

**STATEMENT OF
COMMISSIONERS JULIE BRILL, JON LEIBOWITZ AND EDITH RAMIREZ
REGARDING THE COMPLAINT AND PROPOSED CONSENT ORDER IN
IN RE POOL CORPORATION
NOVEMBER 21, 2011**

The Commission is today issuing for public comment a Complaint and Order that would resolve allegations that Pool Corporation (“PoolCorp”) used anticompetitive acts and practices to exclude rivals from, and to maintain its monopoly power in, several local pool product distribution markets, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

On the basis of staff’s investigation and as outlined in the Complaint, we have reason to believe that a violation of the antitrust laws has occurred — and that Commission action is in the public interest. 15 U.S.C. § 45(b). Specifically, the Complaint alleges that PoolCorp, which possesses monopoly power in many local distribution markets, threatened its suppliers (*i.e.*, pool product manufacturers) that it would no longer distribute a manufacturer’s products on a nationwide basis if that manufacturer sold its products to a new distributor that was attempting to enter a local market. Although these manufacturers preferred to have a broad and diverse distribution network, they declined to add distributors because they feared retribution from PoolCorp. These decisions were not made for independent business reasons.¹

As alleged in the Complaint, PoolCorp’s actions foreclosed new entrants from obtaining pool products from manufacturers representing more than 70 percent of sales. Significantly, there is no efficiency justification for PoolCorp’s conduct. That is, without any legitimate justification, PoolCorp dictated whether new competitors could access the full range of merchandise needed to compete effectively in the market. *Cf. Toys “R” Us, Inc. v. FTC*, 221 F.3d 928, 930 (7th Cir. 2000) (actions by dominant toy retailer to prevent would-be entrants from obtaining access to toys judged to be anticompetitive). Some of PoolCorp’s targets were able to survive by purchasing pool products from other distributors rather than directly from the manufacturers. However, we assess consumer harm relative to market conditions that would have existed but for the respondent’s allegedly unlawful conduct. Here, PoolCorp’s strategy significantly increased a new entrant’s costs of obtaining pool products. Conduct by a monopolist that raises rivals’ costs can harm competition by creating an artificial price floor or deterring investments in quality, service and innovation.² The higher cost structure PoolCorp imposed on new entrants prevented them from providing a competitive constraint to PoolCorp’s alleged monopoly prices. And without full control of their inventory, the new distributors’ ability to provide high quality service to their dealer customers was diminished. The harm to

¹ We disagree with Commissioner Rosch’s conclusion that manufacturers refused to deal with new entrants for independent business reasons. In our view, the evidence demonstrates a causal relationship between the manufacturers’ decisions and PoolCorp’s alleged conduct.

² *See, e.g.*, Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals’ Costs to Achieve Power Over Price*, 96 YALE L.J. 209, 224 (1986) (finding that a dominant firm’s strategy of restraining rivals’ access to supply can be a “particularly effective method of anticompetitive exclusion” because it allows the dominant firm to use its vertical relationships to create additional horizontal market power).

consumers that occurred as a result was substantial. In the end, consumers had fewer choices and were forced to pay higher prices for pool products.

Although we recognize that PoolCorp's alleged conduct did not target incumbent distributors, we nevertheless have reason to believe that the conduct harmed competition and consumers. Separate from PoolCorp, there are few, if any, incumbent distributors in the local markets at issue here. By targeting new distributor entrants, PoolCorp's conduct harmed the very companies that were most likely to compete aggressively on price and to introduce innovative services or ways of doing business.³ The Commission has seen this pattern before. The targets of anticompetitive exclusion are often the new rivals that incumbents foresee as most likely to shake up the market and benefit consumers at the expense of incumbents.⁴ We fail to do our job if we permit a monopolist to decide, without sufficient efficiency justification, whether or on what terms a rival will be permitted to enter the market.

Because we have reason to believe that PoolCorp's conduct had the purpose and effect of maintaining PoolCorp's monopoly power in numerous local markets where its dominance was threatened by new distributor entrants, we support the attached Complaint and Order.

³ See *id.* at 246 (explaining that potential competition by new entrants can provide a "significant competitive check" distinct from established firms).

⁴ See, e.g., *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 499-500 (1988) (condemning association action to prevent inclusion of plastic conduits in relevant standard); *Realcomp II, LTD. v. FTC*, 635 F.3d 815 (6th Cir. 2011) (condemning Multiple Listing Service rules that disadvantaged new brokerage model), *cert. denied*, 2011 U.S. Lexis 7292 (Oct. 11, 2011); *Toys "R" Us, Inc. v. FTC*, 221 F.3d 928 (7th Cir. 2000) (condemning dominant toy company's actions that limited sources of toys available to new warehouse clubs).