Remedies in Antitrust and Merger Control
Are merger remedies effective?

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September 2015: Haggen files for bankruptcy

Slovenian Competition Day
Ljubljana – September 26, 2019

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Consistency between competitive analysis and remedies

Casino / Monoprix (France, 2013)

Competitive analysis in local markets

- Market shares in local markets.
- Number of competitors (and number of stores owned by these competitors) within catchment areas.
- Access by consumers to a variety of stores.
- **This led the Autorité de la concurrence to identify 47 catchment areas in Paris (plus 3 outside Paris) where the merger would potentially have anticompetitive effects.**

Structural remedies: divest stores within these local markets

- *"Casino has undertaken to divest or, in the case of affiliated shops, to cancel affiliation contracts for a certain number of shops in each catchment area. These measures make it possible to maintain balanced competition* ***by restricting Casino's share in the retail space of the catchment area to a maximum of 50%****."*
- Back to market share presumptions.
- **Impact of the divestments also depends on the buyer's identity.**
- **In some markets, stores were divested to high price chains thus leading to higher average prices!**

Finding a suitable buyer for divested stores

Boulanger / Saturn (France, 2011)

June 2011: Boulanger's acquisition of 34 Saturn stores approved with remedies

- Commitment to sell 6 stores (plus to abandon a planned opening) to effective competitors within the identified product market (household electrical goods).

April 2012: commitments revised by the Autorité de la Concurrence

- No suitable buyer could be found within almost a year, despite Boulanger removing its initial reserve prices for the divested stores. One of the reason was that there existed few competitors on this market and that competition from e-commerce was constantly growing.
- Revised commitments were approved by the competition authority:
  - Boulanger committed to trying to sell the divested stores to a larger grocery retailers (whose store sold household goods).
  - If no suitable buyer could be identified the stores would then be sold to any type of retailer.

April 2017 and August 2018: Boulanger acquires four Darty divested stores (following the acquisition of Darty by Fnac).

Difficulties to identify a viable buyer

Albertsons / Safeway (US, 2015)

January 2015: FTC's divesture order in Albertsons / Safeway

- **FTC ordered Albertsons to divest 168 stores in 130 local markets.**
    - 146 stores (in five states including 83 in California) were acquired by Haggen Food & Pharmacy. Haggen grew from an 18-store chain in the Pacific Northwest to a 164-store regional player on the West Coast.
    - New stores converted and rebranded over five months between February and June 2015.
    - **Customers (esp. in Southern California) quickly complained that the new stores were more expensive than the stores they replaced.**

September 2015: Haggen files for bankruptcy

- In August 2015, Haggen started by closing 27 stores.
- On September 1, Haggen filed a lawsuit against Albertsons for false representation to Haggen and the FTC and for "coordinated and systematic efforts to eliminate competition".
- On September 8, Haggen filed for bankruptcy. They then decided to exit the Pacific Southwest (closures complete by mid November). 33 core stores to be auctioned in February 2016.

March 2016: Albertsons acquires the 29 remaining stores!

Ex-post evaluation of merger remedies

Johnson & Johnson / Pfizer (US, 2006)

Steven Tenn and John Yun (*International Journal of Industrial Organization*, 2011)

J&J / Pfizer

- In 2006, J&J acquired Pfizer's consumer health division (including brands such as Listerine or Sudafed).
- Consent agreement between the FTC and the parties to divest six brands (five to Chattem and one to Boehringer Ingelheim) for a value representing about 5% of the transaction.

Empirical analysis based on AC Nielsen data

- **Before and after analysis:** the price of every divested brand fell post-divestitures (but usually small magnitude) and the divested brands performed as well or better than pre-merger (or major changes unrelated to the divesture).
- **Difference in difference analysis:** no statistically significant effect of the divesture.
- **Would seem to suggest that the divestitures maintained the pre-transaction level of competition.**

- **But limited as the analysis does not say anything on the non-divested products (but limited range in this case) and not sure what the right counterfactual is.**

Ex-post evaluation of merger remedies
Carlsberg / Pripps (Sweden, 2001)

Richard Friberg and André Rohman (*IJIO*, 2015)

Carlsberg / Pripps

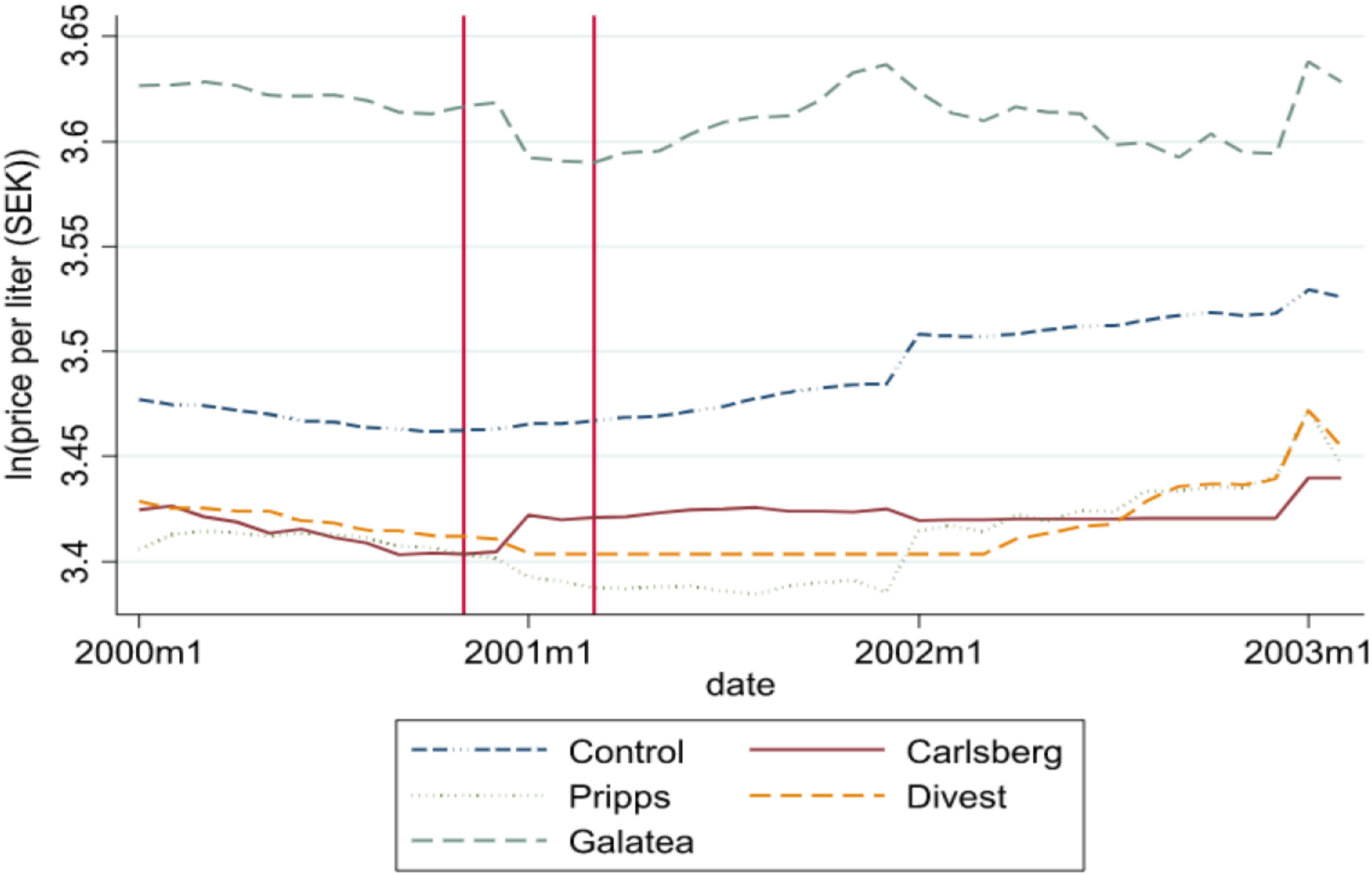
- In 2000, Carlsberg notified its merger with Ringnes, a Norwegian brewer that owned the brewery Pripps.
- The merger was cleared by the Swedish competition authority subject to divestments.
  - In February 2001, 19 beer varieties are divested to a minor pre-merger player Galatea.
  - In November 2002, two additional varieties (but representing a large share of the divested volumes) are divested to Åbro (third largest player).

Empirical analysis based on retail data from the Swedish retail monopoly for alcohol

- Data covers the period January 1996 – December 2002 (i.e., includes only part of the divestments).
- **Difference-in-difference analysis of the merger's effects.**
  - Prices of the divested beers estimated to fall by about 3.2% post-merger.
  - Carlsberg and Pripps prices estimated to fall by 1.6% and 3.2% post-merger.
  - Galatea (non-divested brands) prices estimated to increase by 2.6% post-merger.
- **A structural model of the Swedish beer market allowing to design counterfactual experiments.**

Ex-post evaluation of merger remedies

Carlsberg / Pripps (Sweden, 2001)



Ex-post evaluation of merger remedies

Carlsberg / Pripps (Sweden, 2001)

Structural estimation

- Use the price/quantity data to estimated a demand model: **uncover demand parameters**.
- Use a structural competition model (price competition) and the estimated demand parameter to **recover pre-merger marginal costs**.
- Simulate various counterfactual to estimate the effects of the merger, divestments, etc.
  - Using the estimated demand and cost parameter, simulate the counterfactual equilibrium by modifying the "ownership matrix."
  - *Drawback: assume away any possible merger related cost efficiencies.*

Simulated average effects

- **Merger without remedies:**
  - Average price increase : 1.6%
  - Impact on consumer surplus (relative to blocking the merger): loss of 4.8 million SEK
- **Merger with actual remedies:**
  - Average price increase : 0.5%
  - Impact on consumer surplus (relative to blocking the merger): loss of 2.1 million SEK

Model can also be used to identify the set of divestment (on possibly the buyer of divested assets) that minimizes total consumer welfare loss.

Ex-post evaluation of merger remedies

Telecom mergers in Europe

DG COMP's ex-post assessment (2015)

- **T-Mobile / tele.ring (Austria, 2006)**
  - Merger (cleared with commitments) was not associated with a price increase .
  - Structural remedies likely to have strengthened the smallest operators (Orange and H3G).
- **T-Mobile / Orange (Netherlands, 2007)**
  - Telecom services prices increased after the merger (cleared without commitments). Effects more pronounced for heavier users of mobile service (+10/+15%).
  - But possible confounding effects as could be related to the effects of a previous merger (KPN/Telfort).

Numericable / SFR (France, 2014)

- Merger affecting primarily the very high-speed internet market (ADSL+, FttH/FttLA) cleared subject to commitments by the Autorité de la concurrence.
  - Unbundling access to Numericable's cable network (FttB/FttLA).
  - Offer was not taken up except by La Poste Mobile (MVNO, joint venture between La Poste and SFR).
  - Bouygues Telecom already had its own access offer to Numericable's cable network.
  - Free and Orange decided to favour their own FttH networks.

Ex-post evaluation of merger remedies

Telecom mergers in Europe

H3G / Orange Austria (Austria, 2013)

- Merger cleared subject to commitments by the European Commission.
- Ex post evaluation study by the Austria telecom regulator suggests that prices have increased substantially post-merger.
  - Evaluation for the two year period following the merger, i.e., before the merger commitments regarding MVNO access became effective.
  - First commitment aimed at facilitating MNO market entry did not become effective.
  - Second commitment regarding MVNO access was delayed. Up-front agreement (entry by UPC) effective after December 2014, significant competitive pressure from MVNO only developed after 2015.

Telefonica / E-plus (Germany, 2013)

- **4-to-3 merger cleared with commitments by the European Commission**
  - Facilitate entry by a fourth MNO (spectrum) - seem to have failed!
  - Facilitate access by MNVOs (up to three upfront agreements, plus "best price" guaranteed access (currently under review by DG COMP).
- Some analysts suggest that German prices are now relatively more expensive (when compared to 4-MNOs countries) than before the merger.

Ex-post evaluation of merger remedies

Telecom mergers in Europe

Wind / 3 Italia (Italy, 2016)

- Merger cleared subject to (fix-it-first) commitments by the European Commission.
  - Up-front MNO (Iliad) acquiring spectrum and an option to acquire/co-locate on macro access sites
  - Option to entre into a RAN sharing agreement (3G/4G) and national roaming agreement (2G).
- Iliad (the "new MNO") started offering services in Italy on May 29, 2018.
- **Entry of Iliad was very aggressive.**
  - Led to a strong reaction by incumbent MNOs who decided to double or even triple the data allowances in their offers (keeping prices constant).
  - Iliad reached one million subscribers within the first two months of operation (about 1.4% market share), they now claimed more than 4 million subscribers (about less than 18 months).
- Similar to what happened on the French mobile market (or even broadband market) when Iliad entered as the fourth MNO (Free) with very disruptive offers.

This case shows the importance of the buyer's identity.

Designing (structural) merger remedies

Important to identify early potential buyer for the divested assets.

- Finding a viable buyer.
- Finding a serious competitor: **identity of the buyer of the divested assets matters** when evaluation the competitive effects of the merger.

Interactions between divestments and potential efficiency gains

- Discussions around efficiency gains and remedies cannot be separate.

When a quantitative merger evaluation exercise is carried it should not only be used to support a theory of harm but also to identify the possible set of remedies

- *Again analysis should combine remedies (divestments) and efficiency gains.*

Think early about ex post evaluation!

- Is there anything we can learn from previous ex-post evaluation (e.g., related to telecom mergers)?
- When / why do some remedies work while others don't?