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Center for the Study of

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ACCESS TO INPRIT JOINT VENTURES
COME IN: EVALUATING RESTRICTIONS ON
YOU KEEP ON KNOCKING BUT YOU CAN'T

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JOINT VENTURES
EVALUATING RESTRICTIONS ON ACCESS TO INPUT
YOU KEEP ON KNOCKING BUT YOU CAN'T COME IN:

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Keywords: Antitrust, Joint Ventures, Exclusion.

We investigate the antitrust treatment of restrictions on access to joint ventures and hypothesize proposition for evaluating allegations of anticompetitive harms and potential for network effects. Joint ventures and the type of evidence attention to network effects and raise the issue of economic efficiency. We pay special attention to antitrust standards and propose our own standards which strike a balance between per se and rule of reason treatment. We discuss the framework that explains how joint ventures access rules provide economic benefits and can cause competitive harm. We formulate an economic framework that explains how joint ventures access rules provide economic benefits and can cause competitive harm.

Abstract

Steven C. Salop

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Evaluating Restrictions on Access to Joint Ventures

You keep on knocking but you can't come in!
ECONOMIC ANALYSIS OF EXCLUSIVE ACCESS RULES

INTRODUCTION

Stevan C. Salop
Dennis W. Carlton

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You keep on knocking but you can't come in.

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I.

**INTRODUCTION**

Dennis W. Carlton

EVALUATING RESTRICTIONS ON ACCESS TO INVESTITORS YOU KEEP ON KNOCKING BUT YOU CAN'T COME IN

April 11, 1995
A conceptual foundation for evaluating legal standards and designing venture access rules. Based on this framework, we develop an economic framework for analyzing joint venture rules. We formulate an economic framework for analyzing joint venture rules to estimate the consequences of taking a strictly economic approach to estimating this consequence. This paper, we use the venture formation and antitrust restriction that discusses the characteristics of recent articles concerning joint ventures.

There have been a number of recent articles concerning joint ventures. When rather than as a carefully formulated legal standard, the doctrine which courts sometimes use to complex access cases more precisely to replace the rules set down in that case. Indeed, in courts and commentators are proposing new standards of per se legality the per se rule of illegality in Northwest Stationary, Inc.
and price fixing, not vertical foreclosure.

and price fixing, not vertical foreclosure.

customers of the members. The latter raise issues of cartelization

group boycotts in which a venture refuses to deal with certain

group boycotts in which a venture refuses to deal with

in Associated Press. Similarly, in Associated Press, the venture
deny access to the plaintiffs’ part of the situation by excluding

to the retail stores that were the members. If choice to
corporate was an input joint venture that provided wholesale

Joint venture access cases typically are interpreted under the

members in the output market. Venture may wish to deny access to firms that compete with the

venture may wish to deny access to firms that compete with the

with other members of the venture. In this situation, a joint

independently that they sell in the market, often in competition

venture provides an input that the members use in producing outputs

in producing some product or service of their own. That is, the

provide a product or service to other members which the members

that facilitate vertical integration by the members. Such ventures

often arise in situations where the joint ventures are entities

Joint venture access rules cover two main issues -- who can

competition.

standards that will serve the economic interests of consumers and
Mullite is a mineral that is often used as an ingredient in the production of mullite-based materials. Mullite is a silicate mineral that is commonly found in the Earth's crust. It is a hydrated aluminum silicate that is formed by the reaction of soda ash, lime, and clay. Mullite is a good insulator and has a high melting point, making it suitable for use in high-temperature applications. It is also used in the production of refractory materials, such as bricks and tiles. Mullite is a common mineral in metamorphic rocks, such as garnet and andalusite. It is also found in ancient sediments, such as those found in the Triassic and Jurassic periods. Mullite is a mineral that is often used in the production of refractory materials, such as bricks and tiles. It is also found in ancient sediments, such as those found in the Triassic and Jurassic periods.
In Section II, we present an economic analysis of existing joint ventures and an economic analysis of attorneys' exclusive access rules by carrying out this paper evaluates exclusively attorneys' exclusive access rules by carrying out cases. Such rules can reduce legal process costs but also could raise the likelihood of reaching erroneous outcomes in particular instances. More recently, a number of commentators and the states a standard of per se illegality to govern exclusive agreements in particular cases. For example, Northwest Startermers has in particular cases, for simple rules to eliminate the need to balance benefits and competitive impact of exclusive access rules, courts have looked because it sometimes is difficult to evaluate the net effect. Concerns are the focus of this article, concerns, which raise the most interesting and difficult antitrust and most joint ventures raise no anticompetitive issues under the other antitrust benefits. Therefore balancing of competitive concerns against efficiency and negative effects, so that evaluation of the net competitive impact of circumstances, exclusive access rules may have both positive and competitive benefits by facilitating practicing coordination under certain
Concerns. We identify and evaluate three potential sources of
exclusive access rules that can create competitive

capital acquisition by investors.

This involves permitting more of the revenues to investment to be
access rights can play a role in maintaining investment incentives.
Second, exclusive access rules can reduce by reducing scale and scope economies
costs. Costs can be reduced by reducing scale and scope economies
corresponding in two distinct ways. First, the rules can reduce
directly to the efficiency of joint ventures in the input and
rules in particular. Exclusive access rules can contribute
benefits from joint ventures in general and exclusive access

were identified and evaluated through a number of potential efficiencies.

Harms flowing from the access restrictions.

Evidence that can be used to assess the possible efficiencies and
exclusive access rules. We identify the types of economic
exclusive access rules that can be used to evaluate the net competitive impact of particular
members operate. This economic analyzes of benefits and harms can

competition in the markets in which the joint venture and the
exclusive access rules can reduce consumer welfare by reducing
exclusive access from an overinvestment joint venture. Conversely,
distortion and transaction process, as well as by protection
by increasing the economic efficiency of the production,
can cause. Joint venture access rules can improve consumer welfare
rules to efficiency and the potential competitive harm such rules
we analyze both the potential contribution of joint venture access
a rigorous economic analyzes of input joint venture access rules.
The conduct on the basis of claims that the exclusionary access output market excitement and input market excitement, visa vie Justizrecht, we explain that Dean Wittmer made two anti-competition allegations, Dean Wittmer, the firm that also issues the Discover charge card, Visa anti-trust case. In that matter, Visa denied membership to the venture. We then illustrate our framework with issues raised in the compliance may benefit the venture and its members.

credibility of such claims in light of the fact that reducing consumers, in evaluating such claims, we stress the issue of the firm's competitive position, then predicting such a combination would benefit we venture combines firms that otherwise would compete. If a venture combines firms that become too large, competitive benefit of exclusionary access in case -- to project competitive benefit of exclusionary access increase an additional potential.

we also identity and evaluate an additional potential.

we venture.

price of output paid by consumers and, as a result, reduce consumer members who compete too intensely. Each of these can raise the coordination involves using joint venture ventures to dictate the ability to supply joint venture members. Supporting pricetaking involves disadvantageant input market competitors by restricting the output produced by the joint venture. Input market excitement coordination involves output market excitement disadvantages input market competitors. "input market excitement, output market excitement, and supporting pricetaking competitive harm. We characterize these three sources as output market excitement.
Proper use of per se rules and the structured rule of reason. Part II summarizes and sets out our conclusions regarding the rule of reason standard. We recommend using our economic framework to apply a structured view of per se standards. However, based on our economic analysis, we recognize that the application of per se standards in many cases will lead to non-competitive outcomes. In those cases, we propose a new test based on the impact of a hypothetical merger of members of the venture. In particular, we propose a new test based on the standards that would apply to the collective market power of the venture and the members. We are sympathetic to the use of per se standards, especially of the input provided by the venture.

In Part III, we discuss alternative legal standards that can incentivize as well as to prevent firms from becoming overencumbered.

[The rest of the document continues with various sections discussing different aspects of antitrust law and policy.]

[The body of the text is fragmented, suggesting it may be a part of a larger work or a draft.]

[Reference to specific pages or figures is not visible in this fragmented context.]
II. ECONOMIC ANALYSES OF EXCLUSIONARY ACCESS RULES

Joint venture access rules can improve consumer welfare by increasing the economic efficiency of the production, distribution and transactions process. Conversely, exclusionary access rules can reduce consumer welfare by reducing competition in the markets in which the joint venture and its members operate. Thus, in order to analyze the economic implications of these rules, we first need to understand the potential efficiency benefits and competitive harms that may be created by the rules. Only by understanding the general results of a full economic analysis can legal rules be designed to reduce legal process costs without introducing large errors into the legal process.

This section sets out the analytic framework for analyzing the net competitive impact of access rule provisions. We begin by analyzing the efficiency benefits created by the existence of joint ventures in general and joint venture access rules in particular. We then analyze theories of competitive harm flowing from exclusionary access rules. Finally, we illustrate our framework with claims raised in the recent Visa case.

A. Potential Efficiency Benefits of Joint Venture Rules

In this section, we begin by briefly describing sources of joint venture efficiency and the contribution of access rules to
A Post-Chicago Approach: Antitrust Law Concerns

Achieving scale economies, the ability of a single large production facility to allow the venture to achieve scale economies, can allow the venture to produce development of new products at lower cost. Joint research and development, for example, joint research ventures can coordinate Red activities and reduce costs of production and distribution. Joint ventures can reduce the costs of production by allowing entrepreneurial activities. Two underwriting sources of investment incentives: joint venture effectiveness are reduced costs and increased efficiency. A venture can be highly efficient and, yet, a particular access to the venture, and an access to the venture, is a key deterrent between a venture's efficiency, there are a variety of the many articles discussing efficiency.
would tend to have a general open entity policy. For example, a joint venture in this context may foster competition, as restrict competition may spur innovation, and so to capture an adequate return on their investments, so as to capture an adequate return on their investments, the incentives to invest will be diminished. A joint venture may networking more valuable, which benefits all users. Adding new networks and technologies to existing networks, enhancing the utility of existing networks, and more will provide the value to banks of in the number of new card holders, and at the same time, the network externalities are not unusual in certain contexts. Network externalities, especially those involving open entities, have a strong impact on the number of other users grows. A product to one user increases as the number of other users grows. Network externalities occur when the benefits created by another user's use of the product are valued by a user. In practice, restricting competition may spur innovation, as permits more of these benefits to be captured by the innovator. Generating a common product standard than through negotiation among firms. Joint ventures through an input joint venture that produces the product and free riding. For example, it may be more efficient to develop and network externalities, skill and locational complementarities, and coordination issues such as those relating to standardization, influence the ability of firms to deal efficiently with interfirm joint ventures also can reduce the transaction costs that
In addition, joint ventures sometimes threaten denial of access to a means of enforcing compliance with other rules. The effectiveness of these access rules depends on the effectiveness of the mechanisms and using denial of access as an enforcement.

General Motors is under no general obligation to allow Ford to use its assets with these rates. For example, at a private firm develops a new product or is simply successful, it does not follow these rules should ever be questioned by the courts. These potential effectiveness raise the fundamental question of investment incentives.

Exclusionary access rules can play a role in maintaining adequate ex ante incentives for investment. First, the competition in the two distinct ways discussed earlier. In the separate markets, the joint venture can increase efficiency and effectiveness of joint ventures in the input and output markets. Exclusionary access rules can contribute directly to the joint venture's efficiency.

2. Access Rules and Joint Venture Efficiency

Incentives and efficiency incentives that can make the analysis of investment entails. It is the potential for anticompetitive harms as well as the potential to outweigh the benefits of increased investment occurred anyway. Instead, it may have significant anticompetitive investment or restrict competition, where investment would have returned may not be efficient because it may overstate the returns. Of course, restricting competition in order to increase investment by restricting competition among the members of the joint venture, joint ventures might effectively increase incentives for firms to invest.
For a similar argument, see note 14. It restricts members' output. It restricts the ability of other input suppliers to sell inputs to the joint venture. It restricts access to the input to producers. It restricts the output of the joint venture to that accessed by the members. As discussed in this article, output could be restricted if the members or with whom the members deal, the timing of member entry, the identity of the joint venture, the timing of member entry, the identity of the access rules vary greatly. Access rules may affect the size of the venture. Access rules are not and should not be immune from antitrust scrutiny. For all these reasons, joint venture anticompetitive benefits are not sufficient to justify a remedy that requires cooperation among firms and the common use of property to achieve. Even if a venture is efficient, that does not necessarily imply that the access rules to its use are necessary for its efficiency or even contribution positively to it. Another reason is that the very existence of the joint venture shows that a remedy that requires cooperation among firms is needed. A remedy that requires cooperation among firms and the common use of property to achieve could be used to achieve to suppress competition in ways that a joint venture involves coordination among competing firms and from a collective restriction of output. The main reason is that the joint venture infringes antitrust law. Members of joint ventures do not have an unattached property right to capture the profits that might arise under the antitrust laws. Members of joint ventures are not given the same leeway as single firms to do so. It's manufacturing facilities, even if Ford claims that it is
network or the extent to which the network actually is used. In general, it is the number of times that are attached to a venture that may produce by the venture, positive network externalities, so may be subject to the impact of output market transactions that use the impact potential. Standardization and implementation costs might increase with the

15

As summarized, potential contemporaneous externalities are realized. Joint venture location, skill sets, or market positioning can affect the degree to which economic interests, differences among members with respect to some cases, coordination costs can be affected by different

The identity of members also can affect venture efficiency. In

members later on. members of these joint ventures benefit from the addition of new externalities and do not have large and risky investments. But

primary function is to take advantage of network or standardization issues are less likely to be as important for joint ventures whose after such investments have been made. In contrast, free riding joint venture to choose or increase application fees to new members joint venture to choose or increase application fees to new members.

benefits. Concerns that later applications will free ride on larger benefits. In the case of many research joint ventures, for example, as in the case of many research joint ventures, a

smaller number of members might incur smaller coordination costs. In contrast, a large number of members might incur large coordination costs. In the case of many research joint ventures, a

result, joint ventures come in all sizes. For example, a venture resource is no single efficient size for all ventures and, as a

sizable or time of entry and these fees will affect members

Incentives.
17 We discuss the potential competitive benefits from preventing the creation of an overintensive joint venture in a later section.

16 It is too hard to protect trade agreements in the venture, but even if a firm cannot be

simultaneous ventures. For example, a claim that a firm cannot control operating

history of the venture, however, the experience of some plant-based joint ventures may conflict with the evidence.

and some plants are not plantable or located under the antitrust laws. Some important

should bekläny accepted, some joint ventures are not competitive

ventures. However, this does not mean that every efficiency claim

should be exercised caution in interpreting the operation of joint

efficiency that results from internal rules of operation. Courts

emphasize. It often can be difficult for outsiders to evaluate the

number of different methods. One important caveat deserves

section. 16 Efficiency justifications may be evaluated by a

type of joint venture and other factors discussed in the previous

case. 17 The rules for anticompetitive harm depend on the

before one can decide whether the rules are anticompetitive. The

must consider the potential efficiency justifications for its rules

If a joint venture has created an anticompetitive harm, one

mechanism for generating these kinds of efficiencies.

rules regulating the identity of members are one potential
the evaluation of the effectiveness justifications. In such situations, the past behavior of the joint venture can assist in proposing justifications subsequent to the event. Thus, the exercise of market share, therefore, does not belong to antitrust scrutiny, especially if they seek to a large competitive market share. Hence, antitrust scrutiny should be necessary for evaluating justification. For example, 'justification' means an event that has occurred after the venture, which may have an impact on the venture's structure. The members of the venture often belong to this type of venture. The past membership policies, or bases of the type of venture, its past membership policies, or bases of the type of venture, are factors that affect the venture's justification. There are a number of approaches to evaluating the effectiveness of such claims. The sweep of this defense increases the importance of scrutinizing antitrust law. It generates super-competitive profits. Indeed, antitrust laws should not permit joint ventures to restrict competition for a broad array of anticompetitive restraints. Justification is accepted meretric on the basis of general prudence. It has the potential to be used as a power and justifications to invest. It is accepted meretric on the basis claim to evaluate because it raises the tension between market claim and justifications for members of the joint venture. Thus, as generally the most difficult justification joint venture, consider the claim that access restraints are necessary in order to maintain adequate investment justifications for members of the venture. This claim could be tested by observing what happened when this firm or others like it belonged to this or similar ventures.
there is no valid efficiency justification (but, see section II.C. on overtrustlessness). There do no not necessarily concern.

Economic efficiency. The two do no necessarily concern.

A monopoly, the venture will be concerned with this product. The venture will be concerned with the product in

monopoly. The venture sets a fee to join the venture and some firms

A venture sheet the venture sets a fee to join the venture and some firms

The venture does not punish the venture, the fact that it is efficient to permit a joint venture, the venture does not punish the venture.

For a just trustee to be valid, the efficiency benefits must

Competition.

Restrictions based on the need to generate profits by restricting

are more likely to have a valid efficiency justification than access

essential to the venture's existence. In short, close ventures

in competition in order to earn supra-competitive returns (speculative, the right to further restrict

property rights) is the structure suggests that additional protection of

the venture, this structure suggests that additional protection of

an impact price that yields competitive profits to the members of

supporter and the many members compete in the output market based on

Alternatively, if the venture is structured as a non-project profit

protection has not been essential for the success of the venture.
provides standard interfaces, communicates protocols and an
in credit cards, a network that venture
in the "outport" (the "input") for use by the members in brokering
information (the "input") that each member of the venture indirectly
and market a version of the drug (the "output") that could manufacture
and market a version of the drug (the "output") so that each member of the venture indirectly
manufacture and market create the formula for a new drug (the "output") so


and marketed by the vendors (the "outport") independently manufactured and marketed by the vendors (the "outport") for use in the computers
manufacture and communicated (the "outport") for use in the computers
to consider a production joint venture among computer firms to
produce output that they sell in the market. For example, a
what's the venture provides and input that the members use in
the members use in providing some product or service of their own.
such ventures provide a product or service to their members which
entitles that facilitate vertical integration by their members.
issues often arise in situations where the joint ventures are
restrictions can harm consumers and competition. Access to

In this section, we analyze the ways in which access


Venture Access Rules In Input Joint Venture

B. Potential Competitive Harms From Exclusory Joint

claimed efficiency benefits.
there must be a connection between the exclusive conduct and the
Independent with users outside the platform. In short,'
Exclusively joint venture access rules can harm competition

 purchases them from other semiconductor suppliers.

 the venture produces semiconductors independently of the venture or

 integrated by the dotted outline. As drawn, none of the members of

 semiconductor joint venture also is a manufacturer of computers, as

 factaffect its vertical integration. That is, each member in the

 computer sells to consumers, as shown at the bottom. The venture

 computers supply the input to firms that compete in the output

top of the diagram. The joint venture and its unincorporated

 computers in the input market (semiconductors) are shown at the

 exchange of input and output market competition. In Figure 1,

 structure and

 Insert Figure 1

 Issuing credit cards and dealing with merchants (the "outlets")

 interchange mechanism (the "input") and members then complete in
1. The Competitive Harm of Output Market Exclusion: Disadvantaging Output Market Competitors

A joint venture access rule can harm competition by raising the costs or otherwise disadvantaging the rivals of its members in the output market. This can reduce competition and lead to higher prices than would occur otherwise. For example, denying access to low cost firms in the output market can keep prices higher than they would be otherwise.

Numerous cases have raised issues of output market exclusion.

In Radiant Burners, the input Radiant was unable to obtain was the AGA certification that it needed to market its burner. In Radiant Burners Inc. v. People's Gas Light & Coke Co., 364 U.S. 556 (1961).

In addition, even if output prices do not rise, exclusion or an increase in input prices may reduce production efficiency. Further, an increase in input market share could lead to monopoly.


In Fashion Originators Guild of America, 312 U.S. 457 (1941), various characterizations of input and output markets as relevant to the analysis. Treating wholesale as an input to the retail market, the "red card" retailers allegedly were denied retail access to "white card" retailers and textiles produced by FOCA members.

INDUSTRIAL ORGANIZATION (Chapter 12).

27. For more detailed discussions of these conditions, see Thomsen, G., Krestenmaker and Stevan C. J.apop, Anticompetitive Excision: Costs To Achieve Power Over Price, 96 Yale L. J. 209 (1986); Ordover, Sykes and Wilt, Antitrust, Price Setting, and the Power of John D. McCorran, 115-130 Princeton, Princeton ed., 1995; OECD, Anticompetitive Behavior by Dominant Firms: Toward the producers of Complementary Products, 80 Amer. Econ. Rev. 127.


20. This exception could only be a profitable and anticompetitive strategy under certain conditions in the input and output markets. To analyze when such effects will harm consumers, consider an association that would disadvantage or raise barriers to entry to these

competitors. If the government essentially comprehended that the members of the cooperative were denying rival newspapers access to non-local news and supplying stock necessary to retail consumers. In Associates Press, Inc. v. Northwest Wholesale Stationers, 385 U.S. 124 (1967)
monopoly, of course. See supra, note 29. This goes for abstractions from the issue of effectiveness losses or a small share of the input market or if the members have a small

untaken to create any competitive threat. If the joint venture has

ventured with a low market share in the input and output markets, it

This analytical suggests that expansion of a member from a joint

price from rise.

the joint venture face outside competition, competition may prevent

the joint venture face no barriers to expansion in the output

market, and it membership is unconcentrated or if the members of

the joint venture may prevent any upward price effect from occurring. In that case, there may be
disadvantaged, including members of the joint venture, may prevent

harm to competitors but not to competition. Thus, it members of

harm, In particular, competition among the firms who are not

involved costs were raised by the strategy, consumers may not be

In the computer output market, even assuming that certain

be enhanced by the additional input market competition.

denhancement by the additional input market competition. Moreover, competition could

equally effective competing input joint venture, there then would

could equally effectively vertically integrate their sales or form an

output market either. Similarly, suppose the excluded applicants

such a case, there also could be no anticompetitive impact in the

price and quantity as provided by the venture to its members. In

could supply the input to rival computer manufacturer at the same

competitive to other actual and potential semiconductor producers

In the input market, the strategy would fail to harm
The excision can harm consumers and competition only if the output market, harm to excised firms with occur only if

...
discussing the status of this standard. See Krattemaner and Salop, supra note — for a more detailed discussion. To compete against each other, as long as the face each other market power, even if the remaining members of the joint venture market operate with few and the joint venture will have exerted output of the own members do not offset this decrease, then total output of these expected firms to decrease and if the can cause the output of these expected firms to decrease. For example, if by exercising a group of competitors, the joint venture members can act collectively to restrict total market output. For the joint venture collectively may raise market power. Even if the individual members of the joint venture lack market result.

In the market, higher prices and consumer harm nonetheless can firms who are disadvantaged by denial of access continue to compete exclusion. Thus, it should be clear that even if the excluded exclusion depends on whether or not the exclusion results in a reduction in total market output compared to what it would have been without the collective action can result in elevated output prices. The answer enforcing the exclusion, the relevant issue is whether this because the joint venture members can act collectively in

involve an analysis of the effect on the output market. Thus, proper evaluation of the competitive harm from exclusion, exclusion also leads to an impact on price in the output market, and consumers. Consumers are not harmed significantly unless the competitors who are excluded is not the same as harm to those of course, it is now well recognized that harm to those
Excursionsary market power by a group of firms is the power of those competitive firms to restrict the output of members of the group. A monopolist can exercise power by setting a price that maximizes profits. A group of competitive firms can exercise power by setting a price that is lower than the competitive level, but higher than the marginal cost. The power of the group is the difference between the output at the competitive level and the output at the lower price. This power can be exercised through an output restriction. Firms that are price takers cannot restrict output, even if they are the only firms in the market. By contrast, monopolists can restrict output and earn supernormal profits.

In the context of joint ventures, the concept of excursionary market power is also relevant. A joint venture is a cooperative agreement between two or more firms. The output of a joint venture is the sum of the outputs of the individual firms. If the joint venture has market power, it can restrict output and earn supernormal profits. However, if the joint venture is not significant enough to earn supernormal profits, it cannot exercise power through output restriction. Therefore, the lack of market power does not prevent the exercise of output restriction.
36 For example, see 1992 HorizonsMerger Guidelines.

... and Krattemacher, Lande and Salop, supra note at
price, but few if any, the lower price. Of course, these lower costs also would
exercite market power by exercising its own, and thereby prevent
... exercise of (exclusive) market power. Thus, exercising these new applicances represents the
lower level. Thus, exercising these new applicances represents the
time would gain equal access to the input, prices would fall to a
higher than they would be otherwise. If, instead, the exclusive
input supplied by the venture may lead to output prices that are
comparators, then preventing these applicances from purchasing the
applicances are especially low cost or distributive
applicances. For example, suppose that output market comparitors
involve preventing output prices from falling by reaecting new
exclusory of current members. Exclusory conduct also may
not to increase in output prices, as could occur from
It is important to emphasize that competitive harm is not
comprehensive disadvantage to retaliate for Practice's decision to
depart from the Northwest. The expectation was to place Practice at a
Northwest/s motive in the expectation was to place Practice at a
Northwest. As the Court stated, "[a]ccording to Practice,
theory apparently formed the basis for one of the allegations in
comprehensive by imposing exclusively requirements on members. Thus,
joint venture access rules can disadvantage input market
prices which in turn could lead to higher output prices.
The joint venture access rules could lead to higher input
prices. These disadvantages could lead those competitors to forgo entry or reduce
disadvantages. These joint venture advantages in the input market,
joint venture access rules can harm competitors by

2. The competitive harm of input market restrictions
procompetitive admission of new members.
The joint venture would rise, it would be erroneous to condemn this
and benefit consumers. Even though the competitive market share of
in the market, that increase in output would lower output prices
market output to expand. If these new members increased total output
admitted the new, low-cost members and those new members caused
unacceptable. In that example, suppose the joint venture had
market share of the venture and market power sometimes is
instance, in the previous example, the link between the collective
competitors and entity of uninterrelated output market competitors.

This also can deter two-tier entity of vertically integrated


Harmerson, Ramirez & Witty, Naked Excursion, in Am. Econ. Rev., Nov.

For one economic analysis of the uninterrelated conduct case, see

<ctee>

case. In that case, however,

basis of the allegations in Torarin-Towm.

the use of an all-or-nothing contract to deter entry formed the

that deal with stipules)

of hotels and restaurants quarters, as well as those scores

cut of businesses that sell

457 (1941) (formation of competition from business that sell

40 Fashion Orchesturers Guild of America, Inc. v. FTC, 312 U.S.

42 Exclusivity Requirements force members of the venture to make

the members of the venture are important customers of input market

Input suppliers cost or deter entry of input market competitors. As a result, it can raise real input

236 (1944) (noting importance


134 Similarly, it ASCAP and BMI had exclusivity rules that

38 Northwest, 472 U.S. at 296 n. 7.

providing retail services.

Similarly, one of the allegations in the Fashion Orchesturers Guild

to say that such competitive antitrusts would be contributing to

engage in an independent wholesale operation. The Court went on

exclusivity requirements of competition or of vertically integrated

input market competitors in the input market for

Headed by

negotiation services. In the Fashion Orchesturers Guild

Those on members who volunteered the guild requirements.

These restrictions were supported by interests that imposed substantial

prohibitions on advertising, price discounts, and special sales, including

a variety of restrictions on competitive practices in the


See also National College of Optometry, 468 U.S. 85 (1984).

See also National Collegiate Athletic Ass'n v. Board of Regents of

46 Supra note —; Prentice, supra note —; Prenter, supra note —; Prenter,

45 For other discussions, see Brodley, supra note —; Prenter,

when their costs increase.

This is because even perfectly competitive firms raise prices

44 Supra note —; Prenter, supra note —; Prenter, supra note —; Prenter,

43 Likelihood, see Reisman, supra note —; Reisman, supra note —; Reisman,

42 For a detailed analysis of the conditions under which this harm

Suppose the semiconductor joint venture illustrates in Figure 1

raising input prices or restricting input usage. To illustrate,

A venture also could influence output market prices indirectly, by

ventures and set them at non-competitive levels, as alleged in NCA.

Venture might directly control member output prices or output

output market in order to raise prices and reduce output. A

Joint Ventures can directly limit member competition in the

3. The Competitive Harm of Supporting Pricing

Output market is unconcentrated. If

pressure on output prices. Output prices may rise, even if the

venture and input market competitors could rise, placing cost

venture, thus, the input prices charged by the

the costs of the forecasted input market competitors or deter new

where scale economies are important, thus could significantly raise

potential market attributable to the input market competitors.

rivals, then the exclusive requirement could significantly reduce

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49 Fashion architects guild is perhaps the best example of this.

48 For example, in NAGA, 468 U.S. at 95, the court noted the anticompetitive nature of the NAGA to distinguish members that did not obey the anticompetitive rules.

47 In this case, the products are taken upstream in the input market where not really increased. See Shapiro & Willig, On the Antitrust


45 Membership in the venture is important for other reasons, or venturing at lower effective cost than by other input suppliers, or venturing by the high output prices. "If the input is provided to members by the membership of those members that do not obey the anticompetitive

44 Merger, 364 U.S. 656, 656-9 (1961). We note, of course, the result of the membership of the manufacturers who are considered to have terminated the agreement that would lose access to the retailers and to the specialty market. In this case, if there are no material

43 In contrast, the anticompetitive nature of the NAGA to distinguish members that did not obey the anticompetitive rules.
structured so that the statutory situated firms compete away all to injure competitively. For example, where a venture is

The structure of the venture can be probabilistic of the incentive

theory of consumer harm must be well stated.

demonstrated with somewhat different evidence. In short, the

demonstrated, with somewhat different evidence. This is because the different mechanisms of harm are

competition, as well as demonstrate harm to the excluded

mechanism by which the access rule is alleged to reduce

important to recognize the excluded applicant to carefully specify

injury to a competitor with injury to competition. If therefore is

general allegations of boycott and exclusion often confuse

4. Evaluating Competitive Harm Allegations

maker competition also would be eliminated.

markets produce by the venture, it so that source of output

inputs produced by the joint venture, even it they do not embody the

produced by the joint venture, even if they do not embody the

members from offering other products that compete with the output

members from offering other products that compete with the output

independently in the output market. Such a rule could prevent

the competitive harm by preventing venture members from competing

third, exclusively rules could contribute to the magnitude of

sold by the venture.

inputs on the outside, instead of purchasing the high cost inputs

eliminate members’ abilities to achieve lower costs by purchasing

eliminate members’ abilities to achieve lower costs by purchasing

facilitate pricing coordination. Such a rule would, for example, make

members exclusively use the outputs produced by the venture as well as may

or outputs are indirect, an exclusively access rule requiring that

Second, where the venture’s controls on members’ output prices
on those sunk costs.

In cases where there are fixed and sunk
time who earn rents. In cases where there are gains to
monopoly power, there none the less would be gains to
informational

In the previous section, we analyzed the competitive
business

C. Protective Access Rules

Protection of Access Rules as a Distraction for

more trade.

To restrict output (and thereby raise output price) is already to be
raise fewer antitrust problems than the second because the ability
ts to directly limited by the venture. The first venture should
be a lower member output levels or input purchases
untwisted amounts of input at some cost equal to constant marginal
cost, while in the other, member output levels or input purchases
as another example of how structure can be probative, consider

Contrasting the additional projects to be earned from exclusion.
sometimes can reduce the incentive to exercise market power by
exclusion than without it. Similarly, a non-profit structure
the members of the venture to earn greater profits with the
estimated compared to the case in which the exclusion would allow
In such a situation the incentive to exclude is reduced or
less ability to exercise exclusionary market power.

50 Such a case is more likely for open access joint ventures or

that deny access to the input produced by the joint venture.
that can flow from exclusionary access rules, that is, from rules

from overincutstiveness that reduces competition. In fact, the venture and its members' expectations would gain

ventures. In that case, the venture and its members' expectations would gain

Deese competitive benefits accrue to society, not to the joint

pressive down prices and profits also may be false. The applicants

applicants that they desire membership. In order to compete and

protecting competition lacks credibililt. Of course, claims by

venture that it adopted the exclusiory rule with the purpose of

the venture and its members. In that case, however, a claim by the

cooperation, that reduction in competition normally would benefit

membersnhip would reduce competition by factmlating practicing

access to raises related issues of credibility. If Tecessiary

The protection competition justification for an exclusiory

would not be in the economic interest of the members.

restricting the size of the joint venture. Of course, such a rule

members. An exclusiory access rule could prevent this harm by

be protectable. In the face of potential competition from non-

anticompetitive price and quantity restrictions are more likely to

membershhip to a larger percentage of the input or output market,

increasing membership in the joint venture. By increasing

role in factmlating such anticompetitive collective conduct by

Inex unsusory joint venture access practices can play a key

large.

Competitive benefits by prevening joint ventures from becoming too

reduced. Therefore, exclusively access rules can create a

that otherwise would compete more vigorously, competition could be

becoming overly unsusory. By combining into the venture firms

however, joint ventures sometimes can reduce competition by

For a more detailed economic analysis of this case using the economic framework described in this paper, see Carteron and economic networks. The framework relates to the economic analysis of the issues raised by our economic analysis. That integration of the relationship between Dean Witter and Visa illustrates many competition claims.

...
53 The Visa Rule Is Set Out in Bylaw 2.06. That Bylaw States That

Visa's membership is unattractive to any bank which issues a card

between Visa and Mastercard, which is a joint venture like

There is competition in the network transaction services input

credit card issuing output market.

The Visa case focused on the impact on consumers in the

service. The Visa case focused on the impact on consumers in the

and communication. Like among each card issuer and merchant

These network services provided by the network create contractual

credit cards and servicing the merchants that accept the cards.

themselves and with non-members in two output markets, issuing

members then complete among

venture that provides network transaction interchange services as

Visa's credit card operations can be viewed as an input joint

that Visa's Justifications Should be Accepted as a Matter of Law.

Visa did not have market power evaluated at the issuer level and

been metter. 7* In 1994, the Tenth Circuit Reversed, holding that

Visa members. 7* A July 1992 reached a Rule of Reason verdict for

a credit card that competes with the Visa cards issued by other

Visa cards because of Dean Metter's ownership of the Discover card.
Due to space limitations, the bubble diagram does not illustrate the differences between Visa and Mastercard's approach to this article. The issues raised by both parties illustrate the card issuing markets are illustrated in the bubble diagram. In the bubble diagram, Discover Card also is a proprietary card. The network services and credit cards, Diners Club and Carte Blanche, American Express and the largest Visa and Mastercard issuer, also issue two proprietary proprietary card issuer services the merchants instead. Citibank, the network transaction and interchange services because the competitive alternative in the output market that do not require Visa cards and Mastercards. Proprietary cards are another that in the output market, Visa members compete by issuing both of the Mastercard Association and issue Mastercards as well, so Visa, virtually all substantial Visa card issuers also are members.
visa transactors also issue mastercards.

visa transactions scale and scope, as reflected by the fact that most
credit cards are a differentiated product characterized by
credit cards of the product. the fact that visa card would not be a
valid test case, for consumers who use credit cards with
national promotion and competition. visa card would cause
credit cards to compete with visa card, that would further a large scale
competition could lead to larger prices in the output market.

first, it argued that visa members have collectivite markets in
prices, it are large, then visa card would be a low cost, aggregate
relevant output market. scf icc, inc. 819 p. supp. at 966.
the parties stipulated to general purpose credit cards as the
new vittert, the rule will deter current visa members from issuing new
proprietary cards or competing joint ventures. according to dean
rule on the incertitudes of current visa members to develop competing
second theory introduced the impact of visa's exclusivity access
transaction services and card issuing markets. dean vittert's
theory reduces competition in both the networks
and growth of new proprietary cards and networks. the theory of
second, dean vittert alleged that visa's rule deters the entry
prevent credit card prices from falling.

the ability also to issue a visa card would reduce competition and
credit already competes in issuing credit cards, denying dean vittert
fact that visa card, not withstanding the fact that the discover
card it were denied access to visa membership. instead, dean
card did not argue that it would not be vulnerable with just the discover
competition in the market for issuing credit cards.
effect on competition. The Visa also argued that Dean Witter's entry would have no

In contrast, in denying Dean Witter's allegations of consumer

effectiveness or other competitive benefits, the

large 

effect of the Visa's actions was not outweighed by any

The Visa's second effectiveness justification was that Dean Witter's

other joint ventures to organize or invest in the future.

Visa to admit Dean Witter would alter the incentives of all Visa members. It was argued that Dean Witter's entry into Visa's marketplace would nullify the incentives for Visa and its members to invest. This justification was necessary because Visa created the property and was necessary to create incentives for Visa and its members to invest. Thus justifi-

Visa's three justifications for the rule, two effectiveness

Visa would face in providing network services. The rule therefore reduces the competition that

remediate their membership and deprive them of access to Visa's proprietary cards or starting new networks. Those
65 Antitrust defendants may not justify their conduct as direct conflict with the Sherman Act. However, the view that certain social welfare goals are not countenanced under a strict interpretation of the antitrust laws would be impossible beyond the per se rule. Such justifications would be beyond the scope of the present suit.

States, 221 U.S. 1, 60-70 (1917); Standard Oil Co. v. United States, 221 U.S. 161, 79-80 (1911). An unreasonable restraint of trade is illegal. Where the measure to restrain competition is adopted in good faith to achieve a social welfare objective, the Sherman Act may be applicable if it is not a mere means to achieve an end in itself.

Why the benefits of antitrust law do not mirror exceed the costs.


62 Sears also owned a Visa issuing bank with the simultaneous creation of competition.


Under the monetary and non-economic analysis, the notional benefit of a per se rule without the full balancing of restraints may be under-valued. Other restraints are not based on a full economic analysis. The restraints are evaluated under a full fact.

III. ECONOMIC ANALYSIS OF ALTERNATIVE LEGAL STANDARDS

Reduced competition between the systems, with non-exclusivity. Without Section 2(a) of the Sherman Act, Visa and Mastercard would not be able to implement their exclusionary practices to the extent that they have. Visa and Mastercard also raised the potential for remedial structuring of exclusion from membership.

Visa also raised the potential market competition justifications that were the potential for remedial exclusion of competitors from membership. Diners' Club and American Express and proprietary cards. A second issue...


Kanter" maker" per se violations in antitrust law: Conduct. The court does not lead to a measurable anticompetitive impact. Acquittalooke partor preventive defense. In the context where a standard defense to certain conduct is a per se offense. The challenged conduct, "as commonly expected by an "extermination" of anticompetitive surrounding circumstances. The facts


See also N.C.A.A., 468 U.S. at 102-04. (Per re, if defenses are invoked when See N.C.A.A., 468 U.S. at 102-04. (Per re, if defenses are invoked when)

The court did not conduct so gross as to render unacceptable further examination of the market. See N.C.A.A., 468 U.S. at 102-04. (Per re, if defenses are invoked when)

Non." with the conduct of reason, instead, it focuses directly on the view of the market. See N.C.A.A., 468 U.S. at 102-04. (Per re, if defenses are invoked when)

Argument in favor of a challenged restaurant that may fall

of per se legality.

of the market. The "safe harbor" compensatory, in effect, a rule

anti-competitive impact based a full fact-based compensatory analyses

without even attempting the government to try to show an

utility that the merger can be prevented per se, that is, at the
designed into the court judgments assume that net economic harm is so

merger test exceeds efficiency benefits. The "safe harbor" a fact finding process to determine if the compensatory benefit from

a finding that the market is unconcentrated produces" standard. For example, according to the 1992 Horizontal Merger

legality. Similarly can be determined on the basis of a per se

To measurable anti-competitive effects.

plaintiffs' allegations by showing that the restorations fail to lead

demonstrate anti-competitive effect. Nor may defendants rebut
t.e. Legal Process cost (and the cost of erroneous outcomes)
process faces an unavoidable tradeoff between judicial economy,
process cost to the participants and the courts. Therefore, the legal
economic analyst recognizes that discovery and fact finding are
evenly distributed, the proper outcome in each case. However,
probably on the view that the goal of the legal process is to
their own economic analysis of alternative legal standards is
that has existed between, for example standards and the rule of reason,
issue. This complexity is reflected in the tension and confusion
choice among legal standards becomes an important, yet complex
net economic impact are not generally attributable, however, the
net economic impact, because low cost but perfectly reliable calculations of
This would be a fully specified and unconditional decision-making
negative net economic impact, as set out in the previous section.
stable could forbid any joint venture access rule that produces a
the antitrust laws time considering alternative legal standards. The antitrust laws
be performed costlessly, there would be no reason to spend much
If accurate calculations of actual net economic impact could

A. The benefits and costs of per se standards

When certain conditions occur, it is not necessarily the case that there is an anticompetitive effect the
presumption that when certain conditions occur, anticompetitive
preemption that when certain conditions occur, anticompetitive
preemption that when certain conditions occur, anticompetitive
preemption that when certain conditions occur, anticompetitive
preemption that when certain conditions occur, anticompetitive

In this sense, all per se standards create irrevocable
demonstrate that the anticompetitive effects are the better that the economic rationale for denying the defendant the ability to meet the court's pricing that lacks anticompetitive justifications. The example of the case of the per se rule, where the data was not price fixing, but instead the defendant's economic rationale, on which the authors consider for summary disposition and optimal legal procedure (November 1994), defeated 99 (1993), Becker & Salop, Issue Segregation.

become more attractive. Some commentators argue that per se rules are necessary because courts make frequent errors applying the rule of reason. In economic terms, per se rules are appropriate when the standards should lead to more error, error that is costly to society. In economic terms, per se rules are appropriate when the court and the litigants' refeference to a rule of reason standard.

Legal process should be designed to economize on these twin sources of cost.
likely benefit from joint price setting is small or nonexistent compared to the likely harm to consumers.


This basic economic approach is reflected in a number of judicial decisions regarding per se standards of illegality. For example, in Jefferson Parish, the Court stated:

The rationale for per se rules in part is to avoid a burdensome inquiry into actual market conditions in situations where the likelihood of anticompetitive conduct is so great as to render unjustified the costs of determining whether the particular case at bar involves anticompetitive conduct. Any proposal to limit the scope of antitrust analysis by applying a per se rule should be examined carefully to make sure that the administrative savings from judicial economy are not likely to be more than offset by an increased incidence of judicial error. This is particularly true when the subject matter to which legal standards are applied is as complex and dynamic as joint ventures and their access rules.

72 Therefore, it is not surprising that one hallmark of per se rules is that one typically covers situations in which the Court feels it has great experience. See generally Northwest Wholesale Stationers, Inc. v. United States, 452 U.S. 672 (1981).
that significant efficiency benefits likely would flow from joint
negative net economic impact. Furthermore, the finding in PMR
in gauging the likelihood that a restraint will have a positive or
a threshold matter on certain issues that are most significant
either have to be understood before knowing which standard to apply.
In designing the optimal legal standard, one key question is
and rule of reason antitrust decisions has become less clear over
appreciate this point, the operational distinction between per se
along a continuum and vertebrae among cases. As courts have come to
the proper mix of presumptions and case-specific fact gathering
not as sharp as might appear. As a minimum, the basic facts of a
the distinction between rule of reason and per se standards is
were found. The treatment would not be warranted unless one of these conditions

courts actually stated these conditions in the regulations, that per se

77 Northwest Wholesale Stationers, Inc., 472 U.S. 296-97. The

76 U.S. & Secooy-Vacuum Oil Co., Inc., 310 U.S. 150 (1940)

an element essential to effective competition. "The court stated

possesses market power of the venture has `exclusive access to

per se illegal under either of the conditions: either the venture

Joint Venture cooperative's membership restriction could be held

In Northwest Stationers, the court appears to hold that a

Circuit.

Northwest Stationers and the recent Vtga decision by the Tenth

Northwest Stationers and the recent Vtga decision by the Tenth

standards to govern exclusive access rules, most notably in

Courts have proposed a number of potential per se legal

either by a standard of per se illegality or by a standard of per

reason illegality. Alternatively, the infringement could be foreclosed

access restrictions could be evaluated factually under a rule of

issue of joint venture exclusive access rules. Joint Venture

The economic rationale for per se rules can be applied to the

Restrictions

B. Alternative Per Se Standards for Joint Venture Access

benefits. 79

shortened when there is no showing of significant effectivity

In other cases, Secooy-Vacuum, for example, the process is

reducing the competitive ability to prove anticompetitive effect.

by condemning the planset license per se, that is, without

Thus, it was inappropriate to shorten the decision-making process

practicing reduced the likelihood of negative net economic impact.
been proposed by the commentators mentioned earlier. See supra at 79 VISA U.S.A. 38 F.3d 958. Some of these rules previously had more harshly.

therefore no reason why concerted restraints to deal should be treated as those in FR. (create the need for a fact-based analysis, surprising. After all, if effectiveness justifies rationales for joint pricing and Stipulating.) Thus, the approach is not properly characterized as one more made to fit. In front of function effectiveness. Distinguishable restraints that amply justify at least partial effectiveness rationales and such justifications exist. Therefore, joint tacit coordination at Northwest extent. This is because costs can be found to be justified under the Northwes extent would provide access to many customers that many joint tacit coordination is somewhat amorphous. Regarding the extent anticompetitive effect. Trying to prove anticompetitive effect. Also would provide a complete defense and bar the plaintiff from

based on the substantial market share of members of the venture standard, proof that a low output market concentration measure the joint venture would provide a complete defense. Under another approach, would be able to survive in the market absent access to under one standard used by the Visa court, proof that the excised instead, it adopted a number of standards of per se legality. It adopted neither per se legality nor the rule of reason. Different approach to market power and essentiality of the input. In the Visa case, the tenth circuit chose to look a very anticompetitive effect. In the Visa case, this virtually always likely to have an that only under these circumstances is it warranted to conclude
direct impact of exclusion on the effectiveness of competition.

Concepts are imperceptible proxies for market power and they ignore the
comparative effectiveness of the excluded applicants. Both
involve the same economic issue: the importance of the input to the
both the essential input and competitor viability rules.

1. Criticism of Baseline Input and Competitor Viability Standards

Standards in favor of the structured rule of reason.

forth our recommendations to narrow the application of per se
evaluate the per se standards based on market power. We then set
evaluate the per se standards based on market power. We then
criteria of input essentiality and competitor viability. We then
we first evaluate the per se standards based on the related
we next discuss the problems with these various per se rules.

individual market shares of the members of the venture.
venture only by the output market concentration based on the
venture (as gauged, for example, by the joint venture’s collective
market share or its ability to raise prices by disadvantage
the collective market share of the venture in the input or output
upon the individual market shares of members’ without reference to
only by reference to the concentration in the output market based
of market power. The market power of the venture was gauged
The Visa court adopted a peculiar, is not outright illusory.
application of the rule.

standards does not clearly provide an efficiency defense to
recognized by the Court, 477 U.S. at 296 n. 7, although
Northwest Wholesale Stores, 472 U.S. at 296-97.

Northwest Wholesale Stores, 472 U.S. at 296-97.

...the rule may be inappropriate for allegations of

does not mean that it is essential for all.

applicants. Just because the input is essential for one applicant
output market competition from firms other than the excluded
potential for anticompetitive effect is, of course, the rule of reason standard.

Second, this standard is overinclusive. If the standard is

...the rule of reason standard.

face demonstrates anticompetitive effect. Demonstrating
competition is reduced by denial of access, that showing on this
the excluded applicant can demonstrate that the effectiveness of

and, as interrelated stated, this requirement is not a short cut. It
problems exist in four key ways. First, essentiality is not defined
input is "essential to effective competition." "...this standard is
according to Northwest, exclusion is essential per se if the

The Northwest Essential Input Rule of Per Se

"...the rule of reason standard.

Northwest Wholesale Stores, 472 U.S. at 296-97.
The Visa court took the position that if an excluded firm can survive outside the joint venture, the access restriction should be legal. The "competitor viability" standard of per se legality would allow exclusionary access rules in cases where access is not essential to the viability of the excluded firm but denial of access nonetheless harms competition significantly. The competitor viability rule would immunize the access restraints from the rule of reason inquiry and simply permit the access restraints per se.

This standard of per se legality is problematic in three ways:

First, as already discussed, the fact that the excluded applicant can survive in the market does not mean that the competition will be unaffected by the access restraint or that the joint venture lacks market power. Mere survival does not imply effective competition.

Second, the rule is backward-looking in its focus. The proposed rule focuses on the viability and success of the excluded applicant in the past, not on the likely impact of the access rule on prices and market competition in the future. Third, this rule of per se legality is insensitive to the fact that there

82 Visa

83 Even if access to the input is not absolutely necessary for survival in the output market, denial of access may contribute significantly to competitive harm by disadvantaging an output market competitor. As discussed earlier (Section 11A), the excluded applicant's alternative sources of inputs may be less efficient or input market competition may be reduced by the
and undrop supplies super note act.

See cartoon and paragraph at the end. This is a variant of the Geffgefe.

As a lower level, this is a collection of a lower level. Notice that in this latter case, the joint venture may fall to a lower level. Notice that the joint venture could prevent price from falling or allowing a new application could prevent price from falling. The members of the venture could exercise market power by exercising conduct through the venture. For example, the joint venture's output is that of the members of the venture.

By collective market power in the output market, we mean that prevents prices from falling. Second, it does not distinguish the exercise of market power through its members. Nor does it appear to support market power in the output market. The output market of both. It does not state whether the relevant market power concerns to collective market power is therefore in a number of ways. First, it collective market power as illegality for ventures with the Northwest's rule of per se illegality. I rule of per se.

We criticize these different standards in turn. The individual members of the joint venture in the output market. The court evaluated market power by measuring the concentration of market power. Both the standards require the court to determine what it means by market power and which market is the focus. The court has suggested a rule of per se illegality when a joint venture has market power. Some commentators and the court have suggested a rule of per se illegality when a joint venture.

2. Criticism of Market Power Per Se Rules.
no showing of market power.

Although Bayerisch-Fröhlich's proposal is based as part of
power secured in the context of vertical restraint, Bayerisch-Fröhlich, Inc., 792 P. 2d 210, 229 (1986). Bayerisch-Fröhlich proposes a market
86. For example, see Bortney Strohmeier, 86 HAN CO., Yv. Texas Van Line, Inc.,

venture has (exclusive) (market power). If denial of access to the input, the costs of the
excluded items and thereby leads to a price increase, then the
standard of per se legality when venturers and their members lack

Per the Relevancy

Merger Relevancy of Collective Market Power and

be addressed.

effectively justiciable. In order to create a proper rule of per
the per se rule is inapplicable when the access restraint has
already discussed, Northwestern never makes it clear that
competitive harm in the output market under the rule of reason,
market power is equivalent to demonstrating the possibility of
prices above the level that would otherwise prevail, then showing
by excluding applications, the venture profitability can set output
be a significant short cut. If market power is taken to mean that,
market are equivalent," which, this per se standard may not even
It might be thought that essentially and market power in the input,
relevant market power concept from the essentially of the output.
Higher output prices than would occur absent the market power could restrict access to output from the venture and that exclusion virtually nullifies it. If a group of firms acting collectively has market power and competitive harm from exclusionary conduct is an antitrust violation, the relationship between collective exclusionary harm (exclusive power) and the group of firms acting collectively has (exclusive power) would lead to higher output prices than would occur absent the market power. For example, the "usual" merger test focuses on the distinction between exclusiveory and competitive effects of a hypothetical merger of venture members. Rather, at the least, it must focus on the likely competitive impact of a hypothetical merger of venture members. Even a merger-based standard can lead to erroneous conclusions, as one cannot ignore the distinction between market power of the members of the venture examined in isolation. For these problems, the relevant standard cannot be the collective facetitesses prioring coordination with non-members. To account for these problems, the relevant standard is the market share of members at current prices in the output market. First, a standard based only on the collective market power raises a number of substantive issues. Second, even a merger-based standard can lead to erroneous conclusions. These tests are not equivalent and we discuss important distinctions between them below.
Jack the class action market power to raise prices above that level. Even if venture maintains prices at the current level, even if venture tries to raise prices, the same result, the venture should be permitted to restrict access.

In order to evaluate the extent of market power, one can use a hypothetically merger test that differs from the usual merger test. In the usual test, for most firms, if the merger would prevent the output price from rising, current competition may prevent price from rising, but it obviously would be unable to thereby prevent the output price from falling. Current competition and access rules will disregard more efficient competitors and would be irrelevant in evaluating allegations that the hypothetical merger would prevent members in good standing from raising the price, that standard membership is not simply a merger of existing members. If one simply asks whether a merger of existing competitors, consider the case of exclusion of new applicants for membership (that is, even if the Jack class action market power). That output surpasses that level, even if that process increases above the current level), then it is

In contrast, the venture pass this test (i.e., it is there as a.

on output prices of a hypothetically merger of the venture members. In good standing.
where the usual merger test is used. It does not mean that \( p(B) = p(A) \), either. The usual merger test, passing our test fails.

Our venture may pass the usual merger but fail our merger test. However, a test that means that our merger test also will be failed. However, a test means that our merger test also will pass the usual merger test, passing our proposed merger test, failing the usual merger test, to pass a test expectedly appropriate to the case at hand. Failing our proposed merger test involves a showing that \( p(A) > p(B) \) and passing our test involves a showing that \( p(B) > p(A) \).

The relationships among the tests are as follows. Failing our gauging executionary market power.

Thus, if the usual merger test is inapplicable for \( p(A) \), the usual merger test is inapplicable because it ignores \( p(B) \), and so on.

Potential competitor's impact of the merger on the market share of the stick firm. In that case, the venture would fail our merger test. A price effect. In that case, the venture would fail our merger test. A potential competitor's impact of the market share of the stick firm. In that case, our merger test would fail to lower cost and price effect. Suppose that giving access to low cost applicants would lead to lower prices. Our merger test is straightforward to understand. Suppose that giving access to low cost applicants would lead to lower prices.
somewhat easier to implement than the Carton-Frankel test. Thus, the Carton-Frankel test does not imply that our test will be passed. However, passing the Frankel test implies that a = B. If we will pass the Carton-Frankel test, running the Carton-Frankel test involves a showing that one member of the Carton and Frankel, s merger test gives results similar to this.

91 Carton and Frankel's merger test gives results similar to this.

members of the venture each have no market power and no the venture can utilize its collective market power in promoting
restrictions are adopted collectively by the venture. As a result,

consistent with economic logic and current case law.

merger.

merger.

If the low cost applicants were given access and there were no
low cost applicants, would lead to higher prices than would occur
merger of all the members of the venture, including the excluded
In this section, we focus on the legal analyses of output market exclusion, antitrust reasoning which would apply to the evaluation of legal standards dealing with aggregation of output. Against the backdrop of market concentration in the overall output market can be probitative. In that section, we also show that low

92 4. See Section II.A. supra. In that section, we also show that low

offsetting expansion or other computer competitors, with no
offsetting expansion or other computer competitors, with no
of the computer market, the loss of output is likely to be met with
of the computer market, the loss of output is likely to be met with
this joint venture were to expect one member with a 1% market share
this joint venture were to expect one member with a 1% market share
unconcentrated computer market and semiconductors production. If
unconcentrated computer market and semiconductor production. If
computer companies that collectively have a 3% share or an
computer companies that collectively have a 3% share or an
hypothetical semiconductor joint venture of three small
hypothetical semiconductor joint venture of three small
lack of collective market power appears reasonable. Consider a
lack of collective market power appears reasonable. Consider a
example, a per se standard of legality based on our merger test for
example, a per se standard of legality based on our merger test for
standards based on collective market power have appealed.
standards based on collective market power have appealed.
non-competitive powers were sympathetic to the goals of per se rules and so per se
non-competitive powers were sympathetic to the goals of per se rules and so per se
and resulting entirely free deceptions in many cases. 99 We are
and resulting entirely free deceptions in many cases. 99 We are
The advantage of per se rules is that they can lead to switc
The advantage of per se rules is that they can lead to switc
C. Per Se Standards and the Structured Rule of Reason
C. Per Se Standards and the Structured Rule of Reason
competition may harm consumers by preventing them from earning.
competition may harm consumers by preventing them from earning.
may harm consumers by raising output prices and exclusion of new
may harm consumers by raising output prices and exclusion of new
members lack unitary market power, exclusion of current members
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joint venture membership is unconcentrated, so that indivisible
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power therefore is relevant. As discussed earlier, even if the
power therefore is relevant. As discussed earlier, even if the
membership is unconcentrated,
In addition, proof of antitrust injury suffered by the plaintiff also should be required in order to disclose evidence supporting new allegations that the product would obtain a market share of 1%. A similar result would result if the joint venture were to exclude a significant portion of sources of semiconductors. A be able to find other cost-efficiency sources of semiconductors, a significant increase in practice, similarly, if the venture and its members have effective market power in both the input and output
as a per se standard, that label would not be appropriate if considerable detailed analysis is entailed in the test.

Third, other per se standards such as those proposed by courts could entail significant error costs. For example, we see no role for per se standards based on essentiality or viability. Depending on their exact definitions, these concepts may be probative for demonstrating (or rebutting) claims that the venture has market power in the input market. However, these are at best imperfect proxies for market power and in any event are not necessarily good indicators of anticompetitive effect. Thus, they should not by themselves form the basis for a per se standard.

Similarly, as we have discussed in detail, per se standards that use a measure of concentration based on individual market shares can fail to identify collective market power and can lead to error in many cases. For example, the test may not be relevant for evaluating allegations that the exclusion will prevent price decreases.

When our proposed per se standards cannot be applied simply without risking significant error, we recommend using our framework to apply a structured rule of reason standard that contains three elements.98 First, the plaintiff must state a logically consistent and plausible claim of anticompetitive harm and antitrust injury.

98 As discussed earlier, the rule of reason also can lead to erroneous decisions. See Easterbrook, supra note ___. Our analytic approach should lower the error costs for both types of rules. However, if courts are unable to apply our structured rule of reason without committing serious errors, then expanded use of per se standards may be appropriate.
Juvenile incarceration is too high, as the Court has noted, the costs of incarceration and the benefits of incarceration may not justify the costs of incarceration, and therefore should give the benefit of the doubt to the state, as the Court did in the case of the state's incarceration. In that case, the Court found that the state's incarceration was not justified, as the state had not shown that the benefits of incarceration outweighed the costs.

Many states and local governments have attempted to reduce the incarceration rates by implementing various strategies, such as early intervention programs, diversion programs, and treatment programs. However, these strategies have not been effective in reducing the incarceration rates.

The Court's decision in this case is significant, as it highlights the need for states to carefully consider the costs and benefits of incarceration before opting for incarceration as a punishment. The Court's decision also serves as a reminder that incarceration should not be used as a means to achieve social control, but rather as a last resort when all other alternatives have been exhausted.

In conclusion, the Court's decision in this case is an important step in the right direction, as it serves as a reminder to states that incarceration should be used sparingly and only when necessary. The decision also highlights the need for a more comprehensive approach to criminal justice, one that focuses on rehabilitation and community-based alternatives to incarceration.
In this paper, we have formulated an analytic framework for evaluating the competitiveness impact of exclusive access rules. Despite the framework's limitations, its potential benefits are noteworthy.

For example, in some cases in which there is evidence of a significant anticompetitive harm, the claimed efficiency of a rule's protection against competition benefits of the access rule provisions would not lead to anticompetitive harms. In other cases, analysis will indicate that there is no anticompetitive harm. In other provisions that would not lead to anticompetitive harms, turn out to be protective or cleary be achievable by other access provisions. In many cases, the structured rule of reason can be carried out in the now-proved vital importance of an eye. "

Moreover, balancing often will be unnecessary. Indeed, in many cases, the structured rule of reason can be carried out in the now-proved vital importance of an eye."
It is important to emphasize that the plaintiff be required to make a more focused and structured rule of reason. Analysts, part of a more focused and structured rule of reason, one should use our analysts, and the key factual issues we cases, per se standards which are inappropriate. In these cases, without leading to excessive erroneous outcomes. However, in many order to decrease the cost of the legal decision-making process, we have explained how per se standards sometimes may be inappropriate in these cases. 

We have emphasized the need for the application of the competitive framework and harms using the analytic framework. The structured rule of reason carries out investigation of the costs and creating investment incentives to develop products. We have identified two main efficiency benefits -- reducing competitive harms that exclusive market access rules can create. Competitive benefits of such rules as well as the potential competitive benefits of potential efficiency and other
struct, the economic framework we have proposed is the right one to
struck, the economic framework we have proposed is the right one to
how to evaluate the relevant evidence. However, that balance is
cases and the economic framework they use to determine whether and
balance between harms and benefits of intervention in deciding
attaches to the analyst's but how consistently our target
interaction and the amount of fact finding is not what label one
endless fact finding. What will determine the likelihood of
our approach should not lead to a flood of interaction with
essential that the theory be well stated.
the theory being claimed. In order to specify the proof needed, it is
analysts, they require knowledge of the particular areas and
eliminate frivolous cases and carry out a proper and focused
worth emphasizing. In order for ours to streamline interaction,