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JUSTICE DEPARTMENT WITHDRAWS REPORT ON ANTITRUST MONOPOLY LAW

Antitrust Division to Apply More Rigorous Standard With Focus on the Impact of Exclusionary Conduct on Consumers

WASHINGTON — Christine A. Varney, Assistant Attorney General in charge of the Department's Antitrust Division, today announced that the Department is withdrawing, effective immediately, a report relating to monopolization offenses under the antitrust laws that was issued in September 2008. As of today, the Section 2 report will no longer be Department of Justice policy. Consumers, businesses, courts and antitrust practitioners should not rely on it as Department of Justice antitrust enforcement policy.

The report, "Competition and Monopoly: Single-Firm Conduct Under Section 2 of the Sherman Act," raised too many hurdles to government antitrust enforcement and favored extreme caution and the development of safe harbors for certain conduct within reach of Section 2, Varney said. Varney announced the withdrawal of the report today at a speech at the Center for American Progress.

"Withdrawing the Section 2 report is a shift in philosophy and the clearest way to let everyone know that the Antitrust Division will be aggressively pursuing cases where monopolists try to use their dominance in the marketplace to stifle competition and harm consumers," said Varney. "The Division will return to tried and true case law and Supreme Court precedent in enforcing the antitrust laws."

The report was issued after a series of joint hearings, involving more than 100 participants, that the Department and the Federal Trade Commission (FTC) held from June 2006 to May 2007 to explore the antitrust treatment of single-firm conduct. The FTC did not join with the Department in its report.

Varney said that while there is no question that Section 2 cases present unique challenges, the report advocated hesitancy in the face of potential abuses by monopoly firms. She said that implicit in this overly cautious approach is the notion that most unilateral conduct is driven by efficiency and that monopoly markets are generally self-correcting. "The recent developments in the marketplace should make it clear that we can no longer rely upon the marketplace alone to ensure that competition and consumers will be protected," Varney added.

"I want to commend the efforts of those who participated in the Section 2 hearings," said Varney. "While I do not agree with the conclusions of the Section 2 report, I do believe that the hearings and the report provided a valuable discussion of the enforcement issues involving single-firm conduct."

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