Antitrust Law: Case Development and Litigation Strategy

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WRITING EFFECTIVE CASE SUMMARIES

Case summaries are difficult and time-consuming to write. You are often trying to distill the essence of a lengthy court opinion into a few paragraphs or a few pages. That is a demanding task, but one that becomes easier with practice. Writing good case summaries is an essential skill for an attorney.

A good case summary distills complex legal reasoning into a clear, concise analysis that highlights the key elements of a court's decision. When writing a case summary for an antitrust audience, consider these principles:

Structure and Organization

1. *The basics*: Identify the case name, court, date, and procedural posture (e.g., motion to dismiss, summary judgment, etc.).
2. *The holding*: State the court's holding relevant to the issue being analyzed.
3. *Relevant facts*: Include only what is necessary to understand the court's reasoning. Do not retell the whole story.
4. *Legal framework*: Identify and briefly explain the legal standards or analytical frameworks the court applied. If complex or novel, explain them clearly.
5. *Application to facts*: Explain how the court applied these legal standards to the specific facts of the case.
6. *Conclusion (if necessary)*: Reiterate the court's holding, if needed to conclude the summary.

Case summaries typically must be integrated into a larger memoranda of law or a law review article. While you should cover all key elements listed above, the order and emphasis may vary depending on context.

Write linearly—paragraphs and sentences should seamlessly follow one another, creating a logical progression without jarring transitions. Anticipate the questions the reader will ask when reading the summary and answer them as they arise. You do not want the reader to stop reading to ponder a question that the case summary does not immediately answer.

Analysis and depth

7. *Focus on the court's reasoning, not just result*: Your summary should center on how the court reached its conclusion. Be sure you explain how the court applied the law to the facts.

8. *Identify implicit assumptions*: Good summaries often note analytical premises that the court takes for granted.
9. *Trace precedent*: Highlight where the court builds on, departs from, or creates new precedent.
10. *Note unresolved questions or tensions*: Identify when the court acknowledges (or fails to acknowledge) conflict with other decisions.
11. *Use footnotes strategically*: Use footnotes to provide pin citataions to the case being summarized, authority for propositions in the text, full case citations, additional context, explanations of technical concepts, or relevant comparisons to other cases. Do not clutter the main text.

Language and tone

12. *Be formal and objective*: Avoid personal opinions unless clearly identified. Summarize, do not editorialize. Do not use colloquialisms.
13. *Use precise legal writing*: Use legal terms correctly. Avoid vagueness and undefined jargon.
14. *Be thorough but concise*: Every sentence and every word should serve a purpose.
15. *Make the case summary easy to read*: Simple, clear language enhances readability and ensures that your analysis, not your vocabulary, commands attention. Do not send the reader to the dictionary.
16. *Use proper Bluebook citations*: Use proper Bluebook citation forms consistently throughout your summary, including proper spacing, abbreviations, and formatting for case names, statutes, and other sources.

Optional Commentary

17. *Distinguish what the court said from your own commentary*: You may add brief commentary outside the four corners of the opinion—such as observations on strategy, omitted analysis, or implications for future litigation—but only if clearly labeled as your own assessment.

***An example*: Duffy v. Yardi Sys., No. 2:23-cv-01391-RSL, 2024 WL 4980771 (W.D. Wash. Dec. 4, 2024)**

The attached case summary of an opinion denying a motion to dismiss illustrates these principles. The case summary is a major element in the memorandum of law for which it was written and therefore somewhat detailed. I encourage you to read the original opinion and then compare it to the case summary to see how a lengthy and complex decision can be distilled into a clear, concise analysis that highlights the most important facts, legal standards, reasoning, and implications without losing accuracy or depth.

In *Duffy v. Yardi Sys., Inc.*,[1] on a Rule 12(b)(6) motion to dismiss, the district court held that the class action complaint, brought by tenants in multifamily housing, plausibly alleged a conspiracy among ten competing multifamily housing owners and operators (the "lessors") and their common software provider, Yardi Systems, to raise and maintain nationwide multifamily rental prices at artificially high levels in violation of Section 1 of the Sherman Act. Specifically, the complaint alleged three interrelated components of the conspiracy. First, it alleged a set of vertical agreements under which each lessor licensed Yardi's RENTmaximizer software and, as a condition of that license, provided Yardi with confidential and competitively sensitive pricing, inventory, and market data. Each lessor allegedly understood that its information would be pooled and used to generate rental recommendations for all participants. Second, the complaint alleged a horizontal agreement among the lessors to contribute competitively sensitive data, adopt Yardi's software, and generally implement its price recommendations. Third, the complaint alleged a shared understanding among lessors that the system would generate supracompetitive rents only if a critical mass of competitors participated by submitting data and implementing the pricing recommendations. The court found that the complaint was sufficient under two adequate and independent methods of proving conspiracy: (a) "invitation and acceptance" under *Interstate Circuit* and (b) "parallel conduct with "plus factors" under *Twombly*.

Under *Interstate Circuit*, a complaint states a plausible claim of conspiracy when it alleges that (1) one party extended an invitation to participate in a common scheme; (2) each invitee understood that its competitors had received the same invitation; (3) each invitee also understood that the scheme could succeed only if most or all accepted; and (4) a substantial number of invitees did accept the invitation and cooperate in the scheme.[2] Applying that framework, the court found that the complaint plausibly alleged each of the four elements necessary to support an "invitation and acceptance" theory of agreement among the defendants. First, the complaint alleged that Yardi marketed its RENTmaximizer software as a tool for increasing rents, reducing uncertainty about market conditions, and eliminating the risk of being underbid. As part of this marketing effort, Yardi invited lessors to join a common scheme by licensing its software and providing confidential, competitively sensitive information that Yardi would pool and use—via its software—to generate rental rate recommendations for each licensee. Second, each lessor allegedly understood that its horizontal competitors had received the same invitation, as evidenced by Yardi's marketing materials and public endorsements from existing clients. Third, the complaint alleged that each lessor recognized that the scheme could only succeed in raising rental rates if a critical mass of competitors licensed the program, provided their own data, and implemented the software's price recommendations. Finally, the complaint alleged that a substantial number of competing lessors accepted this invitation by contracting with Yardi,

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[1] No. 2:23-CV-01391-RSL, 2024 WL 4980771 (W.D. Wash. Dec. 4, 2024).

[2] An *Interstate Circuit* conspiracy is commonly called a "hub and spokes" conspiracy, although the *Duffy* court did not use that term in applying the framework. In the *Duffy* analysis, the "hub" is the original invitor (Yardi) and the "spokes" are the invitees (the lessors). Implicit in the *Interstate Circuit* framework is a second layer of reciprocal offers and acceptances occurring horizontally among the lessors themselves: each lessor effectively makes a conditional offer to its competitors that it will join the scheme if they do as well. When other lessors participate, they accept that conditional offer. This pattern of reciprocal conditional participation forms the "rim" of the wheel—the horizontal agreement that transforms separate vertical arrangements into a cohesive conspiracy to restrain trade. *Cf.* United States v. Container Corp. of Am., 393 U.S. 333 (1969) (also tacitly incorporating the idea of implicit reciprocal conditional offers and acceptances among competitors to support a permissive inference of a horizontal conspiracy).

sharing their data, and generally adhering to the pricing recommendations, which allegedly resulted in rental rates higher than they would have been absent the conspiracy. The court concluded: "Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act."[3]

The court also held that the complaint plausibly alleged a horizontal agreement under the *Twombly* framework of parallel conduct supported by "plus factors." Under *Twombly*, a plaintiff may plead a Section 1 conspiracy through circumstantial allegations that competitors engaged in parallel behavior, coupled with additional specific factual allegations that the behavior was not the result of independent decision-making. Here, the court found the complaint alleged that the lessor-defendants engaged in parallel conduct by licensing Yardi's RENTmaximizer software, supplying Yardi with confidential, competitively sensitive data, and generally adhering to the rental rate recommendations generated by the Yardi algorithm. To support the inference that this conduct was not merely coincidental, the court identified as "plus factors" conduct allegedly contrary to each firm's unilateral economic self-interest. Specifically, the court found significant allegations that lessors shared sensitive pricing and inventory data with Yardi, knowing it would be used to generate recommendations for their competitors, delegated price-setting authority to the algorithm, and adopted rent-maximizing strategies over occupancy—even though such conduct would have been irrational absent an expectation of reciprocal participation.[4] Citing *Twombly*, the court concluded that "[t]hese factors provided a context suggesting 'a preceding agreement, not merely parallel conduct that could just as well be independent action.'"[5] Rejecting the defendant's argument that, in the absence of an allegation that the lessor-defendants explicitly agreed to implement RENTmaximizer's price recommendation or were bound to do so by Yardi's license agreement, the court found that the complaint "amply suggests" that the lessor defendants understood that "implementing the system was critical to the success of the enterprise and therefore generally adopted Yardi's pricing recommendations" and that "Yardi was, in fact, able to generate above-market prices using a system that required adoption of its recommendations for success."[6]

After finding the complaint plausibly alleged a conspiracy, the court turned to the applicable standard of review and held that the per se rule would apply if the plaintiffs ultimately proved their claims. The court explained that once a plaintiff plausibly alleges an unlawful agreement to restrain trade, the court must presume the existence of that agreement when determining whether the per se rule or the rule of reason applies. Here, the court found that the complaint plausibly alleged a horizontal agreement among competing lessors, facilitated by Yardi, whose object was to pool competitively sensitive, nonpublic data and to adopt rental price recommendations

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[3] *Id*. at *4 (quoting PLS.Com, LLC v. Nat'l Ass'n of Realtors, 32 F.4th 824, 843 (9th Cir. 2022) (in turn quoting *Interstate Circuit*, 306 U.S. at 227)).

[4] *Id*. at *4 (specifically adopting Judge Crenshaw's reasoning that sharing proprietary commercial data with Yardi would be against each lessor's economic self-interest unless they knew competitors would do the same, as articulated in *In re* RealPage, Inc., Rental Software Antitrust Litig. (No. II), 709 F. Supp. 3d 478, 510 (M.D. Tenn. 2023)). For example, it would be economically irrational for one lessor to implement a higher price recommended by Yardi's program if the other lessors were not also increasing their prices. Presumably, each lessor was maximizing its profits at the prevailing set of prices in the market, so that an increase in price by only one lessor would cause that lessor to reduce its profits.

[5] *Id*. at *4 (citing *Twombly*, 550 U.S. at 557).

[6] *Id*. at *5.

generated by a shared algorithmic platform—recommendations that, according to the complaint, systematically exceeded prevailing market prices. The court explicitly rejected the approach taken by the Middle District of Tennessee in *RealPage*, finding instead that the alleged agreement would fall squarely within the category of conduct deemed per se unlawful under Section 1, regardless of its novel algorithmic implementation.[7] Relying on Supreme Court precedents in *Socony-Vacuum* and *Trenton Potteries*, the court emphasized that agreements among competitors to raise, fix, or stabilize prices are per se illegal, regardless of the mechanism employed.[8] The court flatly rejected the defendants' argument that algorithmic price coordination was too novel for per se treatment, stating: "Such agreements are subject to per se analysis because a collective's power to fix price structures is unreasonable and prohibited by the Sherman Act regardless whether the prices agreed upon are reasonable or unreasonable. The Supreme Court has expressly held that 'the machinery employed by a combination for price-fixing is immaterial,' and the Sherman Act declares all such horizontal agreements to tamper with price structures unlawful."[9]

[7] *Id*. at *7 (disagreeing with *RealPage*, 709 F. Supp. 3d at 513-15, where Judge Crenshaw applied the rule of reason rather than per se analysis to algorithmically facilitated price coordination).

[8] *Id*. at *8 (citing Socony-Vacuum Oil Co. v. United States, 310 U.S. 150, 220-23 (1940), and United States v. Trenton Potteries Co., 273 U.S. 392, 397 (1927)).

[9] *Id*. (citations omitted; quoting *Socony-Vacuum*, 310 U.S. at 223).