Antitrust Final Examination
Monday May 1, 2000

Three hours

The examination consists of three parts:

PART I - thirty multiple choice questions worth 15 points each.
Select the single best answer for each question.

PART II - twenty true/false questions worth 8 points each.

PART III - one essay question worth 90 points.

700 points total.

This is a no notes - closed book examination.

Do not begin until you are told to do so.

Stop all writing when the proctor announces that the examination is over.

Write your answers clearly and legibly on the Scantron and blue book provided.

Make sure your examination number is on all materials you turn in.

Good luck and have a productive and enjoyable summer.

Part I: Thirty multiple choice questions (15 points each)

1. Ten of the 35 competitors in the cobalt industry have decided to form a jointly-managed company to conduct exploration for cobalt ore in the Pacific Ocean. The cost of the exploration is extremely expensive, but the potential rewards are even greater. Which of the following is most correct regarding the legality of this venture from an antitrust perspective?

    a. Based on the facts presented the arrangement is a *per se* violation of Sherman 1.

    b. Based on the facts presented the arrangement is unlawful if the venture does not admit all competitors that wish to join.

    c. Based on the facts presented the arrangement is illegal under Clayton 7.

    d. Based on the facts presented the arrangement is legal.

2. You have been hired by a local group of physicians who practice individually but wish to share certain expensive medical equipment in order to lower the costs of providing medical care to their patients. Which one of the following statements regarding the application of antitrust rules to their professional fees is correct?

    a. Most professionals, including physicians, are exempt from the antitrust laws.

    b. Agreements to increase fees are legal if the quality of services provided improves.

    c. Charging different fees for the same medical service could be a violation of the Robinson-Patman Act.

    d. Agreements to set either minimum or maximum fees would be illegal.

3. A new company, Smalljolt, would like to offer electrical service to various New Hampshire customers. Currently, the electrical utility industry is regulated by the state Public Utilities Commission. With respect to the antitrust laws, companies operating in a highly regulated industries such as electric utility service are:

    a. not expressly or completely exempt.

    b. covered to the same extent as all other industries.

    c. covered to the extent determined by the applicable regulatory agency.

    d. covered to the extent determined by statute and the courts.

4. One intent of antitrust law would be to:

    a. establish a range of allowable profit rates for firms in oligopolistic industries.

    b. prohibit firms from engaging in a joint ventures with foreign firms.

    c. require firms with monopoly power to relinquish any exclusive patent rights they own that are economically important.

    d. prohibit agreements that limit individual firm output.

5. Which of the following is a correct statement regarding enforcement of the antitrust laws?

   a. Any person whose business or property is injured as a direct result of violation of antitrust laws may suit.

   b. A consumer may sue for a violation of antitrust laws regardless of whether he or she purchased directly from the person violating antitrust laws.

   c. The United States Justice Department may enforce only those federal antitrust laws that have possible criminal sanctions.

   d. The Federal Trade Commission may enforce only the Federal Trade Commission Act.

6. The Sunrise Corporation has a number of wholesale distributors, each of which has a defined geographic area in which it has the exclusive right to sell, but only to franchised retailers. Franchised retailers are authorized to sell Sunrise's products only within specified locations. This marketing arrangement will most likely be:

   a. Judged under the rule of reason, whether or not actual title to Sunrise's products passes to the franchised retailers.

   b. Illegal *per se* if title passes to the wholesale distributor, but judged under the rule of reason if Sunrise uses an agency or consignment arrangements and title does not pass to the wholes distributors.

   c. Illegal *per se*, whether or not actual title passes to either the wholesale distributors or the franchised retailers.

   d. Legal *per se*, whether or not actual title passes to either the wholesale distributors or the franchised retailers.

7. Warren T. Covrage's appliance sales constitute less than 0.001% of the market. The marketplace has an abundance of retailers and competition is vigorous. Manufacturers and retailers dislike Covrage's widely advertised price-cutting. (Warren runs a series of cable television ads that have almost a cult-like following.) The manufacturers jointly decide to boycott Covrage to limit his access to appliances and drive him out of business. Covrage has commenced a legal action in federal court against the various parties based upon a violation of the Sherman act. He is seeking injunctive relief and damages. Under these circumstances which of the following is the most likely result?

   a. Covrage is entitled to the relief requested because the facts indicate a *per se* violation.

   b. Covrage's complaint should be dismissed because it indicates only a private wrong as opposed to a public wrong.

   c. Covrage is entitled to the relief requested against any of the manufacturers who may be involved in interstate commerce, but not against any retailer whose sales are only intrastate.

   d. Covrage is not entitled to injunctive relief. Only the United States Department of Justice can obtain such relief.

8. General Motors has entered into contracts to supply all the requirements of 100 automobile dealers in New England. In these contracts, the dealers have agreed not to sell cars that are competitive with those of General Motors. The dealers covered by these contracts constitute 10% of the total number of automobile dealers in the area, but 85% of all the General Motors dealers in New England. General Motors may:

   a. be enjoined from enforcing the contracts if they might substantially lessen competition.
   b. be enjoined only if General Motors directly owns and has its agents operate automobile dealerships in the New England area.
   c. not be enjoined because only 10 percent of the New England automobile dealers are involved.
   d. not be enjoined because a manufacturer may select a distribution system that it deems best and the courts will not second guess that business decision.

9. A contract in "restraint of trade" is:

   a. illegal *per se*.
   b. one the performance of which would limit competition in any business, or restrict the promisor in the exercise of a gainful occupation .
   c. an old common law concept no longer applicable since the passage of the Sherman Act.
   d. termed "naked" when it is incidental to the sale of a business or other property.
   e. illegal even if it is less than required for the protection of the person on whose behalf it is imposed.

10. The Megahard Software Company has been charged by the United States Department of Justice with an attempt to monopolize the spreadsheet software industry. In defending itself against the charge Megahard will prevail if it can establish that:

   a. it had no intent to monopolize the spreadsheet software industry.
   b. its percentage share of the relevant market is less than 30%.
   c. its monopolizing activities in the marketplace are not considered unreasonable restraints of trade.
   d. it does not have monopoly power.

11. The Concrete Producers Association is an association of companies produce concrete to be used in large construction projects. Concrete is a heavy, but relatively cheap commodity product. Which of the following factors would facilitate the association in cooperating to eliminate price competition among themselves:

   a. High cross-elasticity of demand for the product involved.
   b. Wide variations in the costs of production among industry members.
   c. Clauses in customer contracts such as "meet or release" and "most favored nation".

d. The lack of published prices lists.

12. Section 7 of the Clayton Act is the primary statutory provision used by the government in controlling anticompetitive mergers and acquisitions. In general, the Clayton Act is used because:

    a. it provides for harsher criminal penalties than does the Sherman Act.
    b. it enables the government to proscribe mergers and acquisitions in their incipiency.
    c. it provides for exclusive jurisdiction over such activities.
    d. the Sherman Act applies to asset mergers or acquisitions only, not to stock mergers or acquisitions.
    e. the statute of limitations under Clayton 7 is longer than that under Sherman 1 or 2.

13. The Vendomat Corporation has obtained a patent on a revolutionary vending machine that will dispense products when a special number is called on a cell phone. The product dispensed is then charged to the cell phone user's telephone bill. This patented technology is seen as vastly superior to alternatives and promises to sweep the vending machine industry. As the executives of Vendomat Corporation plot their business strategy for exploiting their invention which of the following would be least likely to raise the threat of an antitrust violation?

    a. Setting and enforcing a resale price for the vending machines that uses Vendomat's licensed technology.
    b. Obtaining a near-total monopoly of the market as a result of the patent.
    c. Requiring purchasers of the vending machines using Vendomat's technology to buy the products that will be dispensed in the vending machines from Vendomat Corporation.
    d. Joining a boycott with the vending machine manufacturers to eliminate a discount manufacturer who uses child labor in the Caribbean to make vending machines using endangered rainforest wood trim.

Factual situation for questions 14 and 15

FanciArt Reproductions LLC, a New Hampshire company, makes and sells high-quality, expensive reproductions of the works of famous artists. It sells these reproductions to art wholesalers and retail customers throughout the world mainly through its web site. The wholesalers and retail customers are charged different prices for the same reproductions. In order to qualify as a wholesaler FanciArt Reproductions requires that its wholesale customers buy a certain number of reproductions each year for three years and maintain a physical location to show and sell the products to the retail trade. Qualified wholesale customers must also agree not to purchase reproductions from a list of competing companies during the duration of the three year term of the contract. The wholesalers may distribute all other types of pictures and artwork, including oil, watercolor, charcoal or photography.

14. The Federal Trade Commission has challenged the legality of the agreements between FanciArt Reproductions and its wholesalers. Which of the following would be the most likely outcome of this challenge to the arrangements with the wholesalers?

    a. The wholesaler arrangements are legal *per se* since their duration is less than five years.

    b. The wholesaler arrangements could be illegal under the Sherman, Clayton and Federal Trade Commission Acts.

    c. The legality of the wholesaler arrangements will be primarily determined by whether or not the reproductions produced by FanciArt Reproductions involves artwork that is still under copyright protection.

    d. The wholesaler arrangements are legal because the wholesalers are permitted to sell all other types of pictures.

15. A retail customer in Utah of FanciArt Reproductions has challenged the different prices offered to wholesale and retail customers for the same reproductions under the Robinson-Patman Act. Which of the following is most correct regarding this challenge?

    a. Assuming that a reasonably contemporaneous sale to a wholesale customer at a different price can be proved, the retail customer will prevail.

    b. The retail customer will not prevail if all the wholesale customers are located in New Hampshire.

    c. The retail customer will prevail if FanciArt Reproductions can be shown to exercise market power in the relevant market.

    d. The retail customer will not prevail since functional discounts are permitted under the Robinson-Patman Act.

16. Which of the following statements is most accurate regarding current federal antitrust enforcement policy?

    a. The existence of market concentration is a persistent competitive evil that needs to eliminated.

    b. Firms with market shares above 40% in a relevant market will be considered in violation of the Sherman Act unless proven otherwise.

    c. Private and state antitrust activities are an increasingly important element for overall federal antitrust enforcement policy.

    d. In the information age natural monopolies have all but disappeared.

17. You have been hired by the town of Concord, New Hampshire to provide legal advice to the town manager. Regarding the Local Government Antitrust Act which of the following would be correct advice?

    a. The Local Government Antitrust Act exempts municipalities from the federal antitrust laws.

    b. The Local Government Antitrust Act exempts municipalities from treble damage judgments arising under the federal antitrust laws.

c. The Local Government Antitrust Act denies extension of the Sovereign Immunity Doctrine to municipalities.

d. The Local Government Antitrust Act denies extension of the State Action Doctrine to municipalities.

18. Whamblam Inc., a Illinois corporation, sells video game cartridges to retail stores across the country. One of Whamblam's retail customers, Joystik LLC of New Hampshire, discovers that Whamblam is selling a certain video game cartridge to eToys, a large internet retailer, for $10.50, but charges Joystik $12.25 for the same video game cartridge. Joystik files a Robinson-Patman action against Whamblam. What is the most likely result of that lawsuit?

a. Joystik will lose because eToys distributes the video cartridges through a different channel than Joystik.

b. Joystik will lose because internet sales are not covered under the Robinson-Patman Act.

c. Joystik will win under a theory of secondary line price discrimination.

d. Joystik will win under a theory of primary line price discrimination.

19. Regarding antitrust assessment of mergers which of the following is correct?

a. The process of relevant market definition under Sherman 2 is substantially different from the relevant market definition process under Clayton 7.

b. The phrase "line of commerce" in Clayton 7 refers to the geographic market.

c. The Supreme Court has stated that horizontal mergers producing a combined entity holding an "undue" percentage share of the relevant market are prima facie sufficiently anticompetitive to violate Clayton 7.

d. The Supreme Court has held that Clayton 7 is inapplicable to joint venture situations in which two corporations form a third for the purpose of a particular project.

Factual statement applicable to questions 20 and 21:

The Bytesbak Software Company is the one of largest producer of violent martial arts software games and sells such hit games as *The Doomed Legion* and *Kill the Kops*. Violent martial arts software games are marketed primarily to teenage boys who do not view any other software games as competitive. The management of Bytesbak has decided that it would like to purchase the SyberSlash Games Company, another producer of violent martial arts software games. According to government statistics (complied for a U.S. Senate hearing on the influence of violence on teenagers) the following are the market shares for violent martial arts software game producers:

Alice Cooper Games	40%
Bytesbak Software Co.	25%
Death 'N Destruction Inc.	20%
SyberSlash Games Co.	10%
Bambi Dies, Ltd.	5%

20. Based on the government statistics what is the Herfindahl-Hirshman Index (HHI) for violent martial arts software games market prior to merger and how many points will the merger cause the HHI to change?

    a. 35% and an increase of 10 percentage points
    b. 500 and increase of 100
    c. 2750 and increase of 500
    d. 3250 and a decrease of 100

21. Based on the information provided regarding the proposed Bytesbak-SyberSlash merger, which of the following is correct?

    a. Based on the government's interpretation of HHI statistics as listed in its Merger Guidelines there is a little likelihood of adverse competitive effect from the merger.
    b. Based on the government's interpretation of HHI statistics as listed in its Merger Guidelines there is a high likelihood of adverse competitive effect from the merger.
    c. Despite any HHI analysis, the merger will probably pass antitrust scrutiny by the government due to the fact that even after the merger the combined Bytesbak-SyberSlosh operation will still have a smaller market share than the industry leader.
    d. Despite any HHI analysis, the merger will probably pass antitrust scrutiny by the government if it can be shown that Alice Cooper Games is the industry price leader.

22. Regarding group boycotts which of the following is correct?

    a. Boycotts are lawful only when used to prevent the target firm from engaging in illegal activity that may threaten an entire industry.
    b. Single firm refusal to deal are given the same consideration under Sherman 1 as group boycotts.
    c. An agreement by all the sellers competing in a market to circulate among themselves any adverse credit information about any buyer in the market is an agreement to boycott.
    d. Boycotts resulting from price fixing agreements receive *per se* treatment.

Factual statement applicable to questions 23, 24, 25 and 26:

Federal and New Hampshire state law leave airport concession decisions to the discretion of local authorities. In accordance with this local control the Manchester city council decided to conduct a closed bidding process to determine who could operate food services at the Manchester Airport. The New England Fast Food Co. obtained from the City of Manchester, New Hampshire, an exclusive ten-year franchise to provide food service at the Manchester airport. The Manchester city council recommended, and the mayor approved, grant of the franchise. While New England Fast Food Co. was constructing a restaurant facility at the airport a regular city election was held, and the incumbent mayor

and three of the five incumbent city council members were replaced. Prior to the election, the two principal shareholders of New England Fast Food Co.'s major competitor and loser of the original bidding process, Jim and Jay, and one of the successful city council candidates, Paula, had formed Queen City Foods, Inc., with the purpose of securing the exclusive franchise earlier issued to New England Fast Food Co. Jim and Jay each made substantial campaign contributions to Paula and other council candidates on the successful ticket.

After the election, Queen City Foods, Inc. filed an unfair competition complaint in Superior Court in Manchester alleging that New England Fast Food Co. had hired several employees from Queen City Foods, Inc. to obtain trade secrets (especially their "secret sauce" recipe). Queen City Foods, Inc. claimed damages and sought an injunction prohibiting New England Fast Food Co. from proceeding with any activity to carry out plans to implement its airport food service franchise. Extensive discovery procedures failed to disclose any facts sufficient to support the allegations and New England Fast Food Co.'s motion for summary judgment was eventually granted.

Shortly thereafter, with Paula's strong support, Queen City Foods, Inc. was able to persuade the new mayor and city council to reconsider the airport food service franchise decision. At Paula's behest, the city council invited Jim and Jay to appear before it. They testified that New England Fast Food Co. was both managerially and financially unqualified to implement the franchise. After some discussion, but with no public hearing or other opportunity for New England Fast Food Co. to dispute the charges, the council exercised a revocation clause in the franchise agreement and transferred the exclusive franchise to Queen City Foods, Inc.

New England Fast Food Co. charged a conspiracy in restraint of trade among Jim, Jay, Paula, and Queen City Foods, Inc. under the federal antitrust laws. It alleged, *inter alia*, that the statements of Jim and Jay before the council were false and motivated solely by their interest in obtaining the airport food service franchise, and that the decision of the council was tainted as a result of Jim and Jay's campaign contributions.

23. With respect to the unsuccessful unfair competition litigation filed by Queen City Foods which of the following is correct?

    a. In *Professional Real Estate Investors v. Columbia Pictures* [113 S. Ct. 1920 (1993)] the Supreme Court put forth a two-part definition of "sham" litigation.

    b. Citizens (both natural and corporate) have a constitutional right of access to the courts and it does not matter in an antitrust action that their sole purpose in bringing litigation is to destroy a competitor by means of unsupported allegations.

    c. On the basis of the facts presented in the problem statement the litigation constitutes a "sham litigation" and, as such, is actionable under the antitrust laws.

    d. The completion of the state unfair competition litigation now precludes both parties from bringing up issues regarding competition in the antitrust litigation on the principle of *res judicata.*

24. Regarding the involvement of Jim and Jay in the Concord city council campaign, which of the following is correct?

a. Although individuals and organizations can be "politically active", if the political activity is motivated by a desire to subvert the free market process and eliminate competition it is subject to antitrust censure.

b. The use of campaign contributions to obtain a competitively lucrative license is a form of bribery that removes the protection of the Noerr/Pennington doctrine.

c. To determine the competitive effect of the acts involved would require an examination of the purity of motives underlying the acts of a legislative body, and it is unlikely that a court would do so.

d. Since the anti-competitive conspiracy among the participants existed prior to Paula's election to the city council, the conspirators' actions in getting Paula elected can be actionable on antitrust grounds if the main purpose of getting Paula elected was to directly harm a competitor.

25. Queen City Foods in its defense against the federal antitrust law action claims it is protected by the Noerr/Pennington doctrine. Which of the following is correct regarding this doctrine?

a. The Noerr/Pennington doctrine applies only to "natural" citizens, and not to corporations since corporations can not vote and are not "politically franchised" citizens with First Amendment rights.

b. Even where group action is involved the Noerr/Pennington doctrine makes it clear that wide latitude is permitted to groups to petition or put pressure on government officials.

c. Policy considerations supporting the Noerr/Pennington doctrine can be found in each citizen's Third Amendment rights of petition.

d. The Noerr/Pennington doctrine does not extend to actions that would amount to actionable fraud or deceit.

26. The defendants in the antitrust case, Jim, Jay, Paula, and Queen City Foods, Inc., move to dismiss on the grounds that their conduct was protected under the Noerr/Pennington doctrine. What is the most likely result?

a. The defendant's motion is granted since the two anti-competitive actions alleged (the "sham litigation" and the testimony before the council) alone on the facts presented are unlikely to support an antitrust suit.

b. The defendant's motion is denied since the plaintiff has made out a prima facie case that the defendants specifically intended to harm a competitor and took steps to implement that harm.

c. The defendant's motion is denied since federal judges are reluctant to dismiss an antitrust suit before trial, especially one that involves local political corruption.

d. The defendant's motion is granted because Noerr/Pennington is an absolute defense where the action is a situation where petitioning the government is involved.

27. Which of the following statements is incorrect regarding exclusive dealing and requirement contracts:

a. A showing of substantially lessened competition or a tendency to create a monopoly in any line of commerce is required to establish illegality.

b. They are evaluated under the test of "qualitative substantiality", which de-emphasizes market share data and gives more weight to the probable effect of the contract on the relevant area of effective competition.

c. They are evaluated under the test of "quantitative substantiality", which predicates its finding of illegality principally upon the percentage of the market foreclosed.

d. They are specifically prohibited by Clayton §3.

28. Dr. Paula Liston, a famous government economist, is planning to testify before the Senate Judiciary Committee regarding antitrust enforcement policies. Her testimony is entitled "Market Failures and Antitrust". Which of the following statements would be correct for Dr. Liston to make in her testimony regarding market failures?

a. They can be caused by positive but not negative externalities.

b. They can be caused by inadequate or erroneous information.

c. They are the inevitable result of cartel activity.

d. They have little or no effect on a person not a party to the decision.

29. The Cytoplast Pharmaceutical Company is a drug manufacturer and spends a considerable percentage of its budget on improving its technology. In addition to developing new technology in its own laboratories the company actively seeks out promising technology developed by others. Which of the following would be correct legal advice to give to Cytoplast?

a. Cytoplast is immune from the antitrust laws when dealing with the licensing of any patent it owns.

b. Acquisition of patents through original grant (not licensing from others) may subject Cytoplast to Sherman §2 liability if the patents were acquired with the intent to obtain monopoly power.

c. Acquisition of patents through purchase may subject Cytoplast to Sherman §2 liability if the patents were acquired with the intent to obtain monopoly power.

d. Acquisition of patents by means of fraud on the Patent Office will not subject Cytoplast to Sherman §2 liability even if the patents were acquired with the intent to obtain monopoly power.

30. All the lawyers practicing in the state of Chaos belong to the state bar association. The bar association of Chaos provides a suggested minimum fee schedule for various services that most of the lawyers follow. One of the minimum fees is for the examination of titles to real estate. A large amount of funding for real estate sales in the state of Chaos come from outside the state or out-of-state lending institutions. In this situation which of the following would be correct?

a. The federal antitrust laws do not apply because the fee schedule does not significantly impact interstate commerce.

b. The federal antitrust laws do not apply because professions are not trade or commerce and are exempt.

c. The federal antitrust laws apply only if prices are maintained at a level that is higher than what would exist if there were no suggested minimum fee schedule.

d. The federal antitrust laws apply regardless of the motive of the bar association to affect competition.

Part II: Twenty true/false questions (8 points each)

1. The Capillary Company manufacturers small tubing that is used in certain medical devices. The general counsel of Capillary Company has become concerned that certain employees of the company may have exposed the company to antitrust liability for certain activities undertaken at a recent trade show. For the federal antitrust laws to apply the potentially illegal activity must adversely affect the price of goods sold in interstate commerce.

2. In the 1993 Supreme Court case *Hartford Fire Insurance Co. v. California* Justice Souter, writing for the majority, reaffirmed both the "effects" test for extraterritorial antitrust jurisdiction and the principle of international comity. The case made no basic changes in the substance of the comity doctrine but clarified when and how comity should be applied.

3. Doctor Kilmore is a physician in Maine who has been denied medical staff privileges at the Portland Hospital. She would like to sue using the federal antitrust laws. Since a denial of medical staff privileges requires an effect on interstate commerce to be actionable under the federal antitrust laws and the courts have consistently refused to find such an effect in situations involving medical staff at hospitals, her case will probably not survive the hospital's motion for summary judgment.

4. Although often characterized as per se illegal, most group boycotts or concerted refusals to deal are evaluated under the rule of reason.

5. If an affirmative case of price discrimination under the Robinson-Patman Act is established by a plaintiff, the defendant can use the judicially recognized "necessity" defense.

6. Gizmo Corporation has market power and faces an elastic demand for its product. As a matter of economics Gizmo can discriminate in price.

7. In a pure conglomerate merger the government must establish an actual restraint on competition in the marketplace in order to prevent the merger.

8. Ace Acquisitions Inc. has been steadily acquiring the assets and stock of various corporations that process germanium. It also has been purchasing the stock of its customers and others who purchase substantial quantities of germanium. It now has 8% of the germanium processing facilities in the United States and 22% in New

England where Ace is located. Given these facts it would be illegal *per se* for Ace to purchase the stock of any of its competitors.

9. In *FTC v. Indiana Dentists* (1986) the Supreme Court found that the dentists' collective refusal to submit x-ray data to insurers amounted to an unreasonable restraint of trade.

10. Kolpico, a US company that does a significant amount of business outside the United States and is required by government authorities in Chad to meet with its competitors and allocate territories, will likely escape condemnation under US antitrust laws for the anticompetitive actions in Chad.

11. The Robinson-Patman Act is applicable to the sale of services by doctors and lawyers.

12. Any bad conduct that will support the offense of attempt to monopolize will also support the offense of monopolization.

13. Tying arrangements are competitively harmful because they enable a monopolist to earn additional monopoly profits in a second market.

14. A price fixing cartel of dealers of the same brand of a product will be successful for the only if the branded product enjoys market power.

15. Standard setting by trade associations of competitors is generally analyzed under the rule of reason.

16. The Noerr/Pennington doctrine does not cover proceedings and suits before administrative agencies and courts.

17. A specific intent to monopolize can be shown by email from the ranking company executive that vows to "destroy the competition."

18. Competitors may freely agree to exchange information so long as no steps are taken to secure agreement to a future course of conduct.

19. A plaintiff in a Clayton 4 civil action may sometimes use the judgment or degree in a related public enforcement action as prima facie evidence.

20. Any bad conduct that will support the offense of monopolization will also support the offense of attempt to monopolize.

Part III: One short essay question (90 points)

For some time SousChef has manufactured and sold a mixer to restaurants and caterers. The SousChef mixer is generally recognized as the best in the field. Its stylish design -- white or black enamel with chrome highlights and a stainless steel bowl -- and powerful motor have made it one of the more successful commercial kitchen products of all time.

In 1998, sensing that Americans, particularly affluent Americans, have less time to cook but more money to spend on kitchen gadgets, SousChef decided to create a mixer designed for the home cook. After designing the home mixer (a slightly smaller version of the original in five designer colors) but before marketing it, SousChef conducted some market

research. The market research suggested that, in order for the product to succeed, SousChef had to build an upscale "brand image." Marketing consultants recommended that SousChef limit distribution to highend gourmet and food stores and sell the mixer at a price between $150 and $200 for five years. The consultants projected that SousChef would then be able to expand its distribution network; to include traditional department stores and, possibly, consumer appliance stores.

SousChef followed these recommendations and solicited information from kitchen appliance stores around the country. One month ago, SousChef signed contracts with 10 upscale retail chains. In the contracts, the retailers agreed not to sell the SousChef home mixer for less than $150 but got the option to sell the mixers back to SousChef after six months for $110 (the wholesale price plus $5). SousChef began shipping the mixer to the authorized dealers two weeks ago. Last week, it learned that one of its retailers had violated the agreement by reselling the mixer to Electric Brands, a national consumer appliance store, which plans to sell it for $120.

What are the antitrust implications of the situation, and giving due consideration to the federal antitrust laws, what can SousChef do?