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Antitrust Litigation Seventh Circuit Update

FREEBORN & PETERS LLP ANTITRUST LITIGATION UPDATE: FALL 2013

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Dear Reader:

The last twelve months or so have been busy for antitrust rulings in the Seventh Circuit, not the least of which involved attorneys from Freeborn & Peters LLP representing the defendants in a very significant matter, *In Re Sulfuric Acid Antitrust Litigation.*

Sometimes the likely impact of a ruling can be unclear, so my colleagues and I on the Antitrust Litigation Team have prepared a short set of summaries for seven cases that were recently decided within this jurisdiction. They are attached for your review in this booklet.

The case summaries are as follows:

- *KM Enterprises, Inc. v. Global Traffic Technologies, Inc.*, -- F.3d --, 2013 WL 3958385 (7th Cir. Aug. 2, 2013), a matter of first impression in the Seventh Circuit, in which the court affirmed the dismissal of an antitrust case for improper venue, rejecting a broad interpretation of federal venue and jurisdiction rules that would essentially subject antitrust defendants to suit in any district in the country. This peculiar situation arises when plaintiffs attempt to "mix and match" the general federal venue rules with the alternative service and venue provisions provided by Congress in the Clayton Act for antitrust cases.
- *In Re Sulfuric Acid Antitrust Litigation*, 703 F.3d 1004 (7th Cir. 2012), in which the court affirmed that the standard mode of antitrust analysis, the rule of reason, applies where a defendant proffers plausible pro-competitive justifications for the challenged conduct.
- *Booth v. Crowley*, 687 F.3d 314 (7th Cir. 2012), which clarified that company shareholders may not enforce the prohibition against interlocking directorates in Section 8 of the Clayton Act, 15 U.S.C. 19 by way of securities law derivative actions, unless they can meet the requirements of both statutory schemes.
- *Minn-Chem v. Agrium,* 683 F.3d 845 (7th Cir. 2012), which delineated the extent to which the Foreign Trade Antitrust Improvements Act of 1982 ("FTAIA"), 15 U.S.C.A. Section 6(a), insulates collusive overseas conduct that affects commerce in the United States from antitrust scrutiny under Section 1 of the Sherman Act.
- *Agnew v. National Collegiate Athletic Assn.*, 683 F.3d 328 (7th Cir. 2012), which sets out a cogent description of the methods of analysis used in antitrust cases, at least in the Seventh Circuit, and it also establishes the requirements for pleading a commercial market.

- *Apple, Inc. v. Motorola Mobility, Inc.,* 886 F. Supp. 2d 1061 (W.D. Wis. 2012), which granted summary judgment for Motorola Mobility on Apple's antitrust counterclaims to the extent that they were based on antitrust or unfair competition theories pursuant to the *Noerr-Pennington* doctrine. Apple's claims based on breach of contract and estoppel were allowed to proceed.
- *Championsworld, LLC v. United States Soccer Federation, Inc.,* 890 F. Supp. 2d 912 (N.D. Ill. 2012) in which Championsworld had alleged that, without authority to do so, the Federation required it to pay substantial sanctioning fees and post large performance bonds to organize and promote international soccer matches in the United States in violation of Section 1 of the Sherman Act.

At Freeborn, we are always looking ahead and seeking to find better ways to serve our clients. This litigation update is an important way in which we take a proactive approach to ensure our clients are more informed, prepared, and able to achieve greater success – not just now, but also in the future. I welcome your comments on how we can make this resource even more valuable to you.

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Table of Contents

KM Enterprises, Inc. v. Global Traffic Technologies, Inc., -- F.3d--, 2013 WL 3958385 (7th Cir. Aug. 2, 2013)

In a matter of first impression in the Seventh Circuit, the court affirmed the dismissal of an antitrust case for improper venue, rejecting a broad interpretation of federal venue and jurisdiction rules that would essentially subject antitrust defendants to suit in any district in the country.

This peculiar situation arises when plaintiffs attempt to "mix and match" the general federal venue rules with the alternative service and venue provisions provided by Congress in the Clayton Act for antitrust cases.

The Clayton Act allows for nationwide service of process, which ostensibly subjects corporate antitrust defendants (but not individuals) to nationwide jurisdiction. 15 U.S.C. § 22. However, the Clayton Act's venue provision limits the venue options to those districts where the corporation inhabits, is found, or transacts business. The general federal venue provision, on the other hand, provides that venue is proper where any defendant "resides" and, further, that a corporation resides in any district where it may be subject to personal jurisdiction. 28 U.S.C. § 1391. Thus, if a plaintiff were permitted to use the nationwide service advantage of the Clayton Act, and couple it with the general federal venue rules, it could sue a corporate antitrust defendant in any district court of its choosing, whether or not the corporation did business in the district.

In an opinion authored by Judge Diane Wood, the Seventh Circuit deemed this to be an incongruous result and held that plaintiffs must choose one or the other, but cannot mix and match. In *KM Enterprises*, this resulted in dismissal of the case as neither the general jurisdiction and venue rules, nor the Clayton Act provision, viewed independently, were met. The court also noted that the Clayton Act's venue provision, by its express terms, only impacts corporations, so it could not be used to effect service or establish venue over the co-defendant limited liability company.

In reaching its holding, the court rejected the approach taken by the Third and Ninth Circuits, and sided instead with the Second and D.C. Circuits. The Supreme Court has not yet taken up the issue directly, but Judge Wood noted that the Seventh Circuit's decision was in keeping with the Supreme Court's instruction that, while expanding options for plaintiffs, "[i]n adopting [the venue provision of the Clayton Act], Congress was not willing to give plaintiffs free rein to haul defendants hither and yon at their caprice." *Id.* at *10 (quoting *United States v. Nat'l City Lines, Inc.,* 334 United States 473, 588 (1948)).

On August 16, 2013, the appellant *KM Enterprises* filed a petition for rehearing *en banc*, which as of this publication remains pending.

Table of Contents

In Re Sulfuric Acid Antitrust Litigation,
703 F.3d 1004 (7th Cir. 2012)

In this decision, the Seventh Circuit, in an opinion by leading antitrust jurist Judge Richard Posner, affirmed the standard to be applied in determining whether the *per se* rule or the rule of reason is the appropriate method of analysis in a case arising under Section 1 of the Sherman Act.

A class of direct purchasers of sulfuric acid sued several defendants alleging a scheme to reduce output and increase the price of acid in the U.S. The principal defendants were Canadian mining companies that were required by environmental regulations to produce sulfuric acid as a byproduct of their smelting activities. Sulfuric acid is a highly corrosive chemical used in the manufacture of fertilizer, paper and other goods. The chemical is costly to store, and difficult to dispose of other than by sale. If smelters are unable to dispose of their acid by sale or otherwise, eventually they would be forced to shut down their smelting operations. Because the Canadian market for acid was limited, the Canadian companies began looking at the large U.S. market. But they had virtually no capability for distributing acid in the United States – no distributors or customer relationships. Accordingly, to sell in the U.S., the Canadian companies would need a distribution network.

Although for the Canadian companies, sulfuric acid was an unwanted byproduct of smelting operations, chemical companies in the U.S. manufactured so-called "virgin acid" from sulfur. For U.S. manufacturers, the production of virgin acid was relatively unprofitable. But these manufacturers had in place distribution networks and customer relationships essential to distribute the Canadian companies' byproduct acid in the U.S. The Canadian companies saw an opportunity to persuade these higher-cost producers to distribute smelter acid in lieu of producing their own. According to the plaintiffs, the Canadian companies and the U.S. producers entered into distribution agreements whereby the U.S. producers agreed that, in exchange for becoming distributors of the Canadian acid, they would curtail their own production and be compensated by getting low prices from the Canadian companies that made distribution more profitable than production.

The plaintiffs argued that these so-called "shutdown agreements" restricted output in the U.S. in *per se* violation of the antitrust laws. The defendants argued that, because the agreements have plausible pro-competitive justifications -- facilitating the entry into the U.S. of cheap smelter acid, leading to lower prices overall – they should be analyzed under the rule of reason. The district court held that the rule of reason applied and, because the plaintiffs conceded that they could not prevail under the rule of reason, entered judgment for the defendants. The plaintiffs appealed. The Seventh Circuit affirmed. Although the court agreed with the plaintiffs that their view was a possible interpretation of the shutdown agreements, it was not the only plausible interpretation. The challenged agreements plausibly facilitated

entry of Canadian acid into the U.S. market which would lower prices and prevent the shutdown of the Canadian smelting operations, which shutdowns would have the ultimate effect of reducing output and raising prices of acid in the U.S.

The court agreed that agreements to restrict output are in effect a form of price-fixing, but noted that the Supreme Court had held in *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.,* 441 U.S. 1 (1979), that even price fixing is governed by the rule of reason if the challenged practice when adopted could reasonably be believed to promote enterprise and productivity.

The plaintiffs argued, however, that *BMI* should be limited to holding competitive restrictions subject to the rule of reason only if they create a "new product." The court disagreed. Although the court noted that the shutdown agreements could be regarded as enabling a new product in the U.S. economy – namely Canadian smelter acid – it reasoned that "product talk" was "an unnecessary and distracting embellishment of the rule of reason." *Id.* at 1011. Rather, the lesson of *BMI* is that "[t]he rule of reason directs an assessment of the total economic effects of a restrictive practice that is plausibly argued to increase competition and other economic values on balance." *Id.*

The plaintiffs also argued that *United States v. Socony-Vacuum Oil Co.,* 310 U.S. 150 (1940) required application of the *per se* rule. The court, however, distinguished *Socony*, noting that the only aim and effect of the agreement in that case was to reduce output in order to raise prices. In the instant case, however, the aim was to facilitate the entry of smelter acid into the U.S., which would lower prices.

The court also noted that the unique nature of the case before it, which combined, among other things, involuntary production and the potential for anti-dumping exposure, made it inappropriate for *per se* condemnation, noting that the Supreme Court has taught that the *per se* rule is reserved for cases in which the judiciary has sufficient experience with a particular type of restraint so that the judiciary is convinced that the restraint has no or trivial redeeming benefits.

Finally, the court also addressed the plaintiffs' allegations that a subsequent joint venture between the Canadian companies and one of the U.S. producers was a sham and merely a continuation of the conspiracy. The court found that the challenged joint venture had a legitimate business purpose in taking advantage of various efficiency-enhancing strengths flowing from the arrangement. Where a joint venture has a legitimate business purpose, the court reasoned, the fact that prices are coordinated between the joint venture partners does not condemn it *per se* but rather subjects it to scrutiny under the rule of reason.

Table of Contents

Booth v. Crowley, 687 F.3d 314 (7th Cir. 2012)

In *Booth v. Crowley*, 687 F.3d 314 (7th Cir. 2012), the Seventh Circuit clarified that company shareholders may not enforce the prohibition against interlocking directorates in Section 8 of the Clayton Act, 15 U.S.C.§9 by way of securities law derivative actions, unless they can meet the requirements of both statutory schemes.

The *Booth* plaintiffs owned shares of Sears, Roebuck & Company when the company merged with K-Mart in 2005. Two of the directors on the merged board also served on the boards of other companies that, according to the plaintiffs, competed with the merged Sears-K-Mart entity. The plaintiffs complained that these multiple board positions created "interlocking directorships" in violation of the interlocking directorate prohibition in Section 8 of the Clayton Act. Instead of filing an antitrust suit (where their standing would be questionable), the plaintiffs brought a shareholders' derivative action. That is, under the shareholders' derivative theory, plaintiffs purported to bring their antitrust claims on behalf of the corporation.

Sears moved to dismiss, arguing that under the controlling Delaware law, shareholders may sue derivatively in the name of the company only after they have first submitted a demand to the board of directors, and then only if the directors are unable to make a disinterested decision as to whether the company is harmed and what action, if any, should be taken. In this case, the plaintiffs never made such a demand. The plaintiffs countered that a demand would have been futile, and noted that private plaintiffs are entitled to sue to enforce Section 8. Based on the plaintiffs' arguments, the district court denied the motion to dismiss.

The Seventh Circuit reversed. With Judge Frank Easterbrook writing for the court, the court concluded that the complaint lacked fundamental elements of either an antitrust claim or a shareholders' derivative action.

With respect to the antitrust claim, the court noted that the "concern of antitrust law … is that producers will cooperate and raise prices to the detriment of consumers." *Id.* at 317. The antitrust-injury doctrine limits enforcement of the antitrust laws to those "for whose benefit the laws were enacted." *Id.* If the interlocking directorships were prohibited under Section 8, the court reasoned, both the investors and the corporation would have *gained* by any resulting reduction in competition. Accordingly, the plaintiffs could not show that they suffered antitrust injury. Indeed, insofar as this was a derivative suit, the plaintiffs actually represented the *perpetrator* of the alleged misconduct (the corporation), which had no standing to sue itself, and was not a person that the antitrust laws were intended to benefit.

The court also rejected the plaintiffs' effort to rescue their inadequate antitrust theory by dressing it up as a shareholders' derivative action. The court agreed with the plaintiffs that a demand on the board would have been futile, but not for the reasons the plaintiffs argued. Rather, the court found that "conscientious directors acting in investors' interests would have nixed this suit," because it "serve[d] no goal other than to move money from the corporate treasury to the attorneys' coffers, while depriving Sears of directors whom its investors freely elected." *Id.* at 320 (emphasis in original). Indeed, the court concluded that "[t]he only goal of this suit appears to be fees for the plaintiffs' lawyers," and declared that the case was "so feeble that it is best to end it immediately." *Id.* at 319. The court remanded to the district court with instructions to enter judgment for the defendants.

Table of Contents

Minn-Chem v. Agrium, 683 F.3d 845 (7th Cir. 2012)

In *Minn-Chem*, the Seventh Circuit sitting *en banc* delineated the extent to which the Foreign Trade Antitrust Improvements Act of 1982 ("FTAIA"), 15 U.S.C. §6a, insulates collusive overseas conduct that affects commerce in the United States from antitrust scrutiny under Section 1 of the Sherman Act.

A class of direct U.S. purchasers of potash sued a group of foreign producers of 71% of the worldwide potash production alleging that the foreign producers conspired to increase potash prices in the U.S. According to the plaintiffs, the defendants' worldwide cartel fixed prices primarily through meetings and conduct taking place outside the U.S. The plaintiffs alleged that, because potash is a commodity for which demand is somewhat inelastic, the price-fixing scheme was accomplished through several classic price-stabilization mechanisms. For example, the plaintiffs claimed that the defendants jointly negotiated prices at which they would sell potash *outside* the U.S. then used these inflated prices as benchmarks for their prices in the U.S. Additionally, the plaintiffs contended that the defendants restricted output and used an alleged "joint venture" and a trade association as vehicles to exchange sensitive production and pricing information. As a result, according to the plaintiffs, the price of potash in the U.S. increased by 600% during the alleged cartel period.

The defendants moved to dismiss, arguing that under the FTAIA, the district court had no subject matter jurisdiction because the conduct took place primarily overseas. The district court denied the motion, but in light of the importance of the issue certified the case for interlocutory review. The Seventh Circuit accepted the appeal.

Initially, a three-judge panel reversed the district court on the grounds that a prior decision, *United Phosphorus, Ltd. v. Angus Chemical, Co.* 322 F.3d 942 (7th Cir. 2003), controlled the result and required the district court to treat FTAIA as a limit on its subject matter jurisdiction. The court decided to rehear the case *en banc* and reversed the panel decision, holding instead that the FTAIA does not limit the subject matter jurisdiction of the district courts, expressly overruling its prior decision in *United Phosphorous*. The court pointed out that FTAIA was intended to limit U.S. antitrust enforcement under the Sherman Act for certain arrangements involving trade or commerce with foreign nations, but Congress expressly "recognized that there was no need for this self-restraint with respect to imports" which are "excluded at the outset" from FTAIA coverage. *Id.* at 854. As to imports, the FTAIA commands that the U.S. antitrust laws apply to foreign commerce only where there is a "*direct, substantial* and reasonably *foreseeable* effect on U.S. domestic or import commerce." *Id.* (emphasis supplied).

The court then addressed the statutory criteria in the context of the case before it. In the court's view, the requirements of substantiality and foreseeability were "easily met," given that 5.3 million tons of potash were imported into the U.S. in 2008, and the price of potash increased 600% over the relevant time period. *Id.* at 856. With respect to the requirement of a "direct" effect, the court embraced the approach of the Department of Justice that "direct" means only a "reasonably proximate causal nexus." *Id.* at 856-57. Given that there was no suggestion that the potash market in the U.S. was insulated from the effects of the defendants' conduct by regulatory structures or otherwise, the court found it was "no stretch" to say that the defendants' alleged conduct was a direct cause of the alleged price increases. *Id.* at 859. Accordingly, the *en banc* court reversed the prior decision of the panel, holding that the plaintiffs had stated a claim and that the defendants' motion to dismiss was properly denied.

Table of Contents

Agnew v. National Collegiate Athletic Assn.,

683 F.3d 328 (7th Cir. 2012)

Two student athletes sued the NCAA for alleged violations of the antitrust laws arising from association bylaws preventing multi-year athletic scholarships and capping the number of athletic scholarships per year per team.

The Seventh Circuit's decision, authored by Judge Joel Flaum, is important in two respects: it sets out a cogent description of the methods of analysis used in antitrust cases, at least in the Seventh Circuit, and it also establishes the requirements for pleading a commercial market.

The court noted that the standard framework for analyzing an action's anti-competitive effects on a market is the rule of reason. In applying the rule of reason, the court stated that, as a threshold matter, a plaintiff must show that a defendant has market power. A showing of market power often means defining the relevant market and proving market shares. This continues the Seventh Circuit's tradition of using a market power screen in rule of reason cases.

The court also discussed the "quick-look" analysis, describing it as a framework appropriate where *per se* condemnation is inappropriate, but where "an observer with even a rudimentary understanding of economics could conclude that the arrangements in question have an anti-competitive effect on customers and markets' but there are nonetheless reasons to examine potential pro-competitive justifications." *Id.* at 336. If an anti-competitive effect is obvious, the plaintiff has no initial burden to establish marketing power. The court also noted that, if no legitimate justifications for facially anti-competitive behavior are found, no market power analysis is necessary and the court condemns the practice "without ado." *Id.*

Finally, the court addressed the *per se* rule, describing it as appropriate when a practice facially appears to be the one that would always or almost always tend to restrict competition and decrease output. Naked horizontal price fixing and naked output limitations are classic examples.

Significantly, the Seventh Circuit applied the rule of reason – not the *per se* rule — to the NCAA's restraints despite the fact that the plaintiffs had characterized them as horizontal price fixing and output limitations. The plaintiffs had argued that the "quick-look" method should apply to the case, and that they therefore were not required to allege a relevant market. The Seventh Circuit disagreed. Although the "quick-look" approach permits the

plaintiffs to forego any strict showing of market power and thus a specific definition of the relevant market, this does not mean that the existence of a cognizable relevant market can be dispensed with altogether. The market, moreover, must be a *commercial* market, which the court defined broadly as almost every activity from which an actor anticipates economic gain. Even under a "quick-look" approach, the court held that it is incumbent upon the plaintiff to describe the rough contours of the relevant commercial market affected by the alleged anti-competitive conduct.

In this case, the court held that it was undeniable that some sort of market was at play. After all, big-time college football schools competing for high school football players clearly anticipate economic gain from a successful recruiting program. To some degree this is commercial in nature.

Nevertheless, the court concluded that the plaintiffs had not adequately pleaded a relevant commercial market (apparently based on a strategic decision not to do so), and affirmed the dismissal of the case.

Table of Contents

Apple, Inc. v. Motorola Mobility, Inc.,

886 F. Supp. 2d 1061 (W.D. Wis. 2012)

On August 10, 2012, the United States District Court for the Western District of Wisconsin, Judge Barbara Crabbe presiding, granted summary judgment for Motorola Mobility on Apple's antitrust counterclaims to the extent that they were based on antitrust or unfair competition theories pursuant to the *Noerr-Pennington* doctrine. Apple's claims based on breach of contract and estoppel were allowed to proceed.

The case originated in the International Trade Commission, where Motorola Mobility filed patent infringement claims against Apple. Apple removed the case to federal court and brought counterclaims, including those for antitrust violations. According to Apple, Motorola Mobility violated Section 2 of the Clayton Act by, among other things, refusing to issue Apple a license under reasonable terms for certain essential patents deemed standard in the industry for cellular devices.

The court entered summary judgment for Motorola Mobility on the antitrust counterclaims, concluding that they were based solely on Motorola's patent litigation, and were therefore barred by the *Noerr-Pennington* doctrine. That doctrine protects a party's First Amendment rights to petition the government for a redress of grievances, and provides antitrust immunity to such a petitioner if alleged antitrust violations emerge purely from petitioning activities. The court reasoned that, while Motorola Mobility and Apple had admittedly been unable to come to terms with respect to the license, Apple had produced no evidence that Motorola's refusal to license had harmed Apple, caused it to change its product, delayed the release of its product, caused Apple to lose market share or customers, or harmed Apple in any way. Indeed, the court noted that Apple's own expert identified only attorneys' fees and litigation expenses as damages. Because Apple could demonstrate no damage apart from the litigation Motorola Mobility initiated, Motorola Mobility was immune from antitrust liability.

Because the *Noerr-Pennington* doctrine only applies to protect non-frivolous litigation, the district court also briefly addressed Apple's secondary argument that Motorola Mobility's enforcement efforts were a sham. The court concluded that Apple did not meet its burden of demonstrating that Motorola Mobility's lawsuit was "objectively baseless" and subjectively motivated by a desire to use the judicial process to work anti-competitive harm. As Apple had not presented sufficient evidence to meet the test, the sham exception to the *Noerr-Pennington* doctrine could not apply.

Table of Contents

Championsworld, LLC v. United States Soccer Federation, Inc., 890 F. Supp. 2d 912 (N.D. Ill. 2012)

On August 17, 2012, the United States District Court for the Northern District of Illinois, Judge Harry Leinenweber presiding, granted summary judgment in favor of the defendants, United States Soccer Federation, Inc. and Major League Soccer, LLC, on claims brought by Championsworld, LLC's under Section 1 of the Sherman Act.

Championsworld had alleged that, without authority to do so, the Federation required it to pay substantial sanctioning fees and post large performance bonds to organize and promote international soccer matches in the U.S. Among other claims, Championsworld alleged that through these excessive fees and bonds, the Federation and MLS engaged in an antitrust conspiracy with the intent of driving Championsworld out of the market. Championsworld ceased doing business and filed for bankruptcy in 2005. This lawsuit followed in 2006.

The court confirmed a prior arbitration award holding that the Federation had the authority to charge the sanctioning fees and require promoters to pay the bonds and analyzed the Sherman Act claim under the rule of reason.

In an attempt to meet its burden under the rule of reason, Championsworld offered expert testimony on market definition from Rodney Fort, a professor of sport management at the University of Michigan. The court analyzed the product and geographic dimensions of Dr. Fort's proffered market, which was "the promotion of men's, professional, first-division, international soccer ["MPFI"] matches in the United States." In defining the product market, Dr. Fort endeavored to determine whether Major League Baseball was a substitute for MPFI matches. He ran a regression analysis to determine whether an MPFI match played on the same day as and within the vicinity of a MLB game affected attendance at the baseball game. Because Dr. Fort found that attendance was not significantly affected, he concluded that MLB games and MPFI matches were not substitutes.

The court rejected Dr. Fort's conclusion, finding that the expert had studied the wrong thing. Because soccer has a smaller fan and financial base in the U.S. than baseball, the court reasoned that Dr. Fort should have evaluated substitutability "from the perspective of soccer fans rather than baseball fans." *Id.* at 949. The court pointed out the asymmetricity of markets such that one product could be in the market of another without the converse being true. Accordingly, the court found that Dr. Fort's opinion was not reliable or helpful to the jury.

The court also looked at the so-called "practical indicia" that Championsworld proffered to prove a separate market. See *Id.* at 949-50. Noting that the Seventh Circuit does not find practical indicia sufficient to support a market definition in the absence of economic evidence, and that evidence of a market that focuses "almost entirely" on industry recognition of a market is properly excluded, the court concluded that Dr. Fort's market definition did not meet the professional standards in the field. See *Id*.

The court also criticized Dr. Fort's analysis of the geographic scope of the market, which Dr. Fort opined was the United States because the antitrust laws reached that far and the Federation charges fees nationwide. Because the demand for soccer matches is local, the court found that Dr. Fort's proffered market was not geographically coherent, as it suffered from a disconnect between the supply and demand sides.

With Dr. Fort's market definition opinion excluded, Championsworld could not demonstrate a cognizable market and concomitant market power. Accordingly, the court granted summary judgment for the defendants.

ANTITRUST LITIGATION TEAM

The Antitrust Litigation Team is part of Freeborn & Peters LLP's substantial Litigation Practice Group. The Team supports clients in the litigation of complex antitrust and trade regulation cases throughout the United States and assists clients in international proceedings before such bodies as the Canadian Competition Tribunal and the European Commission. It has counseled clients and defended large antitrust and trade regulation cases on a variety of issues, including Sherman Act Section 1 and Section 2, the Robinson-Patman Act, Hart-Scott-Rodino merger planning and notification, and international joint ventures. Although most of the Team's work involves defending companies and individuals in civil and criminal actions and government investigations, it also represents plaintiffs seeking redress under antitrust and trade regulation laws, including private actions under Sections 1 and 2 of the Sherman Act and related state antitrust statutes; class actions and multi-district litigation; preliminary and permanent injunctive relief; and criminal antitrust investigations, including witness preparation for testimony before federal grand juries. The Antitrust Team also offers antitrust compliance services that educate client personnel with practical guidelines and training, and provide monitoring assistance where appropriate.

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