

# What Structural Presumption?

Reuniting Evidence and Economics on the Role of Market Concentration in Horizontal Merger Analysis

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# What Structural Presumption?

## Rebuttable Presumption

Procedural device that shifts the burden of production

VS

## Substantive Inference

Circumstantial inference based on economic theory

- ① Caselaw History
- ② Positive Analysis
- ③ Normative Analysis

# Caselaw History

## Lower Courts

Baker Hughes (1990)

Three part burden-shifting  
rebuttable presumption

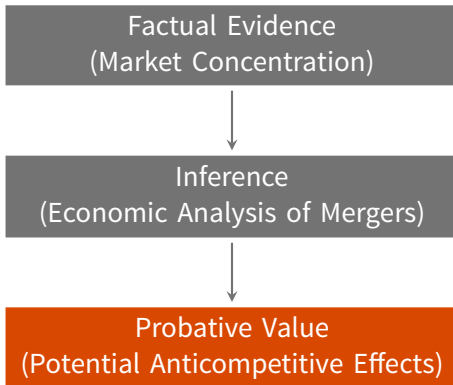
VS

## Supreme Court

Phil. Nat. Bank (1963)

Strong substantive inference  
based on economic thinking

# Substantive Inference



# Caselaw History

## Lower Courts

Baker Hughes (1990)

Three part burden-shifting  
rebuttable presumption

VS

## Supreme Court

Phil. Nat. Bank (1963)

Strong substantive inference  
based on economic thinking

- ① Caselaw History
- ② **Positive Analysis**
- ③ Normative Analysis

## Market Concentration Evidence

- ① Intrinsically probative in degree
- ② Probative regardless of presumption



- ① Caselaw History
- ② Positive Analysis
- ③ Normative Analysis

# Artificial Undervaluation

## Presumption Paradox

The rebuttable presumption framework diminishes the effective probative weight of market concentration evidence

# Implications

- ① Antitrust Applications
- ② Generalizations