The Antitrust Review of the Americas

Published by GLOBAL COMPETITION REVIEW
in association with
Araújo e Policia Advogados
Baker & Miller PLLC
Barbosa Müssnich & Aragão
Brigard & Urrutia Abogados
Cohen Milstein Hausfeld & Toll PLLC
Cornerstone Research
Davies Ward Phillips & Vineberg LLP
De Dios & Goyena
Fasken Martineau DuMoulin LLP
Fraser Milner Casgrain LLP
Goodmans LLP
Goodrich Riquelme y Asociados
Helling, Lindeman, Goldstein & Siegal LLP
Hogan & Hartson LLP
Howrey LLP
Hunton & Williams LLP
Katten Muchin Rosenman LLP
Latham & Watkins LLP
Mattos Muriel Kestener Advogados
Mayer Brown
McCarthy Tétrault LLP
Mcmillan Binch Mendelsohn LLP
Munger Tolles & Olson LLP
Ogilvy Renault LLP
Proskauer Rose LLP
Simpson Thacher & Bartlett LLP
Stephens & Johnson LLP
Sullivan & Cromwell LLP
Weil Gotshal & Manges LLP

2008

THE QUEEN’S AWARDS
FOR ENTERPRISE
2006

WWW.GLOBALCOMPETITIONREVIEW.COM
Identifying Monopolising Conduct Under Section 2 of the Sherman Act

The Antitrust Practice Group
Sullivan & Cromwell LLP

A persistent issue in US antitrust law is the accurate prediction of the conduct that, when undertaken by a firm with monopoly power, will constitute monopolisation under section 2 of the Sherman Act.1 Fifty years ago, the US Supreme Court determined in United States v. Grinnell Corp2 that a firm with monopoly power did not violate section 2 of the Sherman Act merely by continuing to exist. Instead, Grinnell held that some affirmative conduct was necessary and that this conduct needed to constitute “the willful acquisition or maintenance of [monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen or historic accident.”3

For at least two reasons, this clearly sensible, but extremely general, conceptual standard has bedevilled businesses and their lawyers ever since. First, the Grinnell standard has, to some degree, evolved into a group of standards, requiring businesses properly to pigeonhole their conduct into a category in order to be sure it is being properly analysed. With sophisticated modern business strategies that look like one thing, but act like another, this can be difficult and potentially risky.4 Second, all of the standards are somewhat imprecise and highly fact-dependent, giving rise to varying outcomes on seemingly small changes in facts that may not have appeared significant or may not have been fully known to advisers and senior executives at the time of the conduct. This outcome fact-dependency puts a real premium on businesses taking the time and effort to make sure that they have all the facts before they conclude that particular conduct will not raise an antitrust issue.

The challenges presented by the multitude and ambiguity of standards for judging section 2 conduct were discussed by the Antitrust Modernization Commission5 in its April 2007 ‘Report and Recommendations’. The Commission focused, in particular, on the value of having a single clear standard that would be applicable to all potentially monopolising conduct.6 While providing useful insights regarding the advantages and disadvantages of four different possible standards, the Commission did not conclude that any of them could adequately distinguish competitively beneficial or neutral conduct from competitively harmful conduct in all circumstances.7 Indeed, in its report, the Commission simply settled on the term “unreasonably exclusionary conduct” to convey its recognition that even pro-competitive conduct can result in excluding less efficient, effective or innovative competitors, and so only unreasonably exclusionary conduct should serve as a basis for section 2 liability.8

For the present, businesses and their lawyers are left without a single, uniform guideline or even a particularly definitive set of guidelines for analysing whether conduct undertaken by a firm with significant market power will be seen as unreasonably exclusionary. This article will not try to solve that problem but, more modestly, will provide an overview of the treatment of broad categories of conduct that can serve at least as a checklist for spotting issues and beginning to analyse whether conduct may give rise to liability if undertaken by a firm with a substantial market position.

Pricing conduct
Charging high prices
Even though a monopolist’s high prices will harm consumers, at least in the short term, a monopolist is free unilaterally to charge as high a price as it can.9 Indeed, charging high prices is viewed merely as the monopolist’s enjoying the fruits of its monopoly,10 as an essential incentive for innovators and risk takers,11 and, potentially, as a pro-competitive invitation to entry by new competitors.12

Charging low prices
Charging low prices will also not constitute monopolising conduct unless those prices satisfy a below-cost pricing standard established by the US Supreme Court in Brooke Group Ltd v Brown & Williamson Tobacco Corp.13 This rigorous standard – designed to avoid chilling the consumer welfare benefit of lower prices, while still protecting competition – requires two elements. First, the alleged monopolist’s prices must be “below an appropriate measure” of its costs. Second, the alleged monopolist must be likely to “reco[m]p its investment in below-cost prices” by successfully and durably excluding sufficient competition to enable the monopolist subsequently to increase prices to earn back its earlier investment.14

Unfortunately, the Supreme Court has not yet provided any additional guidance as to the most “appropriate measure” of costs against which to compare a monopolist’s prices. The lower courts, although devoting substantial attention to analysing this issue, also have not settled on a single measure of costs. For example, the Second Circuit and the Fifth Circuit favour average variable cost as the dividing line between prices that are predatory and prices that are not.15 In contrast, the Ninth Circuit has created a more complicated standard that wholly immunises only those prices that are above average total cost and distinguishes between prices above and below average variable cost by shifting the burden of proving lack of competitive harm to the defendant when prices are below average variable cost.16

Buying inputs at high prices
Although probably occurring rarely, predatory buying has been a recent focus of attention, culminating in a Supreme Court decision in February 2007 holding that the permissibility of buying inputs at high prices should be assessed under the same rigorous Brooke Group standard discussed in the previous section. In Weyerhauser Co v Ross-Simmons Hardwood Lumber Co, Inc,17 the Supreme Court defined predatory bidding as consisting of a monopolist’s bidding up the market price of a critical input to such high levels that rival buyers of the input cannot survive (or compete as vigorously) and concluded that such conduct was analytically similar to predatory selling by a monopolist. In particular, the Supreme Court observed that both claims “logically require” the buying or selling firm to incur short-term losses in the expectation that it may reap supra-competitive profits in the future.18

In essence, the Court concluded that predatory selling (pricing) and predatory buying are just two different methods for causing selling prices to be below costs. In the context of predatory selling, the monopolist chooses a selling price for its output that is below the existing cost of its inputs. In predatory bidding, the alleged monopolist aggressively purchases an input to drive up the input’s price and to increase the monopolist’s costs so that the existing selling

---

price for its output is again below its costs.

In the predatory buying situation, just as with predatory selling, unless competitors are more efficient than the monopolist, they are forced to pay the same inflated price for the input and, as a result, are forced to sell output below cost at a loss. If these losses drive sufficient competition from the market, the monopolist can recoup its losses by raising prices in the output market, by lowering the prices it offers for the input, or both.

As discussed in the preceding section, while the Brooke Group standard has received wide support, it is still in development with respect to the “appropriate measurement” of costs to be used. As discussed in this firm’s article in the Antitrust Review of the Americas 2007, it likely will be necessary to refine the Brooke Group standard, when applied to predatory buying, even more in order to distinguish accurately between perfectly permissible competitive purchasing activities and predatory bidding activities that can destroy competition. Among other things, it might be necessary to include an element of causation to ensure that the output prices are below costs solely due to the alleged predatory bidding conduct. Unlike the application of the Brooke Group standard to predatory selling, where the alleged monopolist selects or agrees to its price with presumably fairly complete knowledge of the costs below which it is setting its price, an alleged monopolist may purchase inputs without an ability to control, and without timely knowledge of, the output price levels that will prevail when the input is used. This issue was not addressed by the Supreme Court. It also did not address whether the Brooke Group standard would be workable if the plaintiffs in a monopsony buying case were a supplier of the input, claiming to have been harmed when the alleged monopsonist recoups its losses by ultimately lowering input prices. The Court did hint, however, that the latter situation may be different in some unspecified manner.19

Volume discounts
A straightforward volume discount on a single product that is designed to encourage more purchases or to reward loyal customers does not constitute monopolizing conduct (unless the prices somehow run afoul of the Brooke Group predatory pricing standard). In Advo, Inc v Philadelphia Newspapers, Inc,20 the Third Circuit held that volume discounts “offend no antitrust principles”. Even in LePage’s Inc v 3M Co,21 in which the Third Circuit condemned bundled discounts (discussed in the next section), the court stated that “volume discounts ... are concededly legal and often reflect costs savings”.22

Bundled discounts
In contrast to volume discounts, bundled discounts – discounts provided to customers who buy specified quantities across multiple product lines – are viewed more suspiciously. Unfortunately, bundled discounts may also be analysed according to very different standards by different courts.

The Third Circuit has been most prominent in condemning bundled discounts as unnecessarily exclusionary.22 In LePage’s, the Third Circuit summarily rejected the argument that bundled discounts could constitute monopolizing conduct only if the bundle’s price were somehow below cost. The Third Circuit instead analysed bundled discounts to trying by a monopolist:

The principal anticompetitive effect of bundled rebates . . . when offered by a monopolist [is that] they may foreclose portions of the market to a potential competitor who does not manufacture an equally diverse group of products and who therefore cannot make a comparable offer.23

Thus, at least in the Third Circuit, a monopolist’s offering of bundled discounts is most risky when the bundle includes products that competitors cannot offer.24

The LePage’s decision has been widely criticised for, among other things, failing to determine whether the bundled discounts were excluding an equally or a less efficient competitor – in other words, whether the bundle involved below-cost pricing. Other courts that have considered bundled rebates have required, as a precondition to liability, some demonstration of below-cost pricing or that the plaintiff was at least an equally efficient competitor.25

The Antitrust Modernization Commission chose bundled discounts as one of only two specific categories of potentially monopolising conduct for which it urged improved standards. It recommended application of a Brooke Group-like below-cost pricing test to assess the permissible of bundled discounts. Specifically, the Commission suggested that bundled discounts should be held to be improper monopolising conduct only if a plaintiff showed three things:

• that the alleged monopolist sold the competitive product below its incremental cost for the competitive product, attributing all discounts and rebates given on the entire bundle of products solely to the competitive product;

• that the alleged monopolist is likely to recoup the short-term losses; and

• that the bundled discount or rebate programme has had or is likely to have an adverse effect on competition.26

One recent 9th Circuit case, Cascade Health Solutions v Peace-Health,27 has applied the first of the Commission’s three elements (“discount attribution”) and used average variable cost as the “appropriate measure” of costs, but rejected the second element (recoupment) as inappropriate in bundled discount situations, and also rejected the third element as redundant. This case suggests that prices above average variable cost, when all discounts are allocated to the competitive product, may be safe, although a below-cost bundled discount is obviously very risky. Most importantly, as with any conduct contemplated by a firm with substantial market power, a proposed bundled discount should be carefully analysed as to its likely impact on competition so as to judge whether it will be perceived as competition on the merits or as a customised vehicle for reducing competition.

Price discrimination
Price discrimination – charging different customers different prices – will not generally constitute exclusionary conduct for section 2 purposes. Instead, like charging high prices, price discrimination merely enables a monopolist to enjoy more fully the fruits of its market position. By charging customers different prices, a monopolist maximises its profits by extracting as much as it can from each customer based upon the customer’s particular preferences and need for the monopolist’s product or service. The only limitation on a monopolist’s price discrimination is the Brooke Group prohibition on below-cost pricing28 and, in the case of competing purchasers of the monopolist’s product, the Robinson-Patman Act.29

Most favoured nations clauses
Most favoured nations (MFN) clauses typically insure that a buyer of goods or services receives the best price that the seller offers any of its customers. A number of cases, particularly in the health insurance industry, have reviewed MFN clauses and found no section 2 violation.30 Some of these and other decisions have recognized in dicta, however, that MFN clauses may have the potential, in particular circumstances, to exclude competitors.31 Thus, although MFN clauses typically raise no antitrust issues, a clause that would act
primarily to delay or exclude new entry in a given market setting should be reviewed closely for potential competitive effects before implementation.

**Non-price conduct**

**Refusals to deal**

For more than 75 years, it has been well-established that, as a general matter, businesses are free to refuse to deal with competitors, customers and suppliers. This right to refuse to deal, particularly with respect to rivals, was recently reaffirmed by the US Supreme Court in *Verizon Communications Inc v Law Offices of Curtis V Trinko LLP*.33 and there is no doubt that the Court intended to convey that this right was broad, well-established and applicable to firms with a substantial market position.

Nonetheless, *Trinko* has clearly left open the possibility of at least a narrow obligation to deal with a rival in certain circumstances. The Court in *Trinko* affirmed its previous warning (in *Aspen Skiing Co v Aspen Highlands Skiing Corp.*, a case in which the Court condemned a refusal to deal) that the right to refuse was not entirely “unqualified” and stated that “under certain circumstances” a refusal to cooperate with rivals could violate section 2.34 Although the Court characterised Aspen Skiing as being “at or near the outer boundary of section 2 liability” and as a “limited exception,” the Court did not overrule that case. Unfortunately, the Court also did not make entirely clear what placed Aspen Skiing at or near the limit of liability or the “certain circumstances” that could give rise to liability. *Trinko* does give some hints, however, as to the factual circumstances that are more or less likely to matter.

First, because *Trinko* highlighted the risk of collusion and the destruction of incentives in forcing rivals to deal with one another, the risk of refusing to initiate horizontal dealings with a rival is probably extremely low. The risk is probably somewhat greater, however, when engaging in a vertical refusal or both a horizontal and vertical refusal35 to deal with a rival, or when refusing to deal with a customer that results in a direct impact on other competitors and competition.36 It should be noted that the Antitrust Modernisation Commission has expressed the strong view that a refusal to deal with a rival in the same market (ie, horizontal dealings as opposed to vertical dealings) should never constitute unlawful conduct for a monopolist.37 The Commission at least implicitly acknowledges that a vertical refusal to deal, eg, declining to supply a key input, may not be permissible in all circumstances.38

Second, Trinko’s discussion and characterisation of the key evidence in *Aspen Skiing* indicates that evidence of a “willingness to forsake short-term profits to achieve an anticompetitive end” is considered significant, although not necessarily determinative.39 In *Aspen Skiing*, the two evidentiary signals of the willingness to forego short-term profits were the monopolist’s unilateral termination of a pre-existing, voluntary (and presumed profitable) course of dealing with its rival and its refusal to sell to the competitor products on the same terms that it already sold those products to the public. *Trinko* did not, however, hold that a duty to deal arises whenever short-term profits are sacrificed and, arguably, the *Trinko* court’s discussion of *Aspen Skiing* was dicta. It is also notable that, while reviewing a number of potentially clarifying tests for refusals to deal, the Antitrust Modernisation Commission recommended none and found shortcomings in the “profit sacrifice test”.40

**Tying**

If a firm with monopoly power in one product conditions the sale of that product (the ‘tying product’) on the purchaser’s also buying the tied product (the ‘tied product’), this conduct can unquestionably serve as the exclusionary conduct required for a violation of section 2 of the Sherman Act.41 Attacks on tying conduct under section 2 (as opposed to section 1 of the Sherman Act) will generally be analysed under a ‘rule of reason’ balancing approach that seeks to identify the impact on competition in either the tied or tying product market and will balance that harm against any pro-competitive justification offered by the alleged monopolist.42

**Exclusive Dealing**

Exclusive dealing – requiring a buyer to purchase products or services for a specified period of time exclusively or almost exclusively from one supplier – may, in certain circumstances, serve as the conduct basis for a violation of section 2 of the Sherman Act. And it may do so even though the foreclosure of competitors was not as substantial as the 40 or 50 per cent foreclosure that is frequently required for an exclusive contract to constitute a violation of section 1 of the Sherman Act or section 3 of the Clayton Act, both of which also cover this conduct.43

A firm with substantial market power should carefully review the impact of any exclusive agreements, individually and in total, on barriers to entry and competition in general to avoid a potential challenge under section 2 of the Sherman Act. In particular, any such firm should review the strength of its business justification for the exclusive arrangements. Although exclusive dealing is viewed as having potential pro-competitive justifications in many circumstances, these typical justifications may not be persuasive for a firm that already has a substantial market position.44

In addition, a firm with substantial market power should be alert, given the *Lepage*’s decision, to determine whether its pricing and other practices give rise to circumstances that a court might deem to be effectively exclusive dealing arrangements even where the contract does not explicitly require exclusivity.45

**Deception in standard-setting**

In the *Rambus* case, the FTC found that deceptive conduct in connection with participation in standard-setting activities constituted exclusionary conduct under section 2.46 Failure to disclose actual or pending patents covering the technology being adopted as the standard, especially when alternative technologies are under consideration and when disclosure is required or reasonably expected by the standard-setting body, is very risky after *Rambus*.47 The danger to competition arises once the standard had been adopted, is being widely used and is too costly to change. In effect, the deception is seen as leading a standard-setting body to unwittingly hand the dissembling patent owner a monopoly that the patent owner can exploit by charging higher licence fees than it could have without the single-technology standard.48

The *Rambus* case was based on fairly unique facts and should not be seen as generally transforming all allegedly deceptive conduct into monopolising conduct. The FTC drew a sharp distinction between misleading statements in advertising in a rough-and-tumble marketplace and those made “in the context of a standard-setting process in which members expected each other to act cooperatively.” Nonetheless, other cases have considered deception as an integral part of a course of dealing (in contexts other than standard-setting) and have found the full course of dealing to constitute monopolising conduct for purposes of section 2.49

**Monopoly leveraging**

*Berkley Photo, Inc v Eastman Kodak Co*50 described monopoly leveraging as using monopoly power in one market to gain a “competitive advantage” in another market and held that such conduct could constitute an independent basis for finding a violation of section 2.51 Today, after *Trinko*, in which the Supreme Court also dealt with monopoly leveraging, there is little, if anything, left of monopoly leveraging as an independent basis for section 2 liability.
In Trinko, the Court made clear that a leveraging claim “presupposes anticompetitive conduct” in the second market (in other words, not just a competitive advantage) and that there must also be at least a dangerous probability of success in monopolising the second market. In effect, the Court concluded that the monopoly leveraging label adds nothing and that exclusionary conduct, such as that described elsewhere in this article, must be shown to establish a violation of section 2.

**Conclusion**

Needless to say, the 11 broad categories of conduct discussed in this paper do not cover every possible variation of a monopolist’s conduct. As the DC Circuit stated, anti-competitive conduct “can come in too many different forms, and is too dependent upon context, for any court or commentator ever to have enumerated all the varieties.” The safest approach is always to step back, collect all the relevant facts and take a serious and objective look at the likely effect of the conduct on competition under a general rule of reason standard that considers all the circumstances and asks whether a judge and jury are likely to conclude that the conduct is just fair competition or is instead an effort to eliminate competition.

**Notes**

1 Section 2 of the Sherman Act, 15 USC, reads in the pertinent part as follows: “Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize . . . shall be deemed guilty . . .”


3 384 US at 571.

4 For example, in Lepage’s Inc v 3M Co, 324 F3d 141 (3d Cir 2003), 3M argued that its conduct was just a pricing strategy to be judged according to standards for predatory pricing. The Third Circuit, however, held that the conduct was more analogous to tying and exclusive dealing and violated section 2.

5 The Antitrust Modernization Commission was a blue-ribbon commission authorised by the US Congress to study whether and in what respects the US antitrust laws should be modernised. Its 12 members were appointed by the President and the then majority and minority leadership of Congress. The Commission conducted a three-year study and submitted its ‘Report and Recommendations’ in April 2007 (hereinafter AMC Report).

6 The Commission explored a number of suggestions for such a single standard, including the ‘No Economic Sense Test’, the ‘Profit Sacrifice Test’, the ‘Less Efficient Competitor Test’ and the ‘Balancing Test’. The ‘No Economic Sense Test’ analyses conduct by determining whether the challenged conduct makes economic sense, on the basis of the information available to the alleged monopolising firm at the time that it undertook the questioned conduct, if the benefit to the alleged monopolist of the conduct’s harmful impact on competition is excluded from the analysis (AMC Report at 91). The ‘Profit Sacrifice Test’ asks whether the alleged monopolist has sacrificed immediate profits as a part of a strategy whose ultimate profitability depends upon recovery of the sacrificed short-term profits through the long-term exclusion of rivals (AMC Report at 92). The ‘Less Efficient Competitor Test’ seeks to categorise conduct as either unreasonable exclusionary or permissible on the basis of whether the conduct is likely in all the relevant circumstances to exclude firms from the market that are equally or more efficient competitors (AMC Report at 92-93). The ‘Balancing Test’ is essentially the standard rule of reason balancing test that attempts to identify any harm to competition from the conduct as well as any benefits to competition from the conduct (usually in the form of the alleged monopolist’s justification) and balances the two in the particular market context to decide whether the conduct creates or maintains a monopoly position. This standard was applied in United States v Microsoft Corp, 253 F3d 34 (DC Cir 2001).

7 AMC Report at 93.

8 AMC Report at 81.

9 See Berkey Photo, Inc v Eastman Kodak Co, 603 F2d 263, 274 n12 (2d Cir 1979), cert denied, 444 US 1093 (1980).

10 Idem. See also AMC Report at 104: the Commission distinguished between conduct that excludes and conduct that exploits, stating that “exploiting conduct is that which may be undertaken by a monopolist as a fruit of its monopoly, and should not give rise to an antitrust claim.”


12 Berkey Photo, 603 F2d at 274, n12.

13 509 US 209 (1993); see also Microsoft, 253 F3d at 68.

14 Brooke Group, 509 US at 224.

15 See Kelco Disposal v Browning-Ferris Industries, 845 F2d 404 (2d Cir 1988), affirmed on other grounds, 492 US 257 (1989); Stearns Airport Equip Co v FMC Corp, 170 F3d 518 (5th Cir 1999).

16 See William Inglis & Sons Baking Co v ITT Continental Baking Co, 668 F2d 1014 (9th Cir 1981).

17 127 S Ct 1069 (2007).

18 Idem at 1076.

19 Idem.

20 51 F3d 1191, 1203 (3d Cir 1995).

21 324 F3d at 154.

22 See idem; SmithKline Corp v Eli Lilly & Co, 575 F2d 1056 (3d Cir 1976).

23 LePage’s, 324 F3d at 155.

24 See also SmithKline, 575 F2d at 1065.


26 The Antitrust Modernization Commission added the third element because it concluded that the first two screens alone would permit false positives (AMC Report at 100). The third element appears, however, to beg the question, given that the objective of the inquiry is to determine whether there has been a reduction in competition.


28 Brooke Group, 509 US at 221.

29 15 USC section 13.

30 See Blue Cross & Blue Shield United of Wis v Marshfield Clinic, 65 F3d 1406, 1415 (7th Cir 1995); Ocean State Physicians Health Plan v Blue Cross & Blue Shield of RI, 883 F2d 1101, 1110 (1st Cir 1989), cert denied, 494 US 1027 (1990); Kitsap Physicians Serv v Washington Dental Serv, 671 F Supp 1267, 1269-1270 (WD Wash 1987).

31 Marshfield Clinic, 65 F3d 1415; Blue Cross & Blue Shield of Ohio v Bingaman, CN 1:94 CV 2297, 1996 WL 677094 (ND Ohio June 24, 1996), 1996-2 Trade Cas paragraph 71,600, atf’d, 113 F3d 1420 (Table, text at 1997 WL 400095) (6th Cir 1997).


33 540 US 398.


35 Trinko, 540 US at 408.

36 Idem at 409.

37 Idem at 407-408.

38 See AMC Report at 104.

39 See, eg, United States v Dentsply Int’l, Inc, 399 F3d 181 (3d Cir 2005), cert denied, 126 S Ct 1023 (2006) (given Dentsply’s market share and the risk that a distributor would be terminated if it ignored Dentsply’s exclusive dealing requirement, the availability of distributors for rivals was limited).
40 AMC Report at 101.
41 See AMC Report at 104.
42 Trinko, 540 US at 409.
43 AMC Report at 103.
44 See Multistate Legal Studies, Inc v Harcourt Brace Jovanovich, 63 F3d 1540, 1550 (10th Cir 1995); Microsoft, 253 F3d at 84.
45 Idem; see also n6.
46 See Microsoft, 253 F3d 34; LePage’s, 324 F3d 141; Dentsply, 399 F3d at 197.
47 See LePage’s, 324 F3d at 157.

49 Idem.
50 Idem.
52 Idem at 73.
53 See, eg, Conwood Co, LP v US Tobacco Co, 290 F3d 768 (8th Cir 2002); Int’l Travel Arrangers, Inc v Western Airlines, Inc, 623 F2d 1255 (8th Cir 1980).
54 603 F2d 263 (2d Cir. 1979).
55 603 F2d at 291-292.
56 Trinko, 540 US at 415, n4.
57 Caribbean Broad Sys, Ltd v Cable & Wireless PLC, 148 F3d 1080, 1087 (DC Cir 1998).

Sullivan & Cromwell LLP

125 Broad Street
New York, NY 10004-2498
United States
Tel: +1 212 558 4000
Fax: +1 212 558 3588
Website: www.sullcrom.com
Other offices: Washington, DC, Los Angeles, Palo Alto, London, Paris, Frankfurt, Tokyo, Hong Kong, Beijing, Melbourne, Sydney

Sullivan & Cromwell is widely recognized as a premier international litigation firm with one of the leading antitrust practices worldwide. A charter member of the “GCR 100,” S&C has been consistently cited among the world’s leading competition law firms by Global Competition Review, and has regularly been ranked among the top antitrust practices by publications such as Chambers Global. Year after year, the Firm is retained by leading U.S. and non-U.S. companies as advisor in their most significant and complex antitrust matters.

Broad Experience, Global Approach. S&C’s Antitrust Group takes a global, multidisciplinary approach to every matter, drawing on its deep experience and leadership position worldwide as both a litigation and a corporate, financial and transactional firm. The Firm possesses extensive experience representing clients from every industry in all contexts as well as the ability to do so before competition authorities and courts in the U.S., the European Community and elsewhere. Importantly, S&C’s antitrust lawyers move seamlessly from advice to litigation, including any necessary appeals, without changing the team.

Distinctive Client Service. S&C focuses on developing long-term client relationships. Thus, the Firm’s approach to antitrust advice emphasizes in-depth understanding of each client’s business. S&C’s experts provide antitrust advice relating to high-level business strategies, mergers (including any related litigation), antitrust challenges and, where appropriate, challenges to other companies’ anticompetitive practices. The Firm’s hallmarks are the highest quality independent advice and intense dedication to solving client problems.

Contact: Yvonne S Quinn • e-mail: quinny@sullcrom.com
Steven L Holley • e-mail: holleys@sullcrom.com