AAI INVITATIONAL SYMPOSIUM

Non-Price Effects of Mergers

NATIONAL PRESS CLUB - WASHINGTON DC - JUNE 15, 2016

Greg Gundlach
University of North Florida/American Antitrust Institute

Merger Activity: 2015

- 2015 transactions (announced)
  - U.S.
    - $2.1 trillion
  - Global
    - $4.7 trillion
- 2014 transactions (announced)
  - Global
    - $3.4 trillion

Non-Price Competition and Effects

- Non-price competition
  - Activities by firms, excluding those associated with price, that alter demand for the firm's goods or services or those of their competitors (Spence 1977).
- Non-price effects
  - Outcomes of competition and rivalry that manifest in ways other than price
    - Quality, variety, service, and innovation

Significance of Non-Price Competition and Effects

- Business
  - Strategic management
  - Marketing
- Economics
  - Theory of monopolistic competition
  - Literatures
- Law
  - U.S. v. Continental Can Co. (1964)
  - National Cooperative Research Act of 1984

Non-Price Competition and Effects in U.S. Merger Analysis

- Past guidelines:
  - 1992 Horizontal Merger Guidelines
  - 1997 Merger Guidelines
  - 2006 Commentary on the Horizontal Merger Guidelines

Non-Price Competition and Effects in U.S. Merger Analysis

- Current guidelines:
  - 2010 Horizontal Merger Guidelines
    - "[e]nhanced market power can also be manifested in non-price terms and conditions that adversely affect customers, including reduced product quality, reduced product variety, reduced service, or diminished innovation"
    - "reduce product quality or variety, with-draw products or delay their introduction or curtail research and development efforts after the merger . . . can be highly informative in evaluating the likely effects of a merger."
    - "a reduced incentive to continue with an existing product-development effort or reduced incentive to initiate development of new products"
    - "consumers' ability and willingness to substitute away from one product to another in response to a price increase" ... "non-price change such as a reduction in product quality or service."

Current Challenges and Future Directions

- Do the U.S. Merger Guidelines sufficiently recognize non-price considerations and effects?
  - *Do the U.S. merger guidelines adequately recognize the importance and role of non-price competition and effects in the analysis of a merger?*
  - *Should the guidelines incorporate more emphasis of non-price competition and effects?*
  - *If so, how should the guidelines be changed to better address non-price competition and effects?*

Current Questions and Future Directions

- Should non-price effects beyond product quality, variety, service and innovation be considered?
  - *What non-price effects arise from competition?*
  - *What non-price effects should be of interest in the analysis of a merger?*
  - *How should these non-price effects be identified?*

Current Questions and Future Directions

- Is the current approach for analyzing a merger adequate when considering non-price competition and effects?
  - *Does an approach analogous to evaluations of price competition suffice for evaluating non-price competition?*
  - *Is there a need for a different approach for evaluating non-price effects?*
  - *What modifications or changes are required?*

Current Questions and Future Directions

- Do the guidelines offer satisfactory guidance for understanding and evaluating the harms/benefits of a merger in respect to each non-price effect?
  - *What is specifically meant when referencing non-price effects involving product quality? Variety? Service? Innovation?*
  - *How should each of these non-price effects be conceived of and understood?*
  - *What insights are offered in economics?*
  - *What insights are provided in other fields of inquiry?*
  - *What additional understanding is required?*

Current Questions and Future Directions

- Is there a need for clarity in the treatment of conflicts in the assessment of price and non-price effects?
  - *How should conflicts in price and non-price effects be resolved when evaluating a merger?*
  - *Should price effects trump non-price effects or vice versa?*
  - *How should conflicts among non-price effects be addressed?*

AAI INVITATIONAL SYMPOSIUM

Non-Price Effects of Mergers

NATIONAL PRESS CLUB - WASHINGTON DC - JUNE 15, 2016

AGENDA

1:00 p.m. — Welcome and Introduction
Diana Moss, President, American Antitrust Institute

1:15 p.m. — Overview of the Symposium
Gregory T. Gundlach, Distinguished Professor of Marketing, Coggin College of Business, University of North Florida

1:45 p.m. — Non-Price Effects of Mergers: Insight and Experience from Economics, Law and Business

Moderator: Gregory T. Gundlach, Distinguished Professor of Marketing, Coggin College of Business, University of North Florida

Panelists: John Kwoka, Neal F. Finnegan Distinguished Professor of Economics, Northeastern University

Peter N. Golder, Professor of Marketing, Tuck School of Business at Dartmouth

Melissa Schilling, Professor of Management and Organizations, Leonard N. Stern School of Business, New York University

Patrick Woodall, Research Director & Senior Policy Advocate, Food & Water Watch

2:45 p.m. — Break

3:00 p.m. — Changing the Enforcement Paradigm: Approaches to Integrating Non-Price Effects into Merger Enforcement and Policy

Moderator: Diana Moss, President, American Antitrust Institute

Panelists: Daniel E. Haar, Counsel to the Assistant Attorney General, U.S. Department of Justice Antitrust Division

Oliver Richard, Director, Center for Economics, U.S. Government Accountability Office

Carin Zelenko, Director, Capital Strategies Department, International Brotherhood of Teamsters

4:00 p.m. — Break

4:15 p.m. — Moderated Roundtable Discussion
Moderators: Gregory T. Gundlach, Distinguished Professor of Marketing, Coggin College of Business, University of North Florida

Diana Moss, President, American Antitrust Institute

5:00 p.m. — Closing Remarks
Diana Moss, President, American Antitrust Institute