Thursday, May 9, 2019

In our last Antitrust Byte, we brought to your attention Federal Trade Commission ("FTC") Commissioner Rebecca Slaughter’s support for retrospective reviews of vertical transactions. Not to be overlooked, however, is Chairman Joseph Simons’s view, as expressed in his opening remarks during the April 12, 2019, FTC meeting on retrospective merger studies, that “merger retrospective studies can be an important asset in persuading courts to block anticompetitive [horizontal] mergers.” He noted that retrospective studies can both validate prospective merger reviews and provide an empirical basis for a challenge. Chairman Simons stated that “merger retrospectives [are] critical to ensuring the success of [the FTC’s] merger enforcement program.”

As proof of that concept, Chairman Simons referenced the FTC’s prior retrospective analysis of hospital mergers. After a series of losses in the 1990s, the Bureau of Economics at the FTC conducted economic studies on prior hospital mergers. The results of those economic studies resulted in the economic analysis currently used by the FTC in hospital merger challenges—an economic model that has been critical to the FTC’s success in its recent hospital merger challenges.

Thus, the FTC’s success in using retrospective merger reviews in hospital
transactions appears to be fostering a renewed interest in these reviews to guide the FTC’s enforcement actions. Although Chairman Simons recognized that retrospective merger reviews “require significant resources and data,” he noted an interest in exploring how or whether the FTC could use outside researchers to assist in these studies.

©2019 Epstein Becker & Green, P.C. All rights reserved.

Source URL: https://www.natlawreview.com/article/another-important-voice-support-retrospective-antitrust-reviews?bcmt=1