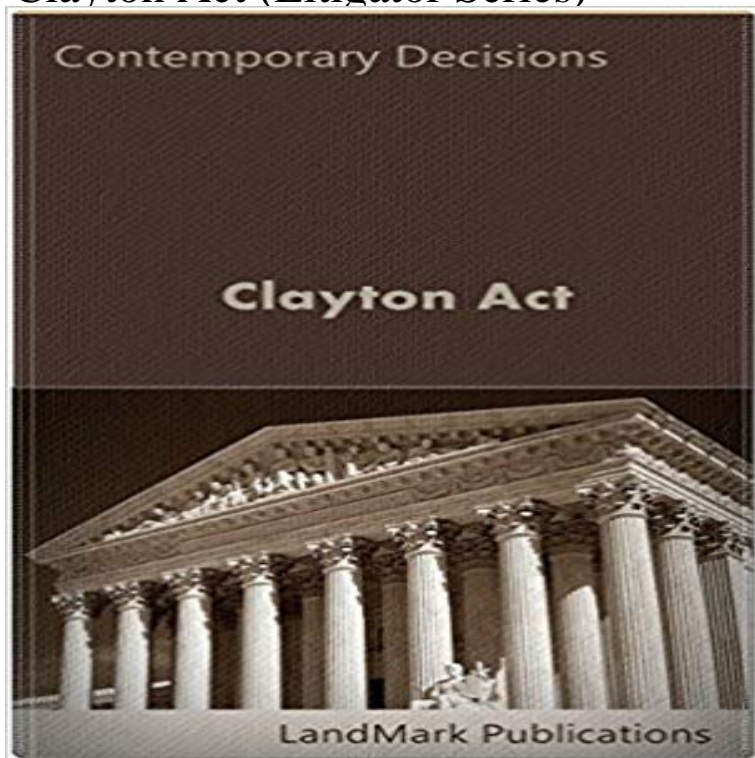


Clayton Act (Litigator Series)



THIS CASEBOOK contains a selection of 38 U. S. Court of Appeals decisions that analyze and interpret provisions of the Clayton Act. The selection of decisions spans from 2010 to the date of publication.

Section 7 of the Clayton Act prohibits mergers where in any line of commerce... the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. 15 U.S.C. 18. As its language suggests, Section 7 deals in probabilities, not certainties. *Brown Shoe Co. v. United States*, 370 U.S. 294, 323, 82 S.Ct. 1502, 8 L.Ed.2d 510 (1962). *ProMedica Health System, Inc. v. FTC*, 749 F.3d 559 (6th Cir. 2014). Merger enforcement, like other areas of antitrust, is directed at market power. *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 713 (D.C.Cir.2001) (quoting Lawrence A. Sullivan & Warren S. Grimes, *The Law of Antitrust* 9.1 at 511 (2000)). Market power is itself a term of art that the Department of Justice Horizontal Merger Guidelines [. . .] define as the power of one or more firms to raise price, reduce output, diminish innovation, or otherwise harm consumers as a result of diminished competitive constraints or incentives. *Horizontal Merger Guidelines (2010) (Merger Guidelines)* 1 at 2. *ProMedica Health System, Inc. v. FTC*, *ibid.* Often, the first steps in analyzing a mergers competitive effects are to define the geographic and product markets affected by it. See *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 510, 94 S.Ct. 1186, 39 L.Ed.2d 530 (1974). [. . .] The first principle of market definition is substitutability: a relevant product market must identify a set of products that are reasonably interchangeable[.] *Horizontal Merger Guidelines* 4.1. [. . .] The general question is whether two products can be used for the same purpose, and if so, whether and to what extent purchasers are willing to substitute one for the other. *F.T.C. v. Arch*

Coal, Inc., 329 F.Supp.2d 109, 119 (D.D.C.2004) (quotations omitted). ProMedica Health System, Inc. v. FTC, ibid.

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