

READING ANTITRUST CASES

When you finish reading an antitrust case, here are some questions you should be able to answer:

1. Who is the defendant?
2. Who is the plaintiff?
3. What did the defendant (allegedly) do that the plaintiff is challenging?
4. In what way does the plaintiff say it was hurt by the challenged conduct (e.g., raised the price the plaintiff paid as a purchaser, competitively disadvantaged or excluded the plaintiff as a competitor in the market, restricted the plaintiff's freedom as a distributor in setting resale prices, determining sales areas or sales locations, or choosing customers)?
5. In addition to any harm to the plaintiff itself, did the defendant's conduct cause any significant harm to others?
6. Why would the defendant engage in the challenged conduct? (The initial answer is almost always "to make money," but the next question is how does the defendant expect its conduct to make more money.)
7. What substantive law does the plaintiff say the defendant has violated and what are the elements of a prima facie case?
8. What is the court being asked to do and who is asking (e.g., accept a plea agreement, dismiss the complaint, certify a class, approve a class action settlement, grant summary judgment, strike an expert's testimony, grant a motion for judgment as a matter of law (JMOL), issue a particular jury instruction, award damages, issue an injunction).
9. What is the procedural law that governs the court in deciding the question?
10. What was the court's decision and how did the court reach it?
11. Did the court create any new rules in deciding the case? If so, how did the court pick the rule?
12. What is the standard of review on appeal?
13. For appeals, who is bringing the appeal, what action of the lower court are they challenging, and what is the claimed error (e.g., the plaintiff, claiming that the district court erred in granting summary judgment for the defendant because genuine issues of material fact exist on every element of the plaintiff's claim; the defendant, claiming that the district court erred in denying its motion for requested jury instructions and the

jury instructions given materially misstate the law; the defendant, claiming that the district court erred in denying its motion for a directed verdict because the evidence at trial cannot support the jury verdict for the plaintiff)?

14. From a positive perspective, did the court decide the question properly given the current state of the law?
15. From a normative perspective, did the court make the right decision?

Questions 1-7 go to the merits of a case. Some decisions are purely procedural, such as deciding a discovery motion, certifying a class, or limiting expert testimony. Even in these procedural cases, you should still be able to answer the first seven questions, since the nature of the merits dispute is likely to have a significant effect on the answer to a procedural question.