

**Analysis to Aid Public Comment**  
*In the Matter of Transitions Optical, Inc., File No. 091-*

In 2008, approximately 18 to 20 percent of all corrective ophthalmic lenses purchased in the United States were photochromic, and photochromic lenses totaled approximately \$630 million in sales at the wholesale level. Photochromic lenses have characteristics and uses distinct from polarized lenses (which are designed to remove glare) and fixed-tint lenses (*e.g.*, prescription sunglasses).

## **B. Transitions' Monopoly Power**

Transitions has monopoly power in the relevant market for the development, manufacture and sale of photochromic treatments for corrective ophthalmic lenses in the United States. Transitions has garnered a persistently high share of at least 80 percent of this market

## 2. Exclusionary Practices with Indirect Customers (Retailers and Wholesale Labs)

In an effort to shut out its rivals, Transitions also directed its exclusionary practices at its indirect customers: wholesale labs and retailers. In 2005, in order to mitigate the new competitive threat posed by Vision-Ease's introduction of LifeRx<sup>®</sup>, Transitions began an exclusionary agreement campaign with major retailers. Transitions induced over 50 retailers, including many of the largest chains, with up-front payments and/or rebates to enter into long term exclusive agreements that were difficult to terminate.

Transitions also has entered into over 100 agreements with wholesale labs that require the wholesale labs to promote Transitions' lenses as their "preferred" photochromic lens and to withhold normal sales efforts for competing photochromic lenses in exchange for rebates or other items of pecuniary value. Further, at least 50 percent of all wholesale labs are owned by lens casters that sell only Transitions' lenses. Because these lens casters generally use their wholesale labs to promote and sell primarily their own brand of lenses, this further impairs competitors' access to wholesale labs.

Additionally, Transitions' agreements with retailers and wholesale labs generally provide a discount only if the customer purchases all or almost all of its photochromic lens needs from Transitions. Because no other supplier has a photochromic treatment that applies to a full line of ophthalmic lenses, Transitions' discount structure impairs the ability of rivals to compete for sales to these customers. It also erects a significant entry barrier by limiting the ability of a rival to enter the market with a new photochromic treatment that applies to less than a full line of ophthalmic lenses.

Transitions' exclusionary practices with retailers and wholesale labs foreclose rivals, in whole or in part, from a substantial share – as much as 40 percent or more – of the retailer and wholesale lab distri

---

The factual allegations in the Complaint are consistent with a finding of monopoly power and compe

---

<sup>3</sup> *E.g.*, *Microsoft*, 253 F.3d at 59.

<sup>4</sup> *Id.*

<sup>5</sup> “Interbrand free-riding” occurs when a manufacturer provides services, training, or other incentives in the promotion of its products for which it cannot easily charge its dealer, and that dealer “free-rides” on these demand-generating services by substituting a cheaper, more profitable product made by another manufacturer that does not invest in comparable services. *See generally* Howard P. Marvel, *Exclusive Dealing*, 25 J.L. & ECON. 1, 8 (1982).

<sup>6</sup> *See United States v. Dentsply Int’l, Inc.*, 277 F. Supp. 2d 387, 445 (D. Del. 2003), *aff’d in rel. part*, 399 F.3d at 196-97; Marvel, *Exclusive Dealing*, 25 J.L. & ECON. at 8 (explaining that an interbrand free-riding justification “does not apply if the promotional investment is purely brand specific. In such cases, the dealer will not be in a position to switch customers from brand to brand.”).

<sup>7</sup> *See In re Polygram*, 136 F.T.C. 310, 361-62 (2003), *aff’d*, 416 F.3d 29, 37-38 (D.C. Cir. 2005).

---

<sup>8</sup> We use the term “*de facto* exclusive dealing” to refer to practices that significantly deter a customer from purchasing or selling a competing photochromic lens.

competition. It also allows Transitions to require that any monies it provides to customers be used solely for the manufacture, promotion or sale of Transitions lenses.

Finally, Paragraph II.F prohibits Transitions from retaliating against a customer that purchases or sells Transitions lenses on a non-exclusive basis.