

Monopolization, Attempted Monopolization and Combination or Conspiracy to Monopolize under Sherman Act

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Abstract

Section 2 of the Sherman Act prohibits monopolization, attempted monopolization and combination or conspiracy to monopolize. Monopolization requires the wilful acquisition or maintenance of the monopoly power in the relevant market. In general, Section 2 of the Sherman Act takes a behavioral monopoly policy and condemns not the monopoly as such but the monopolistic conducts, such as refusal to deal, monopoly leveraging, predatory pricing, price squeeze, patent misuse. As for attempted monopolization, it has three components: the specific intent to acquire monopoly power, the dangerous probability that monopoly power will be attained and overt exclusionary conduct. Finally, combination or conspiracy to monopolize requires proof of (1) concerted action, (2) overt acts in furtherance of the conspiracy or combination, and (3) specific intent to monopolize.

Compared with Section 2 of the Sherman Act, Section 10 of the Fair Trade Law of this country also adopts a behavioral approach toward monopoly policy. However, unlike Section 2 of the Sherman Act, the Section prohibits only the abuse of the monopoly power, not the wilful acquisition of the monopoly power, which means, the Fair Trade Law of this country will not intervene until monopoly is actually formed, regardless how. From the author's point of view, this arrangement cannot provide adequate preventive measures.