**Alternate Case Problems**

*Chapter 22*

**Antitrust Law and Promoting Competition**

**22-1. Tying Arrangements.** Eastman Kodak Co. has about a 20 percent share of the highly competitive market for high-volume photocopiers and microfilm equipment and controls nearly the entire market for replacement parts for its equipment (which are not interchangeable with parts for other manufacturers’ equipment). Prior to 1985, Kodak sold replacement parts for its equipment without significant restrictions. As a result, a number of independent service organizations (ISOs) purchased Kodak parts to use when repairing and servicing Kodak copiers. In 1985, Kodak changed its policy to prevent the ISOs from competing with Kodak’s own service organizations. It ceased selling parts to ISOs and refused to sell replacement parts to its customers unless they agreed not to have their equipment serviced by ISOs. In 1987, Image Technical Services, Inc., and seventeen other ISOs sued Kodak, alleging that Kodak’s policy was a tying arrangement in violation of Section 1 of the Sherman Act. Assuming that Kodak does not have market power in the market for photocopying and microfilm equipment, does Kodak’s restrictive policy consti­tute an illegal tying arrangement? Does it violate antitrust laws in any way? Discuss fully. [*Eastman Kodak Co. v. Image Technical Services, Inc.,* 504 U.S. 451, 112 S.Ct. 2072, 119 L.Ed.2d 265 (1992)]

**22-2. Robinson-Patman Act.** Stelwagon Manufacturing Co. agreed with Tarmac Roofing Systems, Inc., to promote and develop a market for Tarmac’s products in the Philadelphia area. In return, Tarmac promised not to sell its products to other area dis­tributors. In 1991, Stelwagon learned that Tarmac had been selling its products to Stelwagon’s competitors—the Standard Roofing Co. and the Celotex Corp.—at substantially lower prices. Stelwagon filed a suit against Tarmac in a federal district court. What is the principal factor in determining whether Tarmac violated the Robinson-Patman Act? Did Tarmac violate the act? [*Stelwagon Manufacturing Co. v. Tarmac Roofing Systems, Inc.,* 63 F.3d 1267 (3d Cir. 1995)]

**22-3. Antitrust Laws.** Great Western Directories, Inc. (GW), is an independent publisher of telephone directory Yellow Pages. GW buys information for its listings from Southwestern Bell Telephone Co. (SBT). Southwestern Bell Corp. owns SBT, as well as Southwestern Bell Yellow Pages (SBYP), which publishes a directory in competition with GW. In June 1988, in some markets, SBT raised the price for its listing information, and SBYP lowered the price for advertising in its Yellow Pages. GW feared that these companies would do the same thing in other local markets, making it too expensive for GW to compete in those markets. Because of this fear, GW left one market and declined to compete in another. Consequently, SBYP had a monopoly in those markets. GW and another independent publisher filed a suit in a federal district court against Southwestern Bell Corp. What antitrust law, if any, did Southwestern Bell Corp. violate? Should the independent companies be entitled to damages? [*Great Western Directories, Inc. v. Southwestern Bell Telephone Co.,* 74 F.3d 613 (5th Cir. 1996)]

**22-4. Restraint of Trade.** The National Collegiate Athletic Association (NCAA) coordinates the intercollegiate athletic programs of its members by issuing rules and setting standards governing, among other things, the coaching staffs. The NCAA set up a “Cost Reduction Committee” to consider ways to cut the costs of intercollegiate athletics while maintaining competition. The committee included financial aid personnel, intercollegiate athletic administrators, college presidents, university faculty members, and a university chancellor. It was felt that “only a collaborative effort could reduce costs while maintaining a level playing field.” The committee proposed a rule to restrict the annual compensation of certain coaches to $16,000. The NCAA adopted the rule. Basketball coaches affected by the rule filed a suit in a federal district court against the NCAA, alleging a violation of Section 1 of the Sherman Antitrust Act. Is the rule a *per se* violation of the Sherman Act, or should it be evaluated under the rule of reason? If it is subject to the rule of reason, is it an illegal restraint of trade? Discuss fully. [*Law v. National Collegiate Athletic Association,* 134 F.3d 1010 (10th Cir. 1998)]

**22-5. Tying Arrangement.** Public Interest Corp. (PIC) owned and operated television station WTMV‑TV in Lakeland, Florida. MCA Television, Ltd., owns and licenses syndicated television programs. The parties entered into a licensing contract with respect to several television shows. MCA conditioned the license on PIC’s agreeing to take another show, *Harry and the Hendersons.* PIC agreed to this arrangement, although it would not have chosen to license *Harry* if it had not had to do so to secure the licenses for the other shows. More than two years into the contract, a dispute arose over PIC’s payments, and negotiations failed to resolve the dispute. In a letter, MCA suspended PIC’s broadcast rights for all of its shows and stated that “[a]ny telecasts of MCA programming by WTMV‑TV .  .  . will be deemed unauthorized and shall constitute an infringement of MCA’s copyrights.” PIC nonetheless continued broadcasting MCA’s programs, with the exception of *Harry*. MCA filed a suit in a federal district court against PIC, alleging breach of contract and copyright infringement. PIC filed a counterclaim, contending in part that MCA’s deal was an illegal tying arrangement. Is PIC correct? Explain. [*MCA Television, Ltd. v. Public Interest Corp.,* 171 F.3d 1265 (11th Cir. 1999)]

**22-6. Attempted Monopolization.** In 1995, to make personal computers (PCs) easier to use, Intel Corp. and other companies developed a standard, called the Universal Serial Bus (USB) specification, to enable the easy attachment of peripherals (printers and other hardware) to PCs. Intel and others formed the Universal Serial Bus Implementers Forum (USB-IF) to promote USB technology and products. Intel, however, makes relatively few USB products and does not make any USB interconnect devices. Multivideo Labs, Inc. (MVL), designed and distributed Active Extension Cables (AECs) to connect peripheral devices to each other or to a PC. The AECs were not USB compliant, a fact that Intel employees told other USB-IF members. Asserting that this caused a “general cooling of the market” for AECs, MVL filed a suit in a federal district court against Intel, claiming in part attempted monopolization in violation of the Sherman Act. Intel filed a motion for summary judgment. How should the court rule, and why? [*Multivideo Labs, Inc. v. Intel Corp.,* \_\_ F.Supp.2d \_\_, 2000 WL 12122 (S.D.N.Y. 2000)]

**22-7. Monopolization.** Moist snuff is a smokeless tobacco product sold in small round cans from racks, which include point-of-sale (POS) ads. POS ads are critical because tobacco advertising is restricted and the number of people who use smokeless tobacco products is relatively small. In the moist snuff market in the United States, there are only four competitors, including U.S. Tobacco Co. and its affiliates (USTC) and Conwood Co. In 1990, USTC, which held 87 percent of the market, began to convince major retailers, including Wal-Mart Stores, Inc., to use USTC’s “exclusive racks” to display its products and those of all other snuff makers. USTC agents would then destroy competitors’ racks. USTC also began to provide retailers with false sales data to convince them to maintain its poor-selling items and drop competitors’ less expensive products. Conwood’s Wal-Mart market share fell from 12 percent to 6.5 percent. In stores in which USTC did not have rack exclusivity, however, Conwood’s market share increased to 25 percent. Conwood filed a suit in a federal district court against USTC, alleging in part that USTC used its monopoly power to exclude competitors from the moist snuff market. Should the court rule in Conwood’s favor? What is USTC’s best defense? Discuss. [*Conwood Co., L.P. v. U.S. Tobacco Co.,* 290 F.3d 768 (6th Cir. 2002)]

**22-8. Restraint of Trade.** Visa U.S.A., Inc., MasterCard International, Inc., American Express (Amex), and Discover are the four major credit-and charge-card networks in the United States. Visa and MasterCard are joint ventures, owned by the thousands of banks that are their members. The banks issue the cards, clear transactions, and collect fees from the merchants who accept the cards. By contrast, Amex and Discover themselves issue cards to customers, process transactions, and collect fees. Since 1995, Amex has asked banks to issue its cards. No bank has been willing to do so, however, because it would have to stop issuing Visa and MasterCard cards under those networks’ rules barring member banks from issuing cards on rival networks. The U.S. Department of Justice filed a suit in a federal district court against Visa and MasterCard, alleging in part that the rules were illegal restraints of trade under the Sherman Act. Do the rules harm competition? If so, how? What relief might the court order to stop any anticompetitiveness? [*United States v. Visa U.S.A., Inc.,* 344 F.3d 229 (2d Cir. 2003)]

**22-9. Sherman Act.** Dentsply International, Inc., is one of a dozen manufacturers of artificial teeth for dentures and other restorative devices. Dentsply sells its teeth to twenty-three dealers of dental products. The dealers supply the teeth to dental laboratories, which fabricate dentures for sale to dentists. There are hundreds of other dealers who compete with each other on the basis of price and service. Some manufacturers sell directly to the laboratories. There are also thousands of laboratories that compete with each other on the basis of price and service. Because of advances in dental medicine, however, artificial tooth manufacturing is marked by low growth potential, and Dentsply dominates the industry. Dentsply’s market share is greater than 75 percent and is about fifteen times larger than that of its next-closest competitor. Dentsply prohibits its dealers from marketing competitors’ teeth unless they were selling the teeth before 1993. The federal government filed a suit in a federal district court against Dentsply, alleging in part a violation of Section 2 of the Sherman Act. What must the government show to succeed in its suit? Are those elements present in this case? What should the court rule? Explain. [*United States v. Dentsply International, Inc.,* 399 F.3d 181 (3d Cir. 2005)]

**22-10. A Question of Ethics**

A group of lawyers in the District of Columbia regularly acted as court-appointed attor­neys for indigent defendants in District of Columbia criminal cases. At a meeting of the Superior Court Trial Lawyers Association (SCTLA), the attorneys agreed to stop provid­ing this representation until the district increased their compensation. Their subsequent boycott had a severe impact on the district’s criminal justice system, and the District of Columbia gave in to the lawyers’ demands for higher pay. After the lawyers had returned to work, the Federal Trade Commission filed a complaint against the SCTLA and four of its officers and, after an investigation, ruled that the SCTLA’s activities constituted an illegal group boycott in violation of antitrust laws. [*Federal Trade Commission v. Superior Court Trial Lawyers Association,* 493 U.S. 411, 110 S.Ct. 768, 107 L.Ed.2d 851 (1990)]

**1.** The SCTLA obviously was aware of the negative impact its decision would have on the district’s criminal justice system. Given this fact, do you think the law­yers behaved ethically?

**2.** On appeal, the SCTLA claimed that its boycott was undertaken to publicize the fact that the attorneys were underpaid and that the boycott thus constituted an expression protected by the First Amendment. Do you agree with this argu­ment?

**3.** Labor unions have the right to strike when negotiations between labor and management fail. The SCTLA is prohibited from striking. Is it fair to prohibit members of the SCTLA from “striking” against their employer, the District of Columbia, simply because the SCTLA is a professional organization and not a labor union?