Report on the
Federal Trade Commission
Workshop on Slotting Allowances
and Other Marketing Practices in the
Grocery Industry

A Report by Federal Trade Commission Staff

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INTRODUCTION AND EXECUTIVE SUMMARY

Grocery manufacturers and supermarkets deal with each other every day in the roles of supplier and customer. In these roles they bargain over a wide variety of business matters, beginning with the basic elements of price and product quality, but also covering a number of collateral issues that affect the exposure that a particular manufacturer’s goods receive on the retailer’s shelf. Obtaining good exposure is important to the manufacturer since it can significantly affect sales, and shelf allocation is something for which the retailer may demand special compensation, since it involves customized use of the retailers’ most important asset – the store shelves themselves.

“Slotting allowances” are one class of payments that may be made for shelf access. They are lump-sum, up-front payments from a manufacturer or producer (collectively, “manufacturer”) to a retailer to have a new product carried by the retailer and placed on its shelves. The practice is common for certain products in supermarkets, but also occurs in other industries. Some have argued that slotting allowances – and a variant known as “pay-to-stay” fees, paid by manufacturers to keep existing products on retailers’ shelves – harm consumers by, among other things, excluding certain manufacturers and thereby impairing competition that otherwise would take place. Defenders of slotting allowances have asserted that, among other things, they cover the cost of introducing new products to the marketplace and thereby tend to foster entry and innovation. Pay-to-stay fees have been justified as efficient means of allocating limited shelf

1 This Report was prepared by staff of the Federal Trade Commission. It does not necessarily reflect the views of the Commission or any individual Commissioner.

2 The operation and competitive significance of slotting allowances and similar practices in other industries is beyond the scope of this Report.
space. Both slotting allowances and pay-to-stay fees have been the subject of congressional hearings and requests for investigation by the Federal Trade Commission. Despite the interest that has developed, there has been relatively little academic research or empirical data collection regarding these practices.

Because of the substantial debate over and the need for greater information regarding slotting allowances and related shelf allocation practices, the FTC conducted a public workshop on May 31 and June 1, 2000, to shed further light on these issues. Organized by the staffs of the Bureau of Competition’s Office of Policy and Evaluation and the FTC’s Policy Planning office, the workshop brought together approximately forty participants with a variety of perspectives on the grocery industry. They included representatives of large chain retailers; small retailers, wholesalers, and, especially, small manufacturers; and attorneys, economists, marketing academics, and consultants familiar with the industry. As Chairman Pitofsky explained, the workshop was designed without preconceptions to examine a set of practices that in some situations may “make great business sense and contribute to consumer welfare” but in others

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could present “competitive problems.”

The workshop represented one step in an ongoing process to improve the agency’s understanding of those practices.

Although the workshop assisted in accumulating information and developing insights, it could not, and did not, resolve all the questions. Its record was necessarily incomplete. For one thing, the panelists did not represent a complete cross-section of the industry: although the FTC staff invited and would have welcomed broader participation by large manufacturers and retailers, the industry members who actually participated tended to be the smaller firms. Moreover, details of slotting arrangements and other marketing practices are often viewed as competitively sensitive, and an open discussion in a public forum necessarily had to be general. Finally, there was no uniformity of view. Participants voiced diverse viewpoints and offered different assessments of the facts. Thus, the record generated questions and suggested paths for further analysis, but did not provide a basis for definitive answers.

This Staff Report summarizes and synthesizes the information and views presented at the workshop and identifies some of the specific areas where more needs to be learned. The discussion is divided into five parts. Part I describes the shelf space allocation practices that workshop participants identified as the most competitively significant, including slotting

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6 Pitofsky, Tr. 3. References to the workshop transcript in this report are set out in the form “Tr,” followed by a page number. References to written materials submitted for the record are in the form “Submissions,” followed by a page number. The transcript and written submissions can both be found on the FTC website, www.ftc.gov/bc/slotting/index.htm. Workshop panelists and written submissions are listed in Appendices A and B, respectively.

7 Staff, of course, does not adopt participants’ viewpoints merely by reporting them.

8 See Pitofsky, Tr. 4 (one agency role is to “get the facts . . . report to the public and report to Congress”); Senator Bond, Tr. 6-7 (appearing by videotape) (Senate Committee on Small Business will “look forward to receiving recommendations”).
allowances themselves and related practices such as pay-to-stay fees and payments to limit rivals’ shelf space, such as exclusive dealing arrangements. Part II describes one antitrust theory under which the competitive effects of these practices might be assessed – a theory of anticompetitive exclusion. Part III examines the implications of two interrelated practices – category management and the use of category captains – that may help retailers better decide how to allocate shelf space, but that may raise competitive questions as well. Part IV reviews the theory that slotting allowances sometimes might be imposed, not by manufacturers seeking favored access to retailers’ shelves, but rather by large retailers with market power in their purchasing activities. Finally, Part V summarizes the recommendations that came out of the workshop.  

Overview of shelf space allowances. Slotting allowances have grown larger and more widespread in the last twenty years. While precise figures are not available, speakers at the workshop stated that allowances may now range from $75 to $300 per item per store. The allowances may vary geographically, and by section of the store, and perhaps also by the firms’ skill in negotiating different terms. One speaker estimated that it would cost approximately $16.8 million to introduce a small product line of four items in all supermarkets nationwide.

The workshop also discussed two other types of access payments alleged to harm competition. One is the pay-to-stay fee, sometimes required in order for established products to remain on a retailer’s shelves. The second is a payment – which could take the form of a slotting allowance or a pay-to-stay fee – made to gain exclusive or preferential access to shelf space, to the disadvantage of rivals; one example of this is an exclusive-dealing contract providing that a particular firm will be the only one of its product class in the retailer’s store. Neither of these access payments is necessarily improper, but they both involve issues that require careful
consideration.

Some panelists viewed slotting allowances as a mechanism for excluding rivals because they require large, lump-sum, up-front payments at a time when a product may be producing little or no revenue. The allowances are said to impose disproportionate burdens on companies that are unable to finance those expenditures, such as smaller or newer firms. Critics of slotting allowances asserted that they harm consumers, raising prices, deterring innovation, and reducing variety by restricting the number of competing firms in a product category. Critics also contended that they provide few efficiencies, and that any efficiencies that exist could be achieved through less-burdensome means such as failure fees on products that do not succeed.

Other participants viewed slotting allowances as beneficial. These speakers stated that the allowances compensate retailers for the real costs and risks of taking on unproven new products. According to these speakers, slotting allowances reduce the retailer’s financial exposure in trying the product of a new firm, encourage retailers to take such risks, and in this way facilitate rather than exclude new entry at the manufacturer level. Panelists on this side of the debate also stated that a willingness to pay slotting allowances signals the manufacturer’s confidence in a product’s success and shifts risk back to the party best able to control it. They claimed that firms unable to raise enough capital to meet slotting allowance requirements are often manufacturers of products that contribute relatively little value in terms of additional product variety.

Pay-to-stay fees were generally viewed as potentially more problematic than slotting allowances, since they are assessed on established products and therefore lack the efficiency of compensating for new-product risk. On the other hand, to the extent that pay-to-stay fees are spread over time and equate in aggregate size to a lump-sum slotting allowance, they may impose
Access payments can also lead to other issues such as discrimination and collusion, but these were not the focus of the workshop and are covered only briefly in this Report. Particular access payments, e.g., activities amounting to commercial bribery, could raise considerations outside of antitrust law. Such issues were not addressed at the workshop and are beyond the scope of this Report.

Framework for analysis. Many of the competitive issues presented by these arrangements are issues of exclusion. The concern is that a particular form of access payment may tend to exclude rivals, with adverse effects on competition.

Testimony reflected considerable consensus on a framework for analysis of such matters. It begins with consideration of the extent of disadvantage that rival suppliers likely would experience and of their ability to avoid or mitigate that disadvantage. To show harm to competition, rather than merely to competitors, the analysis then inquires about the likely impact on competition in markets in which the disadvantaged suppliers seek to compete. Finally, if anticompetitive harm is likely, the analysis asks whether the practice produces procompetitive benefits that likely would offset the harm and whether similar benefits could be obtained by practical, significantly less restrictive means. Speakers also advised that care should be taken to consider whether there are special countervailing circumstances that would diminish likelihood of competitive harm on some particular set of facts.

Participants viewed the effects of shelf access payments as dependent on the circumstances of their use. Exclusive-dealing contracts, for example, may lead retailers to become usefully committed to making a particular product a success in the marketplace, and they

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may not be harmful to competition as long as other retailers remain available for other manufacturers to use in reaching the market. However, there was considerable consensus that exclusive-dealing contracts can be anticompetitive if they tie up so many retailers that other manufacturers cannot reach customers at all, or can do so only at increased costs, and if this results in an impairment of effective competition. Even apart from any direct acquisition of exclusionary rights, both pay-to-stay fees and slotting allowances could raise manufacturers’ capital costs in ways harmful to competition; they need to be judged on a case-by-case basis, with attention both to likely competitive harms and to likely procompetitive benefits.

**Category management and category captains.** A separate panel discussed the interrelated topics of “category management” and “category captains.” Category management is a business technique for studying consumer demand within a particular category, such as soups, and then allocating shelf space among different products and designing marketing programs to best satisfy that demand as a whole. A category captain is an outside firm, commonly a large supplier, to whom a retailer turns for advice in managing the category. Category management is in some respects a substitute for slotting allowances as a shelf space allocation device.

Panelists agreed that category management can offer important efficiencies, but that the use of category captains can raise competitive questions insofar as it involves a supplier making recommendations about how its competitors should be treated. While these concerns are not so inherently serious as to call into question the entire practice of using category captains, the panel agreed that care should be exercised: (1) that the captain does not improperly receive confidential information about its rivals’ plans; (2) that the category captain does not bias its advice to the retailer in such a way that it effectively excludes or significantly disadvantages its competitors; (3)
that the category captain does not orchestrate horizontal collusion among retailers; and (4) that
the category captain does not orchestrate horizontal collusion among manufacturers.

**Retailer market power.** One panel considered whether slotting allowances are
sometimes imposed by retailers wielding market power. Workshop participants identified and
distinguished three possible types of market power: (1) monopsony power, which depends on a
reduction in the purchases of inputs to force lower input prices; (2) buyer power, which induces
costs lower input prices without reducing input purchases; and (3) gatekeeper power. Each may
require its own, distinct analysis. According to participants, although the exercise of bargaining
leverage by retailers with buyer power can, at least in the short run, result in lower wholesale
prices and potential benefits for consumers, under some circumstances it can cause market
distortions resulting ultimately in lower output and higher prices. The panel expressed a general
sense that actual exercise of monopsony power might be unusual in these markets, but some
participants emphasized potential concerns in settings where manufacturers of a particular product
are limited to selling in a small geographic area and therefore are limited to dealing with just the
retailers in that area. In that situation, a high level of local retailer concentration can leave
manufacturers with limited options. There was general agreement that the FTC’s supermarket
merger program should continue to watch for the possible creation of market power exercisable in
an anticompetitive manner against suppliers.

**Recommendations.** The workshop concluded with a panel of legal and economic
practitioners who had extensive experience counseling on distribution issues. That discussion, the
workshop record as a whole, and the agency’s experience with and analysis of these issues lead
the FTC staff to offer several recommendations. The first is that the agency pursue empirical
studies on topics that will contribute significantly to future enforcement actions or business
guidance, beginning with gathering basic data on current practices. This recommendation is one
that Congress has endorsed by providing funds for the FTC to use in investigating slotting
allowances in the retail grocery industry. Next, staff recommends that the Commission refrain
from issuing slotting-allowance guidelines at the present time, when much remains to be learned.
In terms of future enforcement, the staff recommends that the agency: (1) carefully review
exclusive-dealing contracts to determine whether they threaten a harm to competition; (2)
examine slotting allowances and pay-to-stay fees with particular attention to circumstances that
could give rise to exclusionary effects; (3) revisit price discrimination issues in the context of
appropriate investigations; (4) focus any inquiries into category captains primarily on situations
that may involve anticompetitive exclusion or tacit or explicit collusion; and (5) ensure that
supermarket merger policy continues to take account of the potential exercise of retail market
power in an anticompetitive manner against suppliers.