The Economics of Consumer Protection, Antitrust, and Policy

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These are my views and do not necessarily represent those of the Federal Trade Commission or any of the Individual Commissioners
The FTC

- Our Goal: Enhance consumer welfare

- Three missions work hand-in-hand to achieve this goal
  - Competition (Antitrust)
  - Consumer Protection
  - Public Policy/Advocacy/R&D
Competition

- Competition: The ultimate “consumer protection”
- Competition benefits consumers through
  - Lower prices
  - Improved quality
  - Greater consumer choice
  - Increased innovation
Competition policy in the US

- Protects the competitive process from abuses
  - Stops cartels
  - Stops abuse of dominance
  - Prevents mergers that would lead to price increases
- Advocates for the consumer and the competitive process to other legal bodies, consumers, and businesses
Competition policy in the US (continued)

- Focus is on consumer welfare
  - Competition can, and frequently does, hurt individual competitors as lower prices means lower profits, holding costs constant
  - The FTC does not seek to protect individual competitors
  - The FTC protects the competitive process, thereby protecting the consumer
Mergers: How the process works . . .

- Merging parties file with both agencies
  - In FY 2006, 1,768 transactions were reported under the Hart-Scott-Rodino (HSR) Act

- Initial review by staff of pre-merger notification office resolves 70-80% of cases quickly without any investigation.

- Anything they can’t handle goes to one of the merger divisions for further review. Quick inquiry resolves most of the rest

- Only a handful need in-depth review
  - In FY 2006, 45 second requests were issued (both DOJ and FTC) or 2.5% of mergers filed
General observations about mergers...

- Most mergers don’t present problems
- Many are pro-competitive or competitively neutral
- Unnecessary delay can impose barriers to efficiency-producing transactions
- Some mergers present competitive concerns
- Objective is to identify the mergers that present concerns, while quickly identifying and disposing of those that do not
- Most competitive concerns are resolved through divestitures rather than litigation
The Details: Pre-merger notification

- What transactions are reportable?
- How much does it cost?
## What is reportable?

<table>
<thead>
<tr>
<th>Deals over $252.3 million</th>
<th>Always reportable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deals between $63.1 and $252.3 million</td>
<td>May be reportable if:</td>
</tr>
<tr>
<td></td>
<td>One party bigger than $126.2 million</td>
</tr>
<tr>
<td></td>
<td>Other party bigger than $12.6 million</td>
</tr>
<tr>
<td>Deals of less than $63.1 million</td>
<td>NO LONGER reportable</td>
</tr>
</tbody>
</table>
How much does it cost

- New scaled fees
- Deals over $630.8 million: $280,000
- $126.2 and $630.8 million: $125,000
- Between $63.1 and $126.2 million: $45,000
- Fees are indexed
The review process

- 30 day clock begins to run upon filing
- Pre-merger staff conducts preliminary review
- Many cases resolved at this stage
At the end of 30 days . . .

☐ Two choices:
  ■ Allow merger to go forward
  ■ Issue detailed request for more information and documents (“second request”)

☐ Second request “stops the clock”
After second request made

- Parties have unlimited time to comply, but can’t merge in the meantime
- Formal investigation—with power to compel—proceeds
- Parties and agency negotiate scope of production of documents; internal appeal available
- Negotiations to resolve case continue
  - Typically resolved through divestitures
After parties substantially comply with second request

- New 30 day clock begins to run. At the end of 30 days, either:
  - Agency goes to court to block merger, or
  - Parties are free to merge
Litigation

- Litigated cases (FTC and DOJ) typically resolved at preliminary injunction stage
  - Parties usually abandon transaction if agency win in court
  - Agency usually abandons challenge if parties win in court—but not always (Whole Foods/Wild Oats)
- Court decisions granting or denying injunctions can be appealed to Court of Appeals (and ultimately to Supreme Court)
Role of economics in merger law

- Economic theory and analysis provide the foundations and for evaluating the likely competitive effects of a merger.

- Economics provides an organized structure for the information gathered about a merger.
Role of economics in merger analysis

- Competitive effects analysis
  - Economic theory and quantitative analysis are tools to determine whether the merger is likely to create or enhance market power (e.g., raise prices or lower quality)

- Other economic considerations are also important, including
  - Entry
  - Efficiencies
Role of economists in merger investigations

- Provide rigorous economic logic and supporting evidentiary analysis that most accurately reflects the possible outcomes from a merger
- Act as complement to the lawyers in conducting the investigation
- Make independent recommendation to Commission
Role of economists in merger litigation

- Support the ongoing investigation
- Work with economic expert:
  - Further analyses
  - Expert reports
  - Prepare for deposition and trial testimony
- Assist in preparation of exhibits and other economic evidence to be used at trial
Recent antitrust work

- Whole Foods/Wild Oats (on Appeal)
- Google/DoubleClick (Closed)
- Cephalon (in Litigation)
Antitrust work in oil and gas markets

- Cases
- Commission reports
- Advocacy
- Research
- Gasoline price monitoring
  - 20 wholesale regions and approximately 360 retail areas nationwide
Consumer protection

- For competition to thrive consumers must receive accurate information about products and services
- Authority under FTC Act to protect consumers against fraud, deception and other “unfair business practices”
  - Truth-in-advertising laws (e.g., claims for food, over-the-counter drugs, dietary supplements, alcohol, and tobacco)
  - Marketing practices (Internet, telecommunications, and direct-mail fraud; deceptive spam; fraudulent business, violations of the Do Not Call provisions of the Telemarketing Sales Rule)
Consumer protection (continued)

- Consumer protection also involves
  - Providing consumers with information in situations where the market is unlikely to provide the information that consumers need in order to make their choices
  - Educating consumers so that they may better protect themselves
Role of FTC in consumer protection

- Encourage provision of truthful information in a form that allows consumers to make their own buying decisions
- Other government agencies focus on controlling product quality directly, as well as providing information:
  - Food and Drug Administration
    - Food safety
    - Drug safety and effectiveness
  - Department of Transportation
    - Automobile safety
Role of economists in consumer protection

- Increased role due to relevance of the development of the “Economics of Information”
- Case development
- Evaluation
- Research
- Advocacy
Recent work by the Bureau of Economics: Consumer protection

- Mortgage Disclosure Study
  - *Truth-in-Lending Act*
  - *Real Estate Settlement Procedures Act*

- Online Behavioral Advertising

- FACTA Scoring Study
  - Do Credit Scores Predict Risk in Insurance Markets, or are they merely used as a “proxy” for race and ethnicity?

- Identity Theft

- Consumer Fraud
Identity theft

☐ 1998 Congress directed the FTC to:
  - Establish a repository for complaints
  - Provide assistance to victims
  - Conduct consumer education efforts
### Prevalence of Identity Theft, 2005
*(figures in parentheses are 95 percent confidence intervals)*

<table>
<thead>
<tr>
<th>Victim of:</th>
<th>Percent of Population</th>
<th>Number of Persons (millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any Type of Identity Theft</td>
<td>3.7%</td>
<td>8.3</td>
</tr>
<tr>
<td>Misuse of Existing Credit Card Only</td>
<td>1.4%</td>
<td>3.2</td>
</tr>
<tr>
<td>Misuse of Existing Accounts Other Than Credit Card Accounts</td>
<td>1.5%</td>
<td>3.3</td>
</tr>
<tr>
<td>New Accounts Opened or Other Frauds Committed</td>
<td>0.8%</td>
<td>1.8</td>
</tr>
</tbody>
</table>

*Source: 2006 FTC Identity Theft Survey*
### Costs of Identity Theft, Misuse Discovered Since 2001

<table>
<thead>
<tr>
<th></th>
<th>All Types of Identity Theft</th>
<th>Misuse of Existing Credit Card Only</th>
<th>Misuse of Existing Accounts Other Than Credit Card Accounts</th>
<th>New Accounts Opened or Other Frauds Committed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gross Value Stolen Using Victim’s Personal Information</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>$500</td>
<td>$350</td>
<td>$457</td>
<td>$1,350</td>
</tr>
<tr>
<td>90&lt;sup&gt;th&lt;/sup&gt; Percentile</td>
<td>$6,000</td>
<td>$4,000</td>
<td>$3,800</td>
<td>$15,000</td>
</tr>
<tr>
<td>95&lt;sup&gt;th&lt;/sup&gt; Percentile</td>
<td>$13,000</td>
<td>$7,000</td>
<td>$6,000</td>
<td>$30,000</td>
</tr>
<tr>
<td><strong>Out-of-Pocket Expenses Incurred by Victims</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$40</td>
</tr>
<tr>
<td>90&lt;sup&gt;th&lt;/sup&gt; Percentile</td>
<td>$1,200</td>
<td>$132</td>
<td>$900</td>
<td>$3,000</td>
</tr>
<tr>
<td>95&lt;sup&gt;th&lt;/sup&gt; Percentile</td>
<td>$2,000</td>
<td>$400</td>
<td>$1,200</td>
<td>$5,000</td>
</tr>
<tr>
<td><strong>Hours Victims Spent Resolving Problems Related to Being a Victim of Identity Theft</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>90&lt;sup&gt;th&lt;/sup&gt; Percentile</td>
<td>55</td>
<td>25</td>
<td>44</td>
<td>100</td>
</tr>
<tr>
<td>95&lt;sup&gt;th&lt;/sup&gt; Percentile</td>
<td>130</td>
<td>60</td>
<td>96</td>
<td>1,200</td>
</tr>
</tbody>
</table>

**Source:** 2006 FTC Identity Theft Survey
Consumer fraud

- FTC’s 2nd Survey of Consumer Fraud in 2005
- An estimated 13.5% of U.S. adults, or 21 million people, experienced 1 or more of the 14 specific frauds covered in the survey
  - Estimated total number of incidents: 48.7 million
Specific Frauds, by Number of Victims

-Weight-Loss Products: 4.8
-Foreign Lotteries: 3.2
-Billing - Buyers’ Clubs: 3.2
-Prize Promotions: 2.7
-Work-at-Home Programs: 2.4
-Credit Card Insurance: 2.1
-Advance-Fee Loans: 1.8
-Credit Repair: 1.7
-Business Opportunities: 1.2
-Pyramid Schemes: 0.8
-Debt Consolidation: 0.8
-Government Jobs: 0.5
-Billing - Information Services: 0.4

Millions of Victims
Likelihood of Being a Victim of Fraud, by Age

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Likelihood</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 - 24</td>
<td>14.9%</td>
</tr>
<tr>
<td>25 - 34</td>
<td>17.1%</td>
</tr>
<tr>
<td>35 - 44</td>
<td>15.4%</td>
</tr>
<tr>
<td>45 - 54</td>
<td>14.6%</td>
</tr>
<tr>
<td>55 - 64</td>
<td>11.0%</td>
</tr>
<tr>
<td>65 - 74</td>
<td>10.4%</td>
</tr>
<tr>
<td>75 and over</td>
<td>5.6%</td>
</tr>
</tbody>
</table>
Concluding Remarks

- FTC and Bureau of Economics work hard to promote interests of consumers
- Bureau of Economics is but one of many checks and balances
- Consumer protection starts with you, and education is key