THE RULE OF REASON AND THE GOALS OF ANTITRUST: AN ECONOMIC APPROACH

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ABSTRACT

In this article, we discuss the problem of the rule of reason and the welfare standard in antitrust. We begin with Part I, which reviews the Supreme Court’s guidance on the standard for conducting a rule of reason analysis. Put simply, the Supreme Court has failed to identify clearly what standard to use in conducting a rule of reason inquiry. After a careful—albeit selective—reading of Supreme Court opinions it is simply not clear. While a case can be made for total welfare as the guiding principle of a rule of reason analysis, which is the standard that we advocate, an argument also can be made, based upon case law, for consumer welfare. In most simple cases, the antitrust welfare standard does not matter. Beyond these simple cases, however, there are more complicated cases for which the welfare standard does matter. The article introduces the first set of complications in Part II where we discuss the efficiency trade off. Next is Part III, where we analyze the need to weigh efficiencies that are accompanied by increased market power flowing from joint ventures or mergers. We also turn our attention to the creation of countervailing power through joint ventures or mergers. In Part IV, we analyze restraints that have no apparent total welfare effects, but do have pronounced distributive effects. Finally, we close the article with some concluding comments in Part V regarding how to solve the policy dilemma of the implementation of proper goal of antitrust.