



## POLICY QUESTIONS

- Is the class action bar in the U.S. an effective enforcer of the antitrust laws?
- Do the costs of meritless antitrust class action outweigh the benefits meritorious antitrust class actions?
- If there are benefits to class action antitrust litigation, how do we incent attorneys to bring meritorious claims?
- Does class action antitrust litigation deter entities from engaging in anticompetitive behavior?



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## BENEFITS OF CLASS ACTIONS

- Increases deterrent effect of antitrust laws by the threat of collective, punitive damages.

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# HOW DO U.S. ANTITRUST CLASS ACTIONS WORK?

- Class Motion
- Settlement/Trial
- Class Notice

## CLASS MOTION

Under Fed. R. Civ. P. 23(b)(3), plaintiffs must prove that the:

- Class has **numerous** participants;
- Class representatives and class counsel are **adequate**;
- Class representatives' claims are **typical** of class members;
- Class members share claims that are **common**;
- Common issues relevant to class member claims **predominate** over individual issues.

# CLASS MOTION: DEMONSTRATING COMMON IMPACT

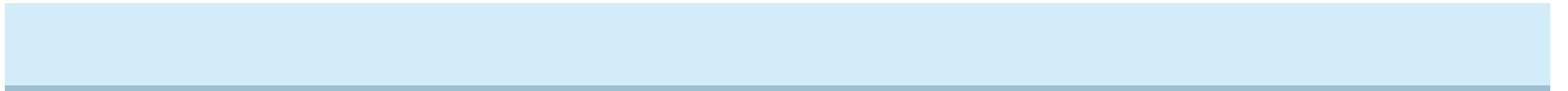
- Biggest hurdle on class motion: generally need testimony of economist expert to establish.
  - Generally means that must show some common overcharge based upon prices that would have prevailed in world absent alleged trade restraint
  - Very difficult to satisfy common impact on competitor claims for lost profits



# CLASS MOTION: DEMONSTRATING COMMON IMPACT (cont'd)

- Evidentiary standard shift: making antitrust class litigation more difficult.





## COMPENSATING CLASS COUNSEL

- Court-approved fees. Two methods used.
  - Percentage of award provided
  - Multiplier based on risk of litigation
- Court is given wide-latitude: No statutory benchmarks

## HOT ANTITRUST CLASS ACTION ISSUES IN U.S.

- Degree of specificity in pleadings: recently grappled with by Supreme Court *Twombly*, 550 U.S. 554 (2007)

## MLC CONCLUSIONS

- A procedure for antitrust class actions can be beneficial
  - Consumer enforcement de-politicizes antitrust law
  - Creates forceful deterrent for antitrust law
- **But** only when appropriate standards/limits set
  - Allows those who should benefit from antitrust regime – consumers – to enforce law
  - Appropriate controls over scope of discovery must be exercised or