

# The Influence of Economic Research on Antitrust Analysis

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# At the Beginning ~~early~~ 1900s

- Recognition of need for a government agency to obtain and publicize information regarding the structure of our economy
  - 1903- creation of the Bureau of Corporations (in the Department of Commerce), the predecessor agency to the FTC
    - Had reportwriting functions from its inception
  - FTC was originally conceived by President Woodrow Wilson to be a research body comprised of experts conducting economic reporting
    - Additional law enforcement and quasi-judicial roles of FTC were incorporated in what ultimately emerged from Congress as the Federal Trade Commission Act of 1914

# FTC Act

- FTC Act of 1914
  - Included statutory provisions granting broad investigatory powers (Section 6 of the Act)
  - Imposed duties to conduct investigations for the President and the Congress
- These provisions still operate today
  - We continue to conduct 6(b) studies
  - Most studies are generated internally by the Commission or Commission staff
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# Early Reports

- Were very detailed descriptions of the structure and business practices of a firm or industry
  - Fact intensive case studies
  - Akin to scholarship of the time but not of today
  - No stating of a hypothesis and empirically testing it
  - No analytical evaluation of some economic phenomenon common to several industries
- Often provided the basis for legislation aimed at resolving problems with business activity

# Early Reports—More Examples

## – The Utility Corporation Report

- Contained 95 (!) volumes and was compiled between 1927 and 1935
- Contributed to the passage of:
  - Public Utility Holding Company Act of 1935
  - Natural Gas Act of 1935
  - Securities and Exchange Act of 1934
  - Federal Power Act of 1935

## – The Chain Store Report

- Contained 33 volumes and took 4 years (1930-1934)
- Lead to the passage of the Robinson-Patman Anti-Price Discrimination Act

# Research Mission and Activities

- Builds on and continues the FTC's long and illustrious history
- Goal is to advance knowledge so that we can do the best job possible at enforcement and advocacy
- We do this through:
  - Internal research where we have a very active program of both sponsored research and providing economists time to conduct their own selfdirected research
    - Often published first in Bureau of Economics Working Paper Series
    - Published in academic journals
    - Data warehouse; cutting edge computing facility
  - Research seminar series weekly seminars where current academic research that is relevant to the antitrust or consumer protection missions is presented
  - Annual Microeconomics Conference
    - bringstogether researchers fromuniversities and othergovernmentagencies to discuss antitrust, consumer protection, and policy issues that the economists in the FTC's Bureau of Economics encounter in their work.
    - providesan opportunity for scholars outside the FTC to gain a better understanding of the work of the FTC and the economic analysis conducted within the FTC's Bureau of Economics

# Research Mission and Activities, cont'

- Periodic Conferences
  - Behavioral Economics and Consumer Policy
  - Pharmaceutical Industry Roundtable
  - Empirical IO Roundtable
  - Home Mortgage Roundtable
  - Merger Roundtable
  - Internet Auctions Roundtable
- Lecture series on advances in economics
  - Econometric Techniques Aviv Nevo
  - Economic Insights from Internet Auctions: A Survey Pat Bajari
  - Applied Dynamic Methods in Industrial Organization Pat Bajari
  - What's New in Econometrics Guido Imbens, Jeffrey Wooldridge
  - Berry-Levinsohn Pakes model of demand Ariel Pakes and Steven Olley
  - Survey of Exclusive Contract Dan O'Brien
- Crossfertilization via personnel
  - Director
  - Visitors
  - Staff visits: CEA, Indiana U., UK Competition Commission,...



# Impacts of Research

- Interactions Between FTC and Academics
- Impacts of FTC Research

# Line of Business Program

- Detailed

# Concentration Profits Relationship

- Line-of-Business program collected detailed, highly disaggregated accounting data collected 1974-1977
- Allowed economists to examine the relationship between concentration and profits in more detail than had been possible previously
- The traditional positive relationship between concentration and profits that had seemed so robust in previous studies, did not appear robust when the better line-of-business data were analyzed.
- New analysis showed that if any relationship existed between profit and concentration it was not due to an enhanced probability of collusion but rather some other market feature such as large firm efficiency or market dominance.
- John Kwoka and David Ravenscraft, "Cooperation Versus Rivalry: Price-Cost Margins by Line of Business" BE working Paper #127 June 1985.

# Vertical Restraints Evaluation Project

- Sylvania decision (1977)
  - Rule of reason for non-price vertical restraints
- Debate over whether per se treatment should remain for vertical price restraints, i.e. resale price maintenance
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# Resale Price Maintenance

- Resale price maintenance treated as per se illegal.
- BE staff conducted empirical research on RPM throughout the 1980s and into the 1990s
  - Thomas Overstreet “Resale Price Maintenance: Economic Theories and Empirical Evidence,” November , 1983
  - Pauline Ippolito “Resale Price Maintenance: Economic Evidence from Litigation” April, 1988

# Health Care Markets

- “Competition in the Health Care Sector: Past, Present, and Future
  - Conference and papers, 1977
  - Some of first research/thinking on competition in health care
  - Classic papers Pauly “Is Medical Care Different?”

# FTC Research Affects Antitrust Analysis: Raising Rivals' Costs

- FTC research developed the theory and provided a useful way to think about problems of unilateral market power
  - 1981 conference on predation and exclusivity restraints
  - led to Salop and Scheffman's 1983 BE Working Paper #83, "Raising Rivals' Costs" (as well as 2 other related BE working papers)





# Industries with Long History of FTC Research: Pharmaceuticals

- 1958 report on Antibiotics Manufacture
- “Sales, Promotion, and Product Differentiation in Two Prescription Drug Markets: (1977) contained one of the initial descriptions of the “first mover” advantage in the economic literature
- “Generic Substitution and Prescription Drug Prices: Economic Effects of State Drug Product Selection Laws” (1985)
- “The Pharmaceutical Industry: A Discussion of Competitive and Antitrust Issues in an Environment of Change” (1999)
- “Generic Drug Industry Dynamics” BE Working Paper 2002
- “Pharmacy Benefit Managers: Ownership of Mail Order Pharmacies: A Federal Trade Commission Report (2005)
- “Emerging Health Care Issues: Follow On Biologic Drug Competition: A Federal Trade Commission Report” (2009)
- “Pay-For-Delay: How Drug Company Payoffs Cost Consumers Billions: A Federal Trade Commission Staff Study”(January 2010)
- “Entry Threats and Pricing in the Generic Drug Industry” BE Working Paper 2010
- “Authorized Generic Drugs: Short-Term Effects and Long-Term Impact: A Federal Trade Commission Report” (2011)
- “Estimating the Effect of Entry on Generic Drug Prices Using Mailman Exclusivity” BE Working Paper 2013

# Industries with Long History of FTC Research: Petroleum

- More than 20 reports from 1900-2007
  - 1952 report International Petroleum Cartel Study
  - 1970s and 1980s era reports on
    - California crude oil markets
    - Offshore oil leasing
    - Alaskan oil export bans
    - Oil import tariffs as a source of government revenue
    - Petroleum Mergers
- More recent research includes
  - The Petroleum Industry: Mergers, Structural Change, And Antitrust Enforcement: A Report of the Staff of the Federal Trade Commission Bureau of Economics (2004)
  - “The Economics of Price Zones and Territorial Restrictions in Gas Marketing

# Industries with Long History of FTC Research: Health Care

- Health care conference, 1977
- “Physician Control of Blue Shield Plans” 1978
- “Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry” 1980
- “Competition Among Hospitals” 1987
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# Academic Research Influences Antitrust: Hospital Mergers

- Academic research provided the foundation for the FTC's current hospital merger enforcement program
  - Generally—evidence built that mergers lead to price increases without corresponding efficiencies, even for-not-profits
  - Specific modeling approaches
    - Robert Town and Gregory Mistnes "Hospital Competition in Networks," Journal of Health Economics, 2001
    - Capps C, Dranove D, Satterthwaite M. Competition and Market Power in Option Demand Markets. RAND Journal of Economics. 2003
- FTC research on hospital mergers
  - Michael Vita and Seth Sachse "The Competitive Effects of Non-Profit Hospital Mergers: A Case Study," May 1999 BE Working Paper #226 (later published in Journal of Industrial Economics, 2001)
  - Aileen Thompson, "The Effect of Hospital Mergers on Inpatient Prices: A Case Study of the New Hanover-Cape Fear Transaction," January 2009, BE Working Paper #295 (later published, International Journal of the Economics of Business, 2011).
  - Deborah Haas Wilson and Christopher Garmon, "Two Hospital Mergers on Chicago's North Shore: A Retrospective Study" January 2009, BE Working Paper #294 (later published, International Journal of the Economics of Business, 2011).
  - Steven Tenn, "The Price Effects of Hospital Mergers: A Case Study of the Sutter Transaction," November 2008, BE Working Paper #293 (later published, International Journal of the Economics of Business, 2011).
  - David Balan and Patrick Romano, "A Retrospective Analysis of the Clinical Quality Effects of the Acquisition of Highland Park Hospital by Evans

# Conclusion

- The FTC has research as part of its core mission
- Antitrust practice has, and continues, to actively draw on advances in research
- The Bureau of Economics is an active contributor to advances in knowledge as well as an active consumer
- Economic thinking has become inextricably embedded in antitrust
  - Advances in economic thinking get incorporated, albeit with a lag
  - Ideas need to be proven and practical
- Antitrust is a real success story for the impact of economic research on real world practice
  - Not just an isolated one-time event, but ongoing receptiveness to advances
- Challenges
  - Vertical
  - Multilateral bargaining
  - Non-overlapping markets
  - Continuing to improve modeling of competitive effects