

12-2012

# FTC ANTITRUST ENFORCEMENT RELATIVE TO THE BUSINESS CYCLE

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FTC ANTITRUST ENFORCEMENT RELATIVE TO THE  
BUSINESS CYCLE

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A Thesis  
Presented to  
The Graduate School of  
Clemson University

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In Partial Fulfillment  
of the Requirements of the Degree  
Master of Arts  
Economics

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by  
Seth Mullikin  
December 2012

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Accepted by:  
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## **Abstract**

This paper sought to determine if antitrust enforcement by the FTC is explained by models that explain traditional output by regulatory agencies. The study examines different types of antitrust enforcement from the FTC. The results showed that some types of antitrust enforcement fit neatly into Peltzman's model explaining regulatory output, while others are more nuanced and difficult to explain.

# Table of Contents

	Page
Title Page.....	i
Abstract.....	ii
Chapter	
1. History of Antitrust Enforcement.....	1
2. Literature Review.....	6
3. Hypothesis.....	12
4. Model.....	16
5. Data.....	20
6. Results.....	23
7. Conclusion.....	28
Appendices	
A. Data.....	31
B. Regression Results.....	39

# **Chapter 1**

## **A History of Antitrust Enforcement**

The purpose of this paper is to examine three types of regulatory output by the Federal Trade Commission (FTC) considered to be antitrust enforcement and how they relate to the business cycle. Specifically, I test Peltzman's hypothesis on regulatory activity of the business cycle. I begin with an introduction covering the history of antitrust enforcement and explaining the types of enforcement covered in this paper. I continue with a literature review that covers Stigler's The theory of economic regulation, from which Peltzman based his hypothesis, and works that tested the hypothesis. I then present a model based on Amacher, Higgins, et al. Finally, I present my own results and conclusion.

The beginnings of modern antitrust enforcement can be found in British common law, which was later transferred to the United States. The first case involving a "restraint of trade" was *Horner v. Graves*<sup>1</sup> in 1831. This case established that it was alright for competitors to enter into agreements to maintain prices or restrict output, but they were not allowed to prevent outsiders from competing. This view continued in the American courts with the Missouri state court of appeals upholding an agreement to "sell through an exclusive sales agent that apportioned output and fixed prices" in *Skrainka v. Scharringhausen* (Sklar 1988, p96).

The Sherman Act (1890) has been interpreted by some as a measure to clarify common law regarding competition and allow the federal government to bring cases. Stigler (1984) has argued that the Sherman Act simply codified common law. Based on a common law understanding, the federal courts did not interpret the Sherman Act as

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<sup>1</sup> This was a British case, but American courts often cited British cases in common law matters at this time.

strongly as some politicians had hoped. This led to the creation of the FTC and the Clayton Act (1914).

The FTC was created with the Federal Trade Commission Act of 1914 and charged with enforcing the Clayton Act from the same year. The Clayton Act consisted of various measures that were intended to close perceived loopholes in the Sherman Act after the *Standard Oil* and *American Tobacco* cases and some measures related to consumer protection, such as false advertising. Sections 2 and 7 are the provisions most associated with antitrust enforcement.

Section 2 prohibited discriminatory pricing “where the effect of such discrimination may be to substantially lessen competition or tend to create monopoly.” The Act, however, allowed differences in price based on “differences in grade, quality, or quantity ...or that makes only due allowance for differences in the cost of selling or transportation”, essentially allowing a more efficient producer a valid defense. This defense was accepted broadly leading to little prosecution of Section 2 until the passage of the Robinson-Patman Act in 1936 (Posner 1976).

The Robinson-Patman Act is nearly unanimously considered by economists to be a law intended to protect producers from competition. The Robinson-Patman Act simply amended section 2 of the Clayton Act, which prohibited price discrimination. The amended section, however, “closed the quantity discount loophole and tightened the cost-justification defense; and it narrowed the meeting competition defense” (Posner 1976, p. 26-27) -- essentially barring legal defenses based on efficiency. Ross (1984) confirms this

by showing the R-P had a statistically significant negative effect on chain stores, specifically grocers. He also presents anecdotal evidence showing that small businessmen obtained other regulations such as “chain store taxes” to hinder competition. Ross quotes Rep. Patman--the bill’s namesake-- as saying “there is no place for chain stores in the American system.” Posner (1970) said R-P was “in reality a price control rather than an antitrust statute”. That the bill was intended to protect inefficient producers at the expense of consumers is hard to deny.

Posner (1976) argues that: “Section 7 of the act forbade certain stock acquisitions, and by thus failing to include mergers (a form of asset acquisition) was easily evaded and essentially of no importance until the statute was thoroughly overhauled in 1950 by the Celler-Kefauver Act.” Bork (1992, p.200) quotes Senator Kefauver explaining the law was intended “simply to plug the loophole in sections 7 and 11 of the Clayton Act.” Despite this, the Supreme Court used several opinions interpreting this law in a manner antithetical to the public’s interest causing the law to be utilized in a pro-producer manner similar to Robinson-Patman.

The *Brown Shoe* decision has been called by Robert Bork (1992, p. 216) “a disaster for rational, consumer-oriented merger policy.” How Section 7 of the Clayton act could transform from an unimportant, mildly pro-consumer regulation into a form of protection for small, inefficient producers similar to Robinson-Patman is apparent in Chief Justice Burger’s opinion. He specifically cites the “desirability of retaining ‘local control’ over industry and the protection of small business” as an important factor in



interpreting Section 7. He transferred the same objectives of the Robinson-Patman Act dealing with prices to merger policy. The Proctor & Gamble case had the effect of declaring that “efficiency was really ...a ‘barrier to entry’” (Bork 1993, p. 204).

Twenty eight years after the Celler-Kefauver Act Congress passed the Hart-Scott-Rodino Act to allow the FTC and Department of Justice to examine mergers before they took place. This had two purposes: first, to give the regulators enough information to determine the legality of the merger and, also, to give the regulators enough time to seek an injunction if it is determined to be illegal (Titus 1979). In order to achieve this, HSR requires that companies notify the Premerger Notification Office before merging under certain circumstances. If the transaction is larger than \$63.4 million, then the Premerger Notification Office must be informed. Also, the Premerger Notification Office must be notified if the acquiring party has \$126.7 million in sales or assets and the party being acquired has sales or assets of \$12.7 million<sup>2</sup>. The Premerger Notification Office then passes the information onto the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice. HSR was passed to allow regulators more time to review a merger so they could avoid the mess of dissolving an illegal merger after it was finished. It was not intended to address any problems with merger policy; therefore, I do not think enforcement will differ markedly under HSR than prior regulations.

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<sup>2</sup> These numbers are from the 2008 Hart-Scott-Rodino Annual Report to Congress.

# **Chapter 2**

## **Literature Review**

A central idea in George Stigler's *The Theory of Economic Regulation* is that "the state can and does selectively help or hurt a vast number of industries" (Stigler 1971, p3). Stigler dismisses the idea that the political process cannot be explained by economic theory. He argues that regulations are sought by certain groups—generally an industry itself—to gain regulations for specific purposes. The industry seeking regulatory assistance must, however, recognize the costs in obtaining the regulations. Stigler posits that the cost-benefit-tradeoff faced by industries explains most government regulations.

Industry uses the coercive power of the state to achieve regulations that serve four broad purposes. The "most obvious contribution that a group may seek of the government is a direct subsidy of money." This, however, is difficult to utilize because of problems in restricting the number of firms seeking a part of a payment. For this method to be feasible, the industry must either gain corresponding increases in the subsidy with each new entrant or bar new entrants from receiving the subsidy. Either of these options would be difficult for a regulator under lobbying pressure, and would thus raise the cost of the industry.

Another method of raising prices for an industry is restriction "of entry by new rivals". Reducing entry by rivals reduces competition, but also prevents competitors who may have developed more efficient technology from entering. Stigler offers the Civil Aeronautics Board as an example of the "diligence with which the power of control over entry will be exercised by a regulatory body". Stigler views a tariff as being an artificial barrier to entry created by the state. Because it hinders foreign competitors with

presumably less political power it is used more often than entry controls to restrict domestic competition. Just as industries seek to restrict direct competitors, they also use the power of the state to raise the price of substitutes, while encouraging compliments. The fourth area of regulation sought by industries is price fixing. Even if the industry could prevent entry from outsiders, it would face the same problems of cheating that a private cartel faces. Therefore, industry will often seek regulation of prices.

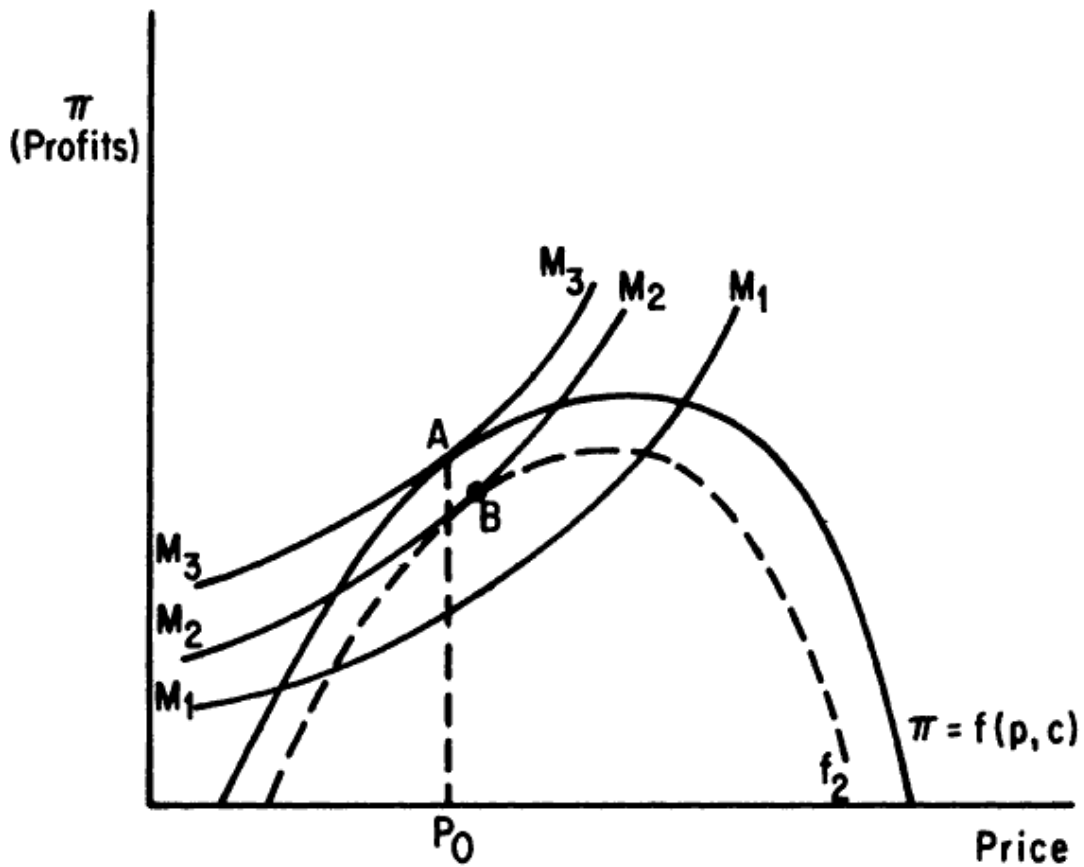
These benefits do have limits and costs. The industry must divide the benefits of the regulation amongst all members of the industry; thus, small producers often receive disproportionate gains. The industry must also deal with “the procedural safeguards required of public processes.” These processes also allow people with other motives an influence in decision making. (As an example Stigler cites the “abandonment of an unprofitable rail line”.) The costs are primarily born in financial and other support for political parties. The industry must be willing to finance get-out-the-vote efforts and “educate (or uneducate) members of the industry and of other concerned industries.”

Sam Peltzman used this theory to develop a model explaining regulatory activity. The model takes the form of a regulator who “wants to maximize a majority.” This model accounts for the benefits and costs that an industry must consider when seeking regulation. The model is shown below:

$$M = n X f - (N-n) X h,$$

where  $n$  is the “number of potential voters in the beneficiary group”,  $f$  is the “(net) probability that a beneficiary will grant support”,  $N$  is the “total number of potential voters”, and  $h$  is the “(net) probability that he who is taxed (every non- $n$ ) opposes”.

Figure I



Based on this model, Peltzman posits that “the marginal product of a dollar of profits must equal the marginal political product of a price cut that also costs a dollar of profits...Political equilibrium occurs at [a] tangency between [a] profit hill and an iso-

majority curve.” See Figure I (Peltzman 1976, p224). This means that if profits decrease the regulator will allow a price to increase in order to continue maximizing his political majority, and if profits rise, the regulator will allow the price to decrease for the same reason. One implication of this position is: “Regulation will tend to be more heavily weighted toward ‘producer protection’ in depressions and toward ‘consumer protection’ in expansions.” Testing this hypothesis is the focus of this paper.

This hypothesis was tested by Shugart and Tollison (1985) using the regulatory output of three agencies. The control variables are the respective agencies’ budgets, various measures of the business cycle, a trend line, and various dummy variables to account for changes made to the different agencies. The output variable for the International Trade Commission (ITC) was the investigation of “unfair methods of competition” or allegedly selling goods below costs. These investigations can be viewed as hampering price declines during a recession. Their results showed that “a 1% decline in real GDP leads to a 9% increase in completed trade investigations” and that 1% increase in the unemployment rate leads to a 1.199% increase in investigations completed--both statistically significant at the 1% level. The output variable for the International Commerce Commission (ICC) was “motor carrier operating rights cases”. The authors recognize that regulations would affect the various transportation industries to differing degrees, but believe that this provides a good proxy for the ICC regulatory activity in general. The results showed that with every 1% decrease in real GDP, there was a 1.89% increase in motor carrier rights operating case, and a 1% increase in the unemployment rate led to a 0.296% increase in motor rights operating cases. The output

variable for the Civil Aeronautics Board (CAB) is the “ratio of air carrier route applications and amendments disposed of annually to route applications and amendments filed”, thus measuring whether or not the CAB was more or less likely to prevent the entry of competition. With each 1% increase in real GDP there was a 2.61% reduction in the ratio; with each 1% increase in the unemployment rate the ratio increased by 0.2964%. The coefficients for the excess capacity rate and the business failure rate were overall less statistically significant and lower in magnitude. As a whole, Shugart and Tollison show strong evidence for Peltzman’s hypothesis, especially when using the unemployment rate and real GDP as measures of the business cycle.

Amacher, Higgins, Shugart, and Tollison (1985) tested Peltzman’s hypothesis using antitrust enforcement data. They viewed antitrust enforcement to be pro-producer. Using R-P cases as the dependent variable and measures of the business cycle, agency budget, and a trend line as the dependent variables, Robinson-Patman Act (R-P) enforcement was shown to be countercyclical. With each 1% increase in real GDP R-P cases declined by 2.46%; with each 1% increase in the unemployment rate, R-P cases declined by 0.67%. The results for FTC cases net of R-P cases are more ambiguous. The coefficient for real GDP is positive, but only statistically significant at the 10% level. The coefficient for the unemployment rate is negative (implying the FTC cases are procyclical) and statistically significant at the 5% level.

# **Chapter 3**

## **Hypothesis**



I believe that antitrust enforcement will conform to Peltzman's hypothesis. I view R-P cases as being pro-producer and, thus, expect they will increase during recessions and decline during expansions. This is consistent with previous literature. The FTC cases in the periods 1915-1950 and 1950-1969 are not as clear; therefore, I will not develop a hypothesis and will look to the data. I also examine FTC "second requests for information" since the Hart-Scott-Rodino Act of 1978 (HSR). I am also unclear on what the data will show for the HSR second requests. My reasoning is explained below.

The Robinson-Patman Act is nearly unanimously considered by economists to be a law to protect producers from competition. The Robinson-Patman Act simply amended section 2 of the Clayton Act, which prohibited price discrimination. The amended section, however, "closed the quantity discount loophole and tightened the cost-justification defense; and it narrowed the meeting competition defense" -- essentially barring legal defenses based on efficiency. (Posner 1976, p. 26-27) Ross (1984) confirms this by showing the R-P had a statistically significant negative effect on the stock market worth of chain stores, specifically grocers. He also presents anecdotal evidence showing that small businessmen obtained other regulations such as "chain store taxes" to hinder competition. Ross quotes Rep. Patman--the bill's namesake--as saying "there is no place for chain stores in the American system." Posner (1970) said R-P was "in reality a price control rather than an antitrust statute". That the bill was intended to protect inefficient producer at the expense of consumers is hard to deny.

To develop my reasoning behind the differences in FTC non-Robinson-Patman cases occurring before and after the Brown Shoe decision, I rely heavily on Robert Bork's *The Antitrust Paradox: A Policy at War With Itself*.

Amacher et al argue that "FTC cases net of Clayton Act Section 2 matters...represent allegations of more traditional antitrust violations such as monopolization or collusion, which may be associated with the 'public interest,' as well as matters nominally linked with pro-consumer regulation, including advertising and product defects." Support for the fact that these "more traditional antitrust violations" were pro-consumer is found in the Sherman Antitrust Act, which the Clayton Act was intended to clarify. Stigler (1984) has argued that the Sherman Act was in the consumers' interest because it simply codified existing common law of restraint of trade into a federal law. Due to the different types of cases brought by the FTC net of Robinson-Patman cases it is unclear what the data will show.

HSR requires that companies notify the Premerger Notification Office before merging under certain circumstances. The Premerger Notification Office then passes the information onto the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice. The FTC or DOJ then decide if more information on the merger is needed for approval. If this is the case, a second request for information is issued. HSR was passed to allow regulators more time to review a merger so they could avoid the mess of dissolving an illegal merger after it was finished. It was not intended to address any other problems with merger policy; therefore, I think it will also be

ambiguous. Because it deals with merger policy the decisions are not strictly pro-consumer or pro-producer. Rather it is between less efficient producers and producers who are seeking greater efficiency.

# **Chapter 4**

## **Model**

In order to test these hypotheses I use variations of the model used by Amacher, Higgins et al. It is:

$$\text{Cases} = \beta_0 + \beta_1 \text{Business Cycle} + \beta_2 \text{Budget} + \beta_3 \text{President} + \beta_4 \text{Time} + \beta_5 \text{Time}^2 + \varepsilon,$$

Where,

Cases = the annual number of cases;  
Business Cycle = the unemployment rate or real gross domestic product;  
Budget = the annual FTC budget;  
President = a dummy variable representing the party of the president (if Republican =1)  
Time = a linear time trend;  
 $\varepsilon$  = the error term.

The first hypothesis tested regards Robinson-Patman cases. In this regression I expect the coefficient on the unemployment rate to be positive and the coefficient on real GDP to be negative. The sign for the presidential dummy variable is expected to be negative.

The second hypothesis tested is that concerning FTC cases. FTC cases refers to cases brought by the FTC net of Robinson-Patman cases. In this regression I expect the coefficient for unemployment to be slightly positive and the coefficient for real GDP to slightly negative for the period prior to 1950. After 1950 I expect these results to maintain the same direction but in greater magnitude. However, it should be noted that I am not entirely convinced of this due to the differing nature of the types of FTC

enforcement. The coefficients for budget and president are expected to be similar to those in the Robinson-Patman cases.

The third hypothesis tests to determine if second requests from the FTC under Hart-Scott-Rodino conform to Peltzman's theory. A slightly different model is used to test this hypothesis. It is:

$$\text{Second Requests} = \beta_0 + \beta_1 \text{Business Cycle} + \beta_2 \text{Budget} + \beta_3 \text{President} + \beta_4 \text{Total Transactions} + \varepsilon,$$

In place of the time trend a variable representing the total transactions for which a second request could have been issued is used. This variable represents all the notifications of mergers the Premerger Notification Office received, essentially all the mergers that met or exceeded the market cap limit for that year. I expect this to better control for spurious factors related to both antitrust enforcement and the economy. Presumably there would be more mergers and, thus, the potential for second requests, during an economic expansion. Using total transactions as an independent variable is intended to control for that.

I expect the sign on unemployment to be positive because this would mean antitrust enforcement is behaving in a countercyclical manner. If the unemployment rate is rising, the amount of antitrust enforcement can be expected to decrease if it conforms to Peltzman's hypothesis. I expect the sign on real GDP to be negative because this would imply a countercyclical nature of antitrust enforcement. If the economy is growing, and Peltzman's hypothesis holds, then one would expect less antitrust

enforcement. Again, I would like to reiterate that I am not as confident in this hypothesis as I am with the Robinson-Patman hypothesis because HSR actions involve mergers, rather than just price cuts. Again, I do not expect the budget to have a significant impact on the level of regulatory activity. I expect the sign for president to be negative as in the previous regressions; however, I expect that the magnitude will be greater. This is because of the greater ideological divide that occurred between the two major political parties after the emergence of the Chicago School. This school of thought posited that regulation in general served private, rather than public, interests. This contrasts with the prior view that regulators made decisions in the interest of society as a whole. I expect this divergence in thought to have an effect on antitrust enforcement under differing political parties because the Chicago School seemed to be embraced more strongly by Republicans. I expect the total transactions to have a positive, statistically significant effect on second requests.

In addition to running the two regressions based on the above model, I repeat them with an added dummy variable for years 1981-1986. This is used to determine if antitrust enforcement changed under President Reagan's first chairman, James C. Miller III, as is widely believed. I expect this dummy variable to have a negative coefficient.

# **Chapter 5**

## **Data**



Cases, the dependent variable, is intended to represent the regulatory output of the FTC. With regards to Robinson-Patman Cases<sup>3</sup>, it will measure cases brought under the Section 2 of the Clayton Act. The Robinson-Patman cases span from 1937 to 1974. When examining FTC cases<sup>4</sup>, it will represent the all FTC cases not brought under Section 2 of the Clayton. The FTC cases were available from 1916 until 1970. While examining the Hart-Scott-Rodino Act, Second Requests<sup>5</sup> is used as the dependent variable. These data are available from 1978 until the present.

I use two measures of the business cycle. They are the unemployment rate<sup>6</sup> and real gross domestic product<sup>7</sup>. The gross domestic product is held constant at 1996 dollars and was available for all years. The FTC budget<sup>8</sup> was also available for all years. When regressing the Robinson-Patman and FTC cases, the entire FTC budget is used. This could lead to problems because a portion of the budget was spent on the Bureau of Consumer Protection. The budget for the Bureau of Competition was available from 1970 to 2008. Therefore, it is used in examining second requests under Hart-Scott-Rodino. For fiscal year 1999 I excluded the portion of the total budget related to Y2K concerns because this was a one-time expenditure.

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<sup>3</sup> This data were obtained from Posner (1976, p64).

<sup>4</sup> This was obtained from Posner (1970, p369).

<sup>5</sup> The data on second requests were obtained from the Hart-Scott-Rodino Annual Report to Congress for years 1978-2008.

<sup>6</sup> The unemployment data were obtained from a Duke University database for years 1916-1947. For years 1948-2008 it was obtained from the Bureau of Labor Statistics.

<sup>7</sup> The real GDP data were obtained from the Bureau of Economic Analysis.

<sup>8</sup> This was obtained from the *Annual Budget of the United States Appendix* for years 1916-2008.

The dummy variable for president is expected to capture any influence the president exerts on the Commission. The time variable represents a linear time trend so as to allow for factors endogenous to the dependent and independent variables that may cause both to increase over time. A squared term is also used to allow for declines caused by other factors, as with Amacher, Higgins et al.

# **Chapter 6**

## **Results**

The results for Robinson-Patman cases support Peltzman's hypothesis very well. The coefficient on **lnGDP** is of the expected sign and is statistically significant above the 5% level. It shows that for every 1% increase in real GDP, there is a 3.91% decrease in the number of Robinson-Patman cases brought by the FTC. As expected, the variable **lnftcbud** did not have a statistically significant effect. Unexpectedly, the presidential dummy variable, **presdummy**, also was not statistically significant. The adjusted R<sup>2</sup> for this regression was 0.4539.

Similar results are found for Robinson-Patman cases when using the natural log of the unemployment rate, **lnunem**, as an independent variable. For every 1% increase in the unemployment rate, there was a 2.17% increase in Robinson-Patman cases. Yet again the FTC budget and the political party of the president did not have a statistically significant effect on the number of Robinson-Patman cases. The adjusted R<sup>2</sup> for this regression was 0.6156.

The results regarding the FTC cases net of Robinson-Patman (or Section 2) cases are more ambiguous. The first regressions cover the entire period (1916-1970) for which data was available. When using **lnGDP** as the independent variable for measuring the business cycle, it has a coefficient of the expected sign but is not statistically significant with a t-statistic of only 1.62. The budget and dummy variable representing the political party of the president do not have a statistically significant effect on the number of FTC cases brought. The results are similar when using **lnunem** as the independent variable measuring the business cycle. The coefficient for **lnunem** is -0.0567 but is not

statistically significant with a t-statistic of -1.33. Again, the variables covering the budget and political party of the president are not statistically significant.

The results for the time period 1916-1950 are also ambiguous. This, however, was expected. For this time period the coefficients on **lnGDP** and **lnunem** are 1.47 and 0.0765, respectively, but neither is statistically significant. The variables representing the FTC budget and political party of the president were also statistically insignificant. For the years 1951-1970 the results covering measures of the business cycle were also statistically insignificant; this was unexpected. The coefficients for **lnGDP** and **lnunem** were 7.233 and -0.618 respectively. These results were of the expected sign but were not statistically significant. One reason these results might not conform to Peltzman's hypothesis is the dual nature of non-Robinson-Patman cases instigated by the FTC. Some cases such as section 7 can be viewed as pro-producer, while others, such as false advertising, can be viewed as pro-consumer. Because these different types of cases are considered together, it would make sense for them to lack statistical significance as a whole.

The results after the Hart-Scott-Rodino Act do not support Peltzman's hypothesis. When using **lnunem**<sup>9</sup> as the control for the business cycle, it is statistically insignificant. The FTC budget was also statistically insignificant. The presidential dummy variable, however, was statistically significant at the 1% level with a t-statistic of -2.67. When

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<sup>9</sup> Because unemployment tends to be a lagging indicator of the economy the author used a lagged version of this variable, but it was also statistically insignificant.

controlling for the unemployment rate, the budget for the Bureau of competition, and the total amount of transactions, the FTC under Republican presidents issue 31.8% fewer second requests than the FTC under Democratic presidents.

The results when using the real GDP as a measure of the business cycle provide evidence counter to Peltzman's hypothesis. The coefficient for the **lnRGDP** was -0.512 and statistically significant at the 5% level. This is not the expected sign. There could be various reasons for this anomaly. Second requests could behave differently than actual FTC cases with respect to the business cycle. Antitrust enforcement could have undergone fundamental changes since Hart-Scott-Rodino that make it pro-consumer rather than pro-producer as traditional antitrust enforcement has been viewed, although I find this unlikely. The Bureau of Competition budget, **Incomp**, was statistically insignificant with a coefficient of -0.238. The presidential dummy variable was statistically significant at the 1% level with a coefficient of -0.276, meaning that the FTC in Republican administrations issues 27.6% fewer second requests than the FTC under Democratic administrations.

It is likely that the HSR regression was not a pure test of the Peltzman hypothesis. A challenge to a merger can be viewed in multiple ways. It could be pro-consumer if it prevents monopoly power. However, it can also be anti-consumer if it prevents the more efficient delivery of goods. The latter situation places producers in opposition to each other, with less efficient producers opposing a merger because it would allow their competitors to become more efficient.

Similar regressions, which replaced the **presdummy** variable with another dummy variable representing the tenure of FTC Chairman James C. Miller III, **Miller**, were also employed. The coefficient for **lnRGDP** was -0.794 and statistically significant at the 1% level. Again, this is not the predicted sign. The coefficient for **lnunem** was -1.187 and statistically significant at the 10% level; this differs from the previous regression using the unemployment as a measure of the business cycle when examining second requests. This is also unusual because it has the same sign as lnRGDP, meaning that second requests behave counter to the business cycle when using real GDP, but behave pro-cyclically when using the unemployment rate. The Miller dummy variable was expected to have a negative sign but was not statistically significant in either of the equations.

# **Chapter 7**

## **Conclusion**



The Robinson-Patman cases support Peltzman's hypothesis strongly. This was to be expected because the Robinson-Patman Act is viewed as being blatantly pro-producer and can be expected to be enforced as such. The Robinson-Patman cases also have fewer factors with the potential for spuriousness because it is essentially a price-fixing scheme. Because of the simplicity in which it behaves as pro-producer law, it can be expected to show the strongest results.

The regression using FTC cases net of Robinson-Patman cases did not show support for Peltzman's hypothesis. This is probably due to two reasons. The first is that the FTC is responsible for enforcing some statutes that are inherently pro-consumer, such as laws concerning false advertising and antitrust enforcement. Because the FTC cases net of Robinson-Patman cases have competing objectives, it is understandable that this measure would not confirm Peltzman's hypothesis. Future research could obtain data on the types of FTC cases filed and determine if section 7 cases alone conform to my hypothesis. The second reason that FTC cases do not support Peltzman's hypothesis is the large number of factors affecting a firm's decision to merge. The decision to cut prices (what Robinson-Patman regulates) is much simpler than the decision to merge. This complexity can be expected to introduce other variables that were not accounted for and would be difficult to measure.

The FTC second requests were different from both Robinson-Patman cases and FTC cases. They were different from FTC cases in that the results were statistically significant. They differed from the Robinson-Patman cases in that the results differed

based on the measure of the business cycle used. Resolving this issue could provide fertile ground for future research. The presidential dummy variable was statistically significant and greater in magnitude when looking at the FTC after Hart-Scott-Rodino; this shows support for my hypothesis that antitrust enforcement became more polarized between political parties after the emergence of the Chicago School.

# Appendix I

## Data

**FTC Budget  
(in real 1996 Dollars)**

<b>Year</b>	<b>Total (in 000s)</b>	<b>Year</b>	<b>Total (in 000s)</b>	<b>Year</b>	<b>Total (in 000s)</b>
1916	4647	1946	20933	1976	141469
1917	16717	1947	19336	1977	150472
1918	15214	1948	23871	1978	141124
1919	9453	1949	24237	1979	125703
1920	8371	1950	22762	1980	122161
1921	8919	1951	25500	1981	111820
1922	8768	1952	24547	1982	105342
1923	9267	1953	24547	1983	96873
1924	9055	1954	23599	1984	101448
1925	8935	1955	24157	1985	89735
1926	8990	1956	26230	1986	89776
1927	8880	1957	30802	1987	86875
1928	9616	1958	33579	1988	83819
1929	12005	1959	34961	1989	84216
1930	12840	1960	36254	1990	88158
1931	21051	1961	41996	1991	92675
1932	17521	1962	52025	1992	95145
1933	15386	1963	59051	1993	99076
1934	24021	1964	61309	1994	105012
1935	22976	1965	67366	1995	101000
1936	21126	1966	68134	1996	100690
1937	22211	1967	70216	1997	102996
1938	25776	1968	73970	1998	111130
1939	26286	1969	81642	1999	118449
1940	24549	1970	88470	2000	134663
1941	23427	1971	95614	2001	136928
1942	20750	1972	101396	2002	150931
1943	18570	1973	107953	2003	154491
1944	17948	1974	113627	2004	161479
1945	17491	1975	128843	2005	157990

<b>Bureau of Competition Budget (in real 1996 Dollars)</b>	
<b>year</b>	<b>(in 000s)</b>
1978	63741.83
1979	58567.36
1980	58235.8
1981	54933.99
1982	50318.56
1983	47085.75
1984	43220.74
1985	52345.69
1986	51681.08
1987	50959.35
1988	47932.09
1989	50453.47
1990	30681.33
1991	33448.96
1992	32617.98
1993	28626.38
1994	21259.84
1995	41508.49
1996	40685.00
1997	39948.4
1998	47603.27
1999	49401.84
2000	49904.59
2001	54705.92
2002	56333.12
2003	57635.17
2004	57236.52
2005	58859.59
2006	56577.39
2007	56595.15
2008	54698.53

<b>Cases</b>			
<b>Year</b>	<b>Robinson-Patman</b>	<b>Year</b>	<b>Robinson-Patman</b>
1937	36	1956	31
1938	19	1957	44
1939	35	1958	76
1940	43	1959	74
1941	58	1960	144
1942	19	1961	105
1943	18	1962	41
1944	22	1963	215
1945	23	1964	25
1946	12	1965	12
1947	12	1966	16
1948	43	1967	9
1949	115	1968	4
1950	22	1969	11
1951	18	1970	11
1952	17	1971	12
1953	14	1972	1
1954	15	1973	1
1955	21	1974	6

<b>Cases</b>			
<b>Year</b>	<b>FTC cases (net of Robinson- Patman cases)</b>	<b>Year</b>	<b>FTC cases (net of Robinson- Patman cases)</b>
1916	1	1943	14
1917	20	1944	8
1918	64	1945	6
1919	121	1946	9
1920	18	1947	11
1921	26	1948	11
1922	32	1949	10
1923	50	1950	5
1924	51	1951	18
1925	21	1952	16
1926	4	1953	7
1927	8	1954	11
1928	10	1955	29
1929	17	1956	22
1930	12	1957	16
1931	4	1958	13
1932	3	1959	12
1933	4	1960	26
1934	14	1961	7
1935	30	1962	15
1936	33	1963	9
1937	18	1964	12
1938	28	1965	18
1939	31	1966	19
1940	33	1967	9
1941	32	1968	15
1942	16	1969	15

<b>Business Cycle</b>					
<b>Year</b>	<b>Real GDP (Billions of 1996 Dollars)</b>	<b>Unemployment Rate</b>	<b>Year</b>	<b>Real GDP (Billions of 1996 Dollars)</b>	<b>Unemployment Rate</b>
1916	\$547	0.09	1963	2690	5.64
1917	532	5.10	1964	2847	5.16
1918	581	4.60	1965	3029	4.51
1919	584	1.40	1966	3228	3.79
1920	575	1.40	1967	3308	3.84
1921	561	5.20	1968	3466	3.56
1922	594	11.70	1969	3571	3.49
1923	674	6.70	1970	3578	4.98
1924	690	2.40	1971	3698	5.95
1925	712	5.00	1972	3898	5.60
1926	755	3.20	1973	4123	4.86
1927	764	1.80	1974	4099	5.64
1928	770	3.30	1975	4084	8.48
1929	822	4.20	1976	4312	7.70
1930	752	3.20	1977	4512	7.05
1931	704	8.70	1978	4761	6.07
1932	612	15.90	1979	4912	5.85
1933	603	23.60	1980	4901	7.18
1934	668	24.90	1981	5021	7.62
1935	728	21.70	1982	4919	9.71
1936	823	20.10	1983	5132	9.60
1937	866	16.90	1984	5505	7.51
1938	836	14.30	1985	5717	7.19
1939	904	19.00	1986	5912	7.00
1940	981	17.20	1987	6113	6.18
1941	1149	14.60	1988	6368	5.49
1942	1360	9.90	1989	6592	5.26
1943	1584	4.70	1990	6708	5.62
1944	1714	1.90	1991	6676	6.85
1945	1693	1.20	1992	6880	7.49
1946	1506	1.90	1993	7063	6.91
1947	1495	3.90	1994	7348	6.10
1948	1560	3.90	1995	7544	5.59



1949	1551	6.05	1996	7813	5.41
1950	1687	5.21	1997	8160	4.94
1951	1815	3.28	1998	8509	4.50
1952	1887	3.03	1999	8859	4.22
1953	1974	2.93	2000	9191	3.97
1954	1961	5.59	2001	9215	4.74
1955	2100	4.37	2002	9440	5.78
1956	2141	4.13	2003	9501	5.99
1957	2184	4.30	2004	9857	5.54
1958	2163	6.84	2005	10153	5.08
1959	2319	5.45	2006	10428	4.61
1960	2377	5.54	2007	10641	4.62
1961	2432	6.69	2008	10471	5.80
1962	2579	5.57			

**Second Requests and Total  
Transactions under Hart-Scott-  
Rodino**

<b>Year</b>	<b>Second Requests</b>	<b>Total Transactions</b>
1978	23	355
1979	58	868
1980	36	824
1981	46	762
1982	26	713
1983	20	903
1984	37	1119
1985	24	1301
1986	32	1660
1987	18	2170
1988	39	2391
1989	35	2535
1990	55	1955
1991	33	1376
1992	26	1451
1993	40	1745
1994	46	2128
1995	58	2612
1996	36	2864
1997	45	3438
1998	46	4575
1999	43	4340
2000	43	4749
2001	27	2237
2002	27	1142
2003	15	968
2004	20	1377
2005	25	1610
2006	28	1746
2007	31	2108
2008	21	1656

# **Appendix II**

## **Regression Results**

<b>Log of Robinson-Patman Cases</b>			
<b>1937-1974</b>			
<b>Independent Variable</b>	<b>Real GDP</b>		<b>Unemployment</b>
lnRGDP	-3.91		
	(-2.30)		
lnunem			2.17
			(3.14)
lnftcbud	1.557		0.323
	(1.01)		(0.14)
presdummy	.016		-0.254
	(0.04)		(-0.53)
Time	0.7737		0.852
	(4.07)		(2.91)
Time <sup>2</sup>	-0.009		-0.010
	(-2.89)		(-2.52)
Constant	-9.51		-21.99
Number of Observations	38		38
F (5, 32)	7.15		8.56
R <sup>2</sup>	0.5277		0.5271
Adjusted R <sup>2</sup>	0.4539		0.6156

<b>Log of FTC Cases</b>			
<b>1916-1969</b>			
<b>Independent Variable</b>	<b>Real GDP</b>		<b>Unemployment</b>
lnRGDP	1.37		
	(1.62)		
lnunem			-0.567
			(-1.33)
lnftcbud	1.07		-1.07
	(2.33)		(-0.82)
presdummy	.023		0.047
	(0.11)		(0.17)
Time	-0.127		0.200
	(-3.40)		(0.64)
Time <sup>2</sup>	0.0004		-0.001
	(0.79)		(-0.33)
Constant	-22.01		16.02
Number of Observations	53		53
F(5, 47)	3.31		2.64
R <sup>2</sup>	0.2605		0.2193
Adjusted R <sup>2</sup>	0.1818		0.6156

<b>Log of FTC Cases</b>			
<b>1916-1950</b>			
<b>Independent Variable</b>	<b>Real GDP</b>		<b>Unemployment</b>
lnRGDP	1.47		
	(1.45)		
lnunem			0.0765
			(0.41)
lnftcbud	1.40		1.13
	(2.49)		(1.92)
presdummy	-0.39		-0.25
	(-0.96)		(-0.59)
Time	-0.179		-0.193
	(-2.44)		(-2.31)
Time <sup>2</sup>	0.0009		0.003
	(0.44)		(1.41)
Constant	-27.46		-13.73
Number of Observations	33		33
F(5, 27)	4.38		3.73
R <sup>2</sup>	0.4479		0.4088
Adjusted R <sup>2</sup>	0.3457		0.2994

<b>Log of FTC Cases</b>			
<b>1950-1969</b>			
<b>Independent Variable</b>	<b>Real GDP</b>		<b>Unemployment</b>
lnRGDP	7.23		
	(1.36)		
lnunem			-0.618
			(-0.84)
lnftcbud	-1.16		-0.961
	(-0.80)		(-0.64)
presdummy	0.014		0.038
	(0.05)		(0.13)
Time	-0.111		0.112
	(-0.88)		(0.73)
Time <sup>2</sup>	-0.004		-0.0021
	(-0.61)		(-0.29)
Constant	-31.96		19.49
Number of Observations	19		19
F(5, 27)	0.59		0.35
R <sup>2</sup>	0.1847		0.1177
Adjusted R <sup>2</sup>	-0.1288		-0.2217

<b>Log of FTC Second Requests</b>			
<b>1978-2008</b>			
<b>Independent Variable</b>	<b>Real GDP</b>		<b>Unemployment</b>
lnRGDP	-0.512		
	(-2.14)		
lnunem			-0.107
			(-0.26)
lncompetitionbudget	-0.238		-0.39
	(-1.14)		(-1.46)
presdummy	-0.27		-0.319
	(-2.51)		(-2.67)
Intotal	0.276		0.0887
	(2.42)		(0.59)
Constant	8.71		7.41
Number of Observations	31		31
F( 4, 26)	7.01		5.01
R <sup>2</sup>	0.5187		0.4353
Adjusted R <sup>2</sup>	0.4447		0.3485



<b>Log of FTC Second Requests (With Miller Dummy Variable) 1978-2008</b>			
<b>Independent Variable</b>	<b>Real GDP</b>		<b>Unemployment</b>
lnRGDP	-0.795		
	(-2.80)		
lnunem			-1.18
			(-1.89)
lncompetitionbudget	-0.255		-0.861
	(-1.11)		(-2.73)
Miller	-0.164		0.356
	(-1.03)		(1.57)
Intotal	0.361		-0.083
	(3.05)		(-0.46)
Constant	10.62		7.41
Number of Observations	31		31
F( 4, 26)	4.81		3.39
R <sup>2</sup>	0.4251		0.3426
Adjusted R <sup>2</sup>	0.3366		0.2414

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