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TO: Antitrust Modernization Commission  
Andrew J. Heimert, Executive Director and General Counsel

FROM: Mark E. Roszkowski  
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DATE: October 13, 2004

RE: Comments regarding Commission issues for study

The area I recommend for study is current vertical restraints law, as developed in four major cases: *Continental T.V., Inc. v. GTE Sylvania, Inc.* (1977)<sup>1</sup>; *Monsanto Co. v. Spray-Rite Service Corp.*<sup>2</sup>; *Business Electronics Corp. v. Sharp Electronics Corp.* (1988)<sup>3</sup>; and *State Oil Company v. Khan* (1997)<sup>4</sup>. As I have noted in a series of law review articles<sup>5</sup>, these cases have introduced wholly unsupported and unprecedented holdings into modern antitrust law: *GTE Sylvania*—proven injury to competition in one market can be justified by purported benefits to competition in another market.

*Monsanto*—proof of an antitrust conspiracy requires proof that excludes the possibility that the defendants were acting independently.

*Business Electronics*—a price fixing agreement requires specific agreement on prices or price levels.

*State Oil*—price fixing is not a per se violation of the Sherman Act.

The most “troubling consequence” of the vertical restraints law created by these cases is its “failure to attach any weight to the value of intrabrand competition.”<sup>6</sup> These case also have undermined important holdings involving horizontal group boycotts and horizontal price fixing, most notably *United States v. Socony-Vacuum Oil Company* (1940).<sup>7</sup>

The articles referenced above provide a full discussion of the problems created by current vertical restraints law, and I will provide copies of those articles on request. I can be reached at the above address; or at (217) 333-0886 or 398-0746. My email address is mroszkow@uiuc.edu.

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<sup>1</sup> 433 U.S. 36 (1977).

<sup>2</sup> 465 U.S. 752 (1984).

<sup>3</sup> 485 U.S. 717 (1988).

<sup>4</sup> 522 U.S. 3 (1997).

<sup>5</sup> See Mark E. Roszkowski, *The Sad Legacy of GTE Sylvania and its “Rule of Reason”: The Dealer Termination Cases and the Demise of Section 1 of the Sherman Act*, 22 CONN. L. REV. 129 (1989); Mark E. Roszkowski, *Vertical Maximum Price Fixing: In Defense of Albrecht*, 23 LOY. U. CHI. L.J. 209 (1992); and Mark E. Roszkowski, *State Oil Company v. Khan and the Rule of Reason: The End of Intrabrand Competition?*, 66 ANTITRUST L.J. 613 (1998).

<sup>6</sup> *Business Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 748 (1988) (Stevens, J., dissenting).

<sup>7</sup> 310 U.S. 150 (1940).