

MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2026

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
Dale Collins

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Class 10 Homework Assignment

Instructions

Submit by email by 3:30 pm on Thursday, September 24

Send to wdc30@georgetown.edu

Subject line: Merger Antitrust Law: Assignment for Class 10

Assignment

Calls for a memorandum to a partner (which may be sent to a client) and numerical problems.

Part A. Product market definition memorandum

John Clark, a partner in Able & Baker LLP with whom you work, has asked you to prepare a short memorandum explaining the role of product market definition in merger antitrust cases. Clark believes that the relevant geographic market will not be in dispute, so he would like you to focus on product market definition. Clark understands that courts typically use two complementary approaches in defining relevant product markets: (1) the *Brown Shoe* “outer boundaries” analysis based on reasonable interchangeability of use and cross-elasticity of demand, informed by the *Brown Shoe* “practical indicia”; and (2) the hypothetical monopolist test (HMT) under the Merger Guidelines. Clark would like the memorandum to explain the basic idea behind each approach, the kinds of evidence that are relevant in applying it, and how the two approaches relate to one another in practice. Write the memorandum so that it can be understood by a business client. You need not include formulas or perform any numerical HMT calculations in this part.

Part B. Critical loss problems

Calls for answers to questions (not in a memo form). Show your work.

1. Products A and B are being tested as a candidate market. The market price for each unit of either product is \$300, each type of product as a constant incremental cost of \$160 per unit and each product type has aggregate sales of 1000 units (i.e., 1000 units of Product A and 1000 units of Product B). When the price for both products is increased by \$15, each firm loses 100 units to products other than A and B. What is the critical loss for the candidate market of products A and B? Do A and B satisfy the hypothetical monopolist test using critical loss analysis and SSNIP of 5%?

2. In *FTC v. Occidental Petroleum Corp.*, No. 86-900, 1986 WL 952 (D.D.C. Apr. 29, 1986), the FTC challenged the pending acquisition by Occidental Petroleum, a major producer of polyvinyl chloride (“PVC”), of Tenneco’s PVC business. Both companies produced PVC in plants in the United States. The parties agreed that the relevant product markets were suspension

homopolymer PVC and dispersion PVC, and the PI proceeding focused largely on the relevant geographic market. The FTC alleged that the relevant geographic market was the United States for both types of products; the merging parties argued that the relevant geographic market was worldwide. In the Section 13(b) proceeding for a preliminary injunction, the evidence showed that if the price of all suspension homopolymer PVC produced in the United States was increased by 5%, U.S. customers would divert about 17% of their purchases to imports from foreign suppliers (who were ready to serve these customers). The evidence also showed that that if the price of all dispersion PVC produced in the United States was increased by 5%, U.S. customers would divert about 12% of their purchases to imports from foreign suppliers (again, who were ready to serve these customers).¹ The evidence in the hearing also showed that the percentage gross margins for homopolymer PVC and dispersion PVC were 28% and 45%, respectively. Was the FTC correct that the relevant geographic market was the United States using the hypothetical monopolist test and a SSNIP of 5%?

3. Premium ice cream sells at \$4.00/pint and has a constant marginal cost of \$2.25/pint. The own-elasticity of aggregate demand for premium ice cream is -1.9, with almost all diversion going to regular ice cream. Two premium ice cream manufacturers proposed to merge. Does premium ice cream satisfy the hypothetical monopolist test under a 5% SSNIP, or should the market be expanded to include regular ice cream?

If you have any questions, send me an email. See you in class.

¹ I have made up some of the facts here, but the hypothetical is consistent with the results in the case.