



COMMENTS ON
"MONOPOLY
MAINTENANCE LAW:
UNDERDEVELOPED AND
MISDIRECTED"

Author: Nicola Petit

**Discussant: Giovanna
Massarotto**

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ROADMAP

Factual & Legal Background

Core Contributions of the Paper

Discussion & Open Questions


FACTUAL & LEGAL BACKGROUND

- **Monopoly maintenance** old concept not developed
 - Section 2 of the Sherman Act "monopolize, or attempt to monopolize"
 - Grinnell (1966) "acquisition or **maintenance of that power**"
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FACTUAL & LEGAL BACKGROUND

- **No** supreme court framework
 - **3-step** rule of reason
 - No guidance: what a **dominant firm can do**
 - Case by case assessment: **lawful** and **unlawful** conduct
 - Case study: **Google Search**
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CORE CONTRIBUTIONS OF THE PAPER

- **Market Power Utilization Test**
 - Asks whether the suspected monopolist **coerced its trading partner** into enacting **a restraint of competition (A)**
 - Test fails  **No liability**
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CORE CONTRIBUTIONS OF THE PAPER

- Focus on the **instrument deployed**
 - Absence coercion
 - **Superior Efficiency** v. **Oppressive behavior**
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DISCUSSION & OPEN QUESTIONS

Utilization Test: **Harvard** or **Chicago**?

Harvard – structuralism, durable dominance

Chicago – conduct, consumer welfare, error-cost caution

Open Question:

Conduct/consumer-effects test or structural reorientation?

DISCUSSION & OPEN QUESTIONS

- Proposed Test: coercive utilization of monopoly power
 - U.S. antitrust law (**consumer welfare**) \neq EU competition law (**regulating competition**)
 - Problem: **coordination among monopolies**
 - What Role Does Coercion Play in **Unilateral §2 Practices?**
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DISCUSSION & OPEN QUESTIONS

Acquisition v. Maintenance



THANK YOU



ANTONIN SCALIA LAW SCHOOL

