

Antitrust Issues for Iowa Ready Mixed Concrete Association

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Why is it relevant to me?

- The relevant “market” for a particular good can cross international boundaries, but just as likely, it can be limited to a twenty-five-mile radius.
- Each of us practices in an area where there are relevant markets that are limited to the county our office is located in.

Antitrust Economics

- Monopoly behavior:
 - A monopoly is a market dominated by a single firm.
 - A monopolist can increase its revenue by reducing output.
 - Firms violate antitrust laws so they can charge monopoly prices.

Per Se v. Rule of Reason

- Antitrust analysis takes two forms:
 - Activities that are illegal by their nature are “per se” violations. When a per se violation is committed the court does not consider if there has been a harm to competition.
 - Activities that are potentially harmful to competition under the applicable antitrust statutes, but which are not per se violations are analyzed under the “rule of reason.”

Per se illegal activities

- Horizontal price fixing → Competitors agreeing to only sell at a certain price.
- Coke and Pepsi agreeing that they will sell all cans of pop for \$1.00.



Per se illegal activities

- Horizontal territory or customer division
- Competitors agree that they will not compete with each other for certain customers or in defined geographic areas.

College Football Presented by Best Buy - ESPN on ABC
Wisconsin @ Penn State, South Carolina @ North Carolina, Texas A&M @ Texas Tech, Arizona @ USC
Saturday, October 13, 2007 3:30PM - 7:00PM ET (12:30PM - 4:00PM PT)



Per se illegal activities

- Group boycotts. Competitors cannot agree to not sell (or otherwise effect a non-favorable market condition) to certain customers.
- Coke and Pepsi agreeing not to sell pop to Caseys.

Per se illegal activities (sometimes)

- **Tying Arrangements** → Requiring the purchase a second product as a condition of purchasing the primary product.
- Only per se illegal if the defendant has a “non insubstantial” amount of market power and can force the purchase of the tied product. *See Northern Pacific Rwy. Co. v. U.S.*, 356 U.S. 1 (1958).



What are not per se illegal activities?

- Everything else.
- Any other activity you believe may create an anti-competitive effect through monopolization, attempted monopolization, predatory pricing or discriminatory pricing will be analyzed under the rule of reason.

Rule of Reason Analysis

- The key inquiry under the rule of reason for any potential antitrust claim is whether there is an **injury to competition**. Absent an injury to competition there is no claim. The second necessary component of most antitrust violations under the rule of reason is an “**intent to restrain trade.**”

Rule of Reason → Injury to competition

- The factors that should be considered when determining if a particular behavior creates a risk of injury to competition are as follows:
 - The market power of the firm(s) at issue.
 - The pro-competitive justification for actions in question.

Market Power

- “The power to force a purchaser to do something that he would not do in a competitive market.” *Eastman Kodak Co. v. Image Technical Serv.’s, Inc.*, 504 U.S. 451, 464 (1992) (internal citations omitted).

Relevant (geographic) Market

- If the (only) truck dealership in Oxford, Iowa attempted to charge monopoly prices for its pick-ups, what would happen?
- People who may have otherwise bought their truck in Oxford will travel to Iowa City to buy their truck.
- Accordingly, the city of Oxford, Iowa is not a “relevant market” for the sale of pick-up trucks.

Relevant (product) Market

- Are there good substitutes available?
- Chevy and Ford pick-ups are reasonably interchangeable; therefore, there are not separate relevant markets in a given geographic region for Ford and Chevy; rather, there is a single market for pick-ups.

Short-cut to determining market power:

- If a firm attempted to charge monopoly prices would its customers travel to find new suppliers and/or would new suppliers enter the market in time to protect consumers?

Pro-Competitive Justification

- R&D



- Economies of Scale



- Economy of Distribution



- Activities that protect consumers



Intent to restrain trade

- What constitutes “intent” in antitrust cases is ambiguous.
- As a consequence, for purposes of analyzing whether an antitrust violation has potentially taken place assume that “intent to restrain trade” can be shown.
- The intent requirement is generally viewed as antiquated because it is so difficult to distinguish intent to damage competition and intent to operate successfully.

Intent to restrain trade

- An email from an employee stating that a new advertising campaign is “going to blow the competition out of the water.”



Thanks very much!

- Feel free to call to talk over an issue.
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