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Market Power and the FTC

by John C. Hilke, Ph.D. (*)

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I. What is Market Power?

- A. Horizontal
- B. Vertical

II. Three Involvements of the FTC

- A. Antitrust Enforcement: mergers, non-merger unfair acts and practices
- B. Consumer Protection: consumer information, advertising claims (unfair acts and practices)
- C. Competition Advocacy: injecting competition analysis into regulatory reform proceedings

III. Limits of Antitrust for Addressing Existing Market Power

IV. Selected Major Issues Going Forward

- A. Existing Market Power: will anyone deal with it?
- B. Innovation and Convergence of Electric Power and Natural Gas Industries: when? what implications?
- C. Affiliate Relationships and Codes of Conduct: Fool me once; shame on you. Fool me twice;

shame on me?

D. Market Monitoring: who, what, reporting to whom?

E. Reliability: is there room for quality competition?

F. Consumer Self-Defense: what do consumers need to protect themselves against market power?

The Federal Trade Commission has three missions:

- Protecting competition by preventing collusion and "unfair methods of competition," and by preventing anti-competitive mergers;
- Preventing false and deceptive advertising; and
- Advocating competition and efficiency.

Although the DOJ/FTC Merger Guidelines provide a firm foundation for analyzing changes in prospective market power resulting from a proposed merger, the analysis does not focus on detecting or measuring market power that may already exist in the market. Further, antitrust enforcement is focused on anti-competitive mergers and unfair forms of competition. From an antitrust perspective, a firm that lawfully acquired market power does not commit an antitrust offense merely by exercising that power, unless it engages in unfair methods of competition to protect that power.

Perspective: Elements of consumer self-defense against anti-competitive pricing?

- Know what the prices are
- Know the characteristics of the products
- Wide choice of suppliers at each purchase occasion
- Opportunities to do it yourself
- Opportunities to look for new suppliers
- Long-term contracts
- Opportunities to aggregate purchases with other
- Stockpiling

Consider taking the perspective that consumers need and deserve the same tools and self-defense in electricity markets that they have in other markets.

[*] John C. Hilke is an Economist in the Bureau of Economics at the Federal Trade Commission and serves as the Bureau's Electricity Project Coordinator. In the latter role, he is the primary developer of FTC staff comments filed before FERC and state regulators concerning electric industry restructuring. Dr. Hilke joined the staff of the FRC in 1978 and has served as Assistant to the Director of the Bureau of Economics and as an expert economic witness in a number of antitrust merger cases. His research interests include antitrust, state securities regulation, international trade, privatization, and regulatory reform. His Ph.D. in economics and

public policy is from Cornell University, where he also taught before joining the staff of the FTC. Dr. Hilke's B.A. in economics is from Swarthmore College.

[Return to this Issue's Index](#)

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