



Structure of Federal Legal Actions Against Monopolization

Antitrust
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Sherman Act § 2

“Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.”

FTC Act § 5

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Everything that violates § 2 for monopolization will also violate FTC Act § 5.

But § 5 is broader, reaching unilateral anticompetitive conduct where there's *market power* even if there's not *monopoly power*.

Yet, as we know, only the FTC can enforce FTC Act § 5. Also, the remedies are limited to prospective relief.

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What's the difference between market power and monopoly power? Just hold on, we're getting to that shortly.

Yet, as we know, only § 5. Also, the remedies are limited to prospective relief.

We'll be concentrating on just the monopolization claim for a while. After we've gone through it thoroughly, we'll come back for a relatively quick look at attempted monopolization.

Monopolization elements

- (1) monopoly power in a relevant market
- (2) anticompetitive conduct

Mode of analysis

Monopolization claims proceed under a rule-of-reason sort of analysis, but courts tend not to use the label “rule of reason” for § 2 claims like they do for § 1 claims.

Monopolization elements

“The offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.”

United States v. Grinnell Corp., 384 U.S. 563, 570-71 (1966)

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a/k/a “monopoly conduct,”
“predatory conduct,” “exclusionary
conduct” (some sources may draw
distinctions among various terms, but
they are often used interchangeably)

Monopolization elements

(1) monopoly power in a relevant market

1. What's a relevant market?

a) product market

b) geographic market

2. What constitutes monopoly power in that market?

(2) anticompetitive conduct