Antitrust law

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Antitrust Laws and Applications The antitrust laws are designed to prevent unfair competition as a result of market might or shrewd manipulation. The United States' economy is based on open competition and fair dealings, assuring competitive pricing and better products. Out-competing is considered acceptable, rigging the game is not. Several laws were passed between 1890 and 1940 which solidified the rules of competition among the very powerful. Although meant to abate the mighty from unfair competition, all businesses should be aware of these laws. Antitrust Laws and Applications 2 Antitrust Laws and Applications The major antitrust legislation from 1890 – 1940 included the Sherman Act, the Clayton Act and the Robinson-Patman Act. Each of the succeeding Acts clarified and built on the one preceding. Sherman Antitrust Act: The act criminalizes all agreements to reduce competition. Contracts, conspiracies and corporate vertical integration that unreasonably restrain interstate or foreign trade. (DOJ1, DOJ2) Agreements such as bid rigging, tying contracts or price fixing are illegal under this act. Monopolies, cartels and oligopolies can be unlawful under certain conditions. Any of these acts that reduce or restrain competition through predatory means is illegal. (DOJ1, DOJ2) The act reduces the strength of monopolies. Until 1890, large companies would suppress competition through anti-competitive conduct such as spot market sales, collusion with a few large suppliers or price fixing. Spot market sales occur when a large National or regional, interstate, company sells products at a low cost in one area to drive out local competition. Their losses are covered by operations in other areas where their business thrives. For example Standard Oil of New Jersey was found guilty of this practice in 1911. (Anderson and Johnson, 1999) Cartels or oligopolies thrive in conditions when very few competitors are in the same

field of business. These orchestrated actions among the few, but powerful players, reduce competition by dividing markets, bid rigging or price fixing. This form of antitrust violation is the most Antitrust Laws and Applications 3 insidious because the market seemingly has competitors. Since this practice is so destructive to the economy, these violations are " per se" illegal; which means, if collusion can be shown, extra profit does not need to be proven for a conviction. If the parties participated, they are guilty. Tying contracts require a customer to purchase two products in order to get the high demand product delivered. Gasoline demand is relatively inelastic, people will continue to buy regardless of price rise. The distributer may require the retailer buy motor oil as well in order to have the right to buy gasoline. This act drives local and small motor oil distributers out of business. The Sherman Act was Congress' first attempt to stop these predatory practices. The Clayton Act clarified and refined the Sherman Act. Clayton Act The Clayton Act outlaws mergers and acquisitions that are likely to lessen competition. The economics of expansion can be very competition unfriendly. Companies can either buy competitors or suppliers. If they merge with competitors, fewer competitors are in the market and one competitor may control the market. If the company buys a supplier, and then refuses to sell to competitors or sells at inflated prices, competition suffers. The Clayton Act allowed Congress and the Federal Trade Commission oversight of large mergers and acquisitions. (DOJ2) Robinson-Patman Act The Robinson-Patman Act guides regulators by one ethic: Antitrust Laws and Applications 4 " to assure reasonably that businessmen at the same functional level would stand on equal competitive footing as far as price is concerned." (Clark, 1995) The Act brought economic analysis to bear on the ethic of monopoly

power and collusion. (Clark, 1995) The question was asked, can a rational predatory firm expect to gain anything less than the current value of their losses sustained by price cutting their competition out of business. (Paterson and Mueller, 1984) Secondarily, will competitors enter a market knowing these predators will price them back out. The loss sustained by the price war may pay dividends when no other competitors enter the business. (Anderson and Johnson, 1999) Enforcement Violators are subject to jail terms, fines and civil penalties of triple damages to the competitors harmed by the unscrupulous practices. (DOJ2) Business Behavior There are several risk management techniques to avoid these antitrust arrangements. First, purchase supplies and materials from either unrelated firms or at " arms length". Do not collude with competitors to rig bids, divide territory or price fix. Avoid any appearance of wrongdoing. To the extent that competitors are friendly on a personal level, business chatter should be kept to very general topics. Antitrust Laws and Applications 5 Some more subtle strategies include broadening the definition of the companies industry. If the competitors become too large or few in the cell phone business, they advertise as communications business. Now, these firms compete with email, faxes, the post office, telegraphs and land line phone companies. The percentage of control drops appreciably. To avoid prosecution, exclusionary or favoritism in selling to retailers is avoided. One master price list or discounts for volume, but allow all buyers the same purchase conditions. The FTC also deals with deceptive advertising. The company should avoid deception through forthright and honest communications with clients and the public. Antitrust Laws and Applications 6 References Anderson, Rod W. and Johnson, Ronald N. (1999) Antitrust and sales-below-cost laws: the case

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