AN FTC GUIDE TO

Single Firm Conduct

Exclusive Supply or Purchase Agreements

EXCLUSIVE CONTRACTS CAN BENEFIT COMPETITION in the market by ensuring supply sources or sales outlets, reducing contracting costs, or creating dealer loyalty. As discussed in the Fact Sheets on Dealings in the Supply Chain, exclusive contracts between manufacturers and suppliers, or between manufacturers and dealers, are generally lawful because they improve competition among the brands of different manufacturers *(interbrand competition)*. However, when the firm using exclusive contracts is a monopolist, the focus shifts to whether those contracts impede efforts of new firms to break into the market or of smaller existing firms to expand their presence. The monopolist might try to impede the entry or expansion of new competitors because that competition would erode its market position. The antitrust laws condemn certain actions of a monopolist that keep rivals out of the market or prevent new products from reaching consumers. The potential for harm to competition from exclusive contracts increases with: 1) the length of the contract term; 2) the more outlets or sources covered; and 3) the fewer alternative outlets or sources not covered.

EXCLUSIVE SUPPLY CONTRACTS prevent a supplier from selling inputs to another buyer. If one buyer has a monopoly position and obtains exclusive supply contracts so that a newcomer may not be able to gain the inputs it needs to compete with the monopolist, the contracts can be seen as an exclusionary tactic in violation of Section 2 of the Sherman Act. For example, the FTC stopped a large drug maker from enforcing 10-year exclusive supply agreements for an essential ingredient to make its medicines in return for which the suppliers would have received a percentage of profits from the drug. The FTC found that the drug maker used the exclusive supply agreements to keep other drug makers from the market by controlling access to the essential ingredient. The drug maker was then able to raise prices for its medicine by more than 3000 percent.

EXCLUSIVE PURCHASE AGREEMENTS, requiring a dealer to sell the products of only one manufacturer, can have similar effects on a new manufacturer, preventing it from getting its products into enough outlets so that consumers can compare its new products to those of the leading manufacturer. For instance, the DOJ challenged exclusive dealing contracts used by a manufacturer of artificial teeth with a market share of at least 75 percent. These exclusive contracts with key dealers effectively blocked the smaller rivals from getting their teeth sold to dental labs, and ultimately, used by dental patients. In similar situations, newcomers may face significant additional costs and time to induce dealers to give up the exclusive agreements with the leading firm, or to establish a different means of getting its product before consumers. The harm to consumers in these cases is that the monopolist's actions are preventing the market from becoming more competitive, which could lead to lower prices, better products or services, or new choices.

ILLEGAL MONOPOLIZATION MAY INCLUDE SUCH THINGS AS EXCLUSIVE SUPPLY OR PURCHASE AGREEMENTS, TYING THE SALE OF TWO PRODUCTS, PREDATORY PRICING, AND REFUSAL TO DEAL.