

Merging West and Thomson: Pro- or Anti-Competitive?*

Mark J. McCabe**

In 1996 West Publishing Company was purchased by Thomson Financial & Professional Publishing Group. Despite a government-mandated divestiture of more than fifty titles, an econometric analysis indicates that legal serials published by West-Thomson experienced a significant post-merger price increase.

¶1 In 1996, Thomson Financial & Professional Publishing Group completed its purchase of West Publishing Company after a thorough investigation by the Antitrust Division of the Department of Justice (DOJ). To satisfy concerns about potential anticompetitive impacts, the companies agreed to divest dozens of titles. Anne K. Bingaman, the assistant attorney general in charge of the Antitrust Division, was quoted in the official press release as saying that “[t]his settlement will ensure that consumers continue to obtain the benefits of competition and entry in these markets for the basic tools of legal research.”¹ In summarizing the DOJ’s complaint against the companies, the press release claimed that without the divestitures required by the consent decree, the merger “would have lessened competition substantially in nine markets for enhanced primary law—legal publications of statutes or court decisions in which commentary is offered, in more than 50 markets for secondary law products—treaties [sic] and legal guides. . . .”²

¶2 Now, almost a decade later, it is possible to evaluate whether this settlement actually preserved competition in the markets defined by the DOJ. This article explains and summarizes some of my recent research on this subject.³ In

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** Assistant Professor, School of Economics, Georgia Institute of Technology, Atlanta, Georgia. I would like to thank the American Association of Law Libraries (AALL), and especially Robert Oakley, Nancy Johnson, Kendall Svengalis, Craig Lelansky, and Claire Engel for their patient support of this project. I also wish to express my gratitude to the numerous AALL member libraries and librarians and the legal publishers whose data contributions made this study possible. Craig Conrath deserves kudos for offering me my first tour of a law library and inspiring my interest in this subject. Aaron Edlin’s excellent comments, as well as those from a pair of anonymous referees, helped me improve the substance and style of a previous, longer version of this article. Finally, expert data assistance was provided by a number of Georgia Tech students, including Ben Stearns, Kelly West, Noel Winter, and Antoine Yazbek.

1. Press Release, U.S. Dep’t of Justice, Justice Department and 7 State Attorneys General Require Thomson Corp. and West Publishing Co. to Restructure \$3.4 Billion Merger (June 19, 1996), available at <http://www.usdoj.gov/opa/pr/1996/Jun96/287.at.htm>.

2. *Id.*

3. See also Mark McCabe, *Law Serials Pricing and Mergers: A Portfolio Approach*, 3 CONTRIBUTIONS TO ECON. ANALYSIS & POL’Y 11 (Aug. 27, 2004), at <http://www.bepress.com/bejeap/contributions/vol3/iss1/art11/>.

particular, two questions are addressed. First, was this merger associated with higher prices? Second, if so, in which markets? Answers to both questions have important implications for antitrust policy.

¶3 Before assessing the potential impact of a merger, markets must be defined. In the case of law serials, at least two competing approaches exist. In the *content-based* approach, it is assumed that libraries substitute between titles that address the same subject; mergers matter only if the merging parties control overlapping content in at least one such market. In the second approach, based on a portfolio model of law serials acquisition, a broader set of serials titles compete for the same library budget dollars. In this case, mergers that increase a firm's share of a given portfolio are likely to result in higher prices. The narrower, content-based approach to market definition was used by the DOJ to review the West-Thomson merger and other law publisher mergers during the 1990s. If this approach is correct, then merger-related price increases should not be observed when overlapping content is divested; if price increases are observed in this case, then we can conclude that a broader, portfolio-based market definition is appropriate.

¶4 To address these questions, a unique data set was assembled that includes price information for nearly five hundred print law serial titles, drawn from eight broad categories of commercial titles,⁴ as well as holdings and use information for these same titles at sixty law libraries. This article reports the results from a "difference-in-differences" analysis of the price variables.⁵ The results suggest that the West-Thomson merger resulted in substantial price increases, even after accounting for general price trends. Furthermore, these increases occurred across a broadly defined portfolio of serial titles consisting of legal encyclopedias and treatises. As indicated above, divestitures were required in a number of cases where apparent content overlap existed between individual titles; with one exception, the divested titles were purchased by Reed-Elsevier.⁶ Despite these divestitures, the results reported here indicate that West-Thomson's titles experienced significant post-merger price increases. One interpretation is that the DOJ simply failed to remedy all of the overlap problems that existed in various content-based markets. However, I also observe similar price increases for the *divested titles* purchased by Reed-Elsevier. This latter result would not be expected if buyers had an incentive

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4. These categories include reporters, citators, encyclopedias, treatises, loose-leaf services, newsletters, codes, and digests. Note that due to problems with the price data for codes and digests, these two categories were excluded from the analysis.
 5. For a preliminary analysis of the other data, see Mark McCabe, A Portfolio Approach to Print Legal Serials Pricing (Georgia Tech Working Paper, July 2002), available at <http://www.prism.gatech.edu/%7Emm284/LegalPub.pdf>.
 6. The divestitures consisted of more than fifty titles, including treatises, encyclopedias, codes, and digests. For example, a Michigan legal encyclopedia was divested since the merging parties published two encyclopedias for that state. Note that at the time of the divestiture, Reed-Elsevier already owned a diverse set of legal serials. By 2002, West-Thomson and Reed-Elsevier were ranked one and two in the United States legal and regulatory information market, with sales shares of 38% and 27%, respectively. Wolters-Kluwer was third, with a 15% share. Equity Research, J.P. Morgan Securities, Ltd., US Legal Publishing Industry: A Growth Story? 3 (Sept. 27, 2002) (copy on file with author).

to purchase only the lowest-priced option available in any given content-based market.⁷ Rather, taken together, these results suggest that a publisher's portfolio size matters and that antitrust markets ought to be more broadly defined. Note, however, that these price effects are observed only within a subset of the legal serials: treatises and encyclopedias. My explanation is that these titles' content are relatively differentiated compared to, say, newsletters or loose-leaf services. So, even if a library's demand is generally portfolio-based, owing to the differentiated nature of most legal materials and the diversity of user needs, this may not always be the case. If (almost) perfect substitutes exist among some serials, mergers affecting these titles may not influence prices when ownership of these overlapping titles is not concentrated.

¶5 These results raise at least two important policy questions: (1) Do antitrust authorities need a new paradigm for academic publishing and other portfolio-type markets? (2) Does the current transition from print to electronic distribution have implications for the analysis of portfolio markets and, in particular, the legal serials market? I briefly address these questions at the conclusion of the article.

¶6 The article is organized as follows. Journal demand, publisher pricing strategies, and the implications for merger analysis are first discussed. Empirical evidence is then considered. The underlying hypotheses are discussed, followed by a description of the data, and then the results. Finally, I conclude by discussing the policy issues mentioned earlier.

Law Serials Demand

¶7 Most discussions of mergers start with market definition and thus demand. To assess the potential impact of a proposed merger, antitrust authorities define a market just large enough so that a hypothetical monopolist in the market would find it profitable to raise prices some percentage amount above current prices. That is, market demand in the defined market is sufficiently inelastic to justify the price increase.

¶8 In legal publishing, experience as a user often suggests that each *unique* title constitutes a distinct market for the purposes of antitrust analysis. For example, no one would argue that a treatise on federal antitrust law could easily substitute for one focusing on state antitrust law, much less one addressing commercial law. If each title corresponds to an antitrust market, then owners of individual titles already have the capacity to achieve monopoly returns; a corollary is that mergers don't matter. An exception should occur only when titles are not unique, producing a more

7. Six of the divested titles—three treatises and three state-specific encyclopedias—are in my data set. An examination of the holdings data reveals that during the sample period almost all of the sixty libraries purchased the divested treatise (now owned by Reed-Elsevier) and the corresponding West-Thomson treatise in each of three practice areas: bankruptcy, contract, and insurance law. In the case of the legal encyclopedias for Illinois, Michigan, and Pennsylvania, libraries located in those states behaved in similar fashion. Thus, even though the divestitures diversified the ownership of legal serials, the portfolio behavior of libraries seems to have neutralized the intended pro-competitive effects.

conventional market definition that encompasses the substitute titles. In such cases, antitrust scrutiny would seem warranted.⁸

¶9 These prior beliefs about market definition imply that demands for individual titles are largely unrelated if their content is highly differentiated. However, this intuition is generally incorrect, at least for the largest individual purchasers of legal serials, the libraries.⁹ Discussions with law librarians employed by academic and government institutions, as well as law firms, revealed that the acquisition of legal serials is generally based on two factors—annual price and expected use. To assemble and maintain their collections, law library behavior appears to be consistent with the following scenario.¹⁰ Libraries first construct a cost-per-use ratio for each title. Given a budget for a relevant set of legal categories, they then proceed to rank the corresponding titles from lowest to highest according to this ratio, and identify a cutoff above which titles need to be canceled. Conversely, if their holdings do not exhaust the budget, additional titles can be purchased until the budget constraint is met. From year to year, as budgets and titles' use change, collections are adjusted accordingly.¹¹ Over the past decade or so the general trend is for increases in library budgets to lag journal price inflation; a consequence is that many libraries have been forced to reallocate dollars from monographs to serials, to postpone the purchase of new titles, and, in some cases, to cancel titles.

¶10 The most interesting aspect of library journal acquisition, of course, is that individual titles across one or more categories are considered simultaneously. So, for example, a law library might group treatises from various subcategories, e.g., antitrust, arbitration, commercial law, corporations, etc., into a single "portfolio" and broadly apply the cost-per-use criterion. In this scenario, titles compete with each other for budget dollars across an entire category or a set of categories rather than across a narrow subcategory, as intuition might otherwise suggest (an intu-

8. Such scrutiny was observed for only one of the several mergers that occurred during the 1990s—West-Thomson.

9. Law libraries exist in several institutional environments, including universities, government, law firms, and corporate offices. University and government libraries tend to be larger and more comprehensive; law firm libraries are smaller but far more numerous; corporate libraries are also small in size. According to AALL, in 2001 its members were distributed across 238 academic libraries, 485 government libraries, and 1261 private law firm and corporate libraries. AM. ASS'N OF LAW LIBRARIES, BIENNIAL SALARY SURVEY AND ORGANIZATIONAL CHARACTERISTICS 1 (2001). AALL estimated that its members' libraries budgeted about \$1.2 billion for legal information products. Of this \$1.2 billion, 17% was spent by academic libraries, 13% by governments, and 70% by private firms. *Id.* at 13 tbl.5.

10. This claim is based on my conversations with law librarians and an analysis of law library holdings and use patterns. See McCabe, *supra* note 5. Unlike the sciences, where journal citations are often used as a proxy for use value, in law no such easy-to-use metric exists. In lieu of actual use data, it appears that law librarians rely on their subjective experience at a particular library to construct cost/use ratios, etc.

11. This type of constrained optimization problem is commonly referred to in the operations research literature as a "knapsack" problem. Note that in practice a library's budget constraint may be "soft," providing some leeway to be expanded slightly to accommodate the marginal title that doesn't quite "fit" the budget.

ition based on the perspective of the typical user of law serials). Furthermore, since serials' content is highly differentiated even within subcategories, libraries try to provide access to as many titles as possible.¹²

Publishers' Pricing Strategies

¶11 Given this demand structure, how do commercial publishers set prices?¹³ Like firms in any industry, they will take into account the structure of demand and the likely strategies of competitors when setting prices. As described earlier, libraries—which constitute the bulk of the demand for the legal serials considered here—attempt to purchase the most “use” given their budgets for specific serials categories. In practice this amounts to ranking titles on a cost-per-use basis and identifying a threshold cost-per-use value above which titles are no longer added (the budget is exhausted).

¶12 Given this portfolio demand, Nevo, Rubinfeld, and McCabe¹⁴ propose a pricing model in which publisher pricing strategies are determined by the distribution of budgets and a title's relative use value; each title's content is considered to be unique. Since all titles in a particular demand portfolio compete for the same budget dollars, relative use value determines demand for individual titles (if prices are equal, higher quality serials experience greater demand). In equilibrium higher quality titles tend to exhibit higher prices.

¶13 Furthermore, in this model, firms controlling larger portfolios of titles may or may not have an incentive to charge higher prices. This ambiguity arises because there are two opposing effects that can influence publisher pricing. On one hand, titles may be substitutes for each other. Consider two titles, journal A and journal B. If the price of A increases, some libraries might change their ranking of A relative to other journals. In some cases this change in ranking might be enough for some libraries to no longer purchase journal A. Of those that no longer purchase A, some might decide to purchase B instead, improving the latter's profitability. Thus, if both titles are owned by the same firm, the latter can “internalize” the benefit of A's price increase on the profits of title B, and vice

12. The extent of such differentiation may be category-specific. In cases where publishers bundle court and regulatory decisions and related news in a single source (e.g., in case reporters, loose-leaf services, and newsletters), the level of differentiation is expected to be low when multiple publishers target the same content area. Differentiation is expected to be higher among authored titles, e.g., treatises and encyclopedias, that address the same subject matter. Presumably, as the level of differentiation declines, law librarians may be more willing to substitute between similar titles. If so, then in that category, the size of the effective portfolio will be a subset of the total number of available titles.
13. There is a small set of nonprofit publishers that sell (mostly) law reviews at modest prices. In general, these publishers are primarily interested in disseminating knowledge as opposed to profits. Here I assume that these publishers set prices no higher than average costs (and are thus ignored in the analysis that follows).
14. A. Nevo, D. Rubinfeld, & M. McCabe, *The Demand for Economics Journals by Academic Libraries: An Econometric Analysis*, 95 AM. ECON. REV. (forthcoming 2005).

versa. Joint ownership results in higher prices for A and B. On the other hand, A and B may be complements. If the price for A is increased, some libraries might decide to continue purchasing it, but will no longer purchase title B since they cannot afford it. This creates a negative price effect between the two journals. Thus, joint ownership leads to lower prices.

¶14 Which effect should dominate? This is an empirical matter that depends on how closely ranked the affected titles are and the distribution of library budgets. Some preliminary merger simulations suggest that mergers are more likely to result in price increases when budgets are distributed in a bell-shaped or normal fashion.

¶15 Though this model seems appropriate for the legal serials market(s), there are at least two factual issues that need to be addressed. One is whether library budgets for serials are comprehensive in scope, covering all categories of titles, or category-specific. If the latter is true, then I would expect that an *inter*-category merger, e.g., a publisher of treatises merging with a publisher of newsletters, would not influence prices. This is because the pricing externalities described earlier should only exist within a given demand portfolio. However, if budgets are generally comprehensive in scope, I would expect intercategory mergers to affect prices in certain situations, but not in all cases.

¶16 This caveat is related to the second factual issue, namely, the extent to which content differentiation influences competition in each category of law serials. In cases where content is highly differentiated, the pricing model should apply quite well. So, for example, if budgets are defined comprehensively, I expect that a merger between a treatises publisher and an encyclopedias publisher would influence prices. On the other hand, when content is similar at the subcategory level, e.g., two court reporters for the same jurisdiction or several newsletters summarizing activity at the same federal agency, then even if budgets are defined broadly, an intercategory merger may not result in higher prices. Why? When the content of law serials in a given subcategory is fairly homogeneous, libraries are more likely to choose the best single product rather than acquire all or most of the available products. This demand behavior leads to more intense price competition among titles in a specific subcategory. And since this competition is not affected by an *inter*-category merger involving, for example, a publisher of treatises and a publisher of newsletters, the price impact of the merger will depend on the degree of competition among the affected titles. For example, if buyers could easily substitute away from a newsletter, then its owner could not easily raise its price after a merger. As a corollary, an *intra*-category merger involving this type of content is not likely to result in higher prices unless the transaction increases the degree of overlap at the subcategory level.

Publisher Mergers

¶17 At the outset of the sample period, in 1990, eighteen commercial law serials publishers were active (in the data collected for this article). By 2000, this number

had declined to twelve due to mergers in the market. This wave of consolidation resulted in the emergence of three large publishers of law materials in the United States—the Thomson Publishing Group, Reed-Elsevier, and Wolters Kluwer. Although the focus here is on the merger of West and Thomson, it is instructive to briefly summarize the acquisitions of each of these firms.¹⁵

¶18 In 1995, Thomson acquired Shepard’s (treatises only), and then purchased West Publishing Company the following year. Prior to these mergers, Thomson’s serials portfolio, as represented by the data used in this study, numbered 135 titles.¹⁶ Of this number, 119 can be classified as treatises and 9 as legal encyclopedias; the remaining Thomson titles consisted of 1 reporter and 6 loose-leaf services. Given the available data, the Shepard’s merger added 16 treatises; the purchase of West added 42 more titles, consisting of reporters (17), legal encyclopedias (4), and treatises (21).

¶19 Reed-Elsevier added to its portfolio three times during the sample period. Starting with 18 legal encyclopedias and treatises, it acquired 50% control of 17 Shepard’s citators in 1996 (and full control in 1998), and full control of 84 Matthew Bender treatises in 1998. In addition, it added most of the West-Thomson divestitures in 1996 (3 legal encyclopedias and 3 treatises in the sample, 5 of which were owned previously by West).

The Empirical Model

¶20 Most previous empirical studies of journal pricing did not attempt to assess the impact of mergers on journal pricing. The two exceptions are the aforementioned paper by Nevo, Rubinfeld, and McCabe¹⁷ and a 2002 article by McCabe.¹⁸ In the latter, merger-related price increases are identified using a “difference-in-differences” regression technique.

¶21 In a 2004 article,¹⁹ I employed the difference-in-differences approach to detect whether the merger of West and Thomson and the associated divestitures affected law serials prices. This approach involves specifying a separate intercept or “fixed effect” for each title (to “difference” the data), a series of intercepts or “time dummies” to capture the effects of general price changes, and a set of

15. Prior to the mergers described here, each of these three companies had already absorbed or created numerous legal serials imprints, e.g., Lawyers Cooperative by Thomson, Aspen Law & Business by Wolters Kluwer, and LexisNexis by Reed-Elsevier.

16. An assumption I make in the empirical analysis in this article is that the information reported in this section is an accurate representation of the portfolios owned by each firm, i.e., if, in the sample, publisher X publishes treatises and newsletters, then I assume that this firm published no titles in other categories. In the case of Reed-Elsevier, West, Thomson, and the titles divested by West-Thomson, this assumption is violated due to the absence of codes and digests from the sample. I address this problem in the next section of the article.

17. Nevo, Rubinfeld, & McCabe, *supra* note 14.

18. Mark McCabe, *Journal Pricing and Mergers: A Portfolio Approach*, 92 AM. ECON. REV. 259 (2002).

19. McCabe, *supra* note 3.

intercepts or “merger dummies” (which measure the differences in the differenced data) to measure the merger-related price changes.

¶22 Ideally, this approach allows me to test three hypotheses:

- H1: Intracategory mergers involving highly differentiated content, e.g., treatises or encyclopedias, are associated with relatively large price effects.
- H2: Intracategory mergers involving content that is less differentiated at the subcategory level, e.g., loose-leaf services or newsletters, are less susceptible to anticompetitive price effects.
- H3: (a) If budgets are category-specific, then intercategory mergers do not influence prices. (b) If budgets are comprehensive in scope, then the price impact of an intercategory merger depends on the degree of product differentiation among the affected titles. Price effects should be largest when two sets of differentiated content are combined (see H1) and less when one or both sets consist of content that is less differentiated at the subcategory level (see H2).

¶23 Of course, to properly test each hypothesis the necessary natural experiments need to have occurred. Given that the sample contains data for six categories of legal categories, testing all of the H1, H2, and H3 possibilities would require six different “pure” intracategory mergers and fifteen distinct intercategory mergers. However, the data does not contain any such pure cases. Furthermore, in some cases only one firm owns all or almost all titles from a specific category, e.g., West owned all but one reporter in the sample. This situation precludes identification of separate merger effects and category-specific time trends. In other cases, estimation of a category-specific merger variable is questionable due to the small sample size, e.g., there are only four West encyclopedias.

¶24 Nevertheless, if I redefine some of the categories, it is still possible to test modified versions of H1 and H2. In the case of H1, by combining treatises and encyclopedias into a single category, I can minimize the sample size problem. Similarly, I can combine newsletters and loose-leaf services to better test H2. And due to data limitations, I need to assume that library budgets are comprehensive in scope.²⁰ Thus, most of H3 needs to be discarded, except for cases involving mergers of H1-type content with H2-type content. That is, compared to an H1 merger, price changes should be relatively small or nonexistent if one of the merging firms publishes H2-type content. Furthermore, given the diverse portfolios of the merging parties, any post-merger price increases must be interpreted with some caution since intercategory effects may be affecting the results. For example, in the case of West-Thomson, I can test H1 only by assuming that H3 holds, since the two

20. This claim can be explained using the following example. Suppose a publisher of treatises and encyclopedias merges with a similar firm. Following the transaction, a general price increase is observed. Because of the hybrid nature of each firm, it is not possible to determine empirically whether the price increase reflects only treatise-treatise and encyclopedia-encyclopedia interactions or also treatise-encyclopedia effects.

companies not only owned treatises and encyclopedias but also codes, digests, and reporters. Table 1 summarizes, by transaction, which of these three modified merger hypotheses can be tested.

Data

¶25 Members of an AALL advisory committee²¹ and I defined a set of the “480 most important” legal serials, drawn from eight broad categories of commercially produced print titles—reporters, codes, digest, citators, encyclopedia, loose-leaf services, newsletters, and treatises. AALL members responded to the following hypothetical request: if you were assembling a new law serials collection, one with national scope but limited to 480 titles, which titles would you include? Although many more legal serials exist than this number, it was not practical to collect information on additional titles. For the period 1990–2000, annual price data for these titles were constructed using records from Georgetown University and, in the case of treatises, supplemented by Svengalis’s annual price survey.²² Because Georgetown did not subscribe to all 480 titles, and since its data for codes and digests could not be used, some 405 titles are represented in the price data. Table 2 reports a number of statistics for serial prices by category for the sample period, 1990–2000.

Estimation Results

¶26 The results regarding H1 and H3 are summarized in table 3. In the case of Thomson, prices for its treatises and encyclopedias increased about 11%. This effect is significant at the 5% level. The fact that the addition of the West titles is associated with a jump in prices for the Thomson titles is consistent with H1 but not definitive. Again, other complementary explanations include delayed effects of the initial Thomson-Shepard’s merger, as well as intercategory effects due to West’s reporters, codes, etc. The estimate for the West titles, significant at the 10% level, implies a post-merger increase of 27%. Regarding the Thomson loose-leaf products, a small but significant increase of 4% is observed after the West merger. This result is consistent with H3.

¶27 The impact of Reed-Elsevier’s acquisition of the divested West titles is substantial. During the period 1997–98, and thus prior to the purchase of the Matthew Bender treatises, price increases, significant at the 10% level, are observed for both sets of titles. Prices for the Reed titles, consisting of treatises and encyclopedias, increased some 28%. Prices for the divested titles may have increased as much as 49%. Although these results are consistent with H1, the potentially confounding influence of other serials categories does remain.

21. This AALL advisory committee included Claire Engel, Nancy Johnson, Craig Lelansky, Robert Oakley, and Kendall Svengalis.

22. KENDALL F. SVENGALIS, *THE LEGAL INFORMATION BUYER’S GUIDE AND REFERENCE MANUAL* (1996–).

Table 1

*Merger Hypotheses:
For Merger i, can H1, H2, and/or H3 be tested?*

Merger	H1	H2	H3
Thomson-West (1996)	Yes*	No	Yes**
Reed Elsevier-Divested West (1996)	Yes*	No	No

H1: Intracategory mergers involving treatises and/or encyclopedias are associated with relatively large price effects.

H2: Intracategory mergers involving loose-leaf services and/or newsletters are associated with negligible or relatively small price effects.

H3: Intercategory mergers do not substantially affect prices.

* Both firms owned treatises and encyclopedias.

** Thomson owned loose-leaf services, West owned treatises and encyclopedias.

Table 2

Descriptive Price Statistics

Serial Category	Number	Price			
		Mean	St. Dev.	Min.	Max.
Reporters	147	704	441	60	2309
Citators	183	581	326	245	2630
Encyclopedias	131	711	464	137	2701
Loose-leaf Services	342	954	621	212	4715
Newsletters	148	1029	1127	275	6922
Treatises	2308	420	459	14	2860

Number of observations: 3259

Table 3

*Merger Hypotheses:
Do Results for Merger i Reject H1, H2, and/or H3?*

Merger	H1	H2	H3
Thomson-West (1996)	No	n/a	No
Reed Elsevier-Divested West (1996)	No	n/a	n/a

H1: Intracategory mergers involving treatises and/or encyclopedias are associated with relatively large price effects.

H2: Intracategory mergers involving loose-leaf services and/or newsletters are associated with negligible or relatively small price effects.

H3: Intercategory mergers do not substantially affect prices.

Conclusions and Policy Implications

¶28 Based on the settlement reached by the DOJ and West-Thomson, it is clear that the agency imagined that dozens if not hundreds of distinct antitrust markets existed within the legal serials publishing industry, that competition between publications was based on the extent of content overlap, and that control of overlapping titles might be anticompetitive. For example, prior to the merger, Thomson and West both published legal encyclopedias addressing the subject of Pennsylvania law (both are included in this analysis). The consent decree specified the spin-off of the West title; it was later acquired by Reed-Elsevier.

¶29 The evidence presented here and in my earlier 2004 article²³ appears to contradict this antitrust framework in the “markets” for secondary law products. Despite the required divestitures, the econometric estimates suggest that the average prices for almost all treatises and encyclopedias published by the acquiring *and* acquired companies were affected by this merger (an H1 merger). Furthermore, prices for the divested encyclopedias and treatises contained in the sample, as well as those published by their new owner, Reed-Elsevier, increased as well. This is consistent with the idea of portfolio demand. As described earlier, buyers of this subset of legal serials prefer purchasing as many of these titles as possible, regardless of the ostensible content overlap. As a consequence, the anticompetitive potential of a merger has less to do with market shares in narrowly defined subject areas than with the total quality and quantity of content in certain broadly defined serials categories.²⁴ On the other hand, the results presented here suggest that *inter*-category (H3) mergers, e.g., those involving newsletters and treatises, probably do not result in anticompetitive effects.

¶30 Finally, these conclusions are contingent on buyers’ ability to select individual titles freely from the various categories of legal serials. Although this assumption was satisfied throughout the sample period and, according to librarians I spoke with, remains true in most cases, what if conditions change? The recent transition to digital distribution of *bundled* content in the market for scientific journals suggests that a similar development in the market for legal serials might strengthen the conclusions presented here.²⁵ Bundling offers publishers with relatively high quality portfolios the opportunity to foreclose lower quality competitors. Although this strategy is likely to succeed with highly differentiated content, e.g., treatises and encyclopedias, its applicability to categories of less-differentiated content, not to mention intercategory bundles, is an unexplored subject.

23. McCabe, *supra* note 3.

24. The likelihood that a content overlap approach to market definition has resulted in errors in merger enforcement begs the obvious question of why it occurred. One possibility is that when analyzing the markets for law serials, the natural inclination of agency economists and attorneys was to rely on their own experience as *users* of these materials. This tendency can obscure the fact that publishers set prices in response to the behavior of those who *purchase* their products, typically a library.

25. For a discussion of this transition from print to digital distribution in the market for scientific journals, see Mark McCabe, *Information Goods and Endogenous Pricing Structures: The Case of Academic Journals*, 12 ECON. BULL., no. 10 (Oct. 28, 2004), at <http://www.economicbulletin.uiuc.edu/2004/volume12/EB-04L00003A.pdf>.