BLOGS

Antitrust

Eleventh Circuit Affirms FTC Finding That Manufacturer’s Exclusive Dealing Program Was Created to Maintain Monopoly Power

The United States Court of Appeals for the Eleventh Circuit has affirmed the Federal Trade Commission’s finding that McWane, Inc. violated Section 5 of the FTC Act when it developed an exclusive dealing program to maintain monopoly power in the domestic fittings market. *McWane, Inc. v. FTC*, 783 F.3d 814 (11th Cir. Apr. 15, 2015). The FTC initiated the enforcement action against McWane, a manufacturer of iron pipe fittings primarily used by municipal water authorities, for requiring exclusivity from its distributors. After a new manufacturer, Star Pipe Products, entered the domestic fittings market in 2009, McWane announced to its distributors that unless all domestic fittings were purchased from McWane, rebates would be forfeited and the distributors would be cut off from purchases for 12 weeks. An FTC administrative law judge found the program to be an illegal exclusive dealing policy. On a vote of 3-1, the FTC affirmed and ordered McWane to stop requiring exclusivity.

The appellate court affirmed, finding the FTC defined a relevant market, demonstrated a monopoly of power existed in that market, and showed McWane’s program constituted illegal maintenance of that monopoly power. The court agreed with the FTC that domestic and imported fittings constituted two separate markets based on price differences, distinct customer base, and lack of reasonable substitutes. The appellate court also found a monopoly existed, as evidenced by McWane’s ability to exclude competition, impact prices, and its overwhelming market share. Finally, the appellate court agreed that McWane intentionally tried to maintain its monopoly power. Even though the program was short term, its “practical effect” was to make it economically infeasible for distributors to switch to a competitor, which had a “probable effect” of substantially lessening competition in the market. McWane was hurt by evidence showing that it actually maintained its dominance even after increasing its prices, and by testimony from McWane executives that the program was deliberately created to freeze out Star from gaining a substantial market share.

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