Dealings with Competitors

Market Division or Customer Allocation

PLAIN AGREEMENTS AMONG COMPETITORS to divide sales territories or assign customers are almost always illegal. These arrangements are essentially agreements not to compete: "I won't sell in your market if you don't sell in mine." The FTC uncovered such an agreement when two chemical companies agreed that one would not sell in North America if the other would not sell in Japan. Illegal market sharing may involve allocating a specific percentage of available business to each producer, dividing sales territories on a geographic basis, or assigning certain customers to each seller.

Q: I want to sell my business, and the buyer insists that I sign a non-compete clause? Isn't this illegal?

A: A limited non-compete clause is a common feature of deals in which a business is sold, and courts have generally permitted such agreements when they were ancillary to the main transaction, reasonably necessary to protect the value of the assets being sold, and limited in time and area covered. There are other situations, however, in which non-compete clauses may be anticompetitive. For instance, the FTC stopped the operator of dialysis clinics from buying five clinics and paying its competitor to close three more. The purchase agreement also contained a non-compete clause that prevented the seller from opening a new clinic in the same local area for five years, and required the seller to enforce non-compete clauses in its contracts with the medical directors of the closed facilities. In this situation, the non-compete clause prevented those doctors from serving as medical directors for any new clinic in the area and reduced the chance that a new clinic would open for five years. The FTC said the agreement to close the clinics, reinforced by the agreement not to compete for five years, was an illegal agreement to eliminate competition between rivals.

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