Published on *The National Law Review* https://natlawreview.com

Revisiting a Dominant Firm's Obligation Under the Antitrust Laws to Deal with a Rival

Article By:

E. John Steren

Patricia M. Wagner

One of the more difficult questions faced by a dominant firm is whether to do business with a rival. The general rule, premised on the principle that true competition affords everyone the ability to make decisions about whom and on what terms one will deal, remains that even a monopolist is free to choose the parties with whom it will deal, as well as the prices, terms, and conditions of that dealing.

But despite U.S. Supreme Court decisions reinforcing and limiting any exceptions to this rule, efforts to hold dominant firms to a different standard continue. Most recently, in denying a motion to dismiss, one court concluded that a dominant firm could be required to deal with a rival, despite legitimate business reasons not to, if (1) the dominant firm and its rival had previously and voluntarily engaged in a prior course of dealing, and (2) there was a refusal to deal with this rival on the same terms as other potential buyers. Furthermore, this court suggested that sacrificing short-term profits, a hallmark of "predatory conduct," may not be necessary to make out a successful refusal-to-deal claim if the refusal to deal was prompted by anticompetitive malice.

While it is unclear whether other courts will follow this minority and expansive view, actions by dominant firms will continue to draw close scrutiny under the antitrust laws. Market turmoil created by the COVID-19 pandemic will likely fuel claims by smaller competitors and new market entrants attacking all manner of activities engaged in by dominant market participants.

©2025 Epstein Becker & Green, P.C. All rights reserved.

National Law Review, Volume X, Number 149

Source URL:https://natlawreview.com/article/revisiting-dominant-firm-s-obligation-under-antitrust-laws-to-deal-rival