

Research Ideas in Antitrust and Consumer Protection: A View from the FTC

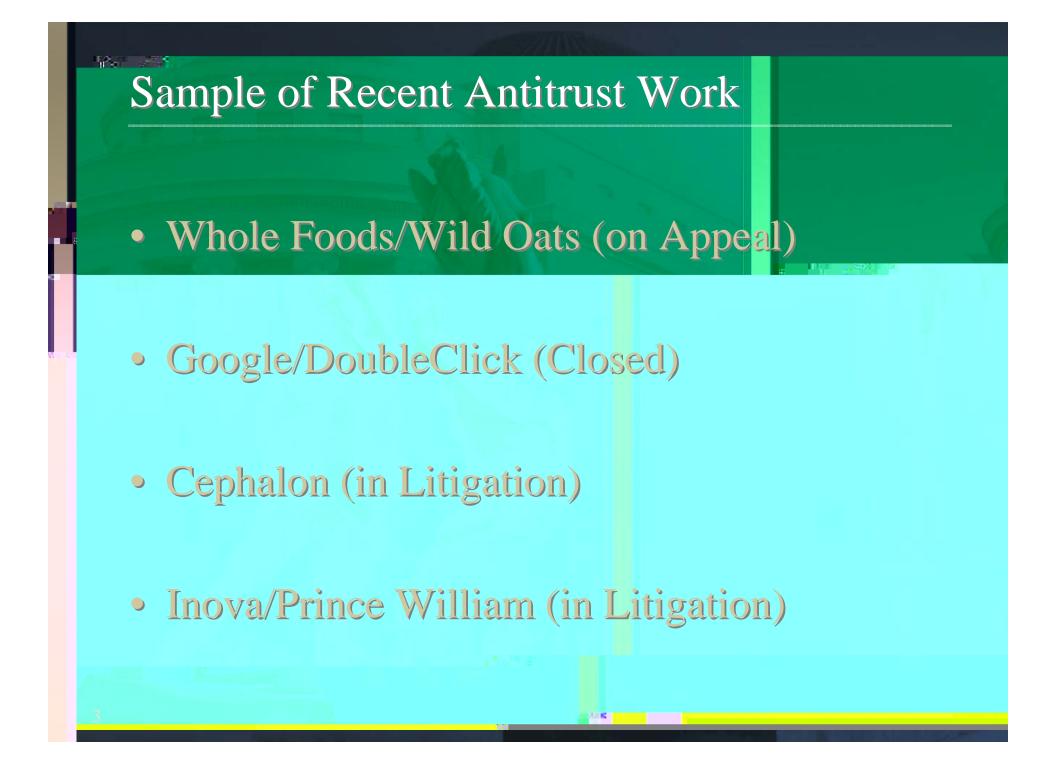
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These are my views and do not necessarily represent those of the Federal Trade Commission or any of the Individual Commissioners

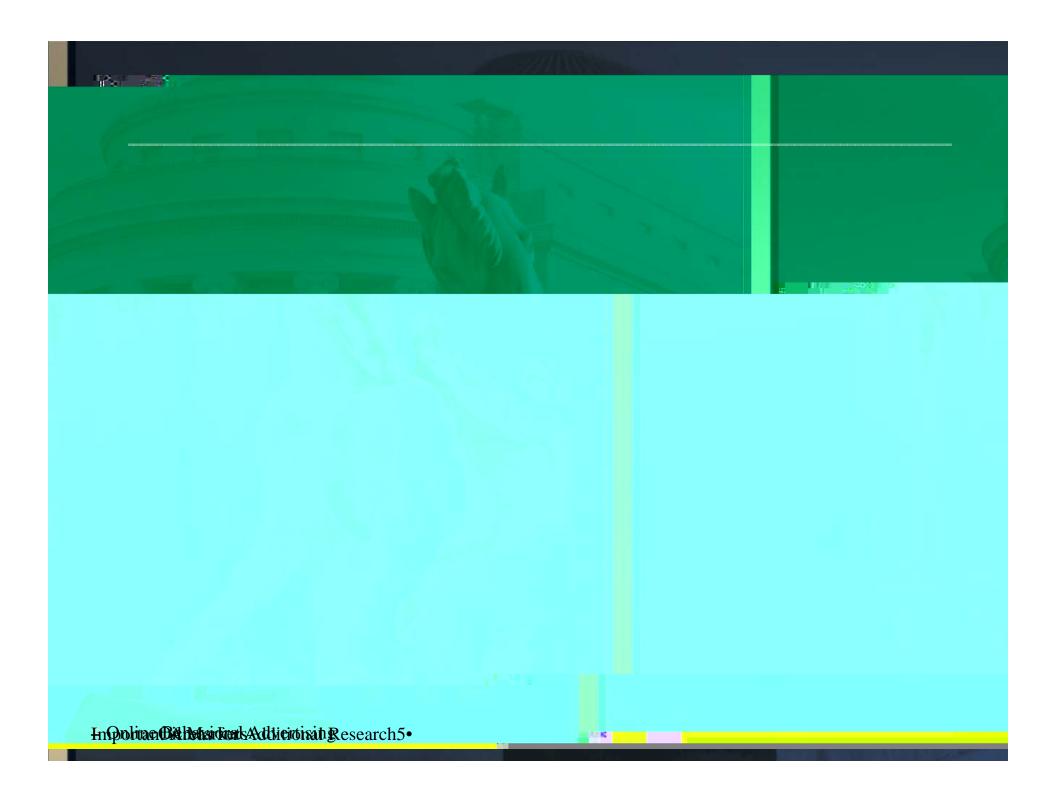
The FTC

Three missions work hand-in-hand to achieve the FTC's goal of enhancing consumer welfare

- -Competition (Antitrust)
- -Consumer Protection
- -Public Policy/Advocacy/R&D







Resale Price Maintenance

- Legal History – Supreme Court in Dr. Miles (1911) made minimum RPM *per se* illegal
 - Supreme Court in Leegin (2007) overturned Dr.
 Miles in favor of rule of reason
 - 5-4 majority
 - Contentious issue still

Role of Economics in RPM

- Theoretical
- Empirical
 - Includes work by Pauline Ippolito (

Research Opportunities on RPM

- In his dissent, Justice Breyer called for research:
 - "I would ask such questions as, how often are harms or benefits likely to occur? How easy is it to separate the beneficial sheep from the antitrust goats?"
 - "How often, for example, will the benefits to which the Court points occur in practice?
 - "The question is how often the "free riding problem" is serious enough to significantly deter dealer investment."
 - "...the ultimate question is not whether, but how much, "free riding" of this sort takes place."
- The change in regime from *per se* illegality to rule of reason provides opportunities for quantitative research on agency/efficiencies/free rider effects

Bundled Discounts and All Unit Discounts

- Bundled discounts ubiquitous and generally efficient
- However, three theories where bundling might be exclusionary
 - A form of predatory pricing
 - De facto tying
 - Entry deterring exclusionary conduct

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Recent History: LePage's

- LePage's v. 3M (3rd Circuit) condemned bundled discounts as violation of Section 2
 - Did not assess whether 3M's bundled discounts were competition on the merits
 - Did not consider whether 3M's bundled pricing was above cost, no matter how cost was calculated
 - Unclear what would have been sufficient to show competition on the merits

PeaceHealth Decision (2007)

 9ttdircuit and refused to follow it-Adopted a cost-based standard for bundled discounts and refused to follow it

Adopted a cost-based standard for bundled discounts

- "Discount attribution standard" in which the full amount of the discounts given by the defendant on the bundle are allocated to the competitive product or products
- If the resulting price of the competitive product is below the defendant's incremental costs to produce them, the trier of fact may find the bundled discount exclusionary

Antitrust Modernization Commission (2007)

- Concerned that 3M decision too vague and will chill welfare-enhancing discounts or rebates
- Proposed a 3 prong test for plaintiff:
 - After allocating all discounts and rebates attributable to the entire bundle to the competitive product, the defendant sold the competitive product below the competitive product's incremental costs
 - Defendant is likely to recoup these short term losses
 - Bundled discount or rebate program likely to have adverse effect on competition
- Recognized that the first test is not perfect and may result in further scrutiny of bundled discounts with no anticompetitive effects
- Carlton, in his separate statement, observed that the analogy of single product predatory pricing and multiproduct bundled discounts is faulty

– Price discrimination rationale for bundling

Research Opportunities on Bundled Discounts

- Calls from the legal and policy communities for additional empirical research into bundled discounts
 - Solicitor General in amicus brief in LePage's
 - Antitrust Modernization Commission
 - 9th Circuit in PeaceHealth
- Complex cost allocation issues
- Effects on competition
- Implementable "screens" or "tests"

Oil and Gas Market Research

- An area where the FTC has tremendous expertise
 - Antitrust cases
 - Commission Reports
 - Advocacy

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- Research
- Gasoline price monitoring
 - 20 wholesale regions and approximately 360 retail areas nationwide
- Significant Utility of Quantitative Studies

Online Behavioral Advertising

- Tracking of a consumer's online activities in order to allow businesses to deliver targeted advertising that more closely match the interests of particular consumers
 - Provides benefits to consumers
 - May harm consumer privacy
- Commission recently requested comments on self-regulatory principles for online behavioral advertising
- Some examples of recent comments:

