Nos. 05-35627; 05-35640; 05-36153; 05-36202

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CASCADE HEALTH SOLUTIONS
fka MCKENZIE-WILLAMETTE HOSPITAL,

Plaintiff-Appellee and Cross-Appellant,

v.

PEACEHEALTH,

Defendant-Appellant and Cross-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
No. CV-02-06032-HA

BRIEF OF *AMICI CURIAE* LAW PROFESSORS IN SUPPORT OF DEFENDANT-APPELLANT AND CROSS-APPELLEE PEACEHEALTH SUPPORTING REVERSAL OF THE VERDICT CONCERNING BUNDLED DISCOUNTS

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici are professors at United States law schools who submit this brief in response to the Court's invitation for *amicus curiae* briefs concerning the appropriate liability rules for antitrust standards for bundled discounting schemes. *Amici* have no personal stake in the lawsuit and have not been paid by any client for their participation in this brief. They are represented *pro bono* by Paul, Weiss, Rifkind, Wharton & Garrison LLP for the purposes of submitting this brief.

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- Richard C. Squire, Associate Professor, Fordham Law School.

SUMMARY OF ARGUMENT

Bundled discounts are ubiquitous in our national economy and are almost always procompetitive. Accordingly, care should be taken in framing liability rules for the rare instances where bundled discounts could be anticompetitive. *Amici* submit that bundled discounts should never be unlawful unless, at a minimum, the seller has charged a below-cost price in the competitive market after discounts given in the non-competitive market are reallocated to the competitive market. In determining what costs should be included in ascertaining whether the seller priced below cost, *Amici* urge the adoption of the average variable cost test.

ARGUMENT

I.

BUNDLED DISCOUNTS ARE PERVASIVE AND USUALLY PROCOMPETITIVE, THEREFORE GREAT CARE SHOULD BE TAKEN IN IMPOSING LIABILITY NORMS

Bundled discounts are everywhere. Fast food restaurants, telecommunications service providers, ski dealers, grocery stores, book and music retailers, and thousands of other sellers of goods and services frequently offer their prospective customers a reduced price to buy separate items in a package. Bundled discounting is also pervasive in large commercial contracts between sophisticated buyers and sellers. Just as with volume discounts, it is intuitive that "the more you buy, the more you save."

Bundled discounting is pervasive, but monopoly power is not. The vast majority of firms that offer bundled discounts have no market power and are not offering the discount for anticompetitive reasons. Firms offer bundled discounts for a variety of legitimate and pro-consumer reasons. Sometimes, firms do so to pass along economies of scope or transaction cost savings to their consumers.[1] Sometimes, they do so to engender customer loyalty or incentivize their clients to try new products or services. *See Virgin Atlantic Airways Ltd.* v. *British Airways PLC*, 257 F.3d 256, 265 (2d Cir. 2001) (describing British Airway's bundled discounts as "[r]ewarding customer loyalty [which] promotes competition on the merits"). Often, firms offer bundled discounts in response to pressure from large, diversified buyers (for example, Group Purchasing Organizations) that leverage their buying power to exact discounts from the seller.[2]

Bundled discounting can also be used for a variety of strategic, but not exclusionary, purposes, by firms that possess some degree of market power. Firms often use bundled discounts to price discriminate,[3] which can increase output and

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[1] *See* Joseph P. Guiltinan, *The Price Bundling of Services: A Normative Framework*, J. Marketing, Apr. 1987, at 74-75 (1987); Robert Scott & Jannett Highfill, *Mixed Bundling with Profit and Sales Objectives*, 7 Int'l Advances in Econ. Res. 243, 243 (2001).

[2] *See* Daniel A. Crane, *Mixed Bundling, Profit Sacrifice, and Consumer Welfare*, 55 Emory L. J. 423, 441 (2006).

[3] William James Adams & Janet L. Yellen, *Commodity Bundling and the Burden of Monopoly*, 90 Q.J. Econ. 475, 476 (1976); R. Preston McAfee, John McMillan &

benefit consumers. Sellers who have a monopoly over one product can also use bundled discounting to increase their sales of that product by offering a reduced price if the customer will also buy a related product from the monopolist.[4] Economic models show that such use of bundled discounting is output increasing and hence *diminishes* the social costs of monopoly power.[5] Bundled discounting can also be used to eliminate "double marginalization," which occurs when a seller of two complementary products charges an inefficient monopoly mark-up on each of the products. By selling the two products in a package, the seller eliminates a portion of the monopoly overcharge, increases output, and benefits consumers.[6]

Amici stress the ubiquity of bundled discounts and some of their usually non-exclusionary explanations to encourage the Court to be cautious in imposing liability for this usually procompetitive practice. To be sure, in rare instances bundled discounting can also be used for anticompetitive purposes. But given that the overwhelming majority of bundled discounts are economically efficient and pro-consumer, any liability rule should be narrowly drawn to avoid chilling a pervasive and usually desirable practice.

Michael D. Whinston, *Multiproduct Monopoly, Commodity Bundling, and the Correlation of Values*, 104 Q.J. Econ. 371, 371 (1989).

[4] *See* Crane, 55 Emory L. J. at 459 (2006).

[5] *Id.*

[6] *Id.* at 434.

II.

PLAINTIFF CHALLENGING A BUNDLED DISCOUNT SCHEME SHOULD BE REQUIRED TO SHOW, AT A MINIMUM, THAT THE COMPETITIVE PRODUCTS IN THE BUNDLE WERE PRICED BELOW COST AFTER REALLOCATION OF DISCOUNTS FROM THE NON-COMPETITIVE MARKETS

A. The Discount Reallocation Screen Is Consistent with the Supreme Court's Approach to Unilateral Pricing Cases

Amici have differing views on the precise liability rule that the Court should adopt concerning bundled discounts. However, in response to the Court's request for guidance, all *Amici* would answer affirmatively the question whether plaintiff should be required to show that "the defendant offered bundled discounts to the defendant's customers [that] were an appropriate measure of the defendant's costs." Further, *Amici* would require that, at a minimum, in making this showing plaintiff must meet the "attribution" or "discount reallocation" test. In short, this rule would require the competitor to show that, if discounts given on a monopoly product were reallocated to the competitive product, the resulting price of the competitive product would be below the seller's cost. *See, e.g.*, *Information Res. Inc.* v. *Dun & Bradstreet*, 359 F. Supp. 2d 307, 307 (S.D.N.Y. 2004) ("When price discounts in one market are bundled with the price charged in a second market, the discounts must be applied to the price in the second market in determining whether that price is below that product's average variable cost.").

The discount reallocation screen is consistent with the Supreme Court's repeated admonition that unilateral pricing decisions deserve the greatest degree of judicial protection unless the prices are predatory: "Low prices . . . benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition." *State Oil* v. *Kahn*, 522 U.S. 3, 15 (1997). Recently, in *Weyerhaeuser Co.* v. *Ross-Simmons Hardwood Lumber Co., Inc.*, 127 S.Ct. 1069 (2007), the Court reaffirmed the reach of its requirement that plaintiff challenging unilateral pricing decisions show that defendant priced in a predatory manner, *i.e.*, below its cost. *Amici* understand the Supreme Court's precedents to establish an absolute rule that a plaintiff cannot show that a seller's discounts, rebates, or otherwise low prices are unlawful unless it can show that the seller priced below its cost. To the extent that cases like *LePage's, Inc.* v. *3M*, 324 F.3d 141 (3d Cir. 2003) (en banc) suggested that unilaterally set discounts could be unlawful even if not predatory, any such ruling is foreclosed by *Weyerhaeuser*'s broad interpretation of the Supreme Court's unilateral pricing precedents even in circumstances other than single-product discounts.[7]

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[7] Given our view that *Weyerhaeuser* forecloses the reasoning that led the *LePage's* court to hold that cost-revenue comparisons are unnecessary in bundled discount cases, we do not reiterate all of the criticisms of that opinion which some of us, and others, have raised elsewhere. *See, e.g.*, Daniel A. Crane, *Multiproduct Discounting: A Myth of Nonprice Predation*, 72 U. Chi. L. Rev. 27, 29 (2005); Richard A. Epstein, *Monopoly Dominance or Level Playing Field? The New Antitrust Paradox*, 72 U. Chi. L. Rev. 49, 71-72 (2005); Thomas A. Lambert, *Evaluating Bundled Discounts,* 89

That plaintiff must show that defendant priced below its costs does not answer the question of how cost-revenue relationships should be assessed when the discount is offered on a package of products. Hence, *Amici* propose the discount reallocation screen, which is arguably the most expansive liability rule assuming the need to show below-cost pricing. If plaintiff cannot show that defendant priced the competitive product below its cost after discounts are reallocated to the competitive product from the monopoly product, plaintiff will be unable to meet any other cost-revenue comparison test. Thus, the discount reallocation test can be used to screen out unmeritorious challenges to bundled discounts, leaving for another day what additional showings plaintiff should have to make it if meets the discount-reallocation test.[8]

The discount reallocation test is best understood by considering the usual description of how bundled discounts could be anticompetitive. A much-cited and discussed example from *Ortho Diagnostic Sys., Inc.* v. *Abbott Labs., Inc.*, 920 F. Supp. 455 (S.D.N.Y. 1996) illustrates how a bundled discount could be used to

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Minn. L. Rev. 1688, 1722-23 (2005); Daniel L. Rubinfeld, *3M's Bundled Rebates: An Economic Perspective*, 72 U. Chi. L. Rev. 243 (2005).

[8] It is *Amici*'s understanding that, if the Court were to adopt the discount-reallocation test, PeaceHealth would prevail without any need to inquire into what further showings plaintiffs in other cases should be required to make. Accordingly, *Amici* do not discuss those further showings. Should the Court wish for further guidance on this question, *Amici* refer the Court to Lambert, 89 Minn. L. Rev. at 1739-55 and Crane, 55 Emory L. J. at 473-84.

exclude an equally efficient competitor. In the *Ortho* illustration, defendant and plaintiff compete for sales of shampoo. *Id.* at 467. Defendant also sells conditioner, over which it has a monopoly. Defendant's per unit cost to produce shampoo is $1.50 and plaintiff's is $1.25. Defendant prices conditioner and shampoo at $5 and $3, respectively, if bought separately, but at $3 and $2.25 if bought as part of a package.

In *Ortho*, Judge Kaplan used this package discount example to show how plaintiff, though as efficient in the production of shampoo as defendant, could be excluded from the shampoo market by the package discount. If customers wanted to refuse defendant's package discount offer and buy the shampoo from plaintiff, they would pay $5 for conditioner. Then, in order to make the customer indifferent on price, plaintiff would have to offer the shampoo for sale for $.25, which would be far below plaintiff's cost. Since plaintiff could not afford to price at that level, it would soon be forced out of business. *See* Lambert, 89 Minn. L. Rev. at 1696-97 (explaining the exclusionary effect of the bundled discount in the *Ortho* hypo). Another way of putting this is to say that if the $2 discount on the monopoly product (conditioner) were reallocated to the competitive product (shampoo) the price of the competitive product ($.25) would be below defendant's cost.

To put the example that way shows how a bundled discount could be exclusionary of an equally efficient competitor. But now change the facts such that the resulting post-discount-reallocation price is *not* below cost. Suppose that

defendant's package price was $4.50 for conditioner and $2.75 for shampoo. The discount to be reallocated from the monopoly product to the competitive product would be $.50. The resulting effective price for shampoo—the price that the equally efficient competitor would need to meet—would be $2.25, safely above both plaintiff and defendant's cost of production. In this scenario, the equally efficient competitor could not be excluded and the bundled discount should therefore be per se lawful. The discount reallocation screen would lead to a dismissal of plaintiff's claim in such a case without the need for further, and potentially complex, inquiry regarding the exclusionary effect of the discount.

Any holding that a post-discount-reallocation, above-cost price could be unlawful makes no sense given that defendant would be perfectly entitled to drop its price to the same level using a single-product discount. Suppose, for example, that instead of offering a bundled discount, defendant simply dropped its price on shampoo to $2.25. Under *Brooke Group, Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993), that above-cost price would be per se lawful. Now suppose again that the effective price (post discount reallocation) that plaintiff had to meet on shampoo because of the bundled discount was also $2.25. If the single-product discount to $2.25 would be per se lawful, a bundled discount resulting in a $2.25 price after discount reallocation should be per se lawful as well. The effect on plaintiff would be identical, since either way $2.25 is the price that it would have to meet stay in

business. Since the price would be above cost, the equally efficient competitor would not be excluded.

B. The Discount Reallocation Screen Enjoys Wide and Growing Support in the Academic and Legal Community

The discount reallocation screen—with its requirement that plaintiff show mathematically that the bundled discount resulted in effective predatory pricing in the competitive market—is enjoying growing support in the academic and legal community. The Areeda treatise recently articulated essentially the same test:

> A test for bundling, or "coercion," based on price-cost relationships is essential to analyzing claims or package discounts because, as in the case of single-product predatory pricing, only an effective price that is "below cost" can exclude the equally efficient rival. Thus, the first element of a package discount case is "coercion" or "exclusion"—namely, a showing that the defendant has priced its package in such a way that the only significant rivals available in the market are unable to make an equally attractive offer.

Phillip E. Areeda & Herbert Hovenkamp, ANTITRUST LAW ¶ 749b2 (2006 Supp.), at 336. In *LePage's*, the United States made clear that bundled rebates or discounts are only exclusionary "under certain theoretical assumptions . . . [where] the competitor competes with respect to but one component of the bundle and cannot profitably match the discount aggregated over the other products" in defendant's bundle. Brief for the United States as *Amicus Curiae* at 8, *3M Co.* v. *LePage's Inc.*, 2004 WL 1205191 (U.S. May 28, 2004) (No. 02-1865). A majority of the scholars and practitioners invited to present their views at the Department of Justice and Federal

Trade Commission's November 29, 2006 hearings on bundled discounts offered support for some version of the discount reallocation test. The bipartisan, Congressionally appointed Antitrust Modernization Commission recently recommended that plaintiff challenging a bundled discounting scheme be required to show that "after allocating all discounts and rebates attributable to the entire bundle of products to the competitive product, the defendant sold the competitive product below its incremental cost for the competitive product." April 2, 2007 Report and Recommendation of Antitrust Modernization Commission at 83. Several courts have also adopted versions of the discount reallocation test. *See Information Res.*, 359 F. Supp. 2d at 307; *Ortho*, 920 F. Supp. at 469; *Virgin Atlantic Airways Ltd.* v. *British Airways PLC,* 69 F.Supp.2d 571, 580-81 (S.D.N.Y. 1999), *aff'd*, 257 F.3d 256 (2d Cir. 2001); *see also Broadcom Corp.* v. *Qualcomm, Inc.*, 2006 WL 2528545 (D.N.J. Aug. 31, 2006) (dismissing complaint regarding bundled discounts where plaintiff did not allege facts showing that the bundled discounts were coercive or exclusionary of rivals).

This growing acceptance of a modified predatory pricing rule for bundled discounts reflects a broad consensus that monopolization cases need to be governed by concrete rules and not merely vague and open-ended standards. Rules allow business people to plan their activities without fear of antitrust liability, simplify litigation, and avoid punting broad questions of industrial policy to juries. The discount reallocation

screen is a common sense rule that tracks the Supreme Court's unilateral pricing jurisprudence and protects bundled discounting from unmeritorious challenges.

C. Common Criticisms of the Discount Reallocation Screen Are Ill-Founded

The Supreme Court has acknowledged that its predatory pricing test is not perfect, but that it is the best that can be done given the inherent limitations are of the adjudicatory process. *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 414 (2004) (noting that "above-cost predatory pricing schemes, [are] 'beyond the practical ability of a judicial tribunal to control.'") (citation omitted). The discount reallocation test is not perfect either—no test is. However, *Amici* have collectively spent hundreds of hours writing, litigating, speaking, and debating about the merits of various tests and believe that the discount reallocation test is as reliable a screen as is possible. *Amici* have encountered a number of arguments against the test that do not hold water and will respond briefly to some of the more common of those arguments.

Many of the arguments against the discount reallocation screen—indeed, against any test that requires cost-revenue comparisons in bundled discount cases—are premised on supposed differences between multi-product discounts and single-product discounts. Of course, the discount reallocation screen takes into account the most important differences by requiring that the entire package discount be attributed

to the competitive product—in other words, the discount reallocation screen treats the entire package discount as if it had been given on just the competitive product and asks whether the plaintiff could profitably have met such a large discount. But even beyond this distinction, some have argued that bundled discounting is fundamentally different because it enables a predator to engage in a cheaper form of predation than single-product predation, or even to predate without sacrificing profits at all.

In support of the "cheaper predation" point, some have argued that, unlike single-product predation which requires a large commitment of resources by the predator to cover the costs of predation, bundled discounting involves no short-run losses since the predator is subsidizing the predatory campaign by the discount on the monopoly product. This argument simply misunderstands economics. A dollar spent and a dollar not earned are each one dollar. Foregoing one dollar of profits on the monopoly product is economically identical to taking one dollar out of bank account to pay for a predation campaign. Predating through bundling is generally no cheaper than predating through a single-product discount.

A more sophisticated argument is that bundled discounting can exclude competitors without any sacrifice of profits to the monopolist. This view is based on the fact, noted earlier, that bundled discounting can be used to encourage customers to purchase a greater quantity of the monopoly product at a reduced price while also committing to purchase the competitive product from the monopolist. But, far from

being anticompetitive, this use of bundled discounts increases consumer welfare, since consumers buy more of the product that they value more highly (the monopoly product) and less of the product that they value less highly (the related product that they also commit to purchase from the monopolist). *See* Crane, 55 Emory L.J. at 459-62. Although a single-product competitor could potentially lose some sales, its loss would result from its inability to offer an efficient discount, not from any exclusionary act.

Another argument that has been advanced is that bundled discounts obfuscate the true cost of goods in the package, which makes it difficult for single-product competitors to offer their own discounts sufficient to make customers indifferent on price. This argument, if correct, would only apply in situations involving retail sales to unsophisticated consumers. Virtually every bundled discounting antitrust case currently pending or previously decided involves large, sophisticated (often monoposony or oligopsony) buyers and dickered contracts. It is implausible that multi-million dollar contracts of the kind at issue in this case would go to defendant simply because the customers could not see that pricing concessions offered by plaintiff resulted in an equally low price.

Finally, the discount reallocation test has been criticized as unadministrable. In particular, a concern has been raised that juries will be unable to understand complex discount-reallocation and cost-price comparison instructions.

Although *Amici* acknowledge that juries often struggle in monopolization cases, they do not believe that the discount reallocation test would add greatly to the difficulty of the jury's task. As with any complex technical subject, the trial court must play the role of gatekeeper and shepherd of the evidence. The discount reallocation screen brings discipline and structure to pretrial dispositive motions and directed verdict motions, a required matrix for expert reports and testimony, and a frame for jury instructions.

D. Alternative Tests Based on Analogies to Tying or Exclusive Dealing Are Insufficient

In closing, *Amici* will respond briefly to the principal alternative test that has been suggested for bundled discounting claims. The *LePage's* court argued that bundled discounting should not be analogized to predatory pricing, but instead to tying or exclusive dealing. 324 F.3d at 155. Neither of those analogies offers a plausible mode of analysis.[9]

In a tying case, the customer is required to take the tied product if he or she wants the tying product. In a bundled discount case, however, the customer has the choice to buy just the monopoly product from defendant. It is possible, of course, that the discount could be so large that it would be economically irrational for a customer who desires both the tied and tying product to buy just the tying product

from defendant and then purchase the tied product separately from plaintiff. But that would only be the case if plaintiff were unable to offer a discount that would make the customer indifferent on whether it accepted defendant's package discount or bought the two items à la carte. And that is a question that tying analysis lacks the tools to answer.

Similarly, exclusive dealing analysis focuses on whether defendant's contractual practices "foreclose" a substantial share of the relevant market to rivals. *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 327 (1961). "Foreclosure" is an empty concept unless it means that rivals cannot compete on the merits for the business. *Barry Wright Corp.* v. *ITT Grinnell Corp.*, 724 F.2d 227, 236 (1st Cir. 1983) ("[V]irtually *every* contract to buy "forecloses" or "excludes" alternative sellers from *some* portion of the market, namely the portion consisting of what was bought.") (Breyer, J.). To put it another way, if a rival would be able profitably to match a diversified seller's bundled discount, what we have is ordinary price competition and not foreclosure. The problem with using exclusive dealing analysis to assess bundled discounts is that exclusive dealing analysis begins with the assumption that whatever contracts are covered by the exclusive dealing contracts are "foreclosed" to rivals, a fact not in evidence in bundled discount cases.

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[9] Notably, the Third Circuit justified its analogy to tying and exclusive dealing by citing the *Areeda* treatise. As noted earlier, the treatise has since come out in favor of a version of the discount reallocation screen.

To begin with either a tying analogy or an exclusive dealing analogy before first assessing the effect of the bundled discount on the rival's ability to compete for the same customers offered the bundled discount puts the cart before the horse. The discount-reallocation screen properly focuses on the exclusionary effect of the package discount. While tying and exclusive dealing law may provide a useful framework once plaintiff has satisfied the discount reallocation screen, plaintiff should not be permitted to invoke the "coercion" and "foreclosure" language of tying and exclusive dealing if it cannot satisfy the discount reallocation screen.

III.

THE APPROPRIATE MEASURE OF COST TO CONSIDER AFTER REALLOCATION OF DISCOUNTS IS AVERAGE VARIABLE COST

Whatever the appropriate measure is in predatory pricing cases, the same benchmark should apply in bundled discounting cases. As noted earlier, the discount-reallocation test is premised on the view that if a single-product discount resulting in a price of x on the competitive product would be per se lawful, a multi-product discount resulting in a price of x (after reallocation of discounts) should also be per se lawful since the effect on the equally identical competitor is identical. It would make no sense to adopt one measure of cost for single-product predation cases and a different measure of cost for bundled discount cases.

In *Rebel Oil Co., Inc.* v. *Atlantic Richfield Co.*, 146 F.3d 1088 (9th Cir. 1998), this Court left open the question of what measure of cost is the appropriate

benchmark in predatory pricing cases. *Amici* submit that average variable cost is the most workable and sensible of the available options. Phillip Areeda & Donald F. Turner, *Predatory Pricing & Related Practices under Section 2 of the Sherman Act*, 88 Harv. L.Rev. 697 (1975); *see also Northeastern Tel. Co.* v. *American Tel. and Tel. Co.*, 651 F.2d 76, 88 (2d Cir. 1981) (adopting the Areeda-Turner average variable cost test). In *Brooke Group*, the Supreme Court made clear that—although it was not deciding what precise measure of cost should be utilized—the appropriate measure of cost must approximate incremental cost. *Brooke Group*, 509 U.S. at 223 ("Although *Cargill* and *Matsushita* reserved as a formal matter the question 'whether recovery should *ever* be available ... when the pricing in question is above some measure of incremental cost,' . . . the reasoning in both opinions suggests that only below-cost prices should suffice, and we have rejected elsewhere the notion that above-cost prices that are below general market levels or the costs of a firm's competitors inflict injury to competition cognizable under the antitrust laws."); *see also United States* v. *AMR Corp.*, 335 F.3d 1109 (10th Cir. 2003) (requiring showing that defendant priced below some measure of incremental cost). The Areeda-Turner average variable cost test is designed as a close surrogate for incremental or marginal cost, and hence comports with the Supreme Court's mandate. *Stearns Airport Equipment Co., Inc.* v. *FMC Corp.*, 170 F.3d 518, 532 (5th Cir. 1999) ("In the wake of *Brooke Group's*

clarification of the standard, a plaintiff must show pricing below the standard this Court has long embraced as an appropriate measure of cost-average variable cost.").

However the appropriate measure of cost is formally described, its key function must be to prevent the inclusion of costs that would have existed whether or not the allegedly predatory increment of output had been made and sold. Requiring sellers to cover some pro rata share of joint and common costs of the business or other fixed costs on every sale is manifestly anti-consumer. The average variable cost test rightly reserves predatory pricing liability for the rare instance where a seller prices in a way that has no explanation except exclusion of competitors.

CONCLUSION

For the foregoing reasons, *Amici* submit that the Court should require plaintiff challenging a bundled discount scheme to show—at a minimum—that the competitive product was priced below average variable cost after discounts are reallocated to the competitive product from non-competitive products.

Dated: April 18, 2007

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Dated: April 18, 2007

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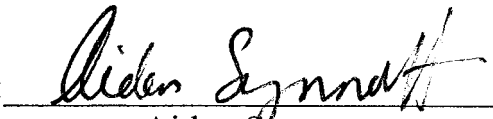
By: 
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