

Paper Trail: Working Papers and Recent Scholarship

This Department tracks current working papers or recently published articles of interest to antitrust practitioners and enforcers. We review four publications in this issue. The competition chapter in the 2002 Economic Report of the President seems to reinforce the comments by Dr. Katz in this issue and Dr. Scheffman in the previous issue that coordinated effects perspectives will have increased antitrust currency during the Bush years—there is nary a mention of unilateral effects. And with respect to explicit collusion in particular, the paper by Genesove and Mullin provides some interesting narrative insights into an apparently effective cartel that never set prices. Correctly or not, the paper by Brock takes antitrust enforcement during the 1990s to task for ignoring the “big picture” that resulted from M&A during that period. Finally, the Carlton and Chevalier paper addresses the prevention of free-riding via the Internet, a topic that seems especially appropriate for an online magazine.

As always, we welcome readers’ suggestions on papers and articles you have found to be particularly useful or insightful. Contact Editors Bill Page (page@law.ufl.edu) or John Woodbury (jrw@crai.com).

—JRW

Papers and Summaries

2002 Economic Report of the President, “Realizing Gains from Competition” (Chapter 3).

While the latest *Economic Report* does not add to antitrust scholarship, this long chapter offers a panoramic view of current antitrust issues, albeit a view that is tilted towards less government intervention. With respect to merger enforcement, the chapter lauds the advances in the Guidelines that have reduced the weight of market concentration in the analysis, allowing more play for entry and efficiencies. Perhaps, as Dr. Katz seems to have suggested in the Interview in this issue (at least with respect to his own views), the agencies will give more credence to cognizable efficiency claims than in the past. Remarkable for its absence is any discussion of the development and deployment of unilateral effects theories in the Guidelines and in agency practice. This is all the more remarkable because in an extensive description of the possible (pro- and anti-) competitive effects arising as a result of partial ownership interests (a topic whose inclusion itself is noteworthy), the underlying model is clearly one of unilateral effects (although the implicit model being used does not appear to be the usual one). What some may find as disturbing as it is surprising is its conclusion regarding the competitive risks that could arise in markets characterized by network effects. Here, Schumpeter is gospel: “[C]onclusive evidence that network effects have prevented the widespread adoption of a markedly superior product has not yet been found.” One wonders if Dr. Katz, one of the founders of modern network effects theory, would agree with such a sweeping conclusion. (Less surprising—perhaps in part in light of that conclusion—is the absence of any discussion of the ongoing *Microsoft* matter.) Consistent with a Schumpeterian view of the world, the chapter suggests that the screening process to evaluate mergers and practices in industries characterized by innovation should place far less weight on concentration than in other industries.

Other topics covered in the chapter include joint ventures, the IP-antitrust nexus, and international antitrust cooperation against the backdrop of *GE/Honeywell*.

David Genesove and Wallace P. Mullin, “Rules, Communication, and Collusion: Narrative Evidence from the Sugar Institute Case,” NBER Working Paper 8145 (Mar. 2001)
www.nber.org/papers/w8145.

In 1927, the Sugar Institute was formed to “rationalize” the behavior of sugar refiners, in response to declining margins and excess capacity, and continued in that role until a 1936 Supreme Court decision found the practices of the Institute illegal. The preceding trial laid bare the workings of the explicit cartel, particularly in the form of notes taken by one of the refiner’s executives. Taking advantage of these detailed notes, this paper compares the workings of the cartel with recent theorizing about detection and punishment. As the authors stress, what makes this cartel interesting is that it did not set prices; it set rules for pricing behavior. Thus, the rules required public postings of all prices, with requirements for when the prices could go into effect. Like other cartels (e.g., IATA), other rules specified what pricing terms were permitted to prevent secret price cuts disguised as the sale of a complementary product or service. Quantity discounts were banned, to reduce the temptation to cheat by lowering price to a large customer. Long-term contracts were banned for the same reason. Perhaps more interestingly, the cartel did not use market share changes to infer cheating, a cornerstone assumption of much of modern collusion theory. Rather, the sugar cartel instead was structured to (and apparently found it more profitable to) evaluate claims of cheating before retaliation. And retaliation did not typically occur by reversion to the non-collusive price for any detection of cheating but instead seemed to be more tit-for-tat. All in all, an interesting look into some of the problems of maintaining cartel stability.

James W. Brock, “Antitrust, the ‘Relevant Market,’ and the Vietnamization of American Merger Policy,” 46 *Antitrust Bulletin* (Winter 2001).

In reviewing merger waves in the 1990s (largely during the Clinton administration) in the radio, retail grocery, banking, and petroleum industries, this article takes the antitrust agencies to task for an almost religious focus on narrow geographic markets. As a result, Brock claims that the antitrust agencies have overlooked the consolidation of economic power on a national scale. He examines evidence of the exercise of enhanced economic bargaining power that has resulted from these mergers, discussing, among other things, the heightened ability of national chains to bundle the sale of local advertising spots in different markets and to coordinate and control access to station playlists; the increased incidence and higher prices of slotting allowances in large grocery store chains; and the heightened ability of large ATM networks to limit access for community banks and their customers. While the article does raise an important issue—that there may be multimarket effects from a merger that must be considered—it’s hard to avoid the conclusion that this article should have been written in the 1960s. The economic and empirical analysis girding the article’s conclusions is very incomplete, lacking the necessary rigor. And its view that the agencies in the ‘90s ignored multimarket effects is (in my experience) simply wrong.

Dennis W. Carlton and Judith A. Chevalier, “Free Riding and Sales Strategies for the Internet,” 69 *J. Indus. Econ.* (Dec. 2001).

If full-service retailers fear the information and service they provide will be used by customers to make purchases at a low-priced/low-service retail outlet, then the full-service retailers will reduce

their service level and the manufacturer will sell less product than otherwise. In response to this free-rider problem, manufacturers commonly designate exclusive sales territories or refuse to deal with price cutters, so that retailers will make a greater sales effort on the expectation that their effort will translate into sales. Carlton and Chevalier present an empirical investigation of the manner in which manufacturers have responded to the potential for Internet retail sites to free ride on sales efforts by brick-and-mortar retail outlets. For three types of branded products (fragrances, DVD players, and side-by-side refrigerators), the authors find that manufacturers appear to have adopted measures that are likely to protect sales by brick-and-mortar retailers. Manufacturer Web sites tend to charge the highest prices, and prices are also relatively high at manufacturer-authorized Web sites. Brick-and-mortar retailers also charge higher prices online than offline. ●

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