Analysis to Aid Public Comment
In the Matter of Pool Corporation, File No. 101-0115

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order to Cease and Desist ("Agreement") with Pool Corporation ("PoolCorp"). PoolCorp is the world's largest distributor of products used in the construction, renovation, repair, service and maintenance of residential and commercial swimming pools. The Agreement resolves charges that PoolCorp used exclusionary acts and practices to maintain its monopoly power in the pool product distribution market in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

The administrative complaint that accompanies the Agreement ("Complaint") alleges that PoolCorp used its monopoly power in local geographic markets to prevent manufacturers from supplying pool products to new entrants since at least 2003. As a result, PoolCorp foreclosed rival distributors from obtaining pool products – a necessary input to compete – and significantly raised its rivals' costs, thereby lowering output, increasing prices, and diminishing consumer choice.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed Order, subject to final approval, contained in the Agreement. The Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public.]TJ.000c(es been TDisolvdur of)3eptingrp per ofiodint wil]TJe8(a)-c froma t

C. PoolCorp's Conduct

Beginning in 2003 and continuing to today, PoolCorp has implemented an exclusionary policy that effectively impeded entry by new distributors by preventing them from being able to purchase pool products directly from manufacturers. Specifically, when a new distributor attempted to enter a local geographic market, PoolCorp threatened manufacturers that it would not deal with them if they also supplied the new entrant. PoolCorp threatened to terminate the purchase and sale of the manufacturer's pool products for all 200+ PoolCorp distribution centers located throughout the United States. PoolCorp's policy did not exclude existing rivals from obtaining pool products from manufacturers.

PoolCorp's threat was significant. The loss of sales to PoolCorp could be "catastrophic" to the financial viability of even major manufacturers. No other distributor could replace the large volume of potential lost sales to PoolCorp, particularly in markets where PoolCorp is the only distributor. New entrants could not offer any economic incentive to manufacturers that would offset the risks imposed by PoolCorp's threats.

After receiving these threats, manufacturers, including the three "must-have" manufacturers, refused to sell pool products to the new distributors and canceled any pre-existing orders. PoolCorp thus effectively foreclosed new distributors from obtaining pool products from manufacturers that represented more than 70 percent of all pool product sales.

In some cases, the new distributors were able to purchase pool products from other distributors. This counterstrategy, however, did not mitigate the effects of PoolCorp's conduct. As a general rule, distributors do not sell pool products to other distributors. Even when possible, this alternative is not a viable long-term strategy because it substantially increases the entrant's costs and lessens its quality of service. For example, buying pool products from a distributor forces the new distributor entrant to pay transportation costs from the distributor's location rather than receiving free shipping under manufacturer programs. The purchases are also at a marked-up price and do not qualify for key manufacturer year-end rebates.

By effectively increasing its rivals' costs, PoolCorp's exclusionary policy prevented the new distributor entrants from being able to compete aggressively on price. Additionally, without full control of their inventory, the entrants' ability to provide quality service to their dealer customers was diminished. PoolCorp specifically targeted new entrants, rather than established rivals, because the new distributors represented a significant competitive threat due to their likelihood to compete aggressively on price in order to earn new business. PoolCorp's conduct, therefore, had the purpose and effect of maintaining and enhancing PoolCorp's monopoly power in numerous local markets where its dominance would otherwise be threatened by new entrants. PoolCorp's exclusionary policy, therefore, has likely resulted in higher prices and reduced output.

There are no procompetitive efficiencies that justify PoolCorp's conduct.

II. Legal Analysis

The offense of monopolization under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market; and (2) the willful acquisition, enhancement or maintenance of that power through exclusionary conduct.[1] A monopolist's refusal to deal with a firm if that firm also deals with a rival has long been recognized as exclusionary conduct. Exclusionary practices violate Section 2 of the Sherman Act when the challenged conduct significantly impairs the ability of rivals to compete effectively with the

bar a substantial number of rivals or severely restrict the market's ambit."[4] New entrants may have a more disruptive impact on the market than established firms because they may have an increased incentive to compete aggressively on price in order to win business. Conduct that artificially raises entry barriers by increasing the scale, cost or time of entry harms consumers by providing a greater opportunity for monopoly pricing.[5]

A monopolist may rebut a *prima facie* showing of competitive harm by showing that the challenged conduct is reasonably necessary to achieve a procompetitive benefit. Any efficiency benefit, if proven, must be balanced against the harm caused by the challenged conduct.

There are no procompetitive efficiencies that ju

PoolCorp to enter into exclusive agreements with manufacturers to purchase private-label pool products.

Paragraph III of the Proposed Order requires PoolCorp to implement an antitrust compliance program. Paragraph IV- VI impose reporting and other compliance requirements. The Order will expire in 20 years.

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