

RECENT DEVELOPMENTS—ANTITRUST

MARIS DISTRIBUTING CO. V. ANHEUSER-BUSCH, INC.

302 F.3d 1207 (11th Cir. 2002)

The Court of Appeals for the Eleventh Circuit ruled on whether a contractual ban on public ownership of distributorships was an unreasonable vertical restraint in violation of § 1 of the Sherman Act.

Anheuser-Busch distributes its brands of beer through a network of approximately 700 authorized wholesale distributors, each with an assigned territory. Anheuser-Busch has ownership interest in twenty of them. Maris Distributing Company was a distributor not owned by Anheuser-Busch. In their distributorship contracts, Anheuser-Busch and Maris agreed that Anheuser-Busch had the right to approve any change in Maris's ownership. After Maris failed in its attempts to sell the business, it filed an antitrust action alleging in part that Anheuser-Busch violated § 1 of the Sherman Act by prohibiting its distributors from being owned, in whole or in part, by the public.

After hearing the evidence at trial, the district court directed a verdict in favor of Anheuser-Busch on the issue of whether Anheuser-Busch had market power. The jury found that Maris had failed to show actual anticompetitive effects as a result of the public ownership restriction. The district court therefore entered judgment for Anheuser-Busch.

Maris appealed and the Eleventh Circuit affirmed. It held that the district court was correct in refusing to impute Anheuser-Busch's large market share in beer manufacturing and sales to distributor ownership, since Maris established no "connection" between the two. The court further held that it is improper to aggregate market share of all parties subject to Anheuser-Busch's distribution agreements, since Anheuser-Busch was the only party interested in the restraint. The aggregating approach would make it difficult for any manufacturer with a significant market share to enter into agreements with vertical restraints, which could be procompetitive. Lastly, the court rejected the argument by Maris that Anheuser-Busch's contract power locked Maris into Anheuser-Busch's business and violated antitrust law according to Supreme Court in *Eastman Kodak v. Image Technical Servs.*, 504 U.S. 451 (1992). The court distinguished *Kodak* from the present case on the ground that the defendant in *Kodak* tried to defend an otherwise viable antitrust claim by arguing that market power is lacking due to competition in another market. The court cautioned that adopting Maris' assertion to equate contract power with market power would radically transform the accepted rule of reason analysis applicable to vertical restraints, and place significant additional risks on such legitimate business practices as exclusive dealing arrangements, output contracts, and franchise tying agreements.

