

## Refusals to Deal



## Other Issues

- Predatory Pricing
- **Refusals to Deal**
- Tie-in
- Mergers
- Cartels

## Refusals to Deal

- We generally have the right to deal with whom we choose. But sometimes this can get you into trouble.

## Some Examples

- Kodak V. Southern Photo Materials (1927)
  - Kodak tried to purchase Southern Photo Materials, a distributor. Southern refused to sell. Kodak then refused to sell to Southern at Wholesale. The Supreme Court found Kodak guilty of violating the Sherman Act, for the intent of its action was to monopolize the industry.

## Some Examples

- Kodak V. Southern Photo Materials (1927)
- Aspen Skiing v. Aspen Highlands Skiing (1985)
  - One firm owned three of four ski slopes at Aspen, and refused to cooperate in a joint marketing effort with the owner of the fourth. The court held that the defendant was motivated by a decision to avoid providing any benefit to the smaller rival, though it would have entailed no cost.

## Some Examples

- Kodak V. Southern Photo Materials (1927)
- Aspen Skiing v. Aspen Highlands Skiing (1985)
- *The Essential Business Facility* doctrine.
  - **I own an essential business facility and I unreasonably refuse to make it available to my competitors. My attempt must be monopolization.**

## Some Examples

- Kodak V. Southern Photo Materials (1927)
- Aspen Skiing v. Aspen Highlands Skiing (1985)
- Image v. Kodak (1992)
  - Kodak refused to sell parts for its photocopiers unless the owner used its repair service or self repair. The district court gave Kodak summary judgment, for Kodak did not have market power in photocopiers. The appeals court reversed the summary judgment, and the Supreme Court upheld the appeals court.

## Some other Examples

- I am a buyer for Wal-Mart. I walk into Nordstrom's and find an exclusive man's dress shirt on sale for \$70. I know that the wholesale price of the shirt is \$25, and know that I can sell the product for \$35 and make a generous profit. I call the maker and order 15,000 in various sizes. He refuses to sell to me. Can Wal-Mart sue the manufacturer for actions in restraint of trade?

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**Probably not. There is a good reason to sell a product only through exclusive stores. So, the manufacturer is probably OK.**  
**(Besides, it does not have a monopoly in shirts)**

## Some other Examples

- I have just purchased the McDonald's franchise in Beechwood Place. I notice that McDonald's does not sell Chicken McNuggets there, though Chick-O-Filet (or something like that), another store in the food court, sells the equivalent, and does quite well. My lease prohibits me from selling chicken. Is this clause in restraint of trade?

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**Probably not. A mall has a good reason to offer the consumer choice and allowing the sale of chicken products would probably wipe out the chicken store.**

## Some other Examples

- After purchasing the McDonald's franchise, I learn that I have to purchase all sorts of products such as mustard ketchup, etc, from the McDonald's corporation. I find many of these products available from local vendors at lower prices. Is the contract with McDonald's in restraint of trade?

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Probably not. McDonalds wants to maintain quality over all its stores.

End

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