



Horizontal Merger Guidelines

Shawn Ulrick

Federal Trade Commission
Bureau of Economics
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The views expressed herein are those of the author and do not necessarily reflect the views of the Federal Trade Commission, any Commission Bureau, or any individual Commissioner.



Horizontal Merger Guidelines

- Describe the analytical framework used by the FTC/DOJ in analyzing horizontal mergers.
- *Guidelines only.*
- “The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise.”



Horizontal Merger Guidelines

5 primary steps:

1. Market Definition & Concentration
2. Potential Competitive Effects
3. Entry Analysis
4. Efficiencies
5. Failing Firm/Division



1. Market Definition & Concentration

- Market definition: “SSNIP” – “Small but Significant and Nontransitory Increase in Price.”
- *i. e.*, smallest group of products such that a hypothetical monopolist could raise prices, say, 5%.
- This method often leads to product markets that are much smaller than industry might expect:
 - e. g., Super premium ice cream, In-store video rentals, etc.



2. Competitive Effects: How do we predict potential harm?

- Once upon a time: HHI was a theory in itself (no longer!).

Now days:

- Do we have an economics theory of harm that holds water?
- Sometimes data is used to estimate elasticities, calculate critical loss, simulate post-merger world.
- When investigating consummated mergers, we may look for evidence of price increases.



How do we Obtain Information?

- Interviews:
 - Parties
 - Customers
 - Competitors
 - Industry Experts
- Documents:
 - The parties submit documents as part of their HSR filing
- Data



Mitigations to Concerns

3. Entry.

4. Efficiencies:

- Must be

1. “Valid” (not causally related to anti-competitive concern).
2. Verifiable (and quantifiable).
3. Merger-specific.

5. Failing Firm/Division.



FTC & “Concentrated” Industries

FTC and staff pay attention to industries that have consolidated. Two examples:

1. Oil - highly controversial. [Example of the FTC & consummated mergers]
2. Ice Cream - received a lot of press response due to “Super Premium” product market. [Example of FTC & “predicting” outcome of merger]



FTC & Oil

- Numerous recent mergers in the oil industry, though concentration has not changed much in relevant markets.
 - ✓ FTC Monitors gasoline prices, and looks for causes of outlier prices.
 - ✓ Merger retrospectives
 - ✓ FTC Petroleum Industry staff report (descriptive)



FTC & Oil

- ✓ Hosken & Taylor paper investigate in Louisville market if retail prices increased after merger.
 - Did not find retail price effect.
- ✓ Measuring price increases is econometrically complicated, so FTC held a 1-day conference to discuss issues:
 - Jerry Hausman, Hal White, Denis Carlton, amongst others as speakers.
- ✓ I think general view of colleagues: Difficult issue, and more work needs to be done.



FTC & Ice Cream

Ice Cream: merger between Dreyer's and Nestle.

A lot of regional ice cream brands, but the Commission issued order requiring divestiture.

- FTC alleged that the product market was “Super Premium Ice Cream,” which is quite concentrated [w/difficult entry].



FTC & Ice Cream

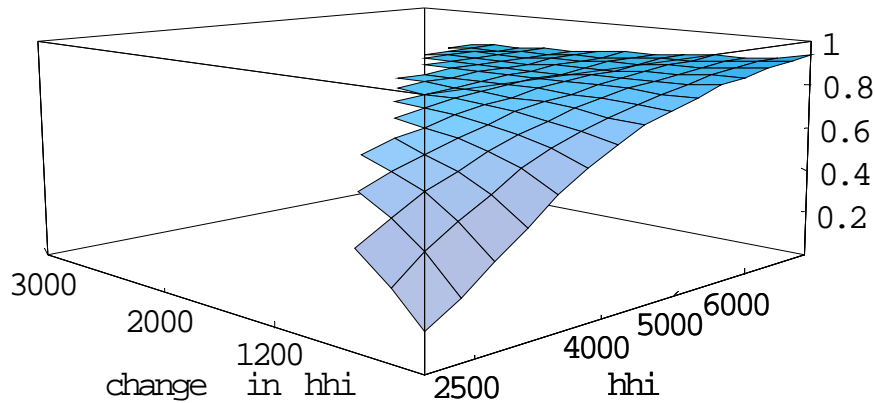
- Reason for this market according to press release:
 - “[differentiation] in the quality of ingredients”
 - “more butterfat and less air.”
- Also: often econometrics is used to estimate price elasticities, etc.



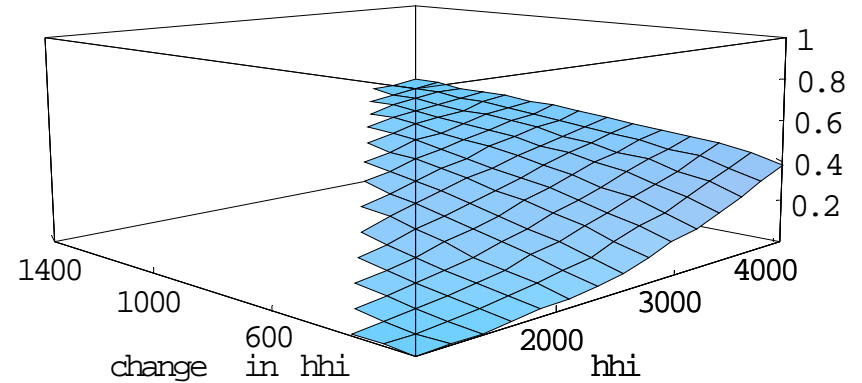
Empirical Evidence of Process

Enforcement Predictions by Values of the Concentration Variables

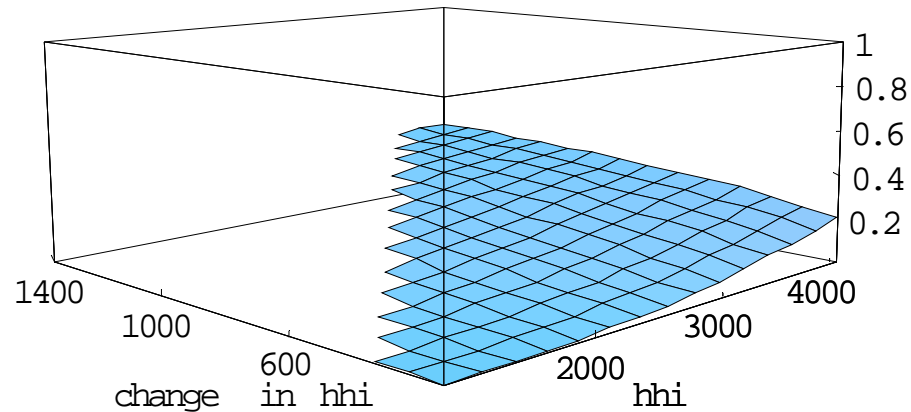
3 rivals



4 rivals



5 rivals

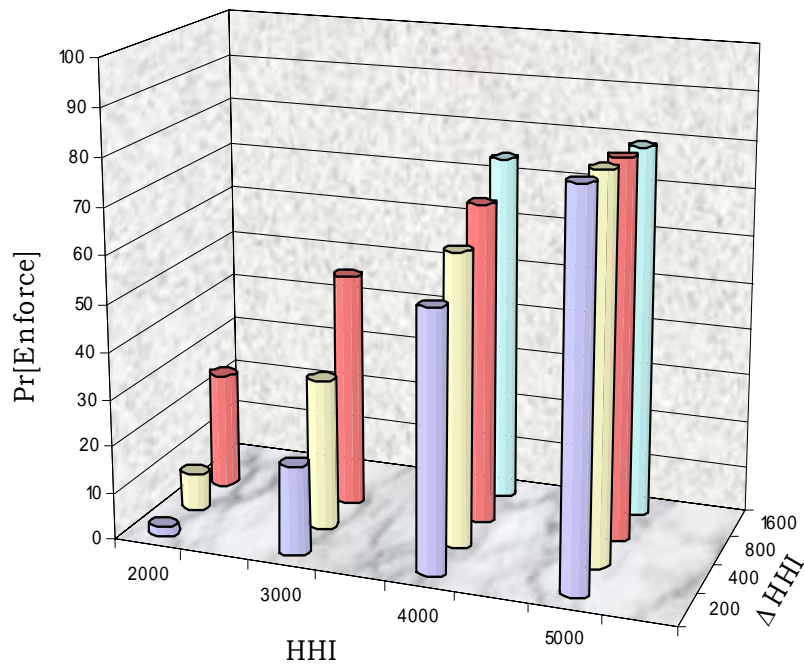




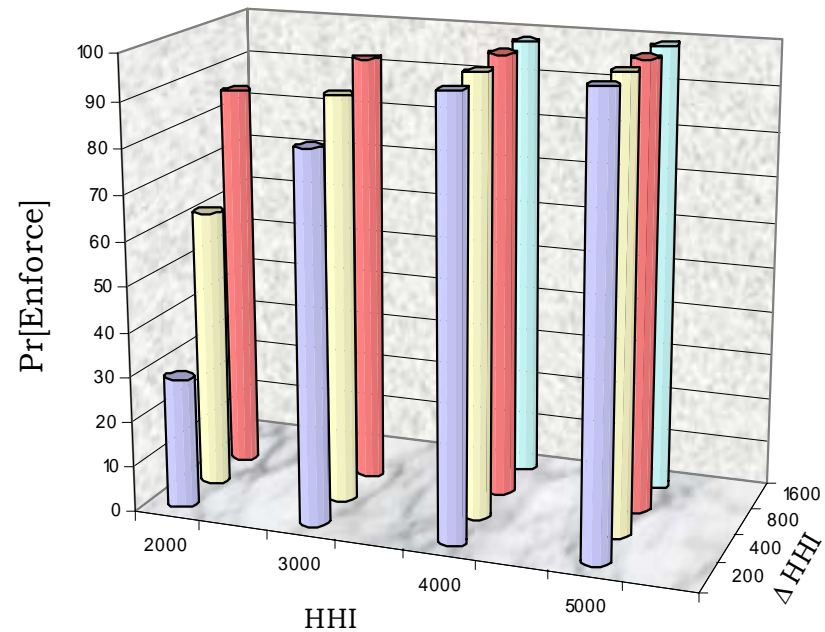
Empirical Evidence of Process

Predicted Probability of Enforcement:

No Complaints



Complaints





Empirical Evidence of Process

- Every merger with easy entry closed.

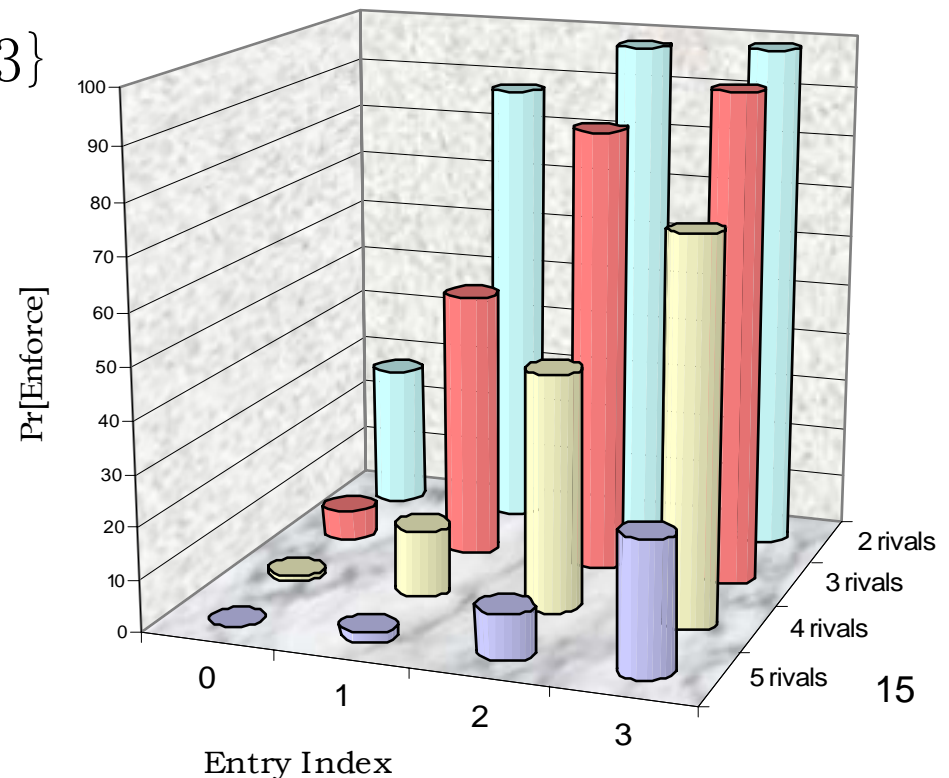
- Entry Index:

* $\text{Index} \in \{0, 1, 2, 3\}$

* depends on how many of the 3 criteria are thought to be difficult.

* 3 criteria:

- . Timeliness
- . likelihood
- . sufficiency.





Empirical Evidence of Process

We found the effect of Hot Documents insignificant when using the complete dataset.

- Doubt Hot Docs are actually insignificant.
 - Probably an artifact of
 1. multicollinearity of Hot Docs w/structure variables.
 2. a coincidence: a merger with Hot Docs. had a failing firm (excluding resulted in significant coef.).
 3. too little data to sort out trouble of 1 & 2.