Attempted Monopolization

Antitrust
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Attempted monopolization elements

"[I]t is generally required that to demonstrate attempted monopolization a plaintiff must prove (1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power."

– Spectrum Sports v. McQuillan (U.S. 1993)

Attempted monopolization elements

(1) Defendant has engaged in predatory or anticompetitive conduct with

(2) a specific intent to monopolize and

(3) a dangerous probability of achieving monopoly power.

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(2) a specific intent to monopolize and

⇧ intent can be inferred from conduct

(3) a dangerous probability of achieving monopoly power.

Intent — attempted monopolization vs. monopolization

With monopolization, intent requires only a deliberate and purposeful act – something that's not an accident.

Attempted monopolization requires more, "specific intent," but it still can be inferred.

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(3) a dangerous probability of achieving monopoly power.

But it's no defense that the plan would have been impossible to execute! (*American Airlines*)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN AIRLINES, INC; and ROBERT L. CRANDALL, Defendants.	COMPLAINT (15 U.S.C. §2) Civil No. CA 3 83-0325D Filed: February 23, 1983

COMPLAINT

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants and complains and alleges as follows:

Crandall: I think it's dumb as hell for Christ's sake, all right, to sit here and pound the shit out of each other and neither one of us making a fucking dime.

Putnam: Well --

Crandall: I mean, you know, goddamn, what the fuck is the point of it?

Putnam: Nobody asked American to serve Harlingen. Nobody asked American to serve Kansas City, and there were low fares in there, you know, before. So --

Crandall: You better believe it, Howard. But, you, you, you know, the complex is here -- ain't gonna change a goddamn thing, all right. We can, we can both live here and there ain't no room for Delta. But there's, ah, no reason that I can see, all right, to put both companies out of business.

Putnam: But if you're going to overlay every route of American's on top of over, on top of every route that Braniff has -- I can't just sit here and allow you to bury us without giving our best effort.

Crandall: Oh sure, but Eastern and Delta do the same thing in Atlanta and have for years.

Putnam: Do you have a suggestion for me?

Crandall: Yes. I have a suggestion for you. Raise your goddamn fares twenty percent. I'll raise mine the next morning.

Putnam: Robert, we --

Crandall: You'll make more money and I will too.

Putnam: We can't talk about pricing.

Crandall: Oh bullshit, Howard. We can talk about any goddamn thing we want to talk about.

Instead of accepting Crandall's offer, Putnam turned over a tape of the conversation to the feds.

***U.S. v American Airlines, Inc.* 743 F.2d 1114 (5th Cir. 1984):**

[From the opinion:]

The question presented in this antitrust case is whether the government's complaint states a claim of attempted monopolization under section 2 of the Sherman Act against the defendants, American Airlines, and its president Robert L. Crandall, for Crandall's proposal to the president of Braniff Airlines that the two airlines control the market and set prices. ...

[W]e conclude that if Putnam had accepted Crandall's offer, the two airlines, at the moment of acceptance, would have acquired monopoly power. At that same moment, the offense of joint monopolization would have been complete. ...

The government unequivocally alleged that Crandall proposed to enlist his chief competitor in a cartel so that American and Braniff, acting together, could control prices and exclude competition at DFW; as Crandall explained to Putnam, "we can both live here and there ain't no room for Delta." As a result of the monopolization, Braniff would "make more money and I will too."

***U.S. v American Airlines, Inc.* 743 F.2d 1114 (5th Cir. 1984):**

[continued ...]

Both Crandall and Putnam were the chief executive officers of their airlines; each arguably had the power to implement Crandall's plan. The airlines jointly had a high market share in a market with high barriers to entry. American and Braniff, at the moment of Putnam's acceptance, would have monopolized the market. Under the facts alleged, it follows that Crandall's proposal was an act that was the most proximate to the commission of the completed offense that Crandall was capable of committing. Considering the alleged market share of American and Braniff, the barriers to entry by other airlines, and the authority of Crandall and Putnam, the complaint sufficiently alleged that Crandall's proposal had a dangerous probability of success.

...

Finally, we note one final consequence of our reasoning. If a defendant had the requisite intent and capacity, and his plan if executed would have had the prohibited market result, it is no defense that the plan proved to be impossible to execute. As applied here, if Putnam from the beginning never intended to agree such fact would be of no aid to Crandall and American.