



Five Questions About Section 5

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Washington, D.C.
October 17, 2008



Do the Sherman and Clayton Acts Cover the Field?

- › Areeda's Hypothesis from the 1960s and 1970s
- › The Supreme Court and the Modern Treatment of Private Rights



What Are the FTC's Chief Section 5 Accomplishments?

- › Test: Name Ten Distinctive FTC Contributions to Competition Policy Jurisprudence Through Section 5
 - › Consents (e.g., Xerox) or Litigated Cases
 - › How many of your top ten are regarded today as distinctive and useful?
- › Why Will Outcomes Improve in the Future?



In Litigation, Is Section 5's Elasticity a Mirage?

- › Last Litigated FTC Section 5 Victories in Competition Cases: 1960s
- › Section 5 in Theory
- › Section 5 in Practice
 - › OAG
 - › Ethyl



What Are the Political Constraints?

- › From Congress or the White House
- › Examples of Backlash
 - › Cement Institute
 - › Kellogg and Exxon



What Is the Content of Section 5?

- › Extensions of Sherman and Clayton Act Concepts?
- › Extensions Based on Demonstrable Effects?
- › Incorporation of Extrinsic Norms?
 - › Which?



Concluding Thoughts

- › Crucial Rationale for FTC's Creation
- › Conceptual Attractions
- › Problems in Implementation