

A yellow right-angled triangle pointing downwards and to the right.

BLOGS
Antitrust

Competitors' Cross-Supply Agreement Deemed Anticompetitive for Antitrust Claims and Procompetitive Under Relationship Statute

The Michigan Court of Appeals recently affirmed a judgment in favor of a dealer on its claims that the manufacturer of the products at issue had violated both the Michigan Antitrust Reform Act (“MARA”) and the Michigan Farm and Utility Equipment Act (“MFUEA”) by increasing competition in the dealer’s exclusive territory. *Manitou N. Am., Inc. v. McCormick Intg, LLC*, 2016 WL 439354 (Mich. Ct. App. Feb. 2, 2016). Manitou, a manufacturer and supplier of telescoping boom lifts, or “telehandlers,” entered into a dealership agreement with McCormick, under which McCormick was to become an exclusive dealer of Manitou’s products in a three-state area. McCormick alleged that Manitou breached the agreement by making direct sales of the telehandlers to another dealer and by entering into agreements with two of Manitou’s competitors. One of the competitor agreements was a cross-supply arrangement under which Manitou and its competitor Gehl agreed to supply one another with each other’s products, in some cases to manufacture products designed by the other, and to market products under both manufacturers’ trademarks. The ostensible purpose of this arrangement was to increase the overall distribution of both parties’ products. The supply agreement also contained a provision for Manitou and Gehl to refrain from contracting with the other party’s authorized dealers. As a result, the supply agreement resulted in Gehl dealers selling both Manitou and Gehl products in competition with McCormick, while effectively preventing McCormick from selling Gehl products because as an authorized Manitou dealer, McCormick was not permitted to contract with Gehl.

In affirming, the appellate court determined the supply agreement between Manitou and Gehl constituted a horizontal agreement in restraint of trade, in that it involved an “agreement between manufacturers/distributors at the same level of the market structure not to compete against each other relative to certain telehandlers and particular dealers.” As such, the supply agreement constituted a per se violation of the MARA. The court also found that McCormick had sufficiently alleged an “antitrust injury,” as required for the claim to proceed, because McCormick had alleged facts from which it could be inferred that the restraint resulted in both reduced selection of products by consumers and decreased sales by McCormick.

In an interesting twist, the court also noted that the supply agreement included procompetitive features—specifically, that it resulted in increased overall distribution of both Manitou and Gehl products through the parties’ respective

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com



dealer networks. This procompetitive feature of the supply agreement served as part of McCormick's MFUEA claim against Manitou, since it created more competitors for McCormick in its effort to sell Manitou products, despite having negotiated for an "exclusive" dealership. Thus, the cross-supply agreement between competitors was both illegally procompetitive and illegally anticompetitive at the same time.