (100% market share in one segment)
- Large post-merger price increases (+40%) enable one to evaluate a rich set of predictions:
  - Price effects by brand
  - Market share effects by brand
- Four demand specifications
  - Unit demand (linear price) vs constant expenditures (log price)
  - Nested logit (NL) versus random coefficients logit (RCL)
- Supply side
  - Account for deviations from Bertrand-Nash before merger (to fit markups)
  - Account for coinciding cost changes by some outsiders after the merger

Merger retrospective: GSK-AZT in Swedish analgesics market – main findings

- Demand side
  - <u>Functional forms</u>: unit demand $\prec$ constant expenditure demand
    (less plausible cross-brand markup pattern, underpredicted price effects)
  - <u>Substitution</u>: RCL $\gtrless$ NL
    (somewhat underpredicted price effects, better predicted market share effects)

  → We focused on comparing NL and RCL under constant expenditure specification
- Supply side
  - Reasonable <u>average</u> predicted price effects, but:
  - Outsiders' price responses are larger than predicted
  - Smaller insider does not raise price by more than the larger insider
- Factors that can explain gaps:
  - Outsider price responses: plausible marginal cost increase, and/or continuation of partial coordination
  - Insiders' price responses: possibly cost disadvantage to smaller merger firm (or misspecified demand/supply)
  - Insiders' market share change: possible increase in perceived quality

Merger retrospectives: broader lessons

- Demand side:
  - In any demand model (e.g. NL versus RCL), it is key to capture the main dimension(s) of product differentiation that are relevant to the merger
  - Magnitude of predicted price effects varies depending on the model and functional forms (in the absence of efficiencies).

  → Sensitivity analysis desirable
- Supply side
  - Evaluate pre-merger conduct (may compare predicted with actual markups)
  - Evaluate post-merger changes in conduct

  → Attempt to incorporate prior information
- When evaluating merger simulation as a tool, account for other factors that may have changed
  - Efficiencies due to the merger
  - Unrelated coinciding cost or quality changes

Merger retrospectives: future research

- More studies on horizontal merger retrospectives
  - Typical merger simulations
  - Price-concentration analysis (geographic markets)
- Retrospectives in other contexts:
  - bidding markets
  - vertical mergers, …
- Evaluating short-term versus long-term effects
  - In particular in the presence of new entry, other changing factors, market dynamics
- Evaluating non-price effects (product development, investment)
- Evaluating efficiency claims
  - Can we come up with a general presumption ("default efficiency")?

Concluding remarks

- Merger retrospectives are useful to evaluate enforcement tools
  - Continue recent focus on evaluating horizontal merger simulation
  - Extend towards other tools (price-concentration) and other settings (vertical mergers)
- Challenges and limitations
  - Accounting for non-merger related changes
  - Accounting for coordinated effects (inherently difficult to predict)
  - Accounting for market dynamics (short-term versus long-term effects)

How Can Merger Retrospectives Be Used to Improve Prospective Merger Analysis?

Understanding Competition with Merger Retrospectives

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The Ohio State University
Department of Economics

Case Studies of Merger Simulation Accuracy

EVIDENCE ON THE ACCURACY OF MERGER SIMULATIONS

Matthew C. Weinberg and Daniel Hosken*

Abstract—This paper evaluates the efficacy of a structural model of oligopoly used for merger review. Using premerger data, we estimate several demand systems and use a static Bertrand model to simulate the price effects of two mergers. Using pre- and postmerger data, we directly estimate the price effects. The direct estimates imply that one merger resulted in

of Log Cabin breakfast syrup by the owner of the Mrs. Butterworth brand. The mergers took place in consumer products industries with little recent history of entry or exit, involved well known products, and affected products that

American Economic Review: Papers & Proceedings 2011, 101:3, 51–55
http://www.aeaweb.org/articles.php?doi=10.1257/aer.101.3.51

More Evidence on the Performance of Merger Simulations

By Matthew C. Weinberg*

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EVIDENCE ON THE ACCURACY OF MERGER SIMULATIONS

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More Evidence on the Performance of Merger Simulations

By Matthew C. Weinberg*

merger simulations relatively well. The first merger combined the ownership of the Pennzoil and Quaker State brands of passenger car motor oil. The second was the purchase

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* Weinberg: Drexel University; Hosken: Federal Trade Commission.

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A supplemental appendix is available online at http://www.mitpressjournals.org/doi/suppl/10.1162/REST_a_00347.

[1] See Baer (1997) for a discussion of the costs of retrospective antitrust policy toward horizontal mergers.

and asymmetric reductions in marginal costs, often 10% or more, would be necessary to equate simulated and directly estimated price changes for syrup. For motor oil, the firms would have to experience smaller but substantial (5%–10%,) increases in marginal costs postacquisition to reconcile the estimated and simulated price effects. Finally, we assess whether models of competition aside from Nash price competition better describe postmerger pricing.

The rest of this paper is structured as follows. Section II provides a brief description of the literature relevant to our paper. Section III provides a brief description of the mergers we study and our data. Section IV describes the demand systems and techniques we use to simulate the price effects of the mergers. Section V compares the simulated price changes to directly estimated price changes and evaluates different explanations for their differences. Section VI concludes.

The Review of Economics and Statistics, December 2013, 95(5): 1584–1600

model of Bertrand competition. Next, using both pre- and postmerger data, I directly estimate the price effects of the mergers using standard techniques from the program evaluation literature following Orley C. Ashenfelter and Daniel Hosken (forthcoming). If the assumptions necessary to simulate the merger hold, the simulated price effects should be close to the directly estimated price effects.

The direct estimates imply that the merger increased prices. These estimates are calculated by comparing the change in the price of the

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the merger would reduce consumer surplus. According to press reports, the Department of Justice reviewed the case but did not take any enforcement action.[1]

The data used in this study are scanner data from the food channel of Information Resources Incorporated (IRI). The data are weekly total revenue and unit sales by week, region, and Universal Product Code (UPC). IRI's food channel covers 64 regions, and the data span the period from October 27, 1996 until January 2, 2000. Prior to the merger, there were seven firms in the market producing four branded tampons

[1] *New York Times*, June 7, 1997.

51

Source: Matthew C. Weinberg (2011) "More Evidence on the Performance of Merger Simulations," *American Economic Review: Papers and Proceedings*, 101(3): 51-55; Daniel Hosken and Matthew C. Weinberg (2013) "Evidence on the Accuracy of Merger Simulations," *Review of Economics and Statistics*, 95(5): 1584-1600

Case Studies of Merger Simulations: Overview

- Studied three packaged consumer products: motor oil, breakfast syrup, feminine hygiene products.
- In each case some specification (AIDS, Linear, Logit with OLS or IV) was reasonably close to direct estimates.
  - Which specification varied by market.
- Simulated price changes sensitive to demand system (AIDS, Linear, Logit).
  - In some specifications little success getting reasonable demand estimates.
  - In some cases more than one estimated demand specification looked reasonable, but gave very different simulated price effects.
  - BLP type models could in principle be more flexible.
- Explored explanations of bias.
  - Checked whether changes in demand, changes in cost, or changes in competition could explain forecast error but little success isolating source.
  - Could have used more ex post data in estimation.

More recent research focusing on conduct.

Econometrica, Vol. 85, No. 6 (November, 2017), 1763–1791

UNDERSTANDING THE PRICE EFFECTS OF THE MILLERCOORS JOINT VENTURE

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McDonough School of Business, Georgetown University

MATTHEW C. WEINBERG
LeBow College of Business, Drexel University

We document abrupt increases in retail beer prices just after the consumma
of the MillerCoors joint venture, both for MillerCoors and its major compe
Anheuser-Busch. Within the context of a differentiated-products pricing mode
test and reject the hypothesis that the price increases can be explained by mov
from one Nash–Bertrand equilibrium to another. Counterfactual simulations
that prices after the joint venture are 6%–8% higher than they would have bee
Nash–Bertrand competition, and that markups are 17%–18% higher. We rel
results to documentary evidence that the joint venture may have facilitated pric
dination.

KEYWORDS: Market power, mergers, unilateral effects, coordinated effects, ar
policy, merger enforcement, brewing industry.

1. INTRODUCTION

ECONOMIC THEORY indicates that repeated interaction within oligopoli
collusive equilibria if there are few enough firms (e.g., Friedman (1971),
Accordingly, the Merger Guidelines of the United States Department of
and Federal Trade Commission (FTC) emphasize that mergers in concen
can facilitate coordination and nearly 60% of merger complaints filed b
FTC over 1990–2014 allege coordinated effects (Gilbert and Greene (20
pirical research, by contrast, focuses on the unilateral effects of mergers
the internalization of diverted sales between merging firms selling differe
(e.g., Berry and Pakes (1993), Hausman, Leonard, and Zona (1994), Wer
(1994), Nevo (2000)). In these models, post-merger coordination is not
stead, firms are assumed to play one-shot Nash–Bertrand pricing equilib
and after the merger.

We study the economic effects of MillerCoors, a joint venture of SABM
Molson Coors Brewing that combined the operations of these brewers
States. The joint venture underwent antitrust review as a merger betwe
and third largest firms in the U.S. brewing industry. It was approved June
DOJ on the basis that merger-specific cost reductions would likely outweigh
petitive effects. Normal course documents of Anheuser-Busch InBev (ABI

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 DOI: 10.3982/ECTA13333

Econometrica, Vol. 85, No. 6 (November, 2017), 1763–1791

UNDERSTANDING THE PRICE EFFECTS OF THE MILLERCOORS JOINT VENTURE

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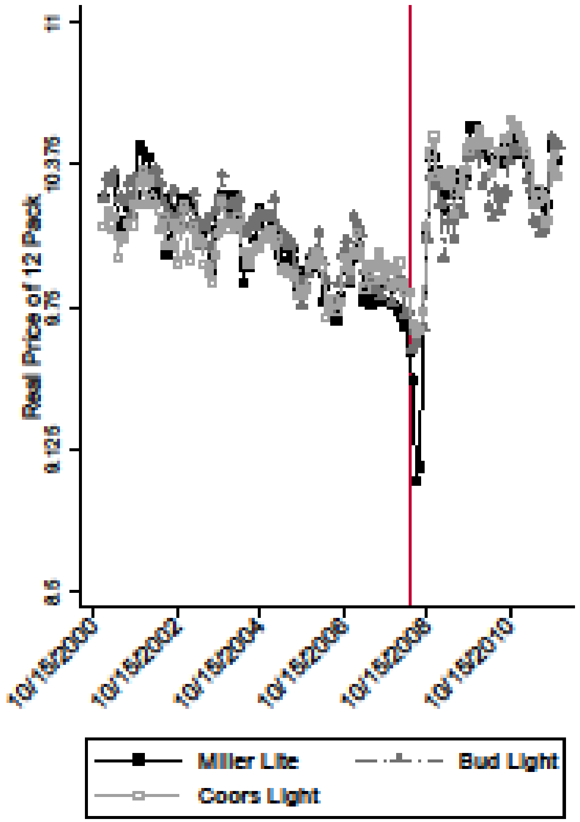
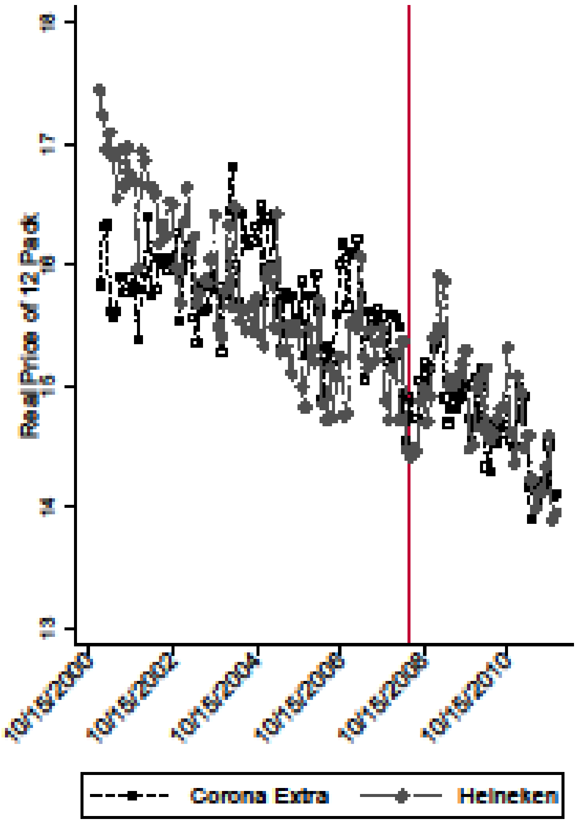
Source: Nathan H. Miller, Matthew C. Weinberg, "Understanding The Price Effects of The MillerCoors Joint Venture," *Econometrica*

Miller-Coors Merger

- Combines the U.S. operations of SABMiller and Molson Coors
  - 2nd and 3rd largest brewers in the U.S.
  - Anheuser-Busch Inbev (ABI) is #1
  - Brands: Bud Light, Budweiser, Miller Lite, Coors Light
  - JV announced Oct. 2007, cleared by DOJ June 2008
- Motived on basis of lowering distribution costs
  - Molson Coors brews (predominately) from Golden CO
  - SABMiller has six breweries dispersed through U.S.
  - Production rationalized across brewing facilities
  - Efficiencies realized (SEC, Ashenfelter, Hosken, and Weinberg (2015))

Pricing Before and After Miller-Coors

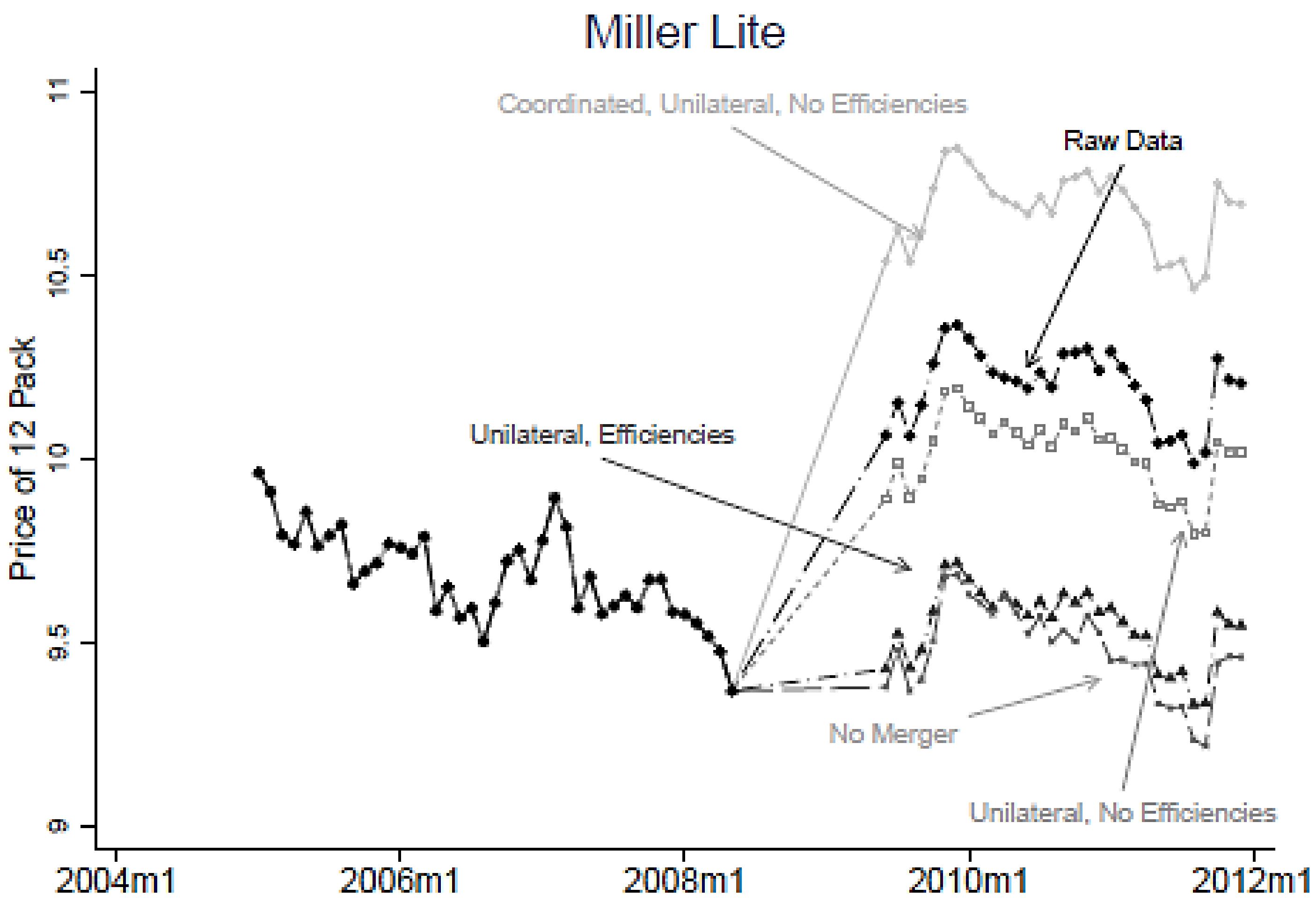




Approach and Main Results

- Estimate demand on data spanning before and after merger.
- Supply nests Bertrand and allows for a particular type of post-merger coordination.
- Assume ABI costs do not increase relative to more distant competitors (eg Corona, Heineken).
  - Prices rose by more than what can be accounted for with “Unilateral Effects”
  - Taken literally, combined Miller/Coors and ABI internalize one-third of pricing externality post-merger
  - Consumer surplus down about 4%
  - Without coordination consumer surplus would have been essentially unchanged

Deviation from Static Nash-Bertrand Pricing



Miller-Coors Merger: Coordinated Effects?

- ABI "Conduct Plan". ABI sends out price list with increases in August, rescinded if MillerCoors does not match
  - "Transparent – so competitors can clearly see the plan"
  - "Simple – so competitors can understand the plan"
  - "Consistent – so competitors can predict the plan"
- Timing: Annual Reports suggest 2008
  - 2005-2007: "extremely competitive environment"
  - 2009-2010: "robust pricing"; "disciplined revenue management"; "sustained price increases"

Areas for more work

- Relatively Straightforward Areas:
  - Marginal Cost Efficiencies.
  - Product Quality Efficiencies.
  - Bargaining Weights.
  - Tests of static Nash.
- Coordinated effects.
- Divestitures.
- Bargaining externalities.
  - If there are three suppliers A, B, and C, pre-merger the buyer does not purchase from B or C, what happens to buyer if B and C merge?
- Entry.
- Product repositioning.

How Can Merger Retrospectives Be Used to Improve Prospective Merger Analysis?

Angelike A. Mina
Federal Trade Commission
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The views expressed in this presentation are my own and do not necessarily reflect those of the Federal Trade Commission.

Why Study Merger Remedies?

- Effective remedies are critical to the Commission's antitrust mission
  - Remedies maintain competition in relevant markets while allowing the Commission to clear the non-problematic parts of the merger

- Updated and expanded on the 1999 Divestiture Study
  - Evaluate the reforms from the 1999 Study, such as more frequent use of upfront buyers

Study Goal

- Assess whether remedy maintained or restored competition
- Evaluate issues arising during the process in order to improve future remedies

Study Methods

- Analysis period restricted to 2006-2012, during which the Commission issued 89 merger orders
- The 89 orders included:
  - 15 orders affecting supermarkets, drug stores, funeral homes, dialysis clinics, and other health care facilities evaluated with questionnaires
  - 24 orders affecting the pharmaceutical industry evaluated using internal information
  - 50 orders evaluated using a case study methodology (our focus today)
    - Both horizontal (46) and vertical (4) merger remedies
    - Both proposed (40) and consummated (10) mergers

Study Methods

- Case studies conducted with <u>50</u> of the <u>89</u> orders
  - Evaluated each market separately
  - 184 relevant geographic/product markets
    - But only 46 different buyers
    - Evaluated buyer's ability to maintain competition in the remedial market(s)

Case Study Methodology

The study was a **qualitative retrospective** and the limited sales data gathered were used to corroborate information obtained in interviews

- **Internal information reviewed**, including Commission memorandums and discussions with the original investigative case teams
- **Interviews** with respondent, buyer of divested assets, competitors, customers, and monitors
  - original investigative staff participated in the study
  - Over 200 interviews, 67% participation rate
- **Sales data** (revenue and volume) for 7 years centered on the year of the remedy
  - Nearly 200 6(b) orders, 96% response rate

Study Questions

- Two dimensions:
  - Did the remedy maintain or restore competition?
  - Were there issues or concerns related to the process used to design and implement the remedy?
- Process concerns:
  - Were only significant if they affected or could have affected the remedy’s success in meeting the remedial goals of the order
  - These include: concerns about the scope of the divestiture package, funding commitments, due diligence, transfer of back-office functions, length of transition services and supply agreements, and the implementation of hold separates
- Competition:
  - Fully maintaining or restoring competition is the stated goal of all FTC remedies and was the standard used in the study

Ratings: Competition

- Three remedy outcome categories:
  - Success: remedy maintained competition in the relevant market at its pre-merger level or returned to that level within 2-3 years
  - Qualified Success: remedy maintained/restored competition in the relevant market, but it took longer than 2-3 years or success was limited due to unanticipated market shocks
  - Failure: remedy did not maintain or restore competition

Case Study Characteristics

- Merger and Remedy Types
  - Of the 46 horizontal mergers, ten were consummated
  - All 4 vertical mergers were unconsummated

Merger Type		Remedy Type	
		Structural	Non-Structural
	Horizontal (46)	87% (40)	13% (6)
	Vertical (4)	0% (0)	100% (4)
	All (50)	80% (40)	20% (10)

Case Study Characteristics

Characteristic:	
Buyer Timing	
Upfront Buyer	69%
Post-Order Buyer	33%
Package Type	
Selected Assets	67%
Ongoing Business	40%
Other Characteristics	
Monitor	74%
Transition Services	57%
Asset Maintenance Order	52%
Supply Agreement	48%
Hold Separate Order	24%

#1 Divestiture of an Ongoing Business Poses Little Risk

Horizontal, Structural, Non-Consummated	Remedy Outcome		
Asset Package	Success	Qualified Success	Failure
Ongoing Business	100%	0%	0%
Selected Assets	56%	11%	33%

Selected Asset Packages Add Risk

- Divestitures of selected assets tended to be successful when buyers:
  - Were knowledgeable about the relevant markets
  - Had similar existing operations or complementary products
  - Were already familiar with the customers
- Several selected asset divestitures succeeded, but encountered difficulties
- The 10 buyers that failed all acquired selected assets—all failed for different reasons
  - The selected asset packages never operated as autonomous businesses before, requiring the buyer to take additional measures before it could compete
  - Some buyers couldn't win customers

Key Takeaways

#1 Divestiture of an Ongoing Business Poses Little Risk

#2 Upfront Buyers Will Not Always Eliminate the Risk Associated with a Selected Asset Package

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#2 Upfront Buyers Will Not Always Eliminate the Risk Associated with a Selected Asset Package

#3 Buyer Due Diligence Sometimes Insufficient

#4 Transfer of Back-Office Support Functions Can Be Difficult

#5 Buyers Remain Reluctant To Bring Issues to Staff or the Monitor as They Occur

How Can Merger Retrospectives Be Used to Improve Prospective Merger Analysis?

Panel Discussion:

Christopher Garmon, Frank Verboven,
Matthew C. Weinberg,
Angelike A. Mina

Moderator: Daniel S. Hosken

Break

12:30-1:30 pm

Remarks

Rebecca Kelly Slaughter, Commissioner

Federal Trade Commission

Should the Findings from Merger Retrospectives Influence Horizontal Merger Policy, And If So, How?

Session moderated by:

Michael G. Vita

Federal Trade Commission

Bureau of Economics

Should the Findings from Merger Retrospectives Influence Horizontal Merger Policy, And If So, How?

Orley Ashenfelter
Princeton University
Industrial Relations Section

Should the Findings from Merger Retrospectives Influence Horizontal Merger Policy, And If So, How?

Steven Berry

Yale University

Department of Economics

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Leemore S. Dafny

Harvard Business School

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Deborah L. Feinstein

Arnold & Porter

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Aviv Nevo

University of Pennsylvania

Department of Economics

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Orley Ashenfelter, Steven Berry,
Leemore S. Dafny,
Deborah L. Feinstein, Aviv Nevo

Moderator: Michael G. Vita

Break

3:15-3:30 pm

What Should the FTC's Retrospective Program Be Over the Next Decade?

Session moderated by:

Bruce Kobayashi

Federal Trade Commission

Bureau of Economics

What Should the FTC's Retrospective Program Be Over the Next Decade?

Nancy L. Rose
Massachusetts Institute of Technology
Department of Economics

What Should the FTC's Retrospective Program Be Over the Next Decade?

John E. Kwoka, Jr.
Northeastern University
Department of Economics

What Should the FTC's Retrospective Program Be Over the Next Decade?

William E. Kovacic

George Washington University

Law School

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Martin S. Gaynor
Carnegie Mellon University
Heinz College

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Dennis Carlton

University of Chicago

Booth School of Business

What Should the FTC's Retrospective Program Be Over the Next Decade?

Panel Discussion:

Nancy L. Rose, John E. Kwoka, Jr., , William E. Kovacic, Martin S. Gaynor, Dennis Carlton

Moderator: Bruce Kobayashi

Closing Remarks

David Schmidt

Federal Trade Commission

Bureau of Economics

Thank You