

AN FTC GUIDE TO DEALINGS WITH COMPETITORS

GROUP BOYCOTTS

ANY COMPANY MAY, ON ITS OWN, refuse to do business with another firm, but an agreement among competitors not to do business with targeted individuals or businesses may be an illegal boycott, especially if the group of competitors working together has market power. For instance, a group boycott may be used to implement an illegal price-fixing agreement. In this scenario, the competitors agree not to do business with others except on agreed-upon terms, typically with the result of raising prices. An independent decision not to offer services at prevailing prices does not raise antitrust concerns, but an agreement among competitors not to offer services at prevailing prices as a means of achieving an agreed-upon (and typically higher) price does raise antitrust concerns.

EXAMPLE: The FTC has challenged the actions of several groups of competing health care providers, such as doctors, charging that their refusal to deal with insurers or other purchasers on other than jointly-agreed upon terms amounted to an illegal group boycott. For a description of these actions, read the Overview of FTC Antitrust Actions in Health Care Services and Products. The FTC also successfully challenged the group boycott of an association of competing trial lawyers to stop providing legal services to the District of Columbia for indigent criminal defendants until the District increased the fees it paid for those services. The Supreme Court upheld the FTC's ruling in this case. 493 U.S. 411 (1990).

Boycotts to prevent a firm from entering a market or to disadvantage an existing competitor are also illegal. FTC cases have involved a group of physicians charged with using a boycott to prevent a managed care organization from establishing a competing health care facility, and retailers who used a boycott to force manufacturers to limit sales through a competing catalog vendor.

AN AGREEMENT AMONG COMPETITORS NOT TO OFFER SERVICES AT PREVAILING PRICES AS A MEANS OF ACHIEVING AN AGREED-UPON (AND TYPICALLY HIGHER) PRICE DOES RAISE ANTITRUST CONCERNS.

Boycotts targeting "price cutters" are especially likely to raise antitrust concerns, and may be achieved with the help of a common dealer or supplier. This was the case in the FTC's action against a national toy retailer that obtained parallel agreements from several toy manufacturers not to supply low-priced "club" stores with a full range of toys. As a result of the supplier boycott organized by the large retailer, consumers had a difficult time comparing the value of different toys at different retail outlets, the kind of comparison shopping which could have driven retailers to lower their toy prices.

Boycotts for other reasons may be illegal if the boycott restricts competition and lacks a business justification. The FTC charged a group of California auto dealers with using an illegal boycott to prevent a newspaper from telling consumers how to use wholesale price information when shopping for cars. The FTC proved that the boycott affected price competition and had no reasonable justification.



Q: I AM A PURCHASING MANAGER AND I HAVE PROBLEMS WITH A SUPPLIER WHO IS ALWAYS LATE WITH DELIVERIES AND WON'T RETURN MY PHONE CALLS. I'VE HEARD THAT OTHER COMPANIES HAVE STOPPED DOING BUSINESS WITH HIM. CAN I RECOMMEND THAT MY COMPANY FIND ANOTHER SUPPLIER, TOO?

A: A business can always unilaterally choose its business partners. As long as it is not part of an agreement with competitors to stop doing business with a targeted supplier, the decision not to deal with a supplier should not raise antitrust concerns.

