

# Aftermarkets and Antitrust

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# What is an Aftermarket?

- A “secondary” product used in conjunction with a “primary” product.
  - A “complement” not a “substitute”
- Examples:
  - printers and ink
  - equipment and “service”
  - trademarks and ingredients

## What is the Antitrust Concern?

- “Lock in” – once customer commits to primary product, they are vulnerable to exploitation in purchases of the secondary product.
- Lock in requires Switching Costs for the primary product.
  - expensive durable goods
  - complementary investments
  - training
- Reduction in competition in the secondary market – equally (or more) efficient secondary market firms unable to compete.

# How Can Firm's Control Their Aftermarket?

- By contract (exclusive dealing).
- By warranty restrictions.
- By controlling access (passwords, copyrights).
- By technological design and/or non-disclosure of technical specifications.
- By pricing (bundled discounts).

# How to Think about Aftermarkets

- As Tying
- As Exclusive Dealing
- As Monopolization/Attempted Monopolization
- As Bundled Discounts

# Aftermarkets as Tying

- Many aftermarket issues look like tying.

## Jefferson Parish test.

1. Separate Products
  2. Coercion or a Forced Sale
  3. Market Power in the Tying Product
  4. Not Insubstantial Amount of Commerce
    - (\*) Anticompetitive Effects in the Tied Market
- 1 and 2 may be the hurdle in an aftermarket matter.
    - Did customer know of the aftermarket restriction?
  - Tying claim only viable if seller has market power in primary market – the key distinction of an aftermarket case is that market power in the primary market may not be necessary.

# Aftermarkets as Exclusive Dealing

- Aftermarket restraints amount to an exclusivity requirement (*de facto* or *de jure*).
  - Is enough of the market foreclosed?
- How many customers buy the secondary product from the primary product seller?
- What is the minimum viable (efficient) scale of the single-product secondary product firm?

# Aftermarkets as Monopolization

- Aftermarket cases can be general monopolization/attempt cases. These cases may succeed where tying or exclusive dealing cases fail.
- Monopolization
  - Monopoly power in the relevant market
    - Could be primary or secondary market
  - Improper acquisition or maintenance of that market power
- Does the aftermarket restriction protect primary market market power?
- Is the secondary market a “relevant market.”

## Aftermarkets as Monopolization (cont)

- Attempted Monopolization
- Exclusionary or predatory practices with an intent to monopolize.
- Dangerous probability of success.
- Is the secondary market a “relevant market.”

## “System” or “Component” Competition

- Fully informed consumers should consider lifecycle costs when making initial purchasing decisions in the primary market. Primary market competition should discipline aftermarket opportunism.
  - “Opt in” not “Lock in”
- Key Question: was the aftermarket restriction known/in place at the time customers made the primary good choice?
  - Even if there is a “change in policy”, reputation effects on the primary market should discipline aftermarket opportunism.
- Key Question: What is the size of the installed base relative to the size of the new sales in the primary market?

# Lessons

- Do you sell a product that is used with other products?
- Do you sell these other products?
- Do you face competition in the sale of those other products?
- Does the fact that you sell the primary product give you an advantage in selling the secondary product (by contract, by pricing, by technological compatibility)?

## Who might be at risk?

- Equipment manufacturers (office, medical, production)
- 
- Durable/disposable product combinations
- 
- “Legacy” suppliers w large installed base but few new customers

## Case Cites

- *Kodak*
- *Heaton*
- *Illinois Tool Works*
- *Ikon*