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Antitrust
Spring 1992

Question I

The Coating Chemical Corporation ("3C") produces, among other things, coatings for the protection of glass lenses used in high precision optical equipment. The type of coating made by 3C, bonded even-flow plastica ("BEP"), is the only type of coating suitable for use on such equipment. 3C makes 85% of the BEP made and sold in the United States.

There are a number of large foreign makers of BEP. These, together, produce several times the amount of BEP made by 3C. However, the foreign makers have never been able to sell much BEP in the United States. The reason for this is that the Department of Defense has adopted a regulation which requires that all high precision lenses used in military equipment-it buys be completely made in the United States. While only 12% of high precision lenses are used in military equipment, manufacturers of lenses do not find it economical to have separate military and civilian high precision lenses. The Department of Defense regulation was adopted only after intense lobbying by BEP and by senators and representatives with large 3C facilities in their constituencies.

3C's 85% share of BEP made and sold in the United States has remained remarkably stable over the years. Three factors account for 3C's 85% market share. First, the aforementioned Department of Defense regulation has restricted foreign competition. The other two factors have a common source, the vast profits made by 3C over the years from the production and sale of BEP. 3C's large profits have enabled it to undertake large-scale promotional efforts. These promotional efforts have not only included extensive media advertising, but efforts aimed at influencing executives of individual lens makers to

use 3C BEP. 3C has given free promotional merchandise to and sponsored seminars for managers of lens makers. In addition, 3C has wined and dined those same managers. As a result, the managers of lens makers in the United States have strong loyalties to 3C as a supplier of BEP.

3C's huge profits have also enabled it to hire the best talent, have the most well-funded and advanced research and development program, and the most efficient and reliable product distribution system. These elements have also helped keep 3C "on top" in sales of BEP.

BEP has recently entered the high precision lens making business. It now has a 15% share of the high precision lens market in the United States. It garnered its share largely at the expense of some small lens makers. These lens makers were forced out of business by 3C's refusal to sell BEP to them. Because no other low-cost, reliable source of BEP was consistently available to these lens makers, they went out of business. 3C was able to buy up their facilities at "bargain basement" prices. 3C is not seeking to expand its share of the high precision lens market in the United States or elsewhere. Indeed, for a number of reasons too complicated to discuss here, it is highly unlikely that 3C will expand its share of the high precision lens market any time in the foreseeable future.

The federal government has now brought an injunctive action against 3C, charging that 3C has illegally monopolized the market for BEP in the United States in violation of section 2 of the Sherman Act. Discuss 3C's possible liability for violation of section 2 of the Sherman Act.

Question II

Battery powered roller-sticks are electrically powered "toys" which are a cross between an in-line roller skate and a pogo stick. The seven

American manufacturers of roller sticks have formed a trade association, the American Roller Stick Manufacturer's Association ("ARSMA"). While the roller stick manufacturers usually have done quite well, a number of threats to their position have arisen. The first threat was competition from high quality, low-priced roller sticks made in the Asian nation of Magoa. Magoa was a small Asian nation ruled by a highly repressive dictatorship. Magoan roller sticks were very popular and competition from them was forcing down the price of American-made roller sticks. The members of ARSMA agreed that something would have to be done to stem the price competition from Magoan roller sticks.

A special committee of ARSMA came up with a "solution" to the problem of Magoan roller sticks which it put forth in a report to the members of ARSMA. The report noted that 15 per cent of Magoan roller sticks were made by prison or other forced labor. While the committee expressed no ethical qualms about this fact, it did note that publicizing this fact might well lead to a decrease in demand for Magoan roller sticks and stem the downward price pressure on American manufacturers. While no single manufacturer could afford to fund such a campaign on its own, the members of ARSMA could pool their resources to fund the advertisements. The committee, therefore, recommended an extensive joint campaign to publicize the use of prison and forced labor to make Magoan roller sticks.

The members of ARSMA unanimously agreed to fund jointly an extensive advertising campaign aimed at publicizing the prison and forced labor origins of some Magoan roller sticks. The campaign (hereinafter referred to as the "Magoan campaign") was launched in a variety of media. The message in all the media was generally the same: "if you buy a Magoan roller stick, there's a good chance it was made by slave labor or political prisoners."

The Magoan campaign worked to perfection. As the report predicted, demand for Magoan roller sticks dropped and American manufacturers were able to raise their prices.

The next problem faced by the membership of ARSMA was internal. It seems that use of certain inexpensive internal parts in roller sticks made by some ARSMA members were leading to problems. The parts would wear prematurely thus causing early failure in the affected roller sticks. These part failures would, of course, render the roller sticks useless. Worse yet, some of the part failures caused serious personal injuries to roller stick users. As word of the failures spread among consumers, all the roller stick manufacturers suffered, whether their particular products had early failures or not. Indeed, industry output dropped sharply as consumers refused to buy roller sticks. To combat this phenomenon, the members of ARSMA agreed to what they called the "ARSMA Quality Production Code" (hereinafter referred to as "the Code"). Under this code, the manufacturers agreed not to use the type of inexpensive parts which had previously been causing early product failures. After the Code was adopted, consumer confidence in roller sticks was restored and sales of the toys increased.

Finally, ARSMA decided to sponsor a trade show for distributors and retailers of roller sticks. The show would conveniently bring together manufacturers and the distributors and retailers who sold their products. The show was a tremendous hit. The distributors and retailers loved the convenience of seeing all the manufacturers' products in one location, and many bought products right at the show. Indeed, the show was responsible for a strong increase in distributor and retailer purchases of roller sticks. The happy world of ARSMA was, however, disturbed by new competition from a number of Korean manufacturers of roller sticks. The Korean competitors wished to exhibit their wares at the trade show. The membership of ARSMA decided to consider the question of Korean manufacturer participation in the show.

A number of ARSMA members stated that if the Koreans were allowed to exhibit at the show, they would discontinue their participation at the shows. If these manufacturers pulled out of the show, it would put the continuation of the shows in serious jeopardy. To protect the show, the membership of ARSMA voted to bar the Korean manufacturers from participation in the show (hereinafter

referred to as "the anti-Korean resolution"). The inability of the Korean manufacturers to participate in the show put them at a competitive disadvantage. However, they were still able to function and often provide effective low-priced competition for the members of ARSMA.

Discuss the possible liability under section 1 of the Sherman Act of the members of ARSMA for (a) the Magoan campaign, (b) the ARSMA Quality Production Code, and (C) the anti-Korean resolution.

Question III

Comprehensive home service software (hereinafter referred to as "CHS software"), is an integrated package of computer software designed to run on personal computers. The package combines every function needed to run a modern home. The package combines everything from home finances to recipes in one single uniform integrated format. While software designed to do individual tasks remains available, the integrated CHS software has proven to be tremendously more popular, outselling their individual rivals by four to one.

The most popular CHS software package is "Home Run" made by Genius Development Corporation ("GDC"). Sales of Home Run account for 75% of all sales of CHS software. All CHS software is fairly complicated. In order to sell the software to customers, a vendor must be willing to undertake an extensive familiarization and sales process with a potential Customer. Otherwise, the customer will not buy the software, or will return it after buying it and trying to use it. For a while, GDC attempted to distribute Home Run through a variety of channels including mail order houses, discount department stores, and specialized retail software vendors. During this time, sales of Home Run lagged. GDC then switched to a policy of selling Home Run only through authorized specialized retail software vendors. Sales of the program began to soar when this change was made.

GDC has two special policies with respect to the distribution and sale of Home Run. The first policy is embodied in every agreement it signs with an authorized retail outlet for Home Run. The policy of GDC is that authorized retailers will sell Home Run only to customers whose principal residence or business is located in a geographical territory given to the retailer by GDC (this policy is known as "the GDC territorial policy.")"

The second policy of GDC is to insist that all retail sales of Home Run be made at no less than \$250 per copy ("the retail price policy"). This policy is not contained in any contract between GDC and its authorized retailers. Instead, GDC simply announced that this was its policy and stated that any retailer violating the policy would be unconditionally and irrevocably terminated as an authorized GDC retailer. GDC has followed through on its announcement, and several authorized retailers have been terminated.

GDC lacks the internal resources to discover violations of its retail price policy. GDC, therefore, relies on two sources to discover violations. First, it has hired an independent marketing firm to check for violations of the price policy. Second, it relies on complaints from authorized retailers to discover violations. GDC has never formally solicited complaints from dealers. However, whenever it receives a complaint from a dealer it sends the following acknowledgment letter signed by a senior executive officer of GDC:

Dear _____

We have received your letter of _____ informing us of the alleged violation of our policy by _____. We will investigate the matter fully and make a determination of what to do based upon the best interests of the entire GDC family.

GDC depends on the cooperation of dealers like you to ensure that Home Run (TM) remains the industry leader in CHS software. Thank you for your letter.

Very truly yours,

Senior Executive

Discuss the legality under section 1 of the Sherman Act of

(a) GDC's territorial policy and (b) GDC's retail price policy.
