John Kwoka, Mergers, Merger Control, and Remedies (MIT Press 2015)

This is an excellent book which is hard to do justice to in a short book note. Professor Kwoka is a distinguished economist at Northeastern University and has published probably the most complete and detailed examination of merger retrospective studies in the United States. He has taken a comprehensive compilation of thousands of qualifying empirical studies of individual and groups of mergers to provide insight into the effects of mergers on both price and non-price variables as well as the effectiveness of antitrust policy towards mergers.

Following an introduction, Chapter two provides an overview of merger and merger policy in the United States. Chapter 3 describes and evaluates the various methods for assessing the effects of consummated mergers. Chapter 4 provides a more detailed look at the difference in difference method used in most reliable merger studies. This is basically calculating the price increases for a particular merger and subtracting the price increases (if any) in a market unaffected by the merger while controlling for factors affecting price unrelated to the merger itself. Chapter Five illustrates how this methodology works in two actual case studies and the strengths and weaknesses of this tool.

The finding for Professor Kwoka’s study is set forth in chapters six through nine. Chapter 6 analyzes the price effects and other results of the study of more than one hundred different products affected by the mergers and related transactions in the qualifying studies. Chapter seven aggregates these effects for the transactions involved.

Chapter eight applies this data set to the question of the effectiveness of merger remedies particularly conduct remedies where the US enforcement agencies imposed some behavioral, rather than structural, remedies. Chapter nine looks at retrospective studies of groups of mergers in the same industry (mostly petroleum and hospitals). Chapter ten provides the policy implications of this massive study of the universe of previous merger retrospectives. Helpful appendices are included summarizing all the individual and group merger retrospectives considered by Professor Kwoka.

The best takeaway can be provided in Professor Kowka’s own words:

“[These results suggest that merger policy at the margin has been excessively permissive. These studied mergers appeared to be cleared too often. Where they are not cleared, remedies do not appear adequate to the task of preventing postmerger price increases. Conduct remedies are, by this evidence, singularly ineffective. All in all, both investigations and policy actions appear to err on the side of permissiveness, with the result that too few mergers are challenged, and too few of those that are challenged are subject to either adequate remedies or opposition by the antitrust agencies.” (120-21).

This is a serious and sobering study of merger effects and merger policy and will be of interest to antitrust enforcers, practitioners, economists, and members of the judiciary. Although technical is places, I also hope that the results and recommendations of this book make their way into the general press and public debate as merger policy continues to evolve in both the United States and abroad.