

## Chapter 8

# What Do You Mean We Can't Do That? Antitrust Law Implications for Upstream Joint Development Arrangements

**Matthew C. Blickensderfer**  
*Frost Brown Todd LLC*  
Cincinnati, Ohio

**Kenneth J. Witzel**  
**Michael D. Brewster**  
*Frost Brown Todd LLC*  
Pittsburgh, Pennsylvania

**Jeffery R. Kramer**  
*Range Resources – Appalachia, LLC*  
Canonsburg, Pennsylvania<sup>1</sup>

### Synopsis

§ 8.01.	<b>Introduction and Background</b> .....	<b>210</b>
§ 8.02.	<i>Commonwealth of Pennsylvania v. Chesapeake Energy Corp.</i> .....	<b>211</b>
	[1] – The Antitrust Related Claims .....	211
	[2] – The UTPCPL.....	212
	[3] – The Opinion.....	214
	[4] – Issues Certified for Appeal.....	216
	[5] – The Appeal .....	216
§ 8.03.	<b>Antitrust Law Overview</b> .....	<b>217</b>
	[1] – Antitrust Penalties and Liability .....	217
	[2] – Restraints of Trade .....	218
§ 8.04.	<b>Joint Development Agreements</b> .....	<b>221</b>
	[1] – Introduction.....	221
	[2] – Common Provisions/Key Concepts .....	222
	[a] – Geographic Boundary .....	222
	[b] – Geological Interval .....	223
	[c] – Lease Acquisition .....	224

---

<sup>1</sup> The opinions expressed in this chapter are the authors' alone and should not be attributed to Frost Brown Todd LLC or Range Resources – Appalachia, LLC. Nothing in this chapter should be construed as legal advice.

	[d] — Participants’ Interests .....	224
	[e] — Information Sharing/Seismic .....	225
§ 8.05.	<b>Application of Antitrust Law to Joint Development Agreements .....</b>	<b>225</b>
§ 8.06.	<b>Practical Considerations.....</b>	<b>227</b>
	[1] — The Primary Object .....	227
	[2] — Controlling the Message .....	229
	[3] — Other Competitors .....	229
	[4] — Avoid a “Divide and Conquer” Approach .....	229
	[5] — “Out of Bounds” is Off-Limits.....	230
	[6] — Avoid Below-Market Ceilings.....	230
	[7] — Penny Wise, Pound Foolish .....	231

**§ 8.01. Introduction and Background.**

In December 2017, the Bradford County Court of Common Pleas issued a decision in the case of *Commonwealth of Pennsylvania v. Chesapeake Energy Corp., et al.*,<sup>2</sup> suggesting that oil and gas operators may have violated Pennsylvania’s common law on antitrust by entering into and acting under a joint development arrangement as to a specific geographical area that, allegedly, caused signing bonuses and royalty percentages for new oil and gas leases in the area to plummet.

The decision provides an excellent starting point for discussing the basic principles governing antitrust law and how they apply to oil and gas joint development arrangements. As discussed below, operators should exercise caution when entering into or acting under joint development agreements that could be construed as attempts to decrease or eliminate competition for new leases in a given geographical area.

---

<sup>2</sup> *Commonwealth of Pennsylvania v. Chesapeake Energy Corp.*, No. 2015IR0069 (Bradford Cty. Dec. 15, 2017) [hereinafter cited as *Chesapeake Energy*]. The case was the subject of an article published earlier this year in the Energy Law Advisor. See Kenneth J. Witzel, *One to Keep a Close Eye On — Bradford County Permits the Pennsylvania Attorney General to Proceed with Novel Claims Against Two Oil and Gas Operators*, THE ENERGY LAW ADVISOR, March 2018.