BLOGS
Antitrust

Court Finds Exclusivity Agreements with Distributors May Give Rise to Anticompetitive Conduct Claim Against Dominant Manufacturer

The United States District Court for the District of Delaware recently held that a manufacturer's use of exclusivity agreements with its distributors may support anticompetitive conduct for purposes of the Sherman and Clayton Acts. *Roxul USA, Inc. v. Armstrong World Indus., Inc*., 2018 WL 810143 (D. Del. Feb. 9, 2018). Armstrong World Industries is a dominant manufacturer in the ceiling tile market, controlling 55 percent of the market share. Roxul USA, one of only three companies that compete against Armstrong, brought suit alleging that Armstrong unlawfully maintained monopoly power in the ceiling tile market through its exclusivity arrangements with building material distributors. Armstrong moved to dismiss, arguing that its use of exclusivity agreements did not rise to the level of anticompetitive conduct.

The court denied the motion, allowing Roxul's claim to proceed. Although Armstrong's 55 percent market share was not, on its own, sufficient to allege monopoly power, other factors supported the claim. Specifically, Roxul alleged a high barrier of entry to the market and Armstrong's history of controlling prices. Despite an overall decrease in sales volume in the market, Roxul alleged that Armstrong was able to raise its prices and charge five percent over market. Roxul also claimed that Armstrong retaliated against distributors who violated the exclusivity provision. The court found that the totality of Armstrong's actions prevented possible competitors from entering the market and reduced consumer choice in the ceiling tile market. Roxul's claim was therefore permitted to proceed.

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