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Resale Price Maintenance and the World After *Leegin*

BY MICHAEL A. LINDSAY

IN OVERRULING THE CENTURY-OLD per se rule against minimum resale price maintenance (RPM) agreements, the U.S. Supreme Court has invited businesses to reconsider their distribution policies. However, *Leegin* did not make all minimum RPM agreements automatically lawful; nor did it directly address the status of minimum RPM agreements under state law. Comments on an ABA Antitrust Section listserv in the days following the release of *Leegin* suggested a raft of possibilities: “it is still illegal per se in a number of states,” and “many (perhaps most) states, either by the express terms of their statutes or by decision of the state’s highest court, interpret their little Sherman Acts to conform to federal court interpretations of the federal Sherman Act,” and “[a]bsent legislation, this could be a long and messy slog.”¹ Counsel and clients must consider the circumstances in which RPM agreements might still be illegal under federal law, as well as the role that state laws will play. The chart accompanying this article (see pages 37–40), *Overview of State RPM (Abbreviated)*, may serve as a starting point for such consideration. (The complete version of this chart that includes all relevant states can be found at <http://www.antitrustsource.com>.)

Background

In 1911, *Dr. Miles* held that a supplier could not lawfully restrict its reseller’s pricing freedom.² In the *Colgate* case eight years later, the Supreme Court clarified that there was no antitrust violation unless there was an “agreement” between the supplier and its reseller—because the Sherman Act forbids only agreements that restrain trade, not unilateral practices that may have the same practical effect.³ A mere suggestion of a resale price was not an “agreement” in restraint of trade; manufacturers were free to provide Manufacturer’s Suggested Resale Prices (MSRPs) and other market intelli-

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gence to their resellers as long as they didn’t “agree” on a reselling price. Many manufacturers took this a step further and adopted what came to be called “*Colgate* policies”: the manufacturer announced the minimum resale prices that it wanted to see and announced a policy that it would not deal with discounters. In other words, at any given time the reseller would be free to sell its existing inventory at whatever price it chose, but the manufacturer could lawfully refuse to resupply a reseller whom it discovered to be discounting below MSRP.

The *Dr. Miles* rule of per se illegality originally applied to nonprice vertical agreements that could have a significant effect on price. The Supreme Court’s 1977 *GTE Sylvania* decision held that non-price vertical restraints should be evaluated under the “rule of reason.”⁴ The rule of reason requires courts to examine the specific agreement and evaluate its actual effects on competition (in contrast to the per se approach, which conclusively presumes that the condemned conduct always or almost always has a net negative effect on competition). Under the rule of reason, an agreement is unlawful only if it has a net negative effect on competition.

The Supreme Court chipped further at the *Dr. Miles* rule in its 1997 *State Oil v. Khan* case.⁵ In *Khan*, the Court held that maximum vertical price agreements—that is, agreements setting a price ceiling above which sales cannot be made—would no longer be judged as illegal per se but would instead be judged under the rule of reason. Yet minimum resale price agreements—agreements not to discount below a price floor—remained subject to the *Dr. Miles* per se rule for another decade.

Leegin v. PSKS

The *Leegin* case arose because a company that started with a *Colgate* policy ended up with reseller agreements. *Leegin* was a small, start-up manufacturer of women’s accessories, such as handbags, shoes, and jewelry, and it was trying to compete with larger, established manufacturers and with department stores and other retail chains. *Leegin* adopted a Retail Pricing and Promotion Policy stating that it would sell its Brighton-branded products only to retailers that followed *Leegin*’s MSRPs. *Leegin* took one step too many, however, and crossed the line separating unilateral announcement from bilateral agreement by demanding that all of its retailers “pledge” their compliance with the pricing policy. PSKS (d/b/a Kay’s Closet) pledged, then broke its promise by discounting the entire Brighton line. *Leegin* suspended shipments to Kay’s; Kay’s sales plunged, and Kay’s sued. A jury found for Kay’s, but only after the trial court excluded *Leegin*’s proffer of expert testimony that *Leegin*’s pricing policy was actually procompetitive.

Supreme Court Decision

Leegin squarely presented the question of whether the *Dr. Miles* per se ban on minimum resale price agreements should continue to be the law, and the Supreme Court said no.⁶

First, the Court found that were it to write on a clean slate, without the *Dr. Miles* precedent, it would have held that resale price agreements should be judged under the rule of reason approach that looks at an agreement's actual effects on competition. Agreements should fall into the "per se" category only if the type of agreement at issue would always or almost always injure competition, for example, price-fixing agreements between competitors. In contrast, minimum resale price agreements can have procompetitive benefits that outweigh the anticompetitive harms.

The Court had held in *Khan* that the primary purpose of antitrust is to protect "interbrand" competition—for example, competition between the Pepsi and Coke brands of cola. Minimum RPM agreements can increase "interbrand" competition precisely because they reduce "intra-brand" competition among retailers selling the same brand. By assuring resellers that they will not face discount price competition from other resellers of the same brand, minimum RPM agreements encourage retailers to invest in services or promotional efforts to sell that brand against competing brands. Moreover, by eliminating the risk that one reseller might "free ride" on another reseller's provision of these services, minimum RPM agreements can give consumers more choices among low-price/low-service brands, high-price/high-service brands, and brands falling in between. RPM can also help new brands enter the market by enabling resellers to provide the pre-sale services necessary to compete with entrenched brands.

Second, the Court found that principles of stare decisis—judicial reluctance to overrule earlier decisions—did not require the Court to adhere to the *Dr. Miles* rule, even though it had stood for nearly a century. The doctrinal basis for the decision had been undermined by decisions like *Sylvania* and *Khan*, and its economic basis has been shown to be flawed. Moreover, Congress had intended the antitrust laws to evolve much like the common law has evolved as courts gain knowledge and experience.

Evaluation Under Federal Rule of Reason

Leegin did not hold that minimum RPM agreements are per se legal. Indeed, *Leegin* itself identified at least two ways in which a purely vertical minimum RPM agreement might be unlawful. In both instances, the wrongfulness is premised on market power—either the retailer's or the manufacturer's:

- "A dominant retailer . . . might request resale price maintenance to forestall innovation in distribution that decreases costs. A manufacturer might consider it has little choice but to accommodate the retailer's demands for vertical price restraints if the manufacturer believes it needs access to the retailer's distribution network."⁷
- "A manufacturer with market power . . . might use resale price maintenance to give retailers an incentive not to sell the products of smaller rivals or new entrants."⁸

In both of these examples, the dominant (or at least very powerful) firm uses minimum RPM to exclude or raise entry barriers for its competition. Anticompetitive minimum RPM

can also result from collusion or conscious parallelism in concentrated industries. For example, seven years ago the Federal Trade Commission challenged the Minimum Advertised Price (MAP) policies that record companies had imposed on music CD retailers—policies that had "no plausible business justification" and had been adopted (by firms accounting for 85 percent of CD sales) for the purpose of "stabilizing retail prices."⁹

Preemption of State Law

Federal law is not the only source of antitrust claims: virtually all of the states have their own antitrust laws. *Leegin* dealt only with a claim arising under Section 1 of the Sherman Act. Thirty-seven states joined in an amicus brief urging that the *Dr. Miles* rule be preserved.¹⁰ State laws on minimum RPM agreements are clearly a matter to be reckoned with.

In *ARC America*,¹¹ the Supreme Court reiterated the presumption against preemption of state antitrust laws but did not reject the possibility of preemption in at least some circumstances. The Supreme Court rejected the argument that state laws permitting indirect purchaser recoveries "pose[d] an obstacle to the accomplishment of the purposes and objectives of Congress." The Court found that state indirect purchaser laws in fact "are consistent with the broad purposes of the federal antitrust laws: deterring anticompetitive conduct and ensuring the compensation of victims of that conduct."¹² Consequently, the state remedial schemes at issue were not preempted.

ARC America dealt with a procedural or remedial rule, rather than a substantive rule of conduct. *Leegin*, however, dealt with a substantive rule of conduct: whether minimum RPM agreements are automatically illegal. A state substantive rule that penalizes procompetitive minimum RPM agreements would defeat an important federal policy. Nevertheless, since *Leegin* did not hold minimum RPM agreements per se legal, state and private enforcers can be expected to argue that contrary state laws are not preempted.¹³

State Deference to Federal Law

As a matter of policy, many states already try to conform their antitrust laws to judicial interpretations of analogous federal law. At least twenty-seven states have codified this principle in their antitrust statutes; other states have adopted the principle through case law. The phrasing and strength of the principle varies broadly. The Delaware statute, for example, appears mandatory, requiring construction of the state law "in harmony with ruling judicial interpretations of comparable federal antitrust statutes."¹⁴ The Michigan statute states that "the courts shall give due deference to interpretations given by the federal courts to comparable antitrust statutes, including, without limitation, the doctrine of per se violations and the rule of reason"¹⁵—suggesting that Michigan state courts must follow federal precedents on whether the per se rule or the rule of reason should apply. In contrast, the Arizona statute pro-

vides that state courts “may” use federal judicial interpretations “as a guide” in construing the state law,¹⁶ and Arizona courts have held that this statute is permissive, not mandatory.¹⁷ The Colorado statute seems somewhere in between: the courts “shall” use federal court interpretations of “comparable” federal statutes “as a guide.”¹⁸ Likewise, the Florida statute provides for giving “due consideration and great weight . . . to the interpretations of the federal courts relating to comparable federal antitrust statutes.”¹⁹ The Texas statute is mandatory, but with a focus. The statute

shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes to the extent consistent with this purpose [which is] to maintain and promote economic competition in trade and commerce occurring wholly or partly within the State of Texas and to provide the benefits of that competition to consumers in the state.²⁰

Other states make clear that, while federal decisions provide guidance, the state has not delegated its authority. For example, Iowa requires courts to construe the Iowa statute “to complement and be harmonized with the applied laws of the United States which have the same or similar purpose as this chapter” but not “in such a way as to constitute a delegation of state authority” to the federal courts.²¹ More defiantly, the Washington state legislature declared that its antitrust statute “shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se.”²² The statute does not state whether the federal definition of “unreasonable per se” should trump any contrary state-court view of what is or is not “unreasonable per se.”

The language of a state’s statutory rule of construction, however, is only the beginning of the analysis. The practitioner must also look to what that state’s courts have actually done with the statute. For example, Arizona, Iowa, and Nebraska all have one form or another of a “federal deference” rule of construction embodied in a statute and none has an “*Illinois Brick* repealer” statute. Nevertheless, in each state, the supreme court has found that state antitrust law permits indirect purchaser actions.²³ Indeed, in the wake of *Leegin*, a number of commentators noted the possibility that states may enact “*Leegin* repealer” statutes.²⁴

RPM Language of State Antitrust Statutes

Most state antitrust law is statutory. About twenty-five states’ laws use substantially the same language as section 1 of the Sherman Act as their sole relevant statute, prohibiting “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce.”²⁵ A number of other states’ statutes include a substantially Sherman Act-like general prohibition but have other, more specific prohibitions as well. Courts construing state statutes that have only the general Sherman Act language and have a relatively pure

“federal deference” statute will presumably be driven to adopt a *Leegin* view. Courts acting under a less restrictive federal-deference rule or construing a statute’s more specific prohibitions may be less inclined to follow *Leegin*.

No state statute expressly prohibits vertical minimum RPM agreements, as such. A number of states, however, prohibit agreements to “maintain” or “regulate” prices. For example, Hawaii prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce” but also expressly declares it illegal to “[f]ix, control, or maintain, the price of any commodity.”²⁶ Likewise, Connecticut prohibits restraints of trade generally and also prohibits contracts, combinations or conspiracies that “fix[], control[] or maintain[] prices, rates, quotations, or fees in any part of trade or commerce.”²⁷ Several states prohibit agreements “[t]o fix any standard or figure” that will control or establish a product’s price.²⁸ In at least one state (Arizona), the prohibition is found in the state constitution²⁹ as well as in the state statute.³⁰ And at least one state (Illinois) judges RPM agreements under the rule of reason.³¹

Perhaps the strongest case to be made for an existing state prohibition on minimum RPM agreements is California. The Cartwright Act prohibits trusts, which are defined as combinations to “increase the price of merchandise or any commodity”³² or to “fix at any standard or figure, whereby [a product’s] price to the public or consumer shall be in any manner controlled or established,”³³ or as agreements to “[e]stablish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.”³⁴ Moreover, the California Supreme Court has held that a minimum RPM agreement is a per se violation of the Cartwright Act.³⁵ This construction of the Act was based at least in part on *Dr. Miles*. California courts will have to grapple with the language of the statute, the value of harmony with federal precedents, the state’s own policy views, and the principle of stare decisis.

New York has an unusual statute providing that “[a]ny contract provision that purports to restrain a vendee of a commodity from reselling such commodity at less than the price stipulated by the vendor or producer shall not be enforceable or actionable at law.”³⁶ Although this would prohibit enforcement of a minimum RPM agreement (and perhaps preclude its use as “cause” for terminating an agreement³⁷), it stops short of making such an agreement illegal.

Non-Antitrust State Statutes

Even in states that are most likely to follow *Leegin* in construing their antitrust statutes, other state laws may create hurdles for a supplier wanting to amend existing distribution agreements to allow RPM. For example, Wisconsin has only a general, Sherman Act-like prohibition on contracts in restraint of trade, and its courts have repeatedly stated that

federal antitrust law will guide interpretation of the Wisconsin statute.³⁸ However, the Wisconsin Fair Dealership Law prohibits the grantor of a “dealership agreement” from “substantially chang[ing] the competitive circumstances of [the] agreement without good cause,” which is defined as a dealer’s failure to substantially comply with nondiscriminatory, “essential[,] and reasonable requirements imposed upon him by the grantor.”³⁹ Even assuming that “reasonable” under this statute is construed consistent with the federal rule of reason, the change in the agreement must still be “essential” in order to be lawful.

Dual Distribution

Sometimes a supplier will distribute both through its own direct sales force and through independent resellers. An agreement between the supplier and a reseller could be considered both a vertical agreement (between supplier and reseller) and horizontal (between a seller and a competing reseller). Since *Sylvania*, lower courts have judged dual distribution agreements under the rule of reason, and the Supreme Court has never addressed the issue expressly.⁴⁰

In *Leegin*, the plaintiff argued that the agreement was horizontal due to the dual character of Leegin’s distribution: independent distribution through stores such as plaintiff’s, and semi-direct sales through stores in which Leegin’s president had an ownership interest.⁴¹ Some of the questions at oral argument suggested a sensitivity to the difficulties of distinguishing vertically driven from horizontally driven minimum RPM agreements. Justice Ginsburg noted that it was “somewhat difficult to distinguish vertical from horizontal in this context, that in fact, the agreement that the manufacturer made with the dealers was more successful in getting a horizontal accord among the dealers than if the dealers had attempted it themselves, in which case some might have held back.”⁴² Justice Stevens followed up with a more pointed question: “Why should that be any different from the arrangement where those dealers all got together in the convention and recommended to the manufacturer that he impose a vertical restraint of precisely the same dimensions?”⁴³

Ultimately, the Court declined to reach the issue of the agreement’s potentially horizontal nature because it had not been raised in the courts below.⁴⁴ Although the justices who posed the vertical-vs.-horizontal questions wound up in the minority, their questions remain very much alive. In the dual distribution context, an injured distributor may well challenge a minimum RPM agreement as a horizontal price-fixing scheme.

Multi-Link Distribution Chains

In *Leegin*, the Court dealt with a supplier selling to a retailer that in turn sold to the end-user. Not all distribution chains are that simple. Often a supplier will sell to a distributor that in turn sells to a retailer who then sells to the end-user. The distributor may have an exclusive territory, an area of primary responsibility, a channel restriction, or no terri-

torial or customer restrictions at all. The distributor might also serve in a dual role, selling to retailers and at the same time competing with them by selling directly to end-users.

There is no reason in principle why *Leegin* should not apply to multi-link distribution chains. The same procompetitive rationales could exist, and indeed they might be even stronger. For example, a start-up supplier may have particular need to promote its product to full-service retail outlets that will invest in product promotion and service. The start-up supplier may not have the resources to act as its own distributor. In such circumstances the supplier may want to bind the distributor to sell only to full-service (non-discounting) retailers, and perhaps even to require the distributor’s contracts with retailers to contain a minimum RPM provision.

Nevertheless, a multi-link chain introduces a number of practical problems. First, the distributor’s interest in dealer selection and minimum RPM enforcement will depend on a number of factors, such as the duration of the distribution agreement, the range and volume of other products that the distributor sells to each retailer, and the mechanism for distributor compensation. Consequently, the distributor’s interest may not be the same as the supplier’s. Second, identifying the point of the breach can be challenging. When a supplier sells directly to a retailer, and the retailer sells below the supplier’s minimum resale price, the breach is obvious, and mitigating circumstances (such as supply from another source) are few. With independent distribution, the situation becomes more confusing. For example, if distributors have exclusive territories, and a retailer is selling below the supplier’s minimum price, there are at least three possible explanations: the retailer is breaching an agreed minimum RPM term; the distributor did not include that term in its agreement with the retailer; or the retailer bought from a distributor who breached its own geographic restraint prohibiting sales outside its territory. Third, the enforcement mechanism may be more complicated. If the retailer’s agreement is with the independent distributor, the supplier must either have the right to enforce as a third-party beneficiary or rely on the distributor to enforce the agreement. (This problem may be at least partly avoided by having the distribution agreement run directly to the supplier.)

Remedies

The remedies for breach of a *Leegin* agreement may not be terribly attractive; every argument that the manufacturer makes about its reseller’s breach of contract and free-riding on the promotional efforts of other distributors will be countered with an argument that the reseller was just trying to bring lower prices to consumers—and which of those arguments is a jury going to find more compelling?

Options

The *Leegin* decision removes some, but by no means all, significant legal risks to minimum RPM agreements and thus opens up a range of business opportunities that the *Dr. Miles*

rule had clearly foreclosed for a century. Businesses face a spectrum of choices, each of which must be assessed with reference to relevant state laws and conditions of competition for the products in question.⁴⁵

1. Do Nothing (Discounting Encouraged). For some suppliers, discounting is not a problem. For example, companies selling commoditized products with little brand equity may tolerate or even encourage discounting. For such suppliers, adopting a “Colgate Policy” is neither necessary nor effective.

2. Do Nothing (Keep Colgate Policy). If a company already has a Colgate Policy, one option is to continue what it has been doing all along. *Leegin* has reduced the exposure that would result if a unilateral policy inadvertently becomes (or is perceived as becoming) an “agreement.” A company may decide that *Leegin* is a helpful development but not enough to justify moving to formal RPM agreements.

3. Adopt a Colgate Policy. If a company has never adopted a Colgate Policy because the perceived risk was too great, then now is the time to reconsider that decision. A unilateral Colgate Policy will not constitute a price-fixing agreement for antitrust purposes, and *Leegin* greatly reduces the risk of per se liability if the unilateral policy evolves into a bilateral agreement.

4. Revisit Co-Op Advertising Policies. Regardless of any Colgate Policy, some companies have attempted to control resellers’ advertised prices through co-op programs that limit reimbursement to advertisements that either have no price information or display prices at or above MSRP. *Leegin* did not address such programs directly, but if agreements on selling price are now judged under the rule of reason, then agreements on advertised price (as opposed to actual sales price) clearly will be too.

5. Revise Dealer, Franchise, or IP License Agreements. One of the major defects of the Colgate doctrine has always been that compliance with a supplier’s announced RPM policy could not be made a condition of dealer agreements. Long-term distribution agreements with no right for the supplier to terminate without good cause before the end of the term meant that Colgate Policies were effective only at the end of the term (i.e., in deciding whether to renew or terminate the agreement). Companies that previously chose not to have a Colgate Policy because they could not effectively enforce it may now wish to reconsider.

6. Preserve Flexibility. Many distribution, franchise, and IP license agreements expressly provide that the reseller has the right to set its own selling price. In the future, the supplier might consider one of the following: simply dropping the existing provision (and being silent on the point); expressly requiring the reseller to sell at or above the supplier’s minimum prices; or reserving the right to impose a minimum RPM requirement but permitting the reseller to terminate if the supplier exercises the right.

Some Thoughts for Resellers. The *Leegin* decision may well cause more manufacturers to create or strengthen minimum resale pricing programs, and this will present chal-

lenges and opportunities for resellers, including dealers, licensees, and franchisees. Resellers should consider the implications for their own business models—how much pre-sale service should the reseller provide; how many competing brands should it carry; what types of programs and agreements are manufacturers likely to want; what types of manufacturers does the reseller want to deal with.

Conclusion

A company’s distribution model is a basic business decision. *Leegin* has removed substantial legal risk, but it does not change business realities. Some resellers may simply refuse to sign an RPM agreement. If they are large buyers that account for a significant percentage of a supplier’s business, the supplier may decide not to press them or any other distributor for such agreements. Moreover, the supplier should consider what it will do if a large customer decides not to honor the RPM agreement: having a policy or agreement that it is not prepared to enforce is worse than having no program at all. Finally, all the agreements in the world will not make a difference unless the distributors are committed to the distribution model. If a supplier is selling to discounters, then like the frog and the scorpion in Aesop’s fable the supplier should expect that the discounter will do what its business model requires: discounting.⁴⁶ Even after *Leegin*, the strongest defense against free-riding discounters may well be the same as it has always been: avoid dealing with discounters in the first place. ■

¹ Dr. Miles *officially overruled*, AT-Conversation Archives (June 28, 2007), <http://mail.abanet.org/scripts/wa.exe?A2=ind0706&L=at-conversation&T=0&F=&S=&P=2553> (comments of Dan Wall, Michael H. Byowitz, and Chris Compton).

² Dr. Miles Med. Co. v. John D. Park & Sons, 220 U.S. 373 (1911).

³ United States v. Colgate & Co., 250 U.S. 300 (1919).

⁴ Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977).

⁵ State Oil Co. v. Kahn, 522 U.S. 3 (1997).

⁶ *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 127 S. Ct. 2705 (2007).

⁷ *Leegin*, 127 S. Ct. at 2717.

⁸ *Id.*

⁹ Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony, Mozelle W. Thompson, Orson Swindle, and Thomas B. Leary, Sony Music Entertainment, Inc., File No. 971-0070 (Sept. 6, 2000), available at <http://www.ftc.gov/os/2000/09/musicstatement.htm>.

¹⁰ See Robert Hubbard & Emily Granrud, 37 *States Submit Supreme Court Amicus Supporting Per Se Rule Against Minimum RPM*, ABA COMMITTEE ON STATE ANTITRUST ENFORCEMENT NEWSLETTER, Vol. 4, No. 8, at 3 (Spring 2007), <http://www.abanet.org/antitrust/committees/state-antitrust>.

¹¹ *California v. ARC America Corp.*, 490 U.S. 93, 101 (1989). See also ANTITRUST MODERNIZATION COMMISSION, REPORT & RECOMMENDATIONS 185 (2007).

¹² *ARC America*, 490 U.S. at 102.

¹³ See, e.g., *Roundtable Conference with Enforcement Officials*, ANTITRUST SOURCE, June 2007, at 24, <http://www.abanet.org/antitrust/at-source/07/06/Jun097-EnforceRTG-20f.pdf> (comments of Robert Hubbard) (“[ARC America] would apply foursquare. States are allowed to make their own decisions about the appropriate way to structure their economies and their antitrust laws and those decisions are entitled to deference and respect.”). For views of a potential private enforcer, see Statement of Written Testimony

Overview of State RPM (Abbreviated) (The complete version of this chart, including all relevant states, is available at <http://www.antitrustsource.com>)

STATE	LEGISLATION	LITIGATION
Arizona	<p>AT: ARIZ. REV. STAT. § 44-1402 (2007) (declaring unlawful “[a] contract, combination or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce”).</p> <p>H: ARIZ. REV. STAT. § 44-1412 (providing legislative intent that “courts may use as a guide interpretations given by the federal courts to comparable federal antitrust statutes” and that “[t]his article shall be applied and construed to effectuate its general purpose to make uniform the [antitrust] law” among the states).</p>	<p>HH: <i>Bunker’s Glass Co. v. Pilkington PLC</i>, 47 P.3d 1119, 1126–27 (Ariz. Ct. App. 2002) (noting that Arizona appellate courts “typically” follow federal antitrust case law but that 44-1412 permits, but does not require, courts to look to federal case law), <i>aff’d</i>, 75 P.3d 99 (Ariz. 2003).</p>
California	<p>AT: CAL. BUS. & PROF. CODE § 16726 (2007) (providing that every trust is “unlawful, against public policy and void”); CAL. BUS. & PROF. CODE § 16720(a) (defining a trust as a combination “[t]o create or carry out restrictions in trade or commerce”).</p> <p>PF: CAL. BUS. & PROF. CODE § 16720(b) (2007) (defining a trust as a combination “[t]o limit or reduce the production, or increase the price of merchandise or any commodity”); CAL. BUS. & PROF. CODE § 16720(d) (2007) (defining a trust as a combination to “fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State”); CAL. BUS. & PROF. CODE § 16720(e) (2007) (defining a trust as a combination to “agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure” or “establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity”).</p>	<p>H: <i>Marin County Bd. of Realtors, Inc. v. Palsson</i>, 549 P.2d 833, 835 (Cal. 1976) (recognizing that a “long line of California cases” has recognized that federal cases interpreting the Sherman Act are applicable to state antitrust cases because both statutes “have their roots in the common law”).</p> <p>PF: <i>Chavez v. Whirlpool Corp.</i>, 113 Cal. Rptr. 2d 175, 179–80 (Cal. Ct. App. 2001) (applying <i>Colgate</i> doctrine to hold that supplier’s unilateral exclusion of distributor did not violate Cartwright Act). <i>See also Mailand v. Burckle</i>, 572 P.2d 1142, 1147–48 (Cal. 1978) (finding resale price maintenance to be per se violation of state antitrust statute because it is a per se violation under the Sherman Act and “federal cases interpreting the Sherman Act are applicable in construing the Cartwright Act”); <i>Harris v. Capitol Records Distributing Corp.</i>, 413 P.2d 139, 145 (Cal. 1966) (finding that vendor’s resale price maintenance scheme violated the Cartwright Act and the Sherman Act).</p>
Colorado	<p>AT: COLO. REV. STAT. § 6-4-104 (2007) (declaring illegal every “contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>PF: COLO. REV. STAT. § 6-4-119 (instructing courts that they “shall” use “comparable” federal court decisions as guidance).</p>	<p>H: <i>See Pomerantz v. Microsoft Corp.</i>, 50 P.3d 929, 933 (Colo. Ct. App. 2002) (applying <i>Illinois Brick</i> indirect purchaser rule reasoning; recognizing legislative intent to use federal interpretations to construe state law); <i>Confre Cellars, Inc. v. Robinson</i>, CA No. 01-N-1060, 2002 U.S. Dist. LEXIS 26843 at *62 (D. Colo. 2002) (federal antitrust cases “provide substantial guidance” to courts interpreting the Colorado statute).</p>

Abbreviation Key: **AT** = Antitrust Provisions; **PF** = Price-Fixing Provisions/Cases; **H** = Federal Harmonization Clauses/Cases

of Marcy Syms, Chief Executive Officer of SYMS Corp., Hearing Before the Sen. Subcom. on Antitrust, Competition Policy and Consumer Rights (July 31, 2007), available at http://judiciary.senate.gov/testimony.cfm?id=2893&wit_id=6608 (“Another source of transaction costs will result from the need to comply with state law: While federal law may allow RPM, state antitrust laws may forbid them.”). For further discussion of state laws and state enforcement, see M. Russell Wofford, Jr. & Kristen C. Limarzi, *The Reach of Leegin: Will the States Resuscitate Dr. Miles?*, ANTITRUST SOURCE, Oct. 2007, <http://www.abanet.org/antitrust/at-source/07/10/Oct07-Wofford10-18f.pdf>.

¹⁴ DEL. CODE ANN. tit. 6, § 2113 (2007).

¹⁵ MICH. COMP. LAWS § 445.784 (2007).

¹⁶ ARIZ. REV. STAT. § 44-1412 (2007).

¹⁷ *E.g.*, *Bunker’s Glass Co. v. Pilkington*, 47 P.3d 1119, 1126–27, 1129 (Ariz. Ct. App. 2002), *aff’d*, 75 P.3d 99, 102–04 (Ariz. 2003). The state supreme court noted that the permissiveness is limited by the state’s interest in maintaining uniformity among state and federal antitrust laws, with the uniformity interest greatest in determining an applicable standard of conduct and less compelling in procedural matters. 75 P.3d at 106.

¹⁸ COLO. REV. STAT. § 6-4-119 (2007).

¹⁹ FLA. STAT. § 542.32 (2007).

²⁰ TEX. BUS. & COM. CODE § 15.04 (2007).

²¹ IOWA CODE § 553.2 (2007).

²² WASH. REV. CODE § 19.86.920 (2007).

²³ *See Bunkers Glass Co. v. Pilkington PLC*, 75 P.3d 99, 102–04 (Ariz. 2003); *Comes v. Microsoft Corp.*, 646 N.W. 2d 440, 446–47 (Iowa 2002); *Arthur v. Microsoft Corp.*, 676 NW. 2d 29, 37 (Neb. 2004).

²⁴ *See, e.g.*, Leon B. Greenfield, Gil Ohana, & David Olsky, *The Lessons of Leegin: Supreme Court Overturns 96-Year-Old Ban on Resale Price Maintenance* (Jun. 29, 2007), <http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=3845>.

²⁵ NEB. REV. STAT. § 59-801 (2006). Other states in this category include Alaska, Arizona, Colorado, Delaware, Florida, Idaho, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Virginia, and Wisconsin.

²⁶ *See* HAW. REV. STAT. § 480-4(a) (2006) (general prohibition); *id.* § 480-4(b)(1) (specific prohibition).

²⁷ CONN. GEN. STAT. § 35-26 (2007) (general prohibition); *id.* § 35-28(a) (specific prohibition).

²⁸ *E.g.*, KAN. STAT. ANN. § 50-101 (2006).

Overview of State RPM (Abbreviated)

STATE	LEGISLATION	LITIGATION
Connecticut	<p>AT: CONN. GEN. STAT. § 35-26 (2007) (declaring unlawful “every contract, combination, or conspiracy in restraint of any part of trade or commerce”).</p> <p>PF: CONN. GEN. STAT. § 35-28(a) (declaring unlawful contracts, combinations or conspiracies that “fix[], control[] or maintain prices, rates, quotations or fees in any part of trade or commerce”).</p> <p>H: CONN. GEN. STAT. § 35-44b (courts “shall” be guided by federal interpretations).</p>	<p>H: <i>Miller’s Pond Co., LLC v. City of New London</i>, 873 A.2d 965, 978 (Conn. 2005) (Connecticut courts follow federal precedent where the federal statute parallels the Connecticut statute but not where the text of Connecticut’s “antitrust statutes, or other pertinent state law, requires the court to interpret it differently”); <i>Vacco v. Microsoft Corp.</i>, 793 A.2d 1048 (Conn. 2002) (citing CONN. GEN. STAT. § 35-44b and following <i>Illinois Brick</i>).</p> <p>PF: See also <i>Elida, Inc. v. Harmor Realty Corp.</i>, 413 A.2d 1226, 1230 (Conn. 1979) (finding purpose of CONN. GEN. STAT. § 35-28(d) was to codify per se violations of the Sherman Act).</p>
Delaware	<p>AT: Del. Code Ann. tit. 6, § 2103 (2007) (making unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).</p> <p>H: Del. Code Ann. tit. 6, § 2113 (requiring that statute “shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes”).</p>	<p>H: <i>Hammermill Paper Co. v. Palese</i>, CA No. 7128, 1983 Del. Ch. LEXIS 400 at *12 (Del. Ch. 1983) (declaring it “manifestly evident” that state antitrust laws should be construed in harmony with federal antitrust law).</p>
Florida	<p>AT: FLA. STAT. § 542.18 (2007) (declaring unlawful “[e]very contract, combination, or conspiracy in restraint of trade or commerce”).</p> <p>H: FLA. STAT. § 542.32 (describing legislative intent that “due consideration and great weight” be given to federal antitrust case law when interpreting state antitrust statute).</p>	<p>H: <i>Duck Tours Seafari, Inc. v. Key West</i>, 875 So. 2d 650, 653 (Fla. 3d Dist. Ct. App. 2004) (“Under Florida law, ‘Any activity or conduct . . . exempt from the provisions of the antitrust laws of the United States is exempt from the provisions of this chapter [542]’”); <i>Parts Depot Co., L.P. by & Through Parts Depot Co. v. Florida Auto Supply</i>, 669 So. 2d 321, 324 (Fla. 4th Dist. Ct. App. 1996) (recognizing that state courts “rely on comparable federal statutes” to construe state statute and recognizing Florida statute to cover horizontal and vertical restraints).</p>

Abbreviation Key: **AT** = Antitrust Provisions; **PF** = Price-Fixing Provisions/Cases; **H** = Federal Harmonization Clauses/Cases

²⁹ ARIZ. CONST. ART. XIV § 15 (2006) (prohibiting any trust or agreement “to fix the prices [or] limit the production . . . of any product or commodity.”).

³⁰ ARIZ. REV. STAT. § 44-1402 (declaring unlawful “[a] contract, combination or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce”).

³¹ *People v. Keystone Automotive Plating Corp.*, 423 N.E. 2d 1246, 1251–52 (Ill. App. Ct. 1981).

³² CAL. BUS. & PROF. CODE § 16720(b) (2007).

³³ CAL. BUS. & PROF. CODE § 16720(d).

³⁴ CAL. BUS. & PROF. CODE § 16720(e)(3).

³⁵ *Mailand v. Burckle*, 20 Cal. 3d 367, 377 n.9 (Cal. 1978) (finding resale price maintenance to be per se violation of state antitrust statute because it is a per se violation under the Sherman Act and “federal cases interpreting the Sherman Act are applicable in construing the Cartwright Act.”). See also *Harris v. Capitol Records Distrib. Corp.*, 413 P.2d 139, 145 (Cal. 1966) (dictum) (resale price maintenance scheme would violate Cartwright Act and Sherman Act); *Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 369-370 (Cal. Ct. App. 2001) (stating “California courts have adopted the *Colgate* doctrine for purposes of applying the Cartwright Act.”).

³⁶ N.Y. GEN. BUS. LAW § 369-a (2007). For a similar statute, see N.J. STAT. § 56:4-1.1 (2007).

³⁷ See *Carl Wagner and Sons v. Appendagez, Inc.*, 485 F. Supp. 762, 772 (S.D.N.Y. 1980) (reseller’s declining to sell at supplier’s minimum resale price cannot be used as basis for supplier’s refusal to supply, in light of section 369-a).

³⁸ *Emergency One v. Waterous Co.*, 23 F. Supp. 2d 959, 970 (D. Wis. 1998) (citing *Grams v. Boss*, 294 N.W.2d 473, 480 (Wis. 1980) (noting that Wisconsin courts have “repeatedly” stated that § 133.03 “was intended as

a reenactment of the first two sections of the federal Sherman Antitrust Act of 1890 . . .”).

³⁹ WIS. STAT. §§ 135.03 and 135.02(4) (2007).

⁴⁰ ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS 159–60 (6th ed. 2007).

⁴¹ *Leegin*, 127 S. Ct. at 2724.

⁴² Transcript of Oral Argument at 4, *Leegin Creative Leather Products, Inc., Petitioner v. PSKS, Inc.*, 127 S. Ct. 2705 (2007) (No. 06-480), available at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/06-480.pdf.

⁴³ *Id.* at 5.

⁴⁴ *Id.*

⁴⁵ This applies only to U.S. distribution. The *Leegin* decision has widened the gap between U.S. and non-U.S. competition law, and counselors need to consider the rules governing distribution in other countries where their clients do business.

⁴⁶ The Scorpion and the Frog, from Aesop’s Fables Online Collection, <http://www.aesopfables.com/cgi/aesop1.cgi?4&TheScorpionandtheFrog>: “A scorpion and a frog meet on the bank of a stream and the scorpion asks the frog to carry him across on its back. The frog asks, ‘How do I know you won’t sting me?’ The scorpion says, ‘Because if I do, I’ll die too.’ The frog is satisfied, and they set out, but in midstream, the scorpion stings the frog. The frog feels the onset of paralysis and starts to sink, knowing they both will drown, but has just enough time to gasp ‘Why?’ Replies the scorpion: ‘It’s my nature . . .’”

Overview of State RPM (Abbreviated)

STATE	LEGISLATION	LITIGATION
Hawaii	<p>AT: HAW. REV. STAT. § 480-4(a) (2007) (declaring unlawful “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).</p> <p>PF: HAW. REV. STAT. § 480-4(b)(1) (clarifying (a), no person, partnership, trust or corporation shall “[f]ix, control, or maintain, the price of any commodity”; engage in activities “with the result of fixing, controlling or maintaining the price”; or “[f]ix, control, or maintain, any standard of quality of any commodity for the purpose or with the result of fixing, controlling, or maintaining its price”).</p> <p>H: HAW. REV. STAT. § 480-3 (requiring Hawaii antitrust statute to be construed “in accordance with judicial interpretations of similar federal antitrust statutes”).</p>	<p>H: <i>Courbat v. Dahana Ranch, Inc.</i>, 141 P.3d 427, 435 n.6 (Haw. 2006) (recognizing that federal interpretations guide the construction of Hawaii statutes “in light of conditions in Hawaii”). See also <i>Island Tobacco Co. v. R.J. Reynolds Tobacco Co.</i>, 627 P.2d 260, 268 (Haw. 1981), <i>overruled on other grounds by Robert’s Hawaii School Bus, Inc. v. Laupahoehoe Transp. Co., Inc.</i>, 982 P.2d 853 (Haw. 1999).</p>
Illinois	<p>AT: 740 ILL. COMP. STAT. 10/3(2) (2007) (declaring unlawful any “contract, combination, or conspiracy with one or more other persons [to] unreasonably restrain trade or commerce”).</p> <p>PF: 740 ILL. COMP. STAT. 10/3(1)(a) (declaring unlawful any “combination or conspiracy with . . . a competitor . . . for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged for any commodity sold or bought by the parties thereto, or the fee charged or paid for any service performed or received by the parties thereto”).</p> <p>H: ILL. COMP. STAT. 10/11 (“when the wording of this Act is identical or similar to that of a federal antitrust law, the courts of this state shall use the construction of the federal law by federal courts as a guide in construing this Act”).</p>	<p>H: <i>People v. Crawford Distributing Co.</i>, 291 N.E.2d 648, 652–53 (Ill. 1972) (declaring that federal antitrust precedent is a “useful guide to our court”).</p> <p>PF: <i>People v. Keystone Automotive Plating Corp.</i>, 423 N.E.2d 1246, 1251–52 (Ill. App. Ct. 1981) (reciting legislative intent of 3(1)(a) to conclude that statute does not proscribe vertical price fixing agreements between buyers and sellers); <i>Gilbert’s Ethan Allen Gallery v. Ethan Allen, Inc.</i>, 620 N.E.2d 1349, 1356 (Ill. App. Ct. 1993) (ruling that vertical price-fixing agreements are to be tested under rule of reason because “per se violations are normally agreements between competitors or agreements that would restrict competition and decrease output” and also recognizing that federal case law is instructive but not binding), <i>aff’d</i>, 162 Ill.2d 99 (1994).</p>
Indiana	<p>AT: IND. CODE ANN. § 24-1-2-1 (2007) (declaring illegal “[e]very scheme, contract, or combination in restraint of trade or commerce, or to create or carry out restrictions in trade or commerce . . .”).</p> <p>PF: IND. CODE ANN. § 24-1-2-1 (declaring illegal “[e]very scheme, contract, or combination . . . to deny or refuse to any person participation . . . or to limit or reduce the production, or increase or reduce the price of merchandise or any commodity”).</p>	<p>H: <i>Deich-Keibler v. Bank One</i>, No. 06-3802, 2007 U.S. App. LEXIS 15419 at *10 (7th Cir. 2007) (noting practice of construing IND. CODE ANN. § 24-1-2-1 in light of federal antitrust case law); <i>Rumple v. Bloomington Hospital</i>, 422 N.E.2d 1309, 1315 (Ind. Ct. App. 1981) (recognizing that Indiana antitrust law is modeled after section 1 of the Sherman Antitrust Act and has been interpreted consistent with federal law interpreting it).</p> <p>PF: <i>Ft. Wayne Cleaners & Dyers Ass’n. v. Price</i>, 137 N.E.2d 738 (Ind. Ct. App. 1956) (affirming judgment against defendant dry cleaner association for vertical minimum price fixing).</p>
Michigan	<p>AT: MICH. COMP. LAWS § 445.772(2) (2007) (declaring unlawful any “contract, combination, or conspiracy” that is “in restraint of, or to monopolize, trade or commerce in a relevant market”).</p> <p>H: MICH. COMP. LAWS § 445.784 (declaring intent of legislature that “in construing all sections of this act, the courts shall give due deference to interpretations given by the federal courts to comparable antitrust statutes, including, without limitation, the doctrine of per se violations and the rule of reason”).</p>	<p>H: <i>Little Caesar Enters. v. Smith</i>, 895 F. Supp. 884, 898 (D. Mich. 1995) (finding no practical difference between federal and state vertical price fixing claims because “Michigan antitrust law is identical to federal law and follows the federal precedents”).</p>
Minnesota	<p>AT: MINN. STAT. § 325D.51 (2006) (declaring unlawful every “contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce”).</p> <p>PF: MINN. STAT. § 325D.53, subd. 1(1)(a) (declaring unlawful any “contract, combination, or conspiracy . . . for the purpose or with the effect of affecting, fixing, controlling or maintaining the market price, rate, or fee of any commodity or service”).</p>	<p>H: <i>Lorix v. Crompton Corp.</i>, 736 N.W.2d 619, 627–29 (Minn. 2007) (Minnesota generally follows federal law but rejects <i>Associated Gen’l Contractors v. Cal. State Council of Carpenters</i>, 459 U.S. 519 (1983)); <i>State by Humphrey v. Road Constructors</i>, 1996 Minn. App. LEXIS 597 at *5 (Minn. Ct. App. 1996) (recognizing that “Minnesota antitrust law is to be interpreted consistently with the federal courts’ construction of federal antitrust law”).</p> <p>PF: <i>State by Humphrey v. Alpine Air Products, Inc.</i>, 490 N.W.2d 888, 894 (Minn. Ct. App. 1992) (holding vertical minimum price fixing agreement a per se violation and recognizing that Minnesota courts consistently interpret state law in harmony with the federal courts’ construction of federal antitrust law) (citing <i>Keating v. Philip Morris, Inc.</i>, 417 N.W.2d 132, 136 (Minn. App. 1987) and <i>State v. Duluth Board of Trade</i>, 121 N.W. 395, 399 (Minn. 1909)), <i>aff’d</i>, 500 N.W.2d 788 (Minn. 1993).</p>

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Overview of State RPM (Abbreviated)

STATE	LEGISLATION	LITIGATION
Nebraska	<p>AT: NEB. REV. STAT. § 59-801 (2007) (declaring illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>H: NEB. REV. STAT. § 59-829 (mandating that courts “shall follow the construction given to the federal law by the federal courts” for similar state provisions).</p>	<p>H: <i>Heath Consultants v. Precision Instruments</i>, 527 N.W.2d 596, 601 (Neb. 1995) (explaining that the “legal reality” is that “federal cases interpreting federal legislation which is nearly identical to the Nebraska act constitutes persuasive authority”). See also <i>Arthur v. Microsoft Corp.</i>, 676 N.W. 2d 29, 35 (Neb. 2004) (interpreting NEB. REV. STAT. § 59-829 to require courts to look to federal law unless federal interpretation would not support the state’s statutory purpose).</p> <p>PF: <i>State ex rel. Douglas v. Assoc. Grocers of Nebraska Cooperative, Inc.</i>, 332 N.W. 690, 693 (Neb. 1983) (citing federal precedent as authority that “both horizontal price-fixing among wholesalers and vertical price-fixing between wholesalers and retailers are presumed to be in restraint of trade and are per se violations” of state antitrust laws).</p>
New York	<p>AT: N.Y. GEN. BUS. LAW § 340 (2007) (declaring unlawful “[e]very contract, agreement, arrangement or combination . . . whereby competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained”).</p> <p>PF: N.Y. GEN. BUS. LAW § 369-a (rendering unenforceable “[a]ny contract provision that purports to restrain a vendee of a commodity from reselling such commodity at less than the price stipulated by the vendor or producer”).</p>	<p>H: <i>Sperry v. Crompton Corp.</i>, 2007 NY Slip Op 1425, 7 (N.Y. 2007) (noting that courts generally construe Donnelly Act in light of federal antitrust case law, but that it is “well settled” that New York courts will interpret the Donnelly Act differently “where State policy, differences in the statutory language or the legislative history justify such a result”); <i>Aimcee Wholesale Corp. v. Tomar Products, Inc.</i>, 237 N.E.2d 223, 225 (N.Y. 1968) (recognizing that New York antitrust law was modeled on Sherman Act).</p> <p>PF: <i>Anheuser-Busch, Inc. v. Abrams</i>, 520 N.E.2d 535, 536–37 (N.Y. 1988) (recognizing that vertical restraints are not per se illegal under New York law); <i>Dawn to Dusk, Ltd. v. Frank Brunckhorst Co.</i>, 23 A.D.2d 780, 781 (N.Y. App. Div. 1965) (applying rule of reason to vertical price and nonprice restraints).</p>
Texas	<p>AT: TEX. BUS. & COM. CODE § 15.05(a) (2007) (making unlawful “[e]very contract, combination, or conspiracy in restraint of trade or commerce”).</p> <p>H: TEX. BUS. & COM. CODE § 15.04 (declaring that the statute “shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes to the extent consistent with this purpose”).</p>	<p>H: <i>Star Tobacco, Inc. v. Darilek</i>, 298 F. Supp. 2d 436, 440 (D. Tex. 2003) (finding that the Texas antitrust statute is intended to be construed in accordance with federal antitrust statutes (citing <i>Abbot Laboratories, Inc. v. Segura</i>, 907 S.W.2d 503, 511 (Tex. 1995) (Gonzalez, J., concurring))).</p>
Washington	<p>AT: WASH. REV. CODE § 19.86.030 (2007) (declaring unlawful “[e]very contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce”).</p> <p>H: WASH. REV. CODE § 19.86.920 (declaring legislative intent that construction of act “be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters” but that the act “shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se”).</p>	<p>H: <i>Blewett v. Abbott Lab.</i>, 938 P.2d 842, 846 (Wash. Ct. App. 1997) (recognizing that although federal antitrust precedent is only a “guide,” “in practice Washington courts have uniformly followed federal precedent in matters described under the [Washington antitrust laws]”).</p>
Wisconsin	<p>AT: WIS. STAT. § 133.03 (2006) (declaring illegal “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce”).</p>	<p>H: <i>Emergency One v. Waterous Co.</i>, 23 F. Supp. 2d 959, 962, 970 (D. Wis. 1998) (noting that Wisconsin courts have “repeatedly” stated that federal antitrust law guides the interpretation of WIS. STAT. § 133.03) (citing <i>Grams v. Boss</i>, 294 N.W.2d 473, 480 (Wis. 1980)).</p> <p>PF: <i>Slowiak v. Hudson Foods, Inc.</i>, No. 91-C-737-2, 1992 U.S. Dist. LEXIS 9387, at *25–*30 (D. Wis. 1992) (holding vertical maximum price restraint lawful because there was no antitrust injury).</p>

Abbreviation Key: **AT** = Antitrust Provisions; **PF** = Price-Fixing Provisions/Cases; **H** = Federal Harmonization Clauses/Cases