



United States v. Dentsply International, Inc.

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Company Background

- For over a century, DENTSPLY International has been committed to providing the dental community with innovative, high quality, cost effective dental products. From our humble beginnings in 1899, the Company has grown to become the largest professional dental products company in the world. From our facilities in 22 nations on six continents, the Company distributes its dental products in over 100 countries under some of the most well established brand names in the dental industry. Worldwide, the profession now depends upon DENTSPLY for innovative new products that advance the practice of dentistry
 - Its artificial tooth business is considered as a “cash cow” whose profits are diverted to other operations of the company.
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Track Record

- Dentsply has long dominated the artificial teeth market, far outstripping its 12 rivals with a 75% share of revenues and 67% based on units sold – about 15 times larger than its next closest competitor, Ivoclar Vivadent Inc., which has 5 percent of the market
 - A 1996 report said that Dentsply's profits from teeth since 1990 had increased 32% from \$16.8 million to \$22.2 million
 - Dentsply has had a reputation for aggressive price increases in the market and has created a high price umbrella.
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Department of Justice Takes Action

- DOJ claims that exclusive agreements between Dentsply and its dealers violate Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act
 - Dentsply's agreements with dealers that they will lose the right to distribute Dentsply teeth if they begin to carry a competing brand of teeth ("Dealer Criterion 6")
 - Dentsply's agreements with new dealers to drop some or all competing brands of teeth they previously carried to gain the right to distribute Dentsply teeth in the first place
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Supply Chain

- ❑ direct distribution to dental laboratories
 - ❑ distribution through dental dealers
 - ❑ combination of direct distribution to dental laboratories and distribution through dental dealers
 - ❑ Dental laboratories construct dentures according to prescriptions and impressions provided by the dentist
 - ❑ Dental dealers distribute artificial teeth to dental laboratories and/or dentists
 - ❑ Dentsply sells its artificial teeth exclusively to independent dental dealers, which compete with each other on price to sell Dentsply's teeth to dental laboratories
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Initial Ruling

- Chief U.S. District Judge Sue L. Robinson of the District of Delaware concluded that while Dentsply's exclusivity policy was designed to exclude its rivals from the market, the government had failed to prove that competitors were barred from gaining a foothold in the market because direct sales to laboratories, the relevant consumer, was a viable method of doing business.
 - Robinson held that the DOJ failed to prove that Dentsply's exclusive agreements with dealers “forclose a substantial share or the market” or “present an unreasonable restraint on competition” because direct distribution to dental laboratories is not only viable, but in someways, advantageous.
 - Concluded that the DOJ failed to prove that Dentsply have been or could be successful in preventing new or potential competitors from gaining a foothold in the market
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Court takes bite out of false teeth monopoly

- ❑ 3rd U.S. Circuit Court of Appeals rules that Dentsply clearly possesses monopoly power - despite the fact that rivals are not entirely excluded from the market and some of their prices are higher - since it has maintained a 75 percent market share, established a "price umbrella" and used repeated aggressive price increases and exclusion of competitors from a major source of distribution
 - ❑ The appellate court found that Robinson erred by focusing on the "ultimate consumers" - the laboratories - and instead should have looked to all "customers" who purchased the teeth, a category that includes both dealers and laboratories
 - ❑ Dentsply's grip on its authorized dealers effectively choked off the market for artificial teeth, leaving only a small sliver for competitors. The district court erred when it minimized that situation and focused on a theoretical feasibility of success through direct access to the dental labs
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Basis

- At issue in the Justice Department's suit, which was filed in 1999, was a policy adopted by Dentsply in 1993 known as "Dealer Criterion 6," which said that authorized dealers "may not add further tooth lines to their product offering."
 - Senior U.S. Circuit Judge Joseph F. Weis Jr. said evidence demonstrated that, through the use of the exclusivity policy, Dentsply "has been able to exclude competitors from the dealers' network, a narrow, but heavily traveled channel to the dental laboratories."
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Basis (cont.)

- "By ensuring that the key dealers offer Dentsply teeth either as the only or dominant choice, Dealer Criterion 6 has a significant effect in preserving Dentsply's monopoly. It helps keep sales of competing teeth below the critical level necessary for any rival to pose a real threat to Dentsply's market share. As such, Dealer Criterion 6 is a solid pillar of harm to competition,"
- When one dealer considered adding two other tooth lines because of customers' demand, Dentsply "threatened to sever access not only to its teeth, but to other dental products as well," Weis said, and the dealer "yielded to that pressure."
- a Dentsply document containing a "reiteration" of Dealer Criterion 6 included such statements as "Block competitive distribution points." and "Tie-up dealers"



Conclusion

- In the future, those companies with large market shares that approach monopoly status would be well advised to take heed to the warnings of Dentsply that attempts to foreclose distribution channels to rivals invite close inspection, if not litigation, by the Government and/or competitors and will be viewed with suspicion by the 3rd Circuit. District courts are also well advised to view such conduct by monopolists as violative of Section 2, or risk reversal, even after a bench trial
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Reference

- Brooks, Mary. “Dentsply: Alleged Monopolist's Exclusive Contracts Held Not To Be a U.S. Antitrust Violation.” Mondaq Business Briefing, Nov 18, 2003
 - Duffy, Shannon. “Panel Finds False-Teeth Co. In Violation of Sherman Act.” The Legal Intelligencer, Feb 28, 2005
 - Hittinger, Carl W. and Donald E. Wieand. “3rd Circuit Sends Strong Message to Monopolists.” The Legal Intelligencer, April 4, 2005.
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