Category Management—A Pervasive, New Vertical/Horizontal Format

BY ROBERT L. STEINER

CATEGORY MANAGEMENT STARTED in the supermarket industry in the mid-1990s and has rapidly swept across non-food categories in the United States, Europe, and elsewhere. It has become the prevailing format for conducting business in many major markets and is a hugely important development. Yet its arrival seems to have gone virtually unnoticed in the law and economics community. Category management simultaneously provides the opportunity for major cost savings in the distribution of consumer goods and a considerable potential for various sorts of antitrust mischief.

Category management (and the individual channel partnerships that preceded it) represents a new kind of vertical arrangement that is not integration, franchising, or a vertical restraint. Instead, it is a vertical partnerships in which previously confidential information is shared between manufacturers and retailers to cut costs in distribution and increase the margins of both parties.

While it will be seen that there are a number of variations in the category management structure, in its basic format a retail chain decides to manage its business on a product category basis. It then appoints one of the leading manufacturers in the field as "Category Captain." The Captain and his team interface with a "Category Manager" from the retailer. The Captain collects detailed information on the recent performance of all brands in the category in formulating a plan to be presented to the retailer for the entire category—not just for the brands of the Captain's firm. The plan will specify which stock-keeping-units (SKUs) the retailer should carry and the retail price of each SKU, the layout of the retailer's "Plan-o-gram" (a kind of architectural drawing of the space each item will occupy on the store's fixtures), and frequently also a promotional plan for the retailer to adopt. In many but certainly not all cases the retailer simply accepts the Category Captain's plan with few changes.

Robert L. Steiner, an economic and business consultant in Washington, D.C., was previously at the FTC Bureau of Economics. Earlier, he spent twenty-five years in family-owned consumer goods manufacturing businesses and was President of the toy company, Kenner Products.

In addition to identifying its efficiencies, antitrusters must remain alert to the possibility that category management can produce a number of competitive concerns: the exclusion of small producers and increased market power of the category's leading manufacturer, the creation of welfare-reducing types of vertical practices, and the facilitation of price-fixing arrangements in the retailing sector.

Vertical Cooperation Through Channel Partnerships

To a substantial extent, manufacturers and retailers perform complementary functions, so that both benefit by the efficiencies achieved by the other. Starting in the mid-1980s with the pioneering arrangement between Procter and Gamble and Wal-Mart, a new format emerged to achieve these efficiencies—so called vertical or channel partnerships between a single manufacturer and a single retailer.[1] The key insight was that many costs in the distribution channel could only be slashed by information sharing and far closer cooperation between firms in a vertical relationship. While integration was frequently undesirable and not feasible, a vertical partnership could enable independent manufacturers and retailers to achieve many of the efficiencies of integration. This was a revolutionary idea in vertical relationships. Soon vertical partnerships between pairs of manufacturers and retailers proliferated.[2]

Most channel partnerships concentrated on logistical "tasks of replenishment, order processing, and receiving and distribution,"[3] although savings in other areas were sometimes also achieved. Together, the manufacturer and retailer would scrutinize each other's operation—revealing costs, procedures and problems, searching for opportunities to eliminate redundancies, looking to develop more efficient systems to handle their business relationships. The pioneering P&G/Wal-Mart partnership was said to reduce the retailer's out-of-stocks, eliminate redundant operations, reduce average inventories, speed up delivery times, and enable P&G to plan its production schedules more intelligently.[4] Virtually all of the participants in a 1992 conference on channel partnerships sponsored by the Marketing Science Institute reported that they had achieved significant savings.[5]

Unlike category management, which developed later, each vertical partnership concerned only a single manufacturer's product line and a single retailer, and posed no antitrust problems.

Category Management

The Structure. In the 1990s, category management supplanted individual channel partnerships as the basic organizational format in supermarkets, discount stores, drug chains, and other mass outlets. Doubtless, the sheer number of individual channel partnerships had become burdensome.

Procter and Gamble's replacement of the product manager system, which it had pioneered, by a category management structure was a facilitating factor. However, the major impetus came from the supermarket industry, which had been losing market share to warehouse clubs, supercenters, discount stores,

and certain "category killers."[6] In response to this challenge, the industry acted through its trade organization (Food Marketing Institute) and its academic consultants, to produce a massive five-volume set of "Category Management Implementation Plans."[7]

Volume 3 of the "Plans"sets out that a supermarket will generally select as Category Captain a leading manufacturer with sophisticated marketing knowledge. The Captain must obtain data on the category, including manufacturers' prices, retail prices, unit sales, promotional plans, and other important operating information on all items in the category. While much of this information is available from market research firms (IRI, Nielsen, etc.), it appears that some of it would have to come from rival makers.

The Captain and his staff will interface with a Category Manager from the supermarket chain, who would bring to the partnership the firm's own operating statistics and such other information as the supermarket's data on consumer behavior derived from its "loyalty program." Together, the Captain and the Manager are to develop a category plan for the supermarket that sets out which SKUs it will carry, their retail prices, promotional programs, and a "Plan-O-gram" showing the location and space accorded to each SKU. The object of the plan is to maximize the category's contribution to the chain's overhead and profit using state-of-the art cost accounting methodologies. Category management preaches that this result also requires studying how costs at both stages can be minimized and how the retailer can offer the items consumers most desire. This effort has often resulted in sharply cutting the number of SKUs the retailer has been offering. It also implies a philosophic hostility to slotting fees, which can bias the selection process in favor of items whose manufacturers will pay large slotting fees rather than those the consumer might prefer.

In practice, the powers of the Category Captain vary. In many cases, "the retailer places the well-being of the entire category in the hands of a single supplier to the category."[8] In one variant known as Vendor Managed Inventory (VMI), the retailer entrusts all stocking decisions to a single category manufacturer. To counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer or engage a "third-party advisor" with no vested interest in the category. At a recent FTC Workshop, the supermarket chain, Stop & Shop, related that it does not appoint a single Category Captain. Instead, its Category Managers consult with several category manufacturers.[9]

The trade press and the speeches of consultants in the field stress that mutual trust is prerequisite to the success of category management. First, the traditional adversarial relationship between manufacturers and retailers must be replaced by a cooperative one. Second, there must be mutual trust that the confidential information the retailer provides the manufacturer is not relayed to competing retailers (for whom the same manufacturer is often serving as Category Captain), nor will the confidential information the manufacturer provides to the retailer be relayed to rival category manufacturers with whom the retailer deals. Third, the manufacturer, which typically devotes substantial resources to the development of the category plan, must trust that the retailer will implement it effectively. Finally, the retailer must trust that the plan was competently and objectively prepared—free of significant "opportunism," wherein the Captain has sacrificed their combined interests (and those of rival manufacturers) to those of his own firm in ways that may be difficult for the retailer to detect.[10]

Efficiencies. Although category management has not always proved effective, in many instances it has clearly generated measurable efficiencies in the United States and Europe. H.E. Butt Grocery Co. claims that category management enabled it to save $12 million annually by improving its product assortments and eliminating slow-moving SKUs.[11] A test of category management in the cat box category increased the retailer's sales by 12.5 percent and gross profit dollars by 9.5 percent and decreased the category's average inventory and warehouse space.[12] The manufacturer was rewarded by increased sales to the retailer. In Europe, a 1998 synopsis of category management results in Spain, Sweden, and the Netherlands reported impressive cost savings in margarine, detergents, and other product classes by reducing out-of-stocks, cutting SKUs, and improving the efficiency of product delivery systems.[13]

A consultant's study sponsored by manufacturer, distributor, and retailer trade groups focused on the opportunities for new kinds of savings to be achieved through coordinated vertical cooperation. These involve re-engineering store fixtures, reducing shelf-stocking time, creating "store-friendly" packages and "store-ready" pallets. Though requiring substantial capital investment, they could produce savings of 18.3 percent in the cost of product handling, the study asserts.[14] Commenting on the study, a vice president for logistics for a large grocery distributor and retailer stressed that "We can take a lot of costs out of the system if everybody understands what the other needs."[15]

The Basis for Antitrust Concerns

That the reduction of costs in distribution need not require vertical integration or franchising, which are often not viable options, but can be achieved by cooperation and sharing of previously confidential information among independent manufacturers, wholesalers, and retailers, has proved a vital insight. However, the very structure of category management, with its congeries of vertical and horizontal relationships, also invites anticompetitive conduct. Many of these concerns are rooted in vertical relations, so these less understood sources of possible anticompetitive conduct must be identified.

Vertical Sources of Anticompetitive Conduct. There are three relationships between manufacturers and retailers: cooperative, competitive, and collusive. Although some new forms of cooperation, as embodied in channel partnerships and category management, can produce significant efficiencies in consumer goods industries, not all kinds of cooperation are so salutary.

There is a strong competitive element in manufacturer-retailer relationships that is obvious to all participants in such industries. When manufacturer-retailer cooperation weakens or eliminates vertical competition, even when the cooperation does not quite rise to the level of collusion in a legal sense, there can be serious welfare consequences.

In my view, firms should be considered competitors when they can take sales, margins, or market shares from each other. By this definition, manufacturers and retailers compete over price just as surely as do firms at the same level. Vertical price competition is the competition between manufacturers and their retailers to obtain a larger share of a brand's retail price.[16] The parties sometimes cooperate by declaring a truce on vertical competition in order to raise margins at both stages, which injures consumers.

Many important functions are vertically mobile. Manufacturers and retailers often compete over functions whose performance bestows market power and the ability to obtain a larger share of a brand's retail price. When consumers' purchasing decisions are guided by the manufacturer's advertising and reputation, the manufacturer will obtain a far larger share of the retail price and retailers a much smaller share than when consumers rely on the retailer for product information and certification. Again, a manufacturer may increase its vertical market power at the retailer's expense by obtaining a strong say in the retailer's selection of items, their pricing, and their display and promotion. This would be a particularly unwelcome development when the maufacturer is already the dominant player in the category.

The third type of vertical competition consists of direct product competition between leading national brands and the private labels of large market share retail chains—a format I believe produces the lowest level of consumer prices in a product category. When leading national brands dominate a category, manufacturers' margins will be high and retailers' margins thin. In categories characterized by a multitude of relatively unknown manufacturers' brands and private labels, retail margins are high and manufacturers' margins are slim. But leading national brands and private labels discipline each other. Private label prices are restrained by the necessity to sell at a considerable discount from the retail prices of the leading national brands to obtain a satisfactory volume of sales, while the factory prices of the national brands are constrained by the low retail prices of private labels, whose market power derives from the reputation enjoyed by the large market share retailers who sponsor them and their ability to provide favorable shelf positioning for their own-label brands.[17]

How Vertical and Horizontal Restraints Can Reinforce Each Other. While the elimination of vertical competition is often harmful, when vertical restraints are combined with horizontal restraints, the outcome is almost certain to be anticompetitive, as the recent *Toys-"R"-Us* case (TRU) (Toys "R" Us, Inc., No. 9278, 1998 FTC LEXIS 119 (1998), *aff'd*, Toys R Us, Inc. v. FTC, 221 F.3d 928 (7th Cir. 2000))[18] illustrates. The emerging warehouse clubs, such as Costco, resold toys at prices well below those of TRU and virtually all other retailers. To counter this threat, TRU used its vertical bargaining clout as the nation's largest toy retailer to force many manufacturers to stop selling "hot" new toys to the warehouse clubs on pain of losing TRU as a customer. But some of the major manufacturers were resisting the pressure from TRU, fearing that if they stopped selling to the warehouse clubs, their competitors would step in and capture a lot of the business with these fast-growing outlets. To solve this problem, TRU orchestrated a horizontal cartel, in which the individually reluctant toy makers agreed to the restrictions on their distribution sought by TRU, with the assurance, given through TRU, that their competitors would do likewise.

The category management structure contains a plethora of new and unique horizontal and vertical relationships among the category's manufacturers and retailers. This is cause for antitrust alertness and concern, since anticompetitive horizontal and vertical agreements can reinforce each other.[19]

Anticompetitive Potential of Category Management

There is a real danger that the dominant manufacturers in a class of goods, who typically are the Category Captains, will substantially increase their market shares and market power. A survey of eighty-six manufacturer respondents found, "The most important reason manufacturers practice Category Management is to influence decisions regarding a category." For the twenty-one retailer respondents, the most important motive was "to increase their profitability."[20] When a manufacturer can influence a large retailer's decisions over the selection of items from its firm and from its competitors' firms, as well as their pricing, shelf positioning, and promotion, it has gained market power horizontally. Equally, it has gained market power vertically by taking over these vital functions, with their decision-making powers, that were formerly the province of the retailer. Their capture should enable the Captain's firm to obtain a larger share of the average retail price in the category at the retailer's expense.

A Category Captaincy does require a substantial investment of time and money, but it is well worth it to most major manufacturers. Indeed, many have been willing to pay for the privilege, and the auctioning off of Captaincies by retailers has become a not uncommon practice.[21]

Smaller manufacturers are frequently unable to compete for Captaincies because they cannot spare the key marketing personnel and cannot afford the expensive software programs or the cost of buying the necessary marketing data. Moreover, smaller producers also fear that the always-difficult task of obtaining entry to the retail shelves of the large chains is exacerbated when the keys to that kingdom are in the hands of their more powerful competitors. These fears have been expressed in various articles in the trade press here and in *The Economist*, which found that a number of smaller British producers were "terrified" that category management would lead to stores using only one supplier.[22]

Ironically, although category management was initiated by

supermarkets, its structure tends to put them at a crucial manpower disadvantage vis-à-vis dominant manufacturers. For unlike sizeable consumer goods manufacturing firms, even the largest retailing firms have never had big staffs with personnel holding advanced degrees in management, marketing, consumer behavior, statistics, and other relevant skills. And yet supermarkets and other mass purveyors of consumer goods can operate in over 200 categories compared to less than 10 in the Category Captain's firm. So a single Category Manager for the retailer is ordinarily responsible for numerous categories. Even Wal-Mart's Category Managers have sometimes been stretched so thin that they cannot exercise adequate supervision.[23]

In some cases the manufacturer even gains control over the retailer's private label program, muting the important welfare-enhancing role of direct product competition. Of course, many retailers do not permit this to happen. For example, despite its close vertical relationship with P&G, Wal-Mart recently introduced with much fanfare its private label competitor to Tide.

As noted, the retailer's chief motive for adopting category management is to increase its profits. If vertical competition becomes significantly more flabby through too-close vertical cooperation, even though the manufacturer may be gaining power relative to the retailer, it is possible that margins at both stages may be raised by category management, so that few if any of the gains in efficiency get passed on to consumers.

Finally, category management potentially may lead to price fixing at the retail level. The geographic domain of Category Captains of leading packaged goods manufacturers tends to be very extensive. A survey found that the three leading manufacturers in a category were "plan-o-gram" Captains in over 50 percent of the retail stores in the grocery and mass merchandiser sectors, in 67 percent of the stores in the drug store and convenience store sectors, and in 33 percent of the stores in the warehouse club sector.[24] Thus, somewhat analogous to the reinforcing vertical and horizontal restraints in *Toys-R-Us*, the competing retailers with a common Category Captain might in combination have so large a market share as to be able to persuade a reluctant Captain to administer a retail price-fixing scheme on their behalf.

Conclusion

Category management is the latest major venue in which the frequently encountered conflict between potential efficiencies and potential anticompetitive effects is being played out.[25] The antitrust concerns are: increased concentration and market power at the manufacturing level, exclusion of smaller producers, increased margins at both stages, and possible retail price fixing. These outcomes are far more likely to occur under the "strong form" of category management, where a single Category Captain from a dominant manufacturing firm calls the shots.

On balance, the efficiency gains from category management should outweigh its anticompetitive propensities. These savings will raise the margins of manufacturers and retailers and should often lower retail prices. But the unanswered question is the extent to which the savings will be passed forward to consumers. Thus, in the end, it seems more likely that category management will boost total surplus than consumer surplus.[26] ■

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[1] A number of developments in place by the mid-1980s permitted the widespread adoption of channel partnerships. These included: bar coding and scanning; Electronic Data Processing (EDI), which enabled a manufacturer's computer to tie in with the retailer's computer to receive real-time price, inventory, and store movement data on all items in the manufacturer's line; the adoption of more sophisticated cost accounting algorithms by retailers (Activity Based Costing and Direct Product Pricing). Moreover, the success of "just in time" delivery by Japanese manufacturers suggested that these techniques could also produce efficiencies in the distribution of consumer goods.

[2] Robert Buzzell & Gwen Ortmeyer, Channel Partnerships: A New Approach to Streamlining Distribution (Report No. 94-104, Marketing Science Institute 1994).

[3] *Id.*

[4] Peter Drucker, *The Economy's Power Shift*, WALL ST. J., Sept. 24, 1992, at A 16.

[5] Marketing Science Institute, Evolving Relationships of Retailers and Manufacturers: Conference Summary (Report No. 92-113 Feb. 27–28, 1992).

[6] A category killer is a mass retailer that specializes in one line of merchandise and carries a huge assortment of items. Staples and Petco are among those that most directly compete in categories that supermarkets carry.

[7] ROBERT BLATTBERG & EDWARD FOX, CATEGORY MANAGEMENT GUIDE 3. THE CATEGORY PLAN (Food Marketing Institute 1995).

[8] Thomas Gruen, *Category Management: The New Science of Retailing*, FIN. TIMES, Mastering Marketing Series, Oct. 1998, at 4–6.

[9] Federal Trade Commission Slotting Allowance Workshop (May 31–June 1, 2000), *available at* http://www.ftc.gov/bc/slotting/slotting531.pdf and /slotting61.pdf.

[10] Thomas W. Gruen & Reshma H. Shah, *Determinants and Outcomes of Plan Objectivity and Implementation in Category Management Relationships*, 76 J. RETAILING 483, 491 (2000).

[11] Food Institute, H.E. Butt: A Success Story 72, at 2 (Apr. 12, 1999).

[12] Pam Domin, *Category Management: A Profitable Approach*, IGA GROCERGRAM June 1997, at 66–68.

[13] *Special Report—Category Management Shows Initial Positive Results in Europe*, RETAIL SYSTEMS ALERT No.6, June 1998, at 11.

[14] Shelly Reese, *ECR Report Sees Major Savings Through Store-Level Changes*, STORES, Aug. 1997, at 48–50 (reporting on Milton Merl & Associates and Deloitte & Touche Study prepared for the Joint Industry Project on ECR).

[15] *Id.* at 50.

[16] For a discussion of vertical competition with some illustrations, see Robert L. Steiner, *Intrabrand Competition—Stepchild of Antitrust*, 36 ANTITRUST BULL. 155, (1978); Steiner, *The Third Relevant Market*, 45 ANTITRUST BULL. 719 (2000).

[17] For an analysis of private label/national brand competition with examples of its price-depressing effects, see Robert L. Steiner, *The Inverse Association Between the Margins of Manufacturers and Retailers*, 8 REV. INDUS. ORG. 717, 732 and nn.11 & 12 (1993).

[18] The author served as consultant to the FTC in this matter.

[19] Another interesting example of how vertical and horizontal restraints reinforced each other to the great disadvantage of consumers occurred with incandescent light bulbs. *See* Robert L. Steiner, *The Nature of Vertical Restraints*, 30 ANTITRUST BULL. 184–87 (1985).

[20] A.C. NIELSEN, NINTH ANNUAL TRADE PROMOTION PRACTICES AND EMERGING ISSUES STUDY 11 (1999).

[21] James Tenser, *Vendors Paying a High Price to Be Category Captains*, BRAND MARKETING: A SUPPLEMENT TO SUPERMARKET NEWS, May 6, 1996; Silvermine Associates, A New Look at Category Management, 75 PROGRESSIVE GROCER, Aug. 1996, at 36–38; Nancy Nachman-Hunt, *Wild Oats Initiates "Category Captain" Program for its Stores*, NATURAL BUS., Sept. 1998, at 5.

[22] THE ECONOMIST, *Supermarket Retailing Categorical Imperatives*, May 17, 1997, at 75; *see also* Liz Parks & Lisa Fried, *Category Management: Cover Story*, 19 DRUG STORE NEWS, Sept. 22, 1997, at 13, 20.

[23] According to a knowledgeable source, Wal-Mart recently required U.S. Tobacco, the dominant producer of smokeless tobacco, to compensate it for lost sales that occurred when the manufacturer put in a rack that unfairly minimized the space accorded to competing brands. Reportedly, the Wal-Mart Category Manager was responsible for so many other categories that she was reported to be unable to exercise effective oversight.

[24] John DeVincentis & Lauri Kotcher, *Packaged Goods Sales Forces—Beyond Efficiency*, MCKINSEY Q. 81 (1985).

[25] In its recently completed investigation of the supermarket industry, the U.K. Competition Commission did not reach a conclusion on most of the testimony it received about category management. It did, however, express concerns about two practices: supermarkets that provided their data free of charge to the firms of Category Captains but not to their competitors; and supermarkets that ceded authority for the allocation of their shelf space to a manufacturer. U.K. COMPETITION COMMISSION, 1 SUPERMARKETS, Item # 2.593, SUMMARY AND CONCLUSIONS (Oct. 2000).

[26] For an interesting debate over whether consumer surplus or total surplus is the proper standard for measuring social welfare, see *Point/Counterpoint*, ANTITRUST, Fall 2000, at 70 & 71.

HAMMOND E. CHAFFETZ, ANTITRUST BAR GIANT

BY DONALD G. KEMPF, JR.

THE ANTITRUST BAR LOST A giant—and the Antitrust Section one of its former Chairmen—when Hammond E. Chaffetz died on January 12, 2001, at the age of 93.

Chaffetz's career in antitrust almost did not happen. When he graduated from Harvard Law School in the Depression year of 1930, there were few jobs available. Chaffetz was therefore delighted to learn that Professor—later Supreme Court justice—Felix Frankfurter had recommended him for a position at the Justice Department's Antitrust Division. But Frankfurter confided to Chaffetz that he had also recommended one of Chaffetz's outstanding law school contemporaries, Alger Hiss, for the same position. It was Hiss's decision to decline the Antitrust Division opportunity that opened the way to antitrust for Chaffetz.

In his eight years at the Justice Department, Chaffetz participated in a number of historic antitrust initiatives, including the first Justice Department legal action against IBM. That case was one of the first to examine the legality of the practice of "tying" one product to another and challenged IBM's requirement that purchasers of its business machines also purchase their supply of "punch cards" from IBM. Some of the theories first articulated in that early case can be seen in the government's current action against Microsoft.

Chaffetz gained national prominence in 1938, when, at age thirty-one, he led a small team of Justice Department lawyers in a milestone prosecution of a price-fixing conspiracy under the Sherman Act. The defendants, sixteen oil companies and thirty individuals, were represented by the leading corporate trial lawyers of the day, including Colonel "Wild Bill" Donovan, who went on to head the OSS during World War II, and Weymouth Kirkland, senior partner of the firm where Chaffetz later spent his entire career in private practice. The jury's verdict against the defendants was affirmed by the United States Supreme Court in *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940), the landmark case in which the Court announced the "per se rule" against price fixing in its famous footnote 59.

Following his government service, Chaffetz joined the law firm of Kirkland & Ellis, where he remained a leader of the firm until his death more than 60 years later. Chaffetz served as Chairman of the Anti-trust Section in 1962–63. A Fellow of the American College of Trial Lawyers and member of the Attorney General's Committee to Study the Antitrust Laws, he handled a large number of major antitrust cases and argued several times in the Supreme Court. In one of those cases, the Court upheld the right of Standard Oil (Indiana) to pursue competitive pricing of its gasoline against charges by the FTC that the company's pricing constituted discriminatory pricing—one of the first cases to a bring pro-consumer economic analysis to antitrust law. In the case of *Dean Foods v. FTC*, 384 U.S. 597 (1966), Chaffetz was disappointed when the Supreme Court ruled five to four that the FTC had implicit authority to seek to enjoin Dean Foods from acquiring a large local Chicago dairy. But he ultimately considered this case a special victory. After losing the legal issue in the Supreme Court, he was able to persuade the Commissioners themselves to permit the merger to go forward.

Chaffetz also contributed to the development of the judicial procedures used today to manage complex cases. This came about through his involvement in the resolution of the so-called *Electrical Equipment Price-Fixing Cases*. In the early 1960s, discovery of a complex bid-rigging scheme involving the allocation of bidding rights among equipment manufacturers in accordance with "phases of the moon" led utility companies to file numerous lawsuits around the country against the twenty-some defendants. This was the first time the federal courts faced the problem on this scale of coordinating the administration of multiple lawsuits involving related parties and issues but pending before different courts. Chaffetz led in the effort to develop procedures and forms that are reflected in the *Manual for Complex Litigation*, which federal judges have used ever since in handling the kind of national litigation associated in recent years with asbestos, breast implants and tobacco.

A passionate litigator, Chaffetz developed a formidable reputation over the years for winning cases. There was a saying at Kirkland & Ellis: "For Hammond, there are only two things—victories and developments." If he believed in a cause, sooner or later he would convince you. Fred Rowe, a retired Kirkland & Ellis partner who was one of Chaffetz's antitrust disciples and who himself served as Chairman of the Antitrust Section in 1969–1970, recalls that "Hammond was not only a superb antitrust advocate, but was the only lawyer I ever knew who could edit a Supreme Court brief, persuade a client on the telephone, and eat a roast beef sandwich—all at the same time."

Chaffetz never truly retired. Even into his nineties, he continued to advise his partners, going to the office regularly, including the day before his death. Jack Levin, a senior partner of Kirkland & Ellis, said that the partners and clients of the firm will best remember Chaffetz "for his uncanny judgment, his unbridled optimism and his unflagging perseverance." ■

Mr. Kempf is Executive Vice President, Chief Legal Officer, and Secretary of Morgan Stanley Dean Witter. In 1965, Hammond E. Chaffetz recruited him to join Kirkland & Ellis, where they worked together closely for the following thirty-five years.