



# The success of divestitures in merger enforcement: Evidence from the J&J–Pfizer transaction<sup>☆</sup>

Steven Tenn, John M. Yun<sup>\*</sup>

Federal Trade Commission, USA

## ARTICLE INFO

### Article history:

Received 5 October 2009

Accepted 15 July 2010

Available online 22 July 2010

### JEL classification:

L1

L4

### Keywords:

Divestiture

Antitrust

Merger

## ABSTRACT

Despite being a widely used tool in merger enforcement, there have been few studies of whether antitrust divestitures are successful. We help fill this void by conducting a study of the divestitures relating to Johnson & Johnson's \$16.6 billion acquisition of Pfizer's consumer health division in 2006. Six brands were divested in this matter to alleviate antitrust concern. For three of the brands, their pre- and post-divestiture performances are similar, while the remainder underwent changes that do not appear to be divestiture related. Overall, the results are consistent with the view that the divestitures maintained the pre-transaction level of competition.

Published by Elsevier B.V.

## 1. Introduction

Under the Hart–Scott–Rodino (HSR) Antitrust Improvements Act of 1976, mergers of sufficient size are subject to review by either the Federal Trade Commission (FTC) or the Department of Justice (DOJ).<sup>1</sup> If a transaction is deemed anticompetitive, the antitrust agencies may attempt to block it or modify the transaction in a manner that alleviates the competitive concern.

An assessment of the success of merger policy can potentially look at two different margins. First, do the antitrust authorities correctly identify which mergers are anticompetitive? Second, conditional on the antitrust agencies obtaining relief, is the remedy sufficient to prevent anticompetitive effects?

Empirical analyses of the success of merger policy have largely focused on the first question. The typical study investigates whether a merger in which the antitrust authorities did not obtain relief led to anticompetitive effects (see Section 2). If so, the policy implication is that antitrust enforcement should be stricter. For this to be true, however, antitrust remedies must effectively maintain competition, rather than simply being “pyrrhic victories” (Elzinga, 1969). As such,

whether the antitrust agencies obtain effective relief can be just as important as whether they correctly identify anticompetitive mergers.

Nonetheless, few studies consider the effectiveness of the relief obtained by the antitrust authorities. This might be expected if the typical remedy in merger cases blocked the transaction, since there would be no competitive change to analyze. This is not the case, however. Of the 144 mergers challenged by the FTC or DOJ over the period 2003–2007, 51% were settled via consent orders, and an additional 13% were restructured after the DOJ informed the parties of its concerns.<sup>2</sup>

The typical remedy in a merger case requires divestiture of the competitive overlap. Since the divested products are sold to firms with little or no presence in the overlap market, this outcome maintains market concentration at the pre-merger level. Divestiture is a particularly attractive remedy since it requires relatively little ongoing regulatory oversight (as compared to, say, a conduct remedy that directly regulates price).

Despite being a widely used tool in merger enforcement, there have been few studies of whether antitrust divestitures are successful in preserving the pre-merger level of competition. We help fill this void by conducting a study of Johnson & Johnson's (J&J) \$16.6 billion acquisition of Pfizer's consumer health division in 2006. This division contained a large number of well-known brands, including Listerine mouthwash and Sudafed cold medicine. The FTC investigated this transaction. To alleviate antitrust concern the merging parties divested six brands (see Section 3 for background on the transaction).

<sup>☆</sup> We thank Daniel Ducore, Daniel Hosken, Paul Pautler, and two anonymous referees for providing helpful comments. The views expressed in this paper are those of the authors and do not necessarily represent the views of the Federal Trade Commission or any individual commissioner.

<sup>\*</sup> Corresponding author. 600 Pennsylvania Ave. NW, Washington, DC 20580, USA. Tel.: +1 202 326 2433.

E-mail address: [jyun@ftc.gov](mailto:jyun@ftc.gov) (J.M. Yun).

<sup>1</sup> For 2009, the HSR minimum reporting threshold is \$65.2 million (<http://www.ftc.gov/os/fedreg/2009/january/090113section7aclaytonact.pdf>).

<sup>2</sup> HSR annual reports for fiscal years 2003–2007. Available at <http://www.ftc.gov/bc/anncompreports.shtm>. Only 9% of challenged mergers were litigated, with the remaining 28% abandoned by the parties.

The J&J–Pfizer divestitures are interesting cases to study for several reasons. First, they are examples of entire lines of business being divested. The FTC frequently follows this practice based, in part, on a FTC Bureau of Competition study that found such divestitures are more successful than divestitures of selected assets (FTC, 1999).<sup>3</sup> In addition, an “up front” buyer was chosen prior to the FTC’s acceptance of the proposed consent agreement for public comment. This practice has also become a frequent feature of antitrust divestitures (Baer and Redcay, 2001).

The J&J–Pfizer transaction is a merger of two conglomerates. This setting commonly results in divestitures. The overlap that raises competitive concern often comprises a small portion of such deals, and the overlap products are often not the primary rationale for the transaction. Negotiating a divestiture with the antitrust authorities can be particularly efficient in such settings, since the time cost of delaying the entire transaction to litigate the merger can be high relative to the cost of divesting the (fairly minor) overlaps. This would appear to be the case in the J&J–Pfizer matter, where the divested brands comprise approximately 5% of the total value of the transaction.

We analyze the impact of the J&J–Pfizer divestitures on several commonly employed sales metrics: dollar and volume sales, retail distribution, and price. A standard “before–after” estimator is used to measure each brand’s post-divestiture change. In addition, we consider a “difference in difference” estimator that measures the post-divestiture change relative to a control group of other brands in the same product category.

For three of the brands, their post-divestiture performance is similar to their pre-divestiture performance, while the remainder underwent changes that do not appear to be divestiture related. However, the results are sensitive to the maintained assumption regarding each brand’s counterfactual performance had the divestitures not taken place. Moreover, significant heterogeneity across the control group leads to imprecise estimates. Overall, however, the results are consistent with the view that the divestitures maintained the pre-transaction level of competition.

The layout of the paper is as follows. Section 2 reviews the previous literature. Section 3 provides additional background on the J&J–Pfizer transaction. The data is described in Section 4. Section 5 details the estimation methodology. Results are presented in Section 6 and Section 7 concludes.

## 2. Literature review

Research analyzing the success of merger policy has largely focused on consummated mergers. Retrospective studies have been undertaken in numerous industries to test whether mergers were anticompetitive.<sup>4</sup> Several studies have sought to determine whether claimed efficiencies from mergers were actually realized (Kaplan, 2000; Pesendorfer, 2003; Breen, 2004).

Far fewer studies have analyzed the impact of antitrust divestitures. Elzinga (1969) considers 39 cases filed between 1954 and 1960 where relief was obtained by 1965 (not all of which involved a divestiture). Elzinga determines that in 29 cases the obtained relief was either unsuccessful or deficient. Reasons include the fact that no divestitures were offered, only partial assets were sold, and

<sup>3</sup> The FTC’s divestiture policy is articulated in its “Frequently Asked Questions about Merger Consent Order Provisions,” available at <http://www.ftc.gov/bc/mergerfaq.shtm>. See also, “Statement of the Federal Trade Commission’s Bureau of Competition on Negotiating Merger Remedies,” available at <http://www.ftc.gov/bc/bestpractices/bestpractices030401.shtm>.

<sup>4</sup> For surveys, see Pautler (2003), Whinston (2006), Hunter et al. (2008), and Weinberg (2008). Recently examined industries include hospitals (Vita and Sacher, 2001; Haas–Wilson and Garmon, 2009), oil (Hastings and Gilbert, 2005; Simpson and Taylor, 2008), airlines (Peters, 2006), and consumer products (Ashenfelter and Hosken, 2008).

deficiencies with the buyer of the asset. Rogowsky (1986) uses a similar approach to Elzinga and analyzes 104 cases that occurred from 1968–1980 where relief was achieved by 1981 (again, not all of the cases involved a divestiture). When timeliness is included as a success criterion, in most cases the obtained relief was deemed unsuccessful or deficient.

In response to the limited early success of antitrust remedies, the HSR Act of 1976 was passed. The HSR Act gave the antitrust agencies authority to analyze a merger prior to consummation. It allowed the agencies to negotiate and implement antitrust relief, such as divestitures, far more quickly.

Only a few papers analyze the impact of divestitures since the HSR Act was passed. Cotterill et al. (1999) study two local markets in Connecticut to determine the impact of divestitures related to Royal Ahold’s supermarket acquisition of Stop & Shop in 1996. They find that price initially fell after the divestitures, but subsequently trended back up. Lacking pre-divestiture data and prices for competing stores, Cotterill et al. do not attempt to control for the counterfactual to the divestiture. Rogers and Hollinger (2004) analyze two oil mergers in 1984 (Texaco–Getty Oil and Socal–Gulf Oil). They find that prices did not rise post-merger, suggesting that the divestitures were successful. Burke (1998) and Piloff (2002) examine the performance of divested bank branches associated with mergers that occurred between 1985–1992 and 1989–1999, respectively. Burke finds that almost all the divested branches remained viable and did not lose (and often gained) market share. Consequently, he concludes divestitures are effective in bank mergers. Piloff finds that, after an initial “runoff period” during which bank deposits decline, divested branches perform as well as other branches.

In 1999, the FTC’s Bureau of Competition published a study that reviewed the Commission’s divestiture orders during the period 1990 through 1994.<sup>5</sup> This study focused on the asset divestiture process and largely relied on qualitative information gathered from interviews with the buyers of divested assets. The Bureau’s divestiture study found that approximately 75% of the divestitures remained in operation at the time of the interview. While existence is a necessary condition for a divestiture to be successful, it is insufficient to determine whether the divestiture maintained competition at the pre-merger level. A central conclusion of the Bureau’s divestiture study is that entire lines of business should be divested, rather than select assets, since such divestitures have a much higher success rate. This recommendation has been incorporated into many FTC divestiture orders.<sup>6</sup>

Since the Bureau’s divestiture study was published, we are unaware of a study in the US that analyzes merger-related divestitures.<sup>7</sup> Indeed, a United States General Accounting Office, 2002 report notes that the FTC has not measured the impact of its divestitures since implementing policy changes summarized in the 1999 divestiture study, and recommends such analysis be undertaken. In an effort to assess the success of the FTC’s current divestiture policy, we analyze the performance of the six brands divested in the J&J–Pfizer transaction.

## 3. Transaction background

In June 2006, Pfizer reached an agreement with J&J to sell its consumer health division for \$16.6 billion.<sup>8</sup> Pfizer’s division had sales of \$3.9 billion, and contained a wide range of well-known brands including Listerine mouthwash and Sudafed cold medicine. The vast majority of the proposed transaction did not involve categories in which both

<sup>5</sup> The divestiture study is available at <http://www.ftc.gov/os/1999/08/divestiture.pdf>.

<sup>6</sup> See the citations in footnote 3 for a discussion of the FTC’s divestiture policy.

<sup>7</sup> Soetevent et al. (2008) analyze the impact of a forced divestiture of gas stations in The Netherlands. This is of limited relevance to US antitrust divestiture policy.

<sup>8</sup> “J&J to buy Pfizer’s Consumer Health Division for \$16.6 billion,” USA Today, June 26, 2006.

متن کامل مقاله

دریافت فوری ←

**ISI**Articles

مرجع مقالات تخصصی ایران

- ✓ امکان دانلود نسخه تمام متن مقالات انگلیسی
- ✓ امکان دانلود نسخه ترجمه شده مقالات
- ✓ پذیرش سفارش ترجمه تخصصی
- ✓ امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
- ✓ امکان دانلود رایگان ۲ صفحه اول هر مقاله
- ✓ امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
- ✓ دانلود فوری مقاله پس از پرداخت آنلاین
- ✓ پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات