

PREFACE

As we discuss in Chapter I, there have been several major developments in case law since the first edition of *Antitrust Law and Economics of Product Distribution*. In particular, the legal analysis for some specific aspects of product distribution has changed dramatically since this book originally was written nearly a decade ago, most notably relating to resale price maintenance. In other areas, such as tying and price discrimination, legal doctrines have not changed as much, but plaintiffs appear to be having much less success under the rules and analyses that have already been established. In areas such as cross-border distribution and the sale of products over the Internet (and other manifestations of technology in product distribution), the law has reached puberty in the last decade. Application of existing rules to those newer situations is causing progress in the evolution of both legal and economic thinking. Finally, there has been some progress in economic learning regarding distributional arrangements, although economics is still better at identifying the key questions rather than providing clear answers.

For these reasons, it was time to update this book. Picking up on the concept envisioned by the preceding editors, the approach was to have a lawyer and an economist work together to provide drafts of each chapter. With the assistance of both the Economics Committee and the Distribution and Franchising Committee of the Section of Antitrust Law of the American Bar Association, we have done that. Each pair was assigned to review what had been written before, to scrap what no longer applies, and to describe anew the latest and best legal and economic analyses that will apply to product distribution.

In addition to the topics covered in the seven chapters in the original book, this second edition of *Antitrust Law and Economics of Product Distribution* adds three entirely new chapters. Chapter II is the first of the new chapters. This chapter sets forth an overview of the many economic principles that apply to distribution and franchising, highlighting the principles that undergird modern analysis of each type of vertical restraint or relationship. A group of economists, Serge Moresi, Spencer Graf, John Woodbury, and Joshua Wright, and attorney Rob McNary shouldered the

task of gathering and consolidating the key principles and empirical research..

As mentioned above, resale pricing is an area in which the most new law was produced in the last decade. Chapter III, written by lawyer Maggy Sullivan and economist Howard Marvel, explores these changes, while describing the underlying legal and economic thinking.

Chapter IV discusses customer and territorial restraints. Authors David Reitman, an economist, and Tom Collin, a lawyer, provide an update on exclusivity and related economic and legal concepts, including in the context of dual distribution.

In Chapter V, the still-alive concept of tying is analyzed anew by lawyer Stuart Senator and economist Vandy Howell. They describe the evolution of tying law and theory from its days of per se illegality to the less-defined existence it maintains today. This area may change again before the next edition of this book is published.

The topic of Chapter VI is exclusive dealing. Through the perspectives of economist Stanley Ornstein and lawyer Gary Kubek, this chapter updates the analyses related to requirements that products be distributed only through certain parties.

Price discrimination is the focus of Chapter VII. Alicia Downey, a lawyer, and Robert Kneuper, an economist, look once again at this curious and vexing topic for advisors.

It is after distributor terminations and suppliers' refusals to deal that many of the above legal claims arise. Chapter VIII discusses the antitrust issues unique to refusal to deal scenarios, including when a supplier terminates a distributor. Attorney Jarod Bona and economist H.E. Frech contributed the update to this chapter.

International distribution is the second all-new chapter, covering the European Union's treatment of virtually all the concepts discussed in the rest of this book. Attorney Renato Nazzini contributed Chapter IX with help from attorney Jennifer Marsh and economist Paul Godek.

In the third newly added Chapter X, practicing lawyers Paul Friedman and Craig Falls, and economist Marc Rysman, evaluate the impact of technology and the Internet on product distribution. They did so, noting the ways in which modern developments have applied and extended earlier principles in today's world of eBay, Amazon, Google, and other new platforms for the sale of products.

In keeping with the multi-disciplinary nature of this project, the editors (and authors of introductory Chapter I) for this edition are James Langenfeld, who is an economist, and attorneys Ted Banks and Quentin Wittrock. In addition to the individuals listed above, the editors wish to

thank Seth Corthell, Raleigh Richards, and SunJung Yoon for their assistance in preparation and editing of this book.

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