Exclusive Dealing

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FTC/DOJ Hearings: Single-Firm Conduct–Exclusive Dealing,
November 15, 2006
Exclusive dealing is very common

- Häagen Dazs
- Car dealers
- Gas stations
- Beer distribution
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Old rule:

- Exclusion
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≡ violation
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Exclusion (*not* foreclosure)
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Vertical restraints create property rights.
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  - Exclusive territories.
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- Exclusive dealing.
  - Creates a property right for customers the supplier pulls in.
For territories and RPM, supplier creates and polices a restraint for somebody else.
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- For exclusive dealing, the property right is for the creator and monitor of the right.
Manufacturer invests in product, reputation, to bring in customers.
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• Manufacturer confers its customers onto dealers cloaked in its reputation.
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• Customer cost is included in the charge for the product.
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- Manufacturer confers its customers onto dealers cloaked in its reputation.
- Customer cost is included in the charge for the product.
- Dealer avoids charge through “bait-and-switch.”
Can you hear me now? Hearing aids.

Counterfactual hard to prove until it is too late.

Manufacturers did not recognize role of exclusive dealing, ended up corpses.

What's the Evidence

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Counterfactual hard to prove until it is too late. Manufacturers did not recognize role of exclusive dealing, ended up corpses.
Exclusive dealing problems come from lock-in through contracts.

- Aghion-Bolton
- Ramseyer, Rasmussen, and Wiley; Segal and Whinston

No contract, no problem.
We appreciate the potential reply that it is impossible to say that a given practice “never” could injure consumers. A creative economist could imagine unusual combinations of costs, elasticities, and barriers to entry that would cause injury in the rare situation. But antitrust law applies rules of per se legality to practices that almost never injure consumers.

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Benefits are hard to prove.

Default rule determines outcome.

"Possibility" makes exclusion the default rule.

Result? Exclusion plus "dominance\equiv\text{violation.}

D\'\text{e}j\'\text{u} vu: Back to where we started.

Beltone Electronics—only remaining dealer-based supplier.
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- Require a contract.
- Require a showing of foreclosure.
“Possibility” results basically all depend on contracts.

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- Require a showing of foreclosure.
- Then, and only then, do the trade-off.