

Antitrust Jury Instruction 13

Rule of Reason – Proof of Relevant Market

As I mentioned, Plaintiffs must show that the harm to competition occurred in an identified market, known as a “relevant market.” There are two aspects to a relevant market. The first aspect is known as a relevant product market. The second aspect is known as the relevant geographic market. It is Plaintiffs’ burden to prove the existence of a relevant market.

Relevant Product Market

The basic idea of a relevant product market is that it includes all products that are reasonable substitutes for each other from a buyer’s point of view; that is, the products compete with each other. In other words, the relevant product market includes the products that a consumer believes are reasonably interchangeable or reasonable substitutes for each other. This is a practical test with reference to actual behavior of buyers and marketing efforts of sellers. Products need not be identical or precisely interchangeable as long as they are reasonable substitutes. For example, if consumers seeking to cover leftover food for storage considered certain types of flexible wrapping material – such as aluminum foil, cellophane, or even plastic containers – to be reasonable alternatives, then all those products would be in the same relevant product market.

To determine whether products are reasonable substitutes for each other, you should consider whether a small but significant permanent increase in the price of one product would result in a substantial number of consumers switching from that product to another. Generally speaking, a small but permanent increase in price is approximately a five percent increase in price not due to external cost factors. If you find that such switching would occur, then you should conclude that the products are in the same product market.

In evaluating whether various products are reasonably interchangeable or are reasonable substitutes for each other, you may also consider: (1) consumers’ views on whether the products are interchangeable; (2) the relationship between the price of one product and sales of another; (3) the presence or absence of specialized vendors; (4) the perceptions of either industry or the public as to whether the products are in separate markets; (5) the views of Plaintiffs and Defendants regarding who their respective competitors are; and (6) the existence or absence of different customer groups or distribution channels.

In this case, Plaintiffs define the relevant product markets as the market for the production of top-tier men's professional tennis, the market for player services for top-tier men's professional tennis, the market for hosting top-tier men's professional tennis, and/or the market for live top-tier men's professional tennis. By contrast, Defendants assert that Plaintiffs have failed to prove a proper relevant product market because Defendants claim that Plaintiffs’ alleged product markets do not include all reasonably interchangeable products or substitutes. If you find that Plaintiffs have proven a relevant product market or markets that includes all reasonably interchangeable products or substitutes, then you should continue to evaluate the remainder of Plaintiffs’ claim with respect to that market or those markets. However, if you find that Plaintiffs have failed to prove such a market, then you must find in Defendants’ favor on this claim.

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Relevant Geographic Market

For each relevant product market you determine that Plaintiffs have proven, Plaintiffs must also prove a relevant geographic market. The relevant geographic market for a given relevant product market is the area in which the defendant faces competition from other firms that compete in that relevant product market and to which customers can reasonably turn for purchases. When analyzing the relevant geographic market, you should consider whether changes in prices or product offerings in one area have substantial effects on prices or sales in another area, which would tend to show that both areas are in the same relevant geographic market. The geographic market may be as large as global or nationwide, or as small as a single town or even smaller. The relevant geographic market for one relevant product market may be larger or smaller than that for a different relevant product market.

Plaintiffs have the burden of proving the relevant geographic market by a preponderance of the evidence. In this case, Plaintiffs claim that the relevant geographic market for each of these markets is global. By contrast, Defendants assert that Plaintiffs have failed to prove a proper geographic market. In determining whether Plaintiffs have met their burden and proven that their proposed geographic market is proper, you may consider several factors, including:

- The geographic area in which the relevant products are sold and where customers for the relevant products are located;
- The geographic area to which customers turn for supply of the relevant products or have seriously considered turning; and
- The geographic areas that suppliers of the relevant products view as potential sources of competition.

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Antitrust Jury Instruction 14

Relevant Market – Necessity of Proof

If, after considering all the evidence, you find that Plaintiffs have proven by a preponderance of the evidence both a relevant product market and a relevant geographic market, then you must find that Plaintiffs have met the relevant market requirement and you must consider the remaining elements of this claim.

If you find that Plaintiffs have failed to prove by a preponderance of the evidence either a relevant product market or a relevant geographic market, then you must find for Defendants and against Plaintiffs on their antitrust claims.