Antitrust

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September 25, 2020

Grad IO

What is Antitrust?

- Current Debate: should we maximize efficiency/social surplus or should we focus on consumer surplus.
  - US antitrust law focuses primarily on harm to consumers.
  - EC tends to also worry about harm to competing firms.
- We know about DWL from market power from undergrad economics. However, without profits, why would firms innovate or perform R&D?
  - Law understands this and awards temporarily monopolies via patents.
- Today, I am going to focus mostly on horizontal mergers among competitors.
  - Most of this is known as unilateral effects (which is a terrible name).
  - Also worry about coordinated effects which mean the nature of equilibrium changes.

Antitrust Legislation : Sherman Act (1890)

Section 1 "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal" (Violation involves an agreement).

Section 2 "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony".

Three *per se* violations

- (1) price fixing (2) horizontal market division (3) refusals to deal.
- Other violations are *rule of reason*.

Antitrust Legislation : Clayton Act (1914)

Section 2 Prohibits some forms of price discrimination, but only when it lessens competition.

Section 3 Prohibits sales based on the condition that the buyer not buy from your competitor (includes tying and exclusive dealing), but only when effect may be to substantially lessen competition.

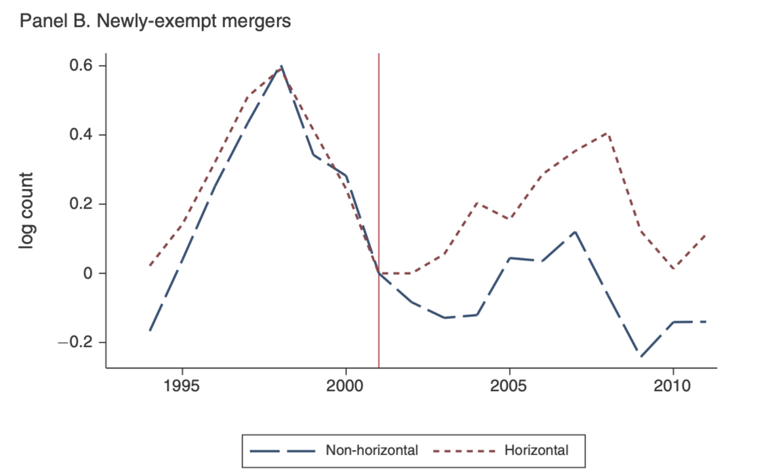
Section 7 Prohibits mergers where the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly in any line of commerce.

Section 8 Prevents a person from being a director of multiple competing firms.

Antitrust Legislation : Hart-Scott-Rodino Act (1976)

- Required pre-notification and registration of large mergers
    - Transaction: $78.2 million
    - Size of Person: $156.3 M with target of $15.6 M or total transaction of $312.6M
    - These are "inflation adjusted" each year.
- Initial review period is 30 days after which DOJ/FTC can request additional information or allow merger to proceed.
- Second review usually involves detailed information about price-cost margins, market shares, etc. (Usually more info available than to academic researchers).
- Can request information company would reasonably have (customer surveys, etc.).
- After second review can ask for injunctive relief or remedies which merging parties can oppose in court.

Abrupt change to the transaction size was passed with other legislation, led to large change in newly exempted merger filings (for horizontal mergers).



DOJ/FTC Horizontal Merger Guidelines

- DOJ/FTC describe markets as:
  - Highly Concentrated: $HHI \geq 2500$.
  - Moderately Concentrated: $HHI \in [1500, 2500]$. $\Delta HHI \geq 250$ merits scrutiny.
  - Un-Concentrated: $HHI \leq 1500$.
- Also consider unilateral effects/UPP and coordinated effects.
- Three steps:
  1. Market Definition
  2. Measure Concentration/Initial Screening
  3. Merger Simulation

Step 1: Market Definition

SSNIP

- Small but significant and non-transitory increase in price (SSNIP): smallest relevant market where a hypothetical monopolist could impose a 5% price increase. (For at least one year).
- Under linear demand this amounts to a price cost margin and an elasticity (sometimes the critical elasticity).

Tricky Examples:

- Whole Foods vs. Wild Oats
- Cellophane Fallacy.

Step 2: Concentration/Screening

- After we define the relevant market, compute the relevant HHI or UPP.
- There can be both geographic and product market issues in the relevant market.
- Some markets may be highly concentrated and others may not be.
- Can ask for divestitures as part of a remedy if there are a few problematic markets in an otherwise uncontroversial merger.

Step 3: Merger Simulation

- Simulate the price effects of the merger
- Take into account likely cost synergies (sometimes there are none).
- Estimate post-merger prices and welfare.

This is what we will talk about next.