

Designing Antitrust Rules for Assessing Unilateral Practices

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Abstract: Businesses engage in a variety of practices to increase sales and profits, often at the expense of competitors. These "unilateral practices" usually become suspect under the competition laws only when the firm using them has what is termed "monopoly power" under U.S. law and a "dominant position" in the European Union (EU). There is great variation in how the courts analyze unilateral practices. The courts have, for example, devised quite different rules for prices: compare *LePage's Inc v 3M* (Minnesota Mining and Manufacturing Co) with *ManufactureF ranqaised es PneumatiquesM ichelinv Commission of the EuropeanC ommunities(2M ichelinI I)*. By the same token, plaintiffs face high hurdles in showing predatory pricing in U.S. law under *Brooke Group Ltd v Brown & Williamson Tobacco Corp*, but low hurdles in showing tying under *Jefferson Parish Hospital District No 2v Hyde*.

Tags: Antitrust Rules; Unilateral Practices

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