

A solid yellow right-angled triangle pointing downwards and to the right.

BLOGS
Antitrust

Franchisor's Designation of Credit Card Processing Service Does Not Constitute Unlawful Tying Arrangement

In *Sheridan v. Marathon Petroleum Co., LLC*, 2008 WL 2486581 (7th Cir. June 23, 2008), a Marathon gasoline dealer filed suit against Marathon to challenge a provision of the dealer's franchise agreement. The franchise agreement required the dealer to process credit card purchases made on credit cards issued by Marathon through specified credit card processing equipment. The franchisee remained free to process payments made by other credit cards through a different processing system if he so chose. The franchisee claimed that Marathon had effectively tied the processing of all credit card payments to the Marathon franchise, thus violating the Sherman Act. The district court disagreed and granted Marathon's motion to dismiss.

On appeal, the Seventh Circuit affirmed the district court. The court noted that the Sherman Act required the franchisee to show that Marathon had market power in the market for the tying product. The court found that the franchisee's complaint failed to adequately allege that Marathon exercised market power in the market for petroleum products. The court agreed that Marathon does exercise a "monopoly" over Marathon franchises, but found that such franchises do not constitute a relevant market. As the court explained, "the exploitation of the slight monopoly power thereby enabled does not do enough harm to the economy to warrant trundling out the heavy artillery of federal antitrust law."

The court also found that the facts did not support even the claim that Marathon had tied its franchises to the credit card processing system. The court noted that franchisees remained free to implement a different processing system for purchases made on cards other than those issued by Marathon. The court found that Marathon could not be held responsible for its franchisees' economic decision not to purchase two such systems. Merely employing a system that creates economic incentives to run all credit card purchases through one system does not constitute unlawful tying.