AN FTC GUIDE TO

Single Firm Conduct

Refusal To Deal

IN GENERAL, ANY BUSINESS–EVEN A MONOPOLIST–may choose its business partners. However, under certain circumstances, there may be limits on this freedom for a firm with market power. As courts attempt to define those limited situations when a firm with market power may violate antitrust law by refusing to do business with other firms, the focus is on how the refusal to deal helps the monopolist maintain its monopoly, or allows the monopolist to use its monopoly in one market to attempt to monopolize another market.

SOMETIMES THE REFUSAL to deal is with customers or suppliers, with the effect of preventing them from dealing with a rival: "I refuse to deal with you if you deal with my competitor." For example, in a case from the 1950's, the only newspaper in a town refused to carry advertisements from companies that were also running ads on a local radio station. The newspaper monitored the radio ads and terminated its ad contracts with any business that ran ads on the radio. The Supreme Court found that the newspaper's refusal to deal with businesses using the radio station strengthened its dominant position in the local advertising market and threatened to eliminate the radio station as a competitor.

One of the most unsettled areas of antitrust law has to do with the duty of a monopolist to deal with its competitors. In general, a firm has no duty to deal with its competitors. In fact, imposing obligations on a firm to do business with its rivals is at odds with other antitrust rules that discourage agreements among competitors that may unreasonably restrict competition. But courts have, in some circumstances, found antitrust liability when a firm with market power refused to do business with a competitor. For instance, if the monopolist refuses to sell a product or service to a competitor that it makes available to others, or if the monopolist has done business with the competitor and then stops, the monopolist needs a legitimate business reason for its policies. Courts will continue to develop the law in this area.

For industries that are regulated, companies may be required by other laws to deal on non-discriminatory terms with other businesses, including competitors and potential competitors. Here, the obligations of a regulated firm to cooperate may be spelled out in a statute or regulations that are enforced by a local, state, or federal agency. The Supreme Court recently found that, for firms that are obliged to share assets with competitors under a regulatory scheme at regulated rates, the antitrust laws do not impose additional duties. That case involved a local telephone company that was required by federal law to provide access to its system, including support services, in a reasonable manner to firms wanting to enter the business of providing local phone service. The Supreme Court dismissed an entrant's antitrust claims, finding that the antitrust laws do not impose additional duties to share assets beyond those required by a comprehensive set of regulations.

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