The Future of BE: Analysis of Effects

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FTC:
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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

Number of Markets

2 to 1 3 to 2 4 to 3 5 to 4 6 to 5 7 to 6 8+ to 7+

Enforced Closed
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
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

Week

Cents
-25.00 -20.00 -15.00 -10.00 -5.00 0.00 5.00 10.00 15.00 20.00 25.00

Merger Date

Chicago  Houston  Virginia
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

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