

Transparency and Antitrust

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Overview

- Antitrust is important, difficult
- Transparency exacerbates difficulty
- Transparency should be about process
 - Not rules or details
- Strategic use of rules/process threaten success
- Antitrust is a nuclear weapon
 - Requires deft use
- Conclusion

Some Mergers are Harmful

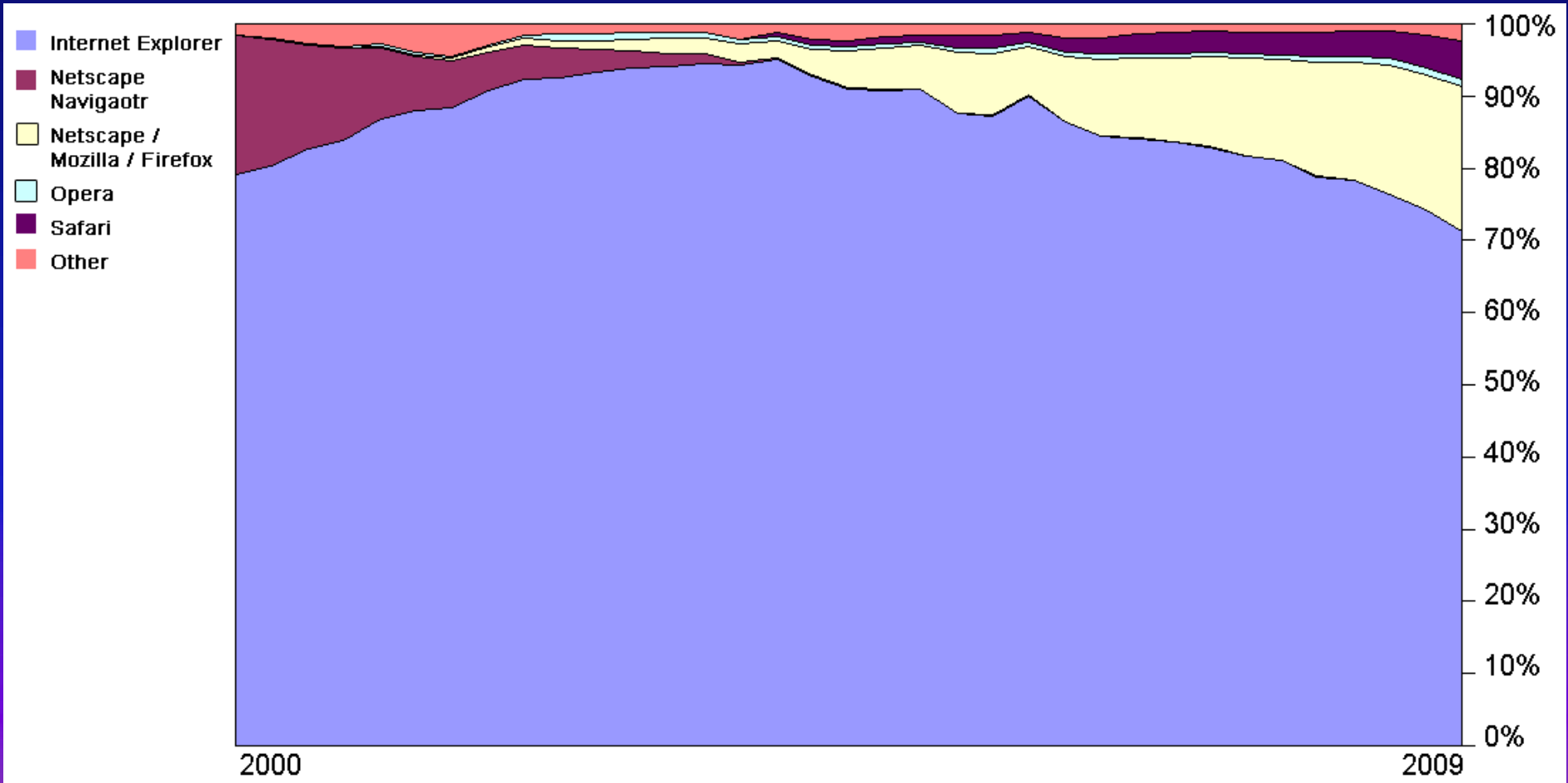
- 1979 Xidex buys Kalvar
- Leading makers of non-silver microfilm
- Xidex closes Kalvar plant, fires workers
- Prices in 1980 rise 25%

- **Antitrust matters**

Some Mergers are Beneficial

- Lockheed/Martin Marietta produces stealthy cruise missile
- 1969 RJ Reynolds acquires Miller Brewing, leads to light beer
- **Non-trivial antitrust problem**

IE Market Share



Durability of Monopoly

- Incentive to engineer around monopoly
- USPS monopoly power lasts 40+ years
 - Faxes, Fedex, email
- Microsoft Internet Explorer lasts < 5 years
- Potential harm depends on durability

Incomplete Framework

- Incomplete understanding of durability
- Many mergers represent a tradeoff
 - Increased competitiveness of a firm
 - Increased risk of monopoly power
- Even merging firms have trouble predicting outcomes
 - Sony/Columbia Pictures
 - GM/EDS
 - Daimler/Chrysler

Brightline Rules

- Brightline rules will make serious errors
 - e.g. “35% market share is too much”
- “Let guidelines be guidelines”
- Transparency should be about process, not rules
- Transparency is a continuum
 - Perfect transparency is infinitely costly

Transparency Tradeoffs: +/-

- Encourages brightline, erroneous rules
- Burden on Commission
 - Not amenable to sound bites
- Discourages investigations to minimize cost
- Cases brought to prevent precedents
- Increases delay of lengthy process
- Reveals current resource state
- Encourages declining standards

Transparency Tradeoffs, Continued

- Risk of revealing confidential information
 - Commission relies on disclosures by third parties
- Self-compliance
 - Reduces burden on Commission
- Fosters accountability
- Reduces personal bias
- Increase in public confidence in process
- Fosters international reconciliation

“Optimal” Transparency

- Most of the benefits from transparency come from clarity about process
- Most of the costs of transparency come from revelation of detail
- Optimal transparency is open about process, closed about detail

Strategic Abuse of Process

- Antitrust is a competitive tool
- Firms serve shareholders, not public
- Threatens integrity, legitimacy of process
- Not avoidable
 - Commission must rely on third parties
- In some cases used to prevent competition
 - Antitrust deterring entry
 - Entry is most important socially

Strategic Antitrust and Transparency

- Transparency reveals “pressure points”
- Transparency reveals target
 - “35% safe harbor”
- Lowers cost of strategic antitrust
- Encourages more strategic manipulation
- May make everyone – firms and public – worse off!

Aside: Private Antitrust Suits

- US has long history of firms suing rivals
- Potential for abuse is huge
 - Small entrants can't afford antitrust suit
- Threat to entry very serious

Antitrust as Nuclear Weapon

- Antitrust trials are huge
- Exxon-Mobil
- How to use a nuclear weapon:
 - “trembling hand”
 - Never a brightline threat
 - Increased risk of Armageddon
- Transparency interferes
- A certain amount of ambiguity necessary
 - Negotiate fixes

Conclusion

- Hippocratic Oath of Antitrust:
 - DO NOT DETER ENTRY
- Framework incomplete
- Transparency about process, not rules
- Reveal process and procedures, not details
- Need check on antitrust power
- Problem of strategic abuse thorny, growing