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NEW MEXICO ANTITRUST LAW¹

JAMES J. WECHSLER*

Recognizing the economic principle that the right of each business entity to compete freely is the essence of the free enterprise system, the New Mexico Legislature took a major step to ensure the effectiveness of free competition in New Mexico by passing the Antitrust Act² during the 1979 legislative session. The Act is designed to modernize the New Mexico Restraint of Trade statutes originally enacted in 1891 and last amended in 1923. It received overwhelming approval from the Legislature, passing the House 56 to 0, and the Senate 31 to 0. This article will update a previous article which discussed the need for the Antitrust Act and proposed legislative reform. The most significant provisions of the new law and their genesis in the Legislature will be discussed.

DEVELOPMENT OF THE ANTITRUST ACT

A complex antitrust bill was introduced in the 1977 legislative session. The Uniform State Antitrust Act was introduced as a committee substitute, and was defeated on the House floor, because of resistance from the business community. As a result, Jeff Bingaman, the Attorney General, set out early in the 1979 session to assure representatives of the business community of the importance of an effective antitrust law to the economy of the state. Even prior to obtaining sponsorship, drafts of the bill were discussed with business leaders and their attorneys to work out problems of draftsmanship and substance.³ A draft bill was prepared by the Office of the Attorney General and then presented to Representative George E. Fet-

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1. This article is an update of a previous article which discussed the importance of antitrust legislation in New Mexico. Wechsler, *New Mexico Restraint of Trade Statutes—A Legislative Proposal*, 9 N.M. L. Rev. 1 (1978).

2. Antitrust Act, 1979 N.M. Laws, ch. 374, §§1 to 18 (codified at N.M. Stat. Ann. §§57-1-1 to 19 (Supp. 1979)).

3. The Office of the Attorney General worked continually with business representatives throughout the legislative session. The bill enjoyed the general support of business and law enforcement groups. Representatives of the New Mexico Retail Association, the Association of Commerce and Industry, the Albuquerque Board of Realtors, and the New Mexico District Attorneys Association, as well as R. E. Thompson, U.S. Attorney, testified on behalf of the bill before the House or Senate Judiciary Committee.

tinger (D. Otero) who decided to be its sponsor. Representatives Paul Kelly (R. Chaves), Frank L. Horan (D. Bernalillo), Raymond G. Sanchez (D. Bernalillo) and Thomas P. Foy (D. Grant), also agreed to sponsor the bill. The bill received do-pass votes from the House and Senate Judiciary Committees, and was managed on the Senate floor by Senator Joseph H. Mercer (R. Bernalillo).

PROVISIONS OF THE ANTITRUST ACT

In order to attain uniformity in enforcement and interpretation of the antitrust laws, the Antitrust Act closely paralleled the federal antitrust laws and the enforcement powers of the United States Department of Justice, Antitrust Division. To accomplish this parallelism the prohibitory language in the Act was adopted from the federal Sherman Act.⁴ Under both Acts, every contract, agreement, combination or conspiracy in restraint of trade or commerce is unlawful.⁵ Using the wording of the old law,⁶ the Act further prohibits "every contract, agreement, combination or conspiracy which controls the quantity, price or exchange of any article of manufacture, product of the soil or mine or any goods or services in restraint of trade."⁷ Similar to Section 2 of the Sherman Act,⁸ the Act prohibits the monopolizing or attempting to monopolize, or contriving or conspiring to monopolize trade or commerce in New Mexico.⁹ To be subject to the New Mexico law, some part of the affected trade or commerce must be within the state.¹⁰ The fact that the activity in question may affect or involve interstate or foreign commerce does not preclude action under the Antitrust Act.¹¹

ATTORNEY GENERAL POWERS

Civil Remedies

Although the previous restraint of trade statutes granted a remedy to private litigants, public enforcement was limited to criminal prosecution with a fine of \$100 to \$1,000, and imprisonment at hard labor not exceeding one year or until the fine had been paid.¹² The

4. 15 U.S.C. §§ 1 to 7 (1976).

5. N.M. Stat. Ann. § 57-1-1 (Supp. 1979); 15 U.S.C. § 1 (1970).

6. N.M. Stat. Ann. § 57-1-1 (1978) (current version at N.M. Stat. Ann. § 57-1-1 (Supp. 1979)).

7. N.M. Stat. Ann. § 57-1-1B (Supp. 1979).

8. 15 U.S.C. § 2 (1976).

9. N.M. Stat. Ann. § 57-1-2 (Supp. 1979).

10. N.M. Stat. Ann. § 57-1-1A (Supp. 1979).

11. *Id.*

12. N.M. Stat. Ann. § 57-1-1 (1978) (current version at N.M. Stat. Ann. § 57-1-6 (Supp. 1979)).

inadequacy of this remedy was a major factor in the lack of public enforcement of the antitrust laws. One of the primary purposes in introducing the legislation expanding the powers of the Attorney General was to develop an effective antitrust enforcement capability within New Mexico comparable to that of the United States Department of Justice, Antitrust Division and of several other states. Consequently, the bill, as presented to its sponsors, included provisions empowering the Attorney General¹³ to seek injunctive relief,¹⁴ civil penalties,¹⁵ and damages in civil actions.¹⁶ Further, a specific subsection was included permitting the Attorney General to bring an action for damages or injunctive relief on behalf of a political subdivision or public agency, as well as on behalf of the state.¹⁷

These provisions of the proposed bill met with little modification throughout the legislative process. Upon the request of Representative Paul Kelly, Jr., the civil penalties, which were originally written in conformity with the Uniform State Antitrust Act to be a maximum of \$50,000 for a violation, were increased to a maximum of \$250,000 for business entities other than individuals.¹⁸ When the bill was presented to the Senate Judiciary Committee, Senator W. S. Eoff (R. McKinley) objected to the maximum penalty as potentially too damaging to small businessmen, and he alone voted against passage.

Civil Investigative Demand

The most significant procedural amendment effected by the Antitrust Act is the granting of pre-complaint investigatory powers to the Attorney General. As originally proposed, the Attorney General would have had the same authority as the United States Department of Justice, Antitrust Division, to issue a civil investigatory demand (CID) requiring a person or entity to produce documents for inspection or answer questions under oath.¹⁹ Safeguards such as confidentiality,²⁰ description of the nature of the conduct under investiga-

13. The Attorney General has primary enforcement under the Act. He may delegate this authority on a case-by-case basis to a district attorney. N.M. Stat. Ann. §57-1-10 (Supp. 1979).

14. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, §5, 9 (codified at N.M. Stat. Ann. §57-1-3A (Supp. 1979)).

15. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, §8 (codified at N.M. Stat. Ann. §57-1-7 (Supp. 1979)).

16. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, §5 (codified at N.M. Stat. Ann. §57-1-3 (Supp. 1979)).

17. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, §6 (codified at N.M. Stat. Ann. §57-1-3B (Supp. 1979)).

18. N.M. Laws, ch. 374, §8 (codified at N.M. Stat. Ann. §57-1-7 (Supp. 1979)).

19. 15 U.S.C. §1312 (1970) (as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976).

20. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, §6 (codified at N.M. Stat. Ann. §57-1-5C (Supp. 1979)).

tion,²¹ and right to counsel²² were included in the draft. On the proposal of Representative George Fettinger, additional protection was added to require judicial intervention prior to the issuance of a demand. Under the Act as passed, the Attorney General cannot, as the Department of Justice can, issue a CID without first applying to the district court for approval of the issuance of the CID. The Attorney General must apply to the District Court of Santa Fe County which shall approve the demand upon a finding that the Attorney General has reasonable cause to believe that the person upon whom it will be served has relevant information to the investigation and that the demand is proper in form.²³ Representative Fettinger further proposed that the recipient of a CID not be required to contest the CID in Santa Fe County if he resides or maintains a principal place of business in another county within the state. As a result, if the Attorney General wishes to enforce a CID, he must file a petition in the district court of the county of residence or principal place of business of the recipient, or in the district court of the County of Santa Fe, if the recipient does not reside or maintain a principal place of residence in New Mexico.²⁴ The provision for pre-complaint investigations was not altered once the bill was introduced and was not opposed by business and industry lobbyists.

Criminal Sanctions

The previous law limited the Attorney General to a misdemeanor prosecution with a penalty of a fine not exceeding \$1,000 nor less than \$100, and by imprisonment at hard labor not exceeding one year or until the fine has been paid.²⁵ Violations of the federal antitrust laws are felonies, subjecting violators to a maximum jail term of three years and a \$100,000 fine for individuals and a \$1,000,000 fine for corporations.²⁶ For that reason, the draft presented to the sponsors changed the criminal penalty to that of a fourth degree felony, with the statutory penalty of imprisonment for an individual for a term of not less than one year nor more than five years, and a fine not to exceed \$5,000.²⁷ Prior to introduction of

21. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, § 6 (codified at N.M. Stat. Ann. § 57-1-5A (Supp. 1979)).

22. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, § 6 (codified at N.M. Stat. Ann. § 57-1-5D (Supp. 1979)).

23. N.M. Stat. Ann. § 57-1-5B (Supp. 1979).

24. *Id.*

25. N.M. Stat. Ann. § 57-1-1 (1978) (current version at N.M. Stat. Ann. § 57-1-6A (Supp. 1979)).

26. 15 U.S.C. § 1 (1976).

27. N.M. Stat. Ann. § 31-18-3D (1978).

the bill, however, the proposed fine for violators other than individuals was raised to a maximum of \$250,000. Further modifications which eliminated reference in the Act to the Criminal Code²⁸ and increased the fine for individuals to a maximum of \$50,000²⁹ were made in the Senate Judiciary Committee.

Protection Against Duplicative Prosecutions

In order to obviate the possibility of abusive prosecutions under the Act, efforts were made by the Attorney General to develop protections against duplicative penalties for the same violation. One such provision the Attorney General proposed was a requirement that he would elect whether to pursue either a criminal or civil penalty. The issue was presented in the Senate Judiciary Committee as to the stage of litigation at which this election would have to be made. The bill originally provided that the election to forego criminal prosecution was made by the filing of a civil complaint, and the filing of an information or the returning of an indictment in a criminal proceeding precluded the filing of a civil action to assess a civil penalty. An amendment introduced by Senator Joe Lang (D. Bernalillo) in the Committee, however, provided additional flexibility to the Attorney General in making the election. As a result of the amendment, the election by the Attorney General to pursue only a civil penalty is made upon the obtaining of a judgment in the action to assess a civil penalty.³⁰ Consequently, the Attorney General may pursue discovery in the civil proceedings, and, if the information received indicates that the conduct involved should more properly be prosecuted as a criminal violation, he may, at that time, seek the criminal sanction.

The concurrent state and federal jurisdiction of some violations gave rise to another provision which also gives protection against duplicative prosecution. If a person has been convicted in a criminal proceeding for violation of the federal antitrust laws, further prosecution by the state would be unnecessary. As a result, after such a

28. Reference to the Criminal Code for sentencing was eliminated by the Senate Judiciary Committee to remedy any possibility that the section may be in violation of Article IV, Section 18 of the New Mexico Constitution which prohibits legislation by reference to other legislation.

29. Antitrust Act, 1979 N.M. Laws, ch. 374, § 7 (codified at N.M. Stat. Ann. § 57-1-6A (Supp. 1979)).

30. Antitrust Act, 1979 N.M. Laws, ch. 374, § 10 (codified at N.M. Stat. Ann. § 57-1-9 (Supp. 1979)). The election of remedies provision only affects the ability of the state to seek to assess a civil penalty in a civil action. It does not affect the right of the state to seek damages. See N.M. Stat. Ann. § 57-1-14 (Supp. 1979) which specifically provides that the remedies afforded the state are cumulative.

conviction, the state is precluded from either bringing a civil action to assess a penalty or instituting its own criminal proceeding for the same violation.³¹

PRIVATE REMEDIES

The previous antitrust law enabled an injured party to recover damages caused by the antitrust violation, declared all contracts and agreements which constituted violations to be void, and relieved the purchaser of a commodity purchased from a violator from making payment for the commodity. The Antitrust Act adopted the first two of these remedies. The third was rejected in drafting in view of the possibility that it could have been invoked to avoid payment on a contract for reasons unrelated to antitrust violations.³²

In keeping with the purpose of conforming the Act with the federal antitrust laws, the provision creating a damage remedy utilized the language of Section 4 of the Clayton Act³³ and granted standing to a person "injured in his business or property."³⁴ Two significant deviations from the present law, however, were adopted by the New Mexico Legislature. The first departure involved the amount of damages available to successful litigants. The Clayton Act grants mandatory treble damages.³⁵ Such potential relief acts as a deterrent to anticompetitive activity.³⁶ After discussions with business representatives who were opposed to such relief in the state law, the Office of the Attorney General drafted a modified version of the Uniform State Antitrust Act provision.³⁷ The draft would have permitted treble damages if the trier of fact found the violation to be flagrant, as under the Uniform Act. It further provided that per se violations would be presumed to be flagrant unless affirmatively found to the contrary. Although the "flagrant" standard had been upheld by the Arizona Supreme Court,³⁸ Representative Fettingger

31. Antitrust Act, 1979 N.M. Laws, ch. 374, § 7, 8 (codified at N.M. Stat. Ann. § 57-1-6B-7C (Supp. 1979)).

32. See *Kelly v. Kosuga*, 358 U.S. 516 (1959) and *State ex rel. McGraw-Edison Co. v. Elec. City Supply Co.*, 74 N.M. 285, 393 P.2d 21 (1964), in which allegations of antitrust violations were insufficient to invalidate contracts which were collateral to the alleged violations.

33. 15 U.S.C. § 15 (1976).

34. N.M. Stat. Ann. § 57-1-3 (Supp. 1979). The provision specifically includes non-business purchases and injuries within the ambit of actionable "business or property." This provision illustrates the legislative intent to grant standing for injuries by consumers which is consistent with the decision of the United States Supreme Court in *Reiter v. Sonotone Corp.*, 99 S.Ct. 2326 (1979) decided after the passage of the Antitrust Act.

35. 15 U.S.C. § 15 (1976).

36. *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977).

37. [1974] 4 Trade Reg. Rep. CCH ¶30,101, § 8(b).

38. *Western Waste Serv. Sys., Inc. v. Superior Court*, 120 Ariz. 90, 584 P.2d 554 (1978).

suggested eliminating such a standard in view of its potential vagueness if challenged in New Mexico courts. As enacted, the statute incorporates the treble damages concept of the Clayton Act but grants discretion to the trier of fact. It provides that up to treble damages may be requested, but the trier of fact may award less than the amount requested, but no less than actual damages, if the facts so justify.³⁹

The second deviation from the present interpretation of federal law is more pronounced and substantially affects the right of those injured by antitrust violations to recover damages. The United States Supreme Court, in *Illinois Brick Co. v. Illinois*,⁴⁰ held, with limited exceptions, that those who do not purchase directly from antitrust violators are unable to recover damages for such violations under the federal antitrust laws. To specifically permit recovery by injured indirect purchasers under the Antitrust Act, the New Mexico Legislature provided that a person injured in his business or property "directly or indirectly" has standing to bring an action under the Act.⁴¹

The granting of standing to indirect purchasers was the most controversial aspect of the bill during its early stages. Business lobbyists, some connected with national organizations which were fighting bills in Congress aimed at overturning the *Illinois Brick* decision, originally objected to the provision. The objection was based primarily upon the fear that permitting recovery by indirect purchasers would give rise to the possibility of duplicative recovery by indirect and direct purchasers. As a result, a provision was drafted to grant a defendant as a complete or partial defense to a damage claim, the right to prove that the plaintiff passed on all or some of the amounts the plaintiff was overcharged or undercharged to another purchaser or seller.⁴² This provision eliminated the possibility of duplicative liability. Such a "pass-on" defense is not presently permitted in a federal action.⁴³

Additional correlation of the Antitrust Act with the federal antitrust laws can be found in the provision regarding proof in a private

39. Antitrust Act, 1979 N.M. Laws, ch. 374, § 5 (codified at N.M. Stat. Ann. § 57-1-3 (Supp. 1979)).

40. 431 U.S. 720 (1977).

41. Antitrust Act, 1979 N.M. Laws, ch. 374, § 5 (codified at N.M. Stat. Ann. § 57-1-3 (Supp. 1979)).

42. Such provision was enacted in Antitrust Act, 1979 N.M. Laws, ch. 374, § 5 (codified at N.M. Stat. Ann. § 57-1-3C (Supp. 1979)).

43. *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968). The decision in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), was based upon the need to avoid duplicative recovery by direct and indirect purchasers from defendants who could not assert a "pass-on" defense. The Antitrust Act differs from the present federal law and permits both the recovery and the defense. Legislation is pending in the 96th Congress to accomplish similar results. S.300 and H.R. 2060.

action. The Act encourages private litigation as an enforcement tool by facilitating proof in a private action following a civil or criminal proceeding brought by the state in which a final judgment or decree is entered determining that a person has violated the Act. As under Section 5(a) of the Clayton Act,⁴⁴ the judgment or decree is prima facie evidence against the violator in any other action brought against him under the Act for all matters with respect to which the judgment or decree would be an estoppel between the two parties.⁴⁵ Specifically unaffected by this provision, however, is the application of collateral estoppel or issue preclusion.⁴⁶

OTHER PROVISIONS

Statute of Limitations

In adopting a limitations period during which an action under the Act must be brought, the Legislature took into account the difficulty in discovering facts concerning antitrust violations in view of the nature of the conspiracy involved, and in view of the continuing nature of antitrust violations. Generally, an action must be brought within four years from the time it accrues.⁴⁷ A plaintiff is permitted, however, to bring an action within four years after he discovered, or by the exercise of reasonable diligence should have discovered, the facts relied upon to prove the claim alleged.⁴⁸ Antitrust violations such as price-fixing, refusals to deal, or tying arrangements, or their effects, may continue over an extended period of time. Under the Antitrust Act a cause of action for a continuing violation is deemed to accrue at any time during the period of the violation.⁴⁹ In order to encourage private enforcement comparable to the federal laws⁵⁰

44. 15 U.S.C. §16(a) (1976).

45. Antitrust Act, 1979 N.M. Laws, ch. 374, §12 (codified at N.M. Stat. Ann. §57-1-11 (Supp. 1979)). For the purposes of this provision, a final judgment or decree does not include a consent judgment, a decree entered before any testimony has been taken at trial in a civil proceeding, or a judgment based upon a plea of nolo contendere in a criminal proceeding.

46. *Id.* The Clayton Act does not contain a provision specifically preserving the doctrine of collateral estoppel. The Seventh Circuit has recently held that Section 5(a) of the Clayton Act preempts the usage of collateral estoppel. *Illinois v. General Paving Company*, 590 F.2d 680 (7th Cir. 1979). Under the Antitrust Act, it is clear that a plaintiff is able to use the doctrine of collateral estoppel to avoid re-litigation of defendant's liability in appropriate cases.

47. Antitrust Act, 1979 N.M. Laws, ch. 374, §13 (codified at N.M. Stat. Ann. §57-1-12 (Supp. 1979)).

48. *Id.* This provision was added to the bill by amendment in the House Judiciary Committee.

49. *Id.* This provision was added to the bill by amendment in the House Judiciary Committee.

50. 15 U.S.C. §16(b) (1976).

the Act allows damage actions to be brought within one year after the conclusion of a timely action brought by the state for criminal or civil penalties or injunctive relief.⁵¹

Exemptions

The 1923 amendment to the previous law⁵² created exemptions from the New Mexico antitrust laws similar to those contained in Section 6 of the Clayton Act.⁵³ Under these exemptions, certain activities of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help are not prohibited, and the labor of a human being is excluded as a commodity or article of commerce.⁵⁴ These exemptions were left intact by the Legislature.

The Antitrust Act added an exemption for activities or arrangements expressly approved by any federal or New Mexico regulatory body or officer acting in a manner permitted by statutory authority.⁵⁵ The state would generally be precluded from reaching federally regulated activities under the preemption doctrine. As to state regulation, however, the Act arguably establishes a broader exemption than is presently available under the federal laws as a result of the judicially created "state action doctrine" originally adopted by the United States Supreme Court in *Parker v. Brown*.⁵⁶ Although the scope of the state action exemption is currently uncertain due to divided opinions by the Supreme Court,⁵⁷ it is evident that a strict standard of scrutiny is applied if the conduct of private persons performed pursuant to state authority is to fall within the exemption. In applying *Parker v. Brown*, one standard set forth by the Supreme Court requires the private activity be *compelled* by the state acting as a sovereign.⁵⁸ In a later plurality opinion, however, the *Parker* doctrine was read as exempting only the actions of public officials and not the private conduct performed pursuant to state

51. Antitrust Act, 1979 N.M. Laws, ch. 374, §13 (codified at N.M. Stat. Ann. §57-1-12B (Supp. 1979)).

52. 1923 N.M. Laws, ch. 37, §1 (current version at N.M. Stat. Ann. §57-1-4 (1978)).

53. 15 U.S.C. §17 (1976).

54. N.M. Stat. Ann. §57-1-4 (1978).

55. Antitrust Act, 1979 N.M. Laws, ch. 374, §17 (codified at N.M. Stat. Ann. §57-1-16 (Supp. 1979)). This provision was originally proposed by insurance companies whose rates are regulated by the Department of Insurance. It was added to the bill in the Senate Judiciary Committee. An amendment proposed to the Senate Judiciary Committee at the request of the newspaper lobby would have exempted from the Act any activity exempted under the federal antitrust laws. This amendment was defeated in committee as unconstitutional legislation by reference in violation of N.M. Const. art. 4, §18.

56. 317 U.S. 341 (1943).

57. *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978); *Cantor v. Detroit Edison Co.*, 428 U.S. 579 (1976).

58. *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

approval.⁵⁹ As a result of the difference in the newly adopted New Mexico law and the judicial interpretations of the federal state action exemption, although certain state regulated activity may be exempt under New Mexico law, it may nevertheless be reached in a federal antitrust action.

Construction With Federal Antitrust Laws

As expressed by Representative Fettinger in his testimony before the House and Senate Judiciary Committees, the purpose of the legislation was to develop an antitrust law in New Mexico which, with certain limited expressed exceptions, would be comparable to the federal antitrust laws. As the statutory provisions of antitrust laws do not specifically set forth in detail the prohibited activity and other elements of the law, it has been necessary for the federal courts to develop a substantial body of antitrust law in interpreting the federal laws. To the extent that the federal laws are comparable to the Antitrust Act, the legislature has indicated its intent to achieve uniform application of the two sets of laws. In doing so, it has specifically stated that, unless the Act has provisions to the contrary, it shall be construed by New Mexico courts in harmony with the judicial interpretations of the federal laws.⁶⁰ Thus, long-developed doctrines such as the "rule of reason" under which only unreasonable restraints of trade are illegal,⁶¹ and the per se rule under which certain types of violations, because of their pernicious nature, are illegal regardless of their purpose or harm,⁶² will be construed to be part of the New Mexico law.

CONCLUSION

The legislative mandate incorporated in the Antitrust Act indicates the importance of the preservation of the principles of competition to the economy of the state. Enforcement efforts, both public and private, will encourage a free marketplace for business and consumers. The Antitrust Act provides an effective tool toward ensuring freedom and efficiency in business operations and the most competitive prices for goods and services.

59. *Cantor v. Detroit Edison Co.*, 428 U.S. 579 (1976) (plurality opinion of Justices Stevens, Brennan, White and Marshall).

60. Antitrust Act, 1979 N.M. Laws, ch. 374, § 16 (codified at N.M. Stat. Ann. § 57-1-15 (Supp. 1979)). An earlier version of the bill also made reference to the federal antitrust laws in the construction of the Act. This language was removed by the Senate Judiciary Committee in view of possible conflict with N.M. Const. art. 4 § 18 as legislation by reference.

61. The "rule of reason" doctrine was originally adopted by the United States Supreme Court in *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1 (1911).

62. The concept of the per se rule in decisions of the United States Supreme Court originated in *Addyston Pipe & Steel Co. v. United States*, 175 U.S. 211 (1899).