

proscribed 44

FN'43 See generally Bock, Mergers and Markets, An Economic Analysis of Case Law 25-35 (1960)

FN44 United States v E I du Pont de Nemours & Co , 353 U S 586, 592, 595, 68 S Ct 1107, 92 L Ed 1533, A G Spalding & Bros v Federal Trade Comm'n, 301 F 2d 585, 603 (C A 3rd Cir), American Crystal Sugar Co v Cuban-American Sugar Co , 259 F 2d 524, 527 (C A. 2d Cir), United States v Bethlehem Steel Corp , 168 F Supp 576, 603 (D C S D N Y) See also note 39, supra.

Brown Shoe Co v United States, supra at 325-326, 82 S Ct at 1523-1524

It seems clear to us that there is more than substantial evidence to support at least these indicia of a separate submarket. 1) As we have noted, sintered *932 metal friction materials are substantially higher in price than organic friction materials 2) They clearly have peculiar characteristics and uses as has been pointed out in the exhibits quoted above 3) They require an entirely different technology and separate production facilities

Similar indicia were employed by Judge (now Chief Justice) Burger, writing for the D C Court of Appeals in Reynolds Metals Co. v FTC, 114 U S App DC 2, 309 F 2d 223, 226-229 (1962) He held that aluminum florist foil was a distinct market from decorative aluminum foil because of distinct customers, uses and prices

We hold that there is substantial evidence on the whole record to support the FTC finding that sintered metal friction materials constituted a valid submarket

[2] The second issue was whether the FTC's findings of anticompetitive effects was supported by substantial evidence An FTC chart presented in evidence at the hearing and subsequently considered by the Commission, shows the percentage results of the Abex

acquisition The chart shows Abex (American Brake Shoe) absorbed its principal competition and took a dominant position in the submarket. Although appellant attacks this chart as not including all relevant competition, we find in the testimony of industry figures as to market competitors both substantial and highly persuasive testimony as to its inclusiveness