/*We continue with the dissenting opinions in the Omni case. */
Justice Stevens, with whom Justice White and Justice Marshall join, dissenting.

Section 1 of the Sherman Act provides in part: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U. S. C. MDRV 1 (emphasis added). Although we have previously recognized that a completely literal interpretation of the word "every" cannot have been intended by Congress, {1} the Court today carries this recognition to an extreme by deciding that agreements between municipalities, or their officials, and private parties to use the zoning power to confer exclusive privileges in a particular line of commerce are beyond the reach of MDRV 1. History, tradition, and the facts of this case all demonstrate that the Court's attempt to create a "better" and less inclusive Sherman Act, cf. West Virginia University Hospitals, Inc. v. Casey, --- U. S. --- (1991) (slip op., at 17) is ill advised.

I

As a preface to a consideration of the "state action" and socalled "Noerr-Pennington" exemptions to the Sherman Act, it is appropriate to remind the Court that one of the classic common-law examples of a prohibited contract in restraint of trade involved an agreement between a public official and a private party. The public official -- the Queen of England -- had granted one of her subjects a monopoly in the making, importation, and sale of playing cards in order to generate revenues for the crown. A competitor challenged the grant in The Case of Monopolies, 11 Co. Rep. 84, 77 Eng. Rep. 1260 (Q.B. 1602), and prevailed. Chief Justice Popham explained on behalf of the bench:

> "The Queen was . . . deceived in her grant; for the Queen . . . intended it to be for the weal public, and it will be employed for the private gain of the patentee, and for the prejudice of the weal public; moreover the Queen meant that the abuse should be taken away, which shall never be by this patent, but potius the abuse will be increased for the private benefit of the patentee, and therefore . . . this grant is void jure Regio." Id., at 87a; 77 Eng. Rep., at 1264.

In the case before us today, respondent alleges that the city of Columbia, South Carolina, has entered into a comparable agreement to give respondent a monopoly in the sale of billboard advertising. After a three-week trial, a jury composed of citizens of the vicinage found that, despite the city fathers' denials, there was indeed such an agreement, presumably motivated in part by past favors in the form of political advertising, in part by friendship, and in part by the expectation of a beneficial future relationship -- and in any case, not exclusively by a concern for the general public interest. {2}
Today the Court acknowledges the anticompetitive consequences of this and similar agreements but decides that they should be exempted from the coverage of the Sherman Act because it fears that enunciating a rule that allows the motivations of public officials to be probed may mean that innocent municipal officials may be harassed with baseless charges. The holding evidences an unfortunate lack of confidence in our judicial system and will foster the evils the Sherman Act was designed to eradicate.

/* The idea being that a jury and then Judge behind that can divine between the cases in which

there is a form of "bribery" and where there is just a decision between competing public policy concerns. */

II

There is a distinction between economic regulation, on the one hand, and regulation designed to protect the public health, safety, and environment. In antitrust parlance a "regulated industry" is one in which decisions about prices and output are made not by individual firms, but rather by a public body or a collective process subject to governmental approval. Economic regulation of the motor carrier and airline industries was imposed by the Federal Government in the 1930s; the "deregulation" of those industries did not eliminate all the other types of regulation that continue to protect our safety and environmental concerns.

The antitrust laws reflect a basic national policy favoring free markets over regulated markets. {3} In essence, the Sherman Act prohibits private unsupervised regulation of the prices and output of goods in the marketplace. That prohibition is inapplicable to specific industries which Congress has exempted from the antitrust laws and subjected to regulatory supervision over price and output decisions. Moreover, the so-called "state action" exemption from the Sherman Act reflects the Court's understanding that Congress did not intend the statute to preempt a State's economic regulation of commerce within its own borders.

The contours of the state action exemption are relatively well-defined in our cases. Ever since our decision in Olsen v. Smith, 195 U. S. 332 (1904), which upheld a Texas statute fixing the rates charged by pilots operating in the Port of Galveston, it has been clear that a State's decision to displace competition with economic regulation is not prohibited by the Sherman Act. Parker v. Brown, 317 U. S. 341 (1943), the case most frequently identified with the state action exemption, involved a decision by California to substitute sales quotas and price control -- the purest form of economic regulation -- for competition in the market for California raisins.

In Olsen, the State itself had made the relevant pricing decision. In Parker, the regulation of the marketing of California's 1940 crop of raisins was administered by state officials. Thus, when a state agency, or the State itself, engages in economic regulation, the Sherman Act is inapplicable. Hoover v. Ronwin, 466 U. S. 558, 568-569 (1984); Bates v. State Bar of Arizona, 433 U. S. 350, 360 (1977).

Underlying the Court's recognition of this state action exemption has been respect for the fundamental principle of federalism. As we stated in Parker, 317 U. S., at 351, "In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress."

However, this Court recognized long ago that the deference due States within our federal system does not extend fully to conduct undertaken by municipalities. Rather, all sovereign authority "within the geographical limits of the United States" resides with "the Government of the United States, or [with] the States of the Union. There exist within the broad domain of sovereignty but these two. There may be cities, counties, and other organized bodies with limited legislative functions, but they are all derived from, or exist in, subordination to one or the other of these."

United States v. Kagama, 118 U. S. 375, 379 (1886).

Unlike States, municipalities do not constitute bedrocks within our system of federalism. And also unlike States, municipalities are more apt to promote their narrow parochial interests "without regard to extraterritorial impact and regional efficiency." Lafayette v. Louisiana Power & Light Co., 435 U. S. 389, 404 (1978); see also The Federalist No. 10 (J. Madison) (describing the greater tendency of smaller societies to promote oppressive and narrow interests above the common good). "If municipalities were free to make economic choices counseled solely by their own parochial interests and without regard to their anticompetitive effects, a serious chink in the armor of antitrust protection would be introduced at odds with the comprehensive national policy Congress established." Lafayette v. Louisiana Power & Light Co., 435 U. S., at 408. Indeed, "[i]n light of the serious economic dislocation which could result if cities were free to place their own parochial interests above the Nation's economic goals reflected in the antitrust laws, . . . we are especially unwilling to presume that Congress intended to exclude anticompetitive municipal action from their reach." Id., at 412-413. {4}

/* Which is a quotation directly contrary to the majority's point. The jury and court found that the cities action were not even legal under South Carolina law, therefore, the preservation of STATE rights is not advanced by the majority opinion. */

Nevertheless, insofar as municipalities may serve to implement state policies, we have held that economic regulation administered by a municipality may also be exempt from Sherman Act coverage if it is enacted pursuant to a clearly articulated and affirmatively expressed state directive "to replace competition with regulation." Hoover, 466 U. S., at 569. However, the mere fact that a municipality acts within its delegated authority is not sufficient to exclude its anticompetitive behavior from the reach of the Sherman Act. "Acceptance of such a proposition -- that the general grant of power to enact ordinances necessarily implies state authorization to enact specific anticompetitive ordinances -- would wholly eviscerate the concepts of `clear articulation and affirmative expression' that our precedents require." Community Communications Co. v. Boulder, 455 U.S. 40, 56 (1982).

Accordingly, we have held that the critical decision to substitute economic regulation for competition is one that must be made by the State. That decision must be articulated with sufficient clarity to identify the industry in which the State intends that economic regulation shall replace competition. The terse statement of the reason why the municipality's actions in Hallie v. Eau Claire, 471 U. S. 34 (1985), was exempt from the Sherman Act illustrates the point: "They were taken pursuant to a clearly articulated state policy to replace competition in the provision of sewage services with regulation." Id., at 47. {5}

III

Today the Court adopts a significant enlargement of the state action exemption. The South Carolina statutes that confer zoning authority on municipalities in the State do not articulate any state policy to displace competition with economic regulation in any line of commerce or in any specific industry. As the Court notes, the state statutes were expressly adopted to promote the "`health, safety, morals or the general welfare of the community,'" see ante, at 4-5, n. 3. Like Colorado's grant of "home rule" powers to the city of Boulder, they are simply neutral on the

question whether the municipality should displace competition with economic regulation in any industry. There is not even an arguable basis for concluding that the State authorized the city of Columbia to enter into exclusive agreements with any person, or to use the zoning power to protect favored citizens from competition. {6} Nevertheless, under the guise of acting pursuant to a state legislative grant to regulate health, safety, and welfare, the city of Columbia in this case enacted an ordinance that amounted to economic regulation of the billboard market; as the Court recognizes, the ordinance "obviously benefited COA, which already had its billboards in place . . . [and] severely hindered Omni's ability to compete." Ante, at 2.

Concededly, it is often difficult to differentiate economic regulation from municipal regulation of health, safety, and welfare. "Social and safety regulation have economic impacts, and economic regulation has social and safety effects." D. Hjelmfelt, Antitrust and Regulated Industries 3 (1985). It is nevertheless important to determine when purported general welfare regulation in fact constitutes economic regulation by its purpose and effect of displacing competition. "An example of economic regulation which is disguised by another stated purpose is the limitation of advertising by lawyers for the stated purpose of protecting the public from incompetent lawyers. Also, economic regulation posing as safety regulation is often encountered in the health care industry." Id., at 3-4.

In this case, the jury found that the city's ordinance -- ostensibly one promoting health, safety, and welfare -- was in fact enacted pursuant to an agreement between city officials and a private party to restrict competition. In my opinion such a finding necessarily leads to the conclusion that the city's ordinance was fundamentally a form of economic regulation of the billboard market rather than a general welfare regulation having incidental anticompetitive effects. Because I believe our cases have wisely held that the decision to embark upon economic regulation is a nondelegable one that must expressly be made by the State in the context of a specific industry in order to qualify for state action immunity, see, e. g., Olsen v. Smith, 195 U. S. 332 (1904) (Texas pilotage statutes expressly regulated both entry and rates in the Port of Galveston); Parker v. Brown, 317 U. S. 341 (1943) (California statute expressly authorized the raisin market regulatory program), I would hold that the city of Columbia's economic regulation of the billboard market pursuant to a general state grant of zoning power is not exempt from antitrust scrutiny. {7}

Underlying the Court's reluctance to find the city of Columbia's enactment of the billboard ordinance pursuant to a private agreement to constitute unauthorized economic regulation is the Court's fear that subjecting the motivations and effects of municipal action to antitrust scrutiny will result in public decisionmaking being "made subject to ex post facto judicial assessment of `the public interest.' " Ante, at 11. That fear, in turn, rests on the assumption that "it is both inevitable and desirable that public officials often agree to do what one or another group of private citizens urges upon them." Ante, at 9.

The Court's assumption that an agreement between private parties and public officials is an "inevitable" precondition for official action, however, is simply wrong. {8} Indeed, I am persuaded that such agreements are the exception rather than the rule, and that they are, and should be, disfavored. The mere fact that an official body adopts a position that is advocated by a private lobbyist is plainly not sufficient to establish an agreement to do so. See Fisher v. Berkeley, 475 U. S. 260, 266-267 (1986); cf. Theatre Enterprises, Inc. v. Paramount Film

Distributing Corp., 346 U.S. 537, 541 (1954). Nevertheless, in many circumstances, it would seem reasonable to infer -- as the jury did in this case -- that the official action is the product of an agreement intended to elevate particular private interests over the general good.

In this case, the city took two separate actions that protected the local monopolist from threatened competition. It first declared a moratorium on any new billboard construction, despite the city attorney's advice that the city had no power to do so. When the moratorium was invalidated in state court litigation, it was replaced with an apparently valid ordinance that clearly had the effect of creating formidable barriers to entry in the billboard market. Throughout the city's decisionmaking process in enacting the various ordinances, undisputed evidence demonstrated that Columbia Outdoor Advertising had met with city officials privately as well as publicly. As the Court of Appeals noted: "Implicit in the jury verdict was a finding that the city was not acting pursuant to the direction or purposes of the South Carolina statutes but conspired solely to further COA's commercial purposes to the detriment of competition in the billboard industry." 891 F. 2d 1127, 1133 (CA4 1989).

Judges who are closer to the trial process than we are do not share the Court's fear that juries are not capable of recognizing the difference between independent municipal action and action taken for the sole purpose of carrying out an anticompetitive agreement for the private party. {9} See, e. g., In re Japanese Electronic Products Antitrust Litigation, 631 F. 2d 1069, 1079 (CA3 1980) ("The law presumes that a jury will find facts and reach a verdict by rational means. It does not contemplate scientific precision but does contemplate a resolution of each issue on the basis of a fair and reasonable assessment of the evidence and a fair and reasonable application of the relevant legal rules"). Indeed, the problems inherent in determining whether the actions of municipal officials are the product of an illegal agreement are substantially the same as those arising in cases in which the actions of business executives are subjected to antitrust scrutiny. {10}

The difficulty of proving whether an agreement motivated a course of conduct should not in itself intimidate this Court into exempting those illegal agreements that are proven by convincing evidence. Rather, the Court should, if it must, attempt to deal with these problems of proof as it has in the past -- through heightened evidentiary standards rather than through judicial expansion of exemptions from the Sherman Act. See, e. g., Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U. S. 574 (1986) (allowing summary judgment where evidence of a predatory pricing conspiracy in violation of the Sherman Act was founded largely upon circumstantial evidence); Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 768 (1984) (holding that a plaintiff in a vertical price-fixing case must produce evidence which "tends to exclude the possibility of independent action").

Unfortunately, the Court's decision today converts what should be nothing more than an anticompetitive agreement undertaken by a municipality that enjoys no special status in our federalist system into a lawful exercise of public decisionmaking. Although the Court correctly applies principles of federalism in refusing to find a "conspiracy exception" to the Parker state action doctrine when a State acts in a nonproprietary capacity, it errs in extending the state action exemption to municipalities that enter into private anticompetitive agreements under the guise of acting pursuant to a general state grant of authority to regulate health, safety, and welfare. Unlike the previous limitations this Court has imposed on Congress' sweeping mandate in

MDRV 1, which found support in our common-law traditions or our system of federalism, see n. 1, supra, the Court's wholesale exemption of municipal action from antitrust scrutiny amounts to little more than a bold and disturbing act of judicial legislation which dramatically curtails the statutory prohibition against "every" contract in restraint of trade. {11}

IV

Just as I am convinced that municipal "lawmaking that has been infected by selfishly motivated agreement with private interests," ante, at 17, is not authorized by a grant of zoning authority, and therefore not within the state action exemption, so am I persuaded that a private party's agreement with selfishly motivated public officials is sufficient to remove the antitrust immunity that protects private lobbying under Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U. S. 127 (1961), and Mine Workers v. Pennington, 381 U. S. 657 (1965). Although I agree that the "sham" exception to the Noerr-Pennington rule exempting lobbying activities from the antitrust laws does not apply to the private petitioner's conduct in this case for the reasons stated by the Court in Part III of its opinion, I am satisfied that the evidence in the record is sufficient to support the jury's finding that a conspiracy existed between the private party and the municipal officials in this case so as to remove the private petitioner's conduct from the scope of NoerrPennington antitrust immunity. Accordingly, I would affirm the judgment of the Court of Appeals as to both the city of Columbia and Columbia Outdoor Advertising.

I respectfully dissent.

Note 1:

Construing the statute in the light of the common law concerning contracts in restraint of trade, we have concluded that only unreasonable restraints are prohibited.

"One problem presented by the language of MDRV 1 of the Sherman Act is that it cannot mean what it says. The statute says that `every' contract that restrains trade is unlawful. But, as Mr. Justice Brandeis perceptively noted, restraint is the very essence of every contract; read literally, MDRV 1 would outlaw the entire body of private contract law. Yet it is that body of law that establishes the enforceability of commercial agreements and enables competitive markets -- indeed, a competitive economy -- to function effectively.

"Congress, however, did not intend the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations. The legislative history makes it perfectly clear that it expected the courts to give shape to the statute's broad mandate by drawing on common-law tradition. The Rule of Reason, with its origins in common-law precedents long antedating the Sherman Act, has served that purpose. . . . [The Rule of Reason] focuses directly on the challenged restraint's impact on competitive conditions." National Society of Professional Engineers v. United States, 435 U. S. 679, 687-688 (1978) (footnotes omitted).

We have also confined the Sherman Act's mandate by holding that the independent actions of the sovereign States and their officials are not covered by the language of the Act. Parker v. Brown,

317 U. S. 341 (1943).

Note 2:

The jury returned its verdict pursuant to the following instructions given by the District Court:

"So if by the evidence you find that that person involved in this case procured and brought about the passage of ordinances solely for the purpose of hindering, delaying or otherwise interfering with the access of the Plaintiff to the marketing area involved in this case . . . and thereby conspired, then, of course, their conduct would not be excused under the antitrust laws.

"So once again an entity may engage in . . . legitimate lobbying . . . to procure legislati[on] even if the motive behind the lobbying is anti competitive.

"If you find Defendants conspired together with the intent to foreclose the Plaintiff from meaningful access to a legitimate decision making process with regard to the ordinances in question, then your verdict would be for the Plaintiff on that issue." App. 81.

Note 3:

"The Sherman Act reflects a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. `The heart of our national economic policy long has been faith in the value of competition.' Standard Oil Co. v. FTC, 340 U. S. 231, 248. The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain -- quality, service, safety, and durability -- and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers. Even assuming occasional exceptions to the presumed consequences of competition, the statutory policy precludes inquiry into the question whether competition is good or bad." National Society of Professional Engineers, 435 U. S., at 695.

Note 4:

In Owen v. City of Independence, 445 U. S. 622 (1980), this Court recognized that "notwithstanding [42 U. S. C.] MDRV 1983's expansive language and absence of any express incorporation of common-law immunities, we have, on several occasions, found that a tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that `Congress would have specifically so provided had it wished to abolish the doctrine.' Pierson v. Ray, 386 U. S. 547, 555 (1967)." Id., at 637. Nevertheless, the Court refused to find a firmly established immunity enjoyed by municipal corporations at common law for the torts of their agents. "Where the immunity claimed by the defendant was well established at common law at the time [42 U. S. C.] MDRV 1983 was enacted, and where its rationale was compatible with the purposes of the Civil Rights Act, we have construed the statute to incorporate that immunity. But there is no tradition of immunity for municipal corporations, and neither history nor policy supports a construction of MDRV 1983 that would justify" according them such immunity. Id., at 638. See also Will v. Michigan Dept. of State Police, 491 U. S. 58, 70 (1989) ("States are protected by the Eleventh Amendment while municipalities are not . . .").

Note 5:

Contrary to the Court's reading of Hallie, our opinion in that case emphasized the industry-specific character of the Wisconsin legislation in explaining why the delegation satisfied the `clear articulation' requirement. At issue in Hallie was the town's independent decision to refuse to provide sewage treatment services to nearby towns -- a decision that had been expressly authorized by the Wisconsin legislation. 471 U. S., at 41. We wrote:

"Applying the analysis of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 (1978), it is sufficient that the statutes authorized the City to provide sewage services and also to determine the areas to be served." Id., at 42.

"Nor do we agree with the Towns' contention that the statutes at issue here are neutral on state policy. The Towns' attempt to liken the Wisconsin statutes to the Home Rule Amendment involved in Boulder, arguing that the Wisconsin statutes are neutral because they leave the City free to pursue either anticompetitive conduct or free-market competition in the field of sewage services. The analogy to the Home Rule Amendment involved in Boulder is inapposite. That Amendment to the Colorado Constitution allocated only the most general authority to municipalities to govern local affairs. We held that it was neutral and did not satisfy the `clear articulation' component of the state action test. The Amendment simply did not address the regulation of cable television. Under home rule the municipality was to be free to decide every aspect of policy relating to cable television, as well as policy relating to any other field of regulation of local concern. Here, in contrast, the State has specifically authorized Wisconsin cities to provide sewage services and has delegated to the cities the express authority to take action that foreseeably will result in anticompetitive effects. No reasonable argument can be made that these statutes are neutral in the same way that Colorado's Home Rule Amendment was." Id., at 43.

We rejected the argument that the delegation was insufficient because it did not expressly mention the foreseeable anticompetitive consequences of the city of Eau Claire's conduct, but we surely did not hold that the mere fact that incidental anticompetitive consequences are foreseeable is sufficient to immunize otherwise unauthorized restrictive agreements between cities and private parties.

Note 6:

The authority to regulate the " `location, height, bulk, number of stories and size of buildings and other structures,' " see ante, at 5, n. 3 (citation omitted), may of course have an indirect effect on the total output in the billboard industry, see ante, at 7, n. 4, as well as on a number of other industries, but the Court surely misreads our cases when it implies that a general grant of zoning power represents a clearly articulated decision to authorize municipalities to enter into agreements to displace competition in every industry that is affected by zoning regulation.

Note 7:

A number of Courts of Appeals have held that a municipality which exercises its zoning power to further a private agreement to restrain trade is not entitled to state action immunity. See, e. g.,

Westborough Mall, Inc. v. Cape Girardeau, 693 F. 2d 733, 746 (CA8 1982) ("Even if zoning in general can be characterized as `state action,' . . . a conspiracy to thwart normal zoning procedures and to directly injure the plaintiffs by illegally depriving them of their property is not in furtherance of any clearly articulated state policy"); Whitworth v. Perkins, 559 F. 2d 378, 379 (CA5 1977) ("The mere presence of the zoning ordinance does not necessarily insulate the defendants from antitrust liability where, as here, the plaintiff asserts that the enactment of the ordinance was itself a part of the alleged conspiracy to restrain trade").

Note 8:

No such agreement was involved in Hallie v. Eau Claire, 471 U. S. 34 (1985). In that case the plaintiffs challenged independent action -- the determination of the service area of the city's sewage system -- that had been expressly authorized by Wisconsin legislation. The absence of any such agreement provided the basis for our decision in Fisher v. Berkeley, 475 U. S. 260, 266-267 (1986) ("[t]he distinction between unilateral and concerted action is critical here . . . [t]hus, if the Berkeley Ordinance stabilizes rents without this element of concerted action, the program it establishes cannot run afoul of MDRV 1").

Note 9:

The instructions in this case, fairly read, told the jury that the plaintiff should not prevail unless the ordinance was enacted for the sole purpose of interfering with access to the market. See supra, at 3, n. 2. Thus, this case is an example of one of the "polar extremes," see ante, at 9, n. 5, that juries -- as well as Solomon -- can readily identify. The mixed motive cases that concern the Court should present no problem if juries are given instructions comparable to those given below. When the Court describes my position as assuming that municipal action that was not prompted "exclusively by a concern for the general public interest" is enough to create antitrust liability, ibid., it simply ignores the requirement that the plaintiff must prove that the municipal action is the product of an anticompetitive agreement with private parties. Contrary to our square holding in Fisher v. Berkeley, 475 U. S. 260 (1986), today the Court seems to assume that municipal action which is not entirely immune from antitrust scrutiny will automatically violate the antitrust laws.

Note 10:

"There are many obstacles to discovering conspiracies, but the most frequent difficulties are three. First, price-fixers and similar miscreants seldom admit their conspiracy or agree in the open. Often, we can infer the agreement only from their behavior. Second, behavior can sometimes be coordinated without any communication or other observable and reprehensible behavior. Third, the causal connection between an observable, controllable act -- such as a solicitation or meeting -- and subsequent parallel action may be obscure." 6 P. Areeda, Antitrust Law MDRV 1400, at 3-4 (1986).

See also Turner, The Definition of Agreement under the Sherman Act: Conscious Parallelism and Refusals to Deal, 75 Harv. L. Rev. 655 (1962) (discussing difficulties of condemning parallel anticompetitive action absent explicit agreement among the parties).

Note 11:

As the Court previously has noted:

"In 1972, there were 62,437 different units of local government in this country. Of this number 23,885 were special districts which had a defined goal or goals for the provision of one or several services, while the remaining 38,552 represented the number of counties, municipalities, and townships, most of which have broad authority for general governance subject to limitations in one way or another imposed by the State. These units may, and do, participate in and affect the economic life of this Nation in a great number and variety of ways. When these bodies act as owners and providers of services, they are fully capable of aggrandizing other economic units with which they interrelate, with the potential of serious distortion of the rational and efficient allocation of resources, and the efficiency of free markets which the regime of competition embodied in the antitrust laws is thought to engender." Lafayette v. Louisiana Power & Light Co., 435 U. S. 389, 407-408 (1978) (footnotes omitted).