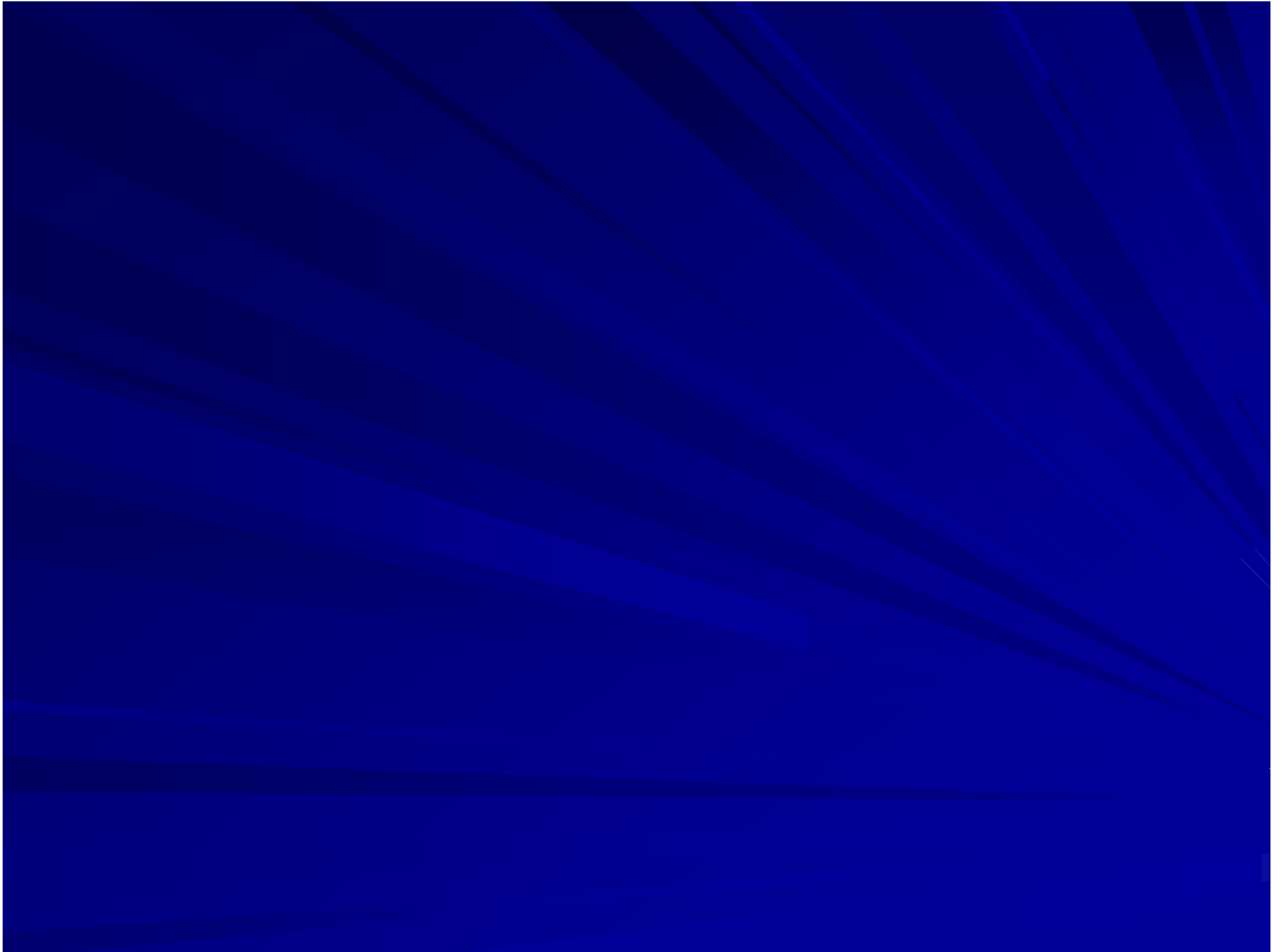




Courts Ask:

- Will this merger raise price?
- How high did this conspiracy raise price?
- What would profits have been absent some anticompetitive behavior?
- All these questions compare two states of the world, but only one is observed





Concord v. Brunswick

“Conclusions and methodology are not entirely distinct from one another. Neither the Daubert analysis nor the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the ipse dixit of the expert. A court may conclude that there is simply too great an analytic gap between the data and the opinion proffered. A court must focus on the reasonableness of using a particular approach, along with the expert's particular method of analyzing the data thereby obtained, to draw a conclusion regarding the particular matter to which the expert testimony was directly relevant.”

Does Structural Model Accurately Characterize Consumer Behavior?

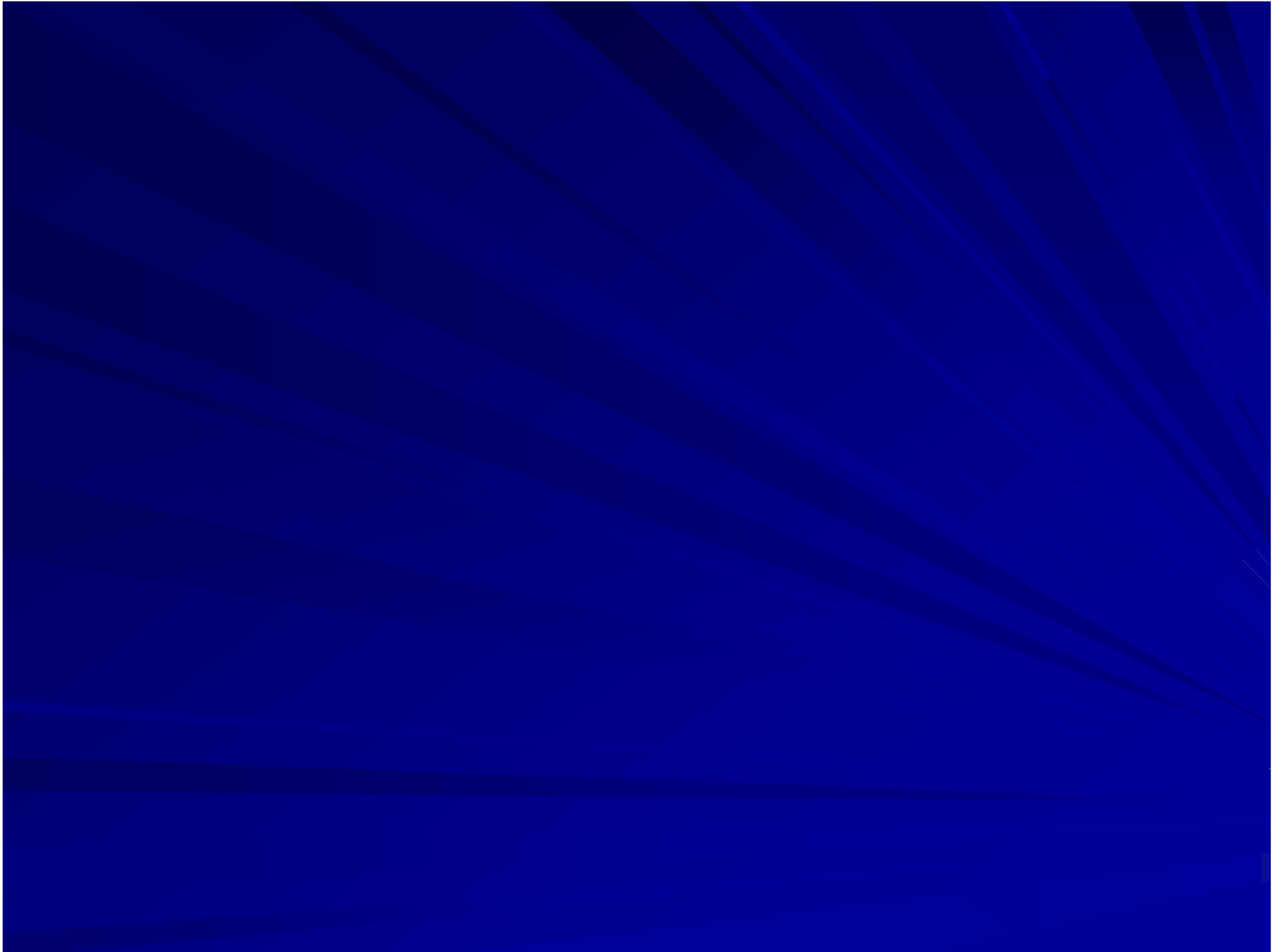
- Who are the consumers?
 - e.g., drugs (MD, PBM, consumer)
- Do consumers make a single choice from a well defined set of alternatives?
- Do consumers make choices based on relative prices?
- Do consumers stockpile inventory?
- How is customer heterogeneity handled?





How Well Must a Structural Model Fit?







My Current Agenda

■ Reassessment

- Update practice in response to new evidence and learning

■ Administrability

- Methodology must give reliable, robust answers within time constraints of merger investigation

■ Testing

- Examine consummated mergers

Bread Cross Examination Questions

- How do firms compete?
 - What are the four P's of marketing?
- How does the retail sector behave?
- Do prices vary with MC?
 - What is Hi-Lo pricing?; loss-leaders?
- Do all consumers have same price sensitivity?
 - Don't their outside options differ?