

militates towards reduced government intervention, including antitrust actions, although not none at all.

4.2.3 Chicago and the courts

One example of the active use of the populist *per se* rule was the 1967 *Schwinn* case, in which the U.S. Supreme Court condemned as *per se* violations of the Sherman Act the territorial marketing and other restrictions imposed by the Schwinn bicycle company upon its distributors.⁵¹

The first example of the New Learning promoted by the Chicago School came just ten years later, in the 1977 decision of the U.S. Supreme Court in *Sylvania*,⁵² which reversed the *Schwinn per se* rule and relied expressly on the writings of Chicago School commentators.⁵³ It postulated a **rule of reason** which stated that:

the fact finder weighs **all of the circumstances** of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.⁵⁴

Once efficiency had established its beachhead amongst the factors to be considered, it sought to expand its role. In this and subsequent cases, economic values are accorded predominant if not exclusive weight as compared with social and political values. The efficiencies of vertical and territorial restraints imposed by a dominant supplier upon its distributors can outweigh other concerns.

⁵¹U.S. v. *Arnold, Schwinn & Co. et al*, 388 U.S. 365, 1967.

⁵²*Continental T.V., Inc. et al., v. GTE Sylvania Inc.*, 433 U.S. 36, 58, 59, 1977.

⁵³Barry Hawk, "The American (Antitrust) Revolution: Lessons for the EEC?", 1988, **European Competition Law Review** 53, 60; see also *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 1985; *Fishman v. Estate of Wirtz*, 807 F. 2d. 742 (7th Cir.), 1986.

⁵⁴Schechter, "The Rule of Reason in European Competition Law", **Legal Issues of European Integration**, p. 7, citing *Sylvania*, p. 49.