



MEMORANDUM

From: Exclusionary Conduct Study Group
To: All Commissioners
cc: Andrew J. Heimert and Commission Staff
Date: May 4, 2005
Re: Exclusionary Conduct Study Plan

Issue Adopted by the Commission for Study

- Should the substantive standards for determining whether conduct is exclusionary or anticompetitive under either Section 1 or Section 2 of the Sherman Act be revisited?

Questions for Public Comment

1. What are the circumstances in which a firm's refusal to deal with (or discrimination against) rivals in adjacent markets violates Section 2 of the Sherman Act? Does the Supreme Court's decision in *Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004), state an appropriate legal standard in this respect?
2. Should the essential facilities doctrine constitute an independent basis of liability for single-firm conduct under Section 2 of the Sherman Act?
3. What should be the standards for determining when a firm's product bundling or bundled pricing violates Section 2 of the Sherman Act?
4. How should the standards for exclusionary or anticompetitive conduct be determined (e.g., through legislation, judicial development, *amicus* efforts by DOJ and FTC), particularly if you believe the current standards are not appropriate or clear?

Hearings

- Two panels of approximately three to four hours each.
1. Refusals to deal and essential facilities
 - Representative(s) from defense bar
 - Representative(s) from business community
 - Representative(s) from plaintiffs' bar
 - Scholar(s)
 2. Product bundling and bundled pricing
 - Representative(s) from defense bar

- Representative(s) from business community
- Representative(s) from plaintiffs' bar
- Scholar(s)