SUPREME COURT OF THE UNITED STATES

No. 90–1029

EASTMAN KODAK COMPANY, PETITIONER *v.* IMAGE TECHNICAL SERVICES, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 8, 1992]

JUSTICE BLACKMUN delivered the opinion of the Court.

This is yet another case that concerns the standard for summary judgment in an antitrust controversy. The principal issue here is whether a defendant's lack of market power in the primary equipment market precludes—as a matter of law—the possibility of market power in derivative aftermarkets.

Petitioner Eastman Kodak Company manufactures and sells photocopiers and micrographic equipment. Kodak also sells service and replacement parts for its equipment. Respondents are 18 independent service organizations (ISOs) that in the early 1980s began servicing Kodak copying and micrographic equipment. Kodak subsequently adopted policies to limit the availability of parts to ISOs and to make it more difficult for ISOs to compete with Kodak in servicing Kodak equipment.

Respondents instituted this action in the United States District Court for the Northern District of California alleging that Kodak's policies were unlawful under both §§ 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2. After truncated discovery, the District Court granted summary judgment for Kodak. The Court of Appeals for the Ninth Circuit reversed. The appellate court found that respondents had presented sufficient evidence to raise a genuine issue concerning Kodak's market power in the service and parts markets. It rejected Kodak's contention that

lack of market power in service and parts must be assumed when such power is absent in the equipment market. Because of the importance of the issue, we granted certiorari. ___ U.S. ___ (1991).

Because this case comes to us on petitioner Kodak's motion for summary judgment, ``[t]he evidence of [respondents] is to be believed, and all justifiable inferences are to be drawn in [their] favor.'' *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Matsushita Electric Industrial Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Mindful that respondents' version of any disputed issue of fact thus is presumed correct, we begin with the factual basis of respondents' claims. See *Arizona* v. *Maricopa County Medical Society*, 457 U.S. 332, 339 (1982).

Kodak manufactures and sells complex business machines—as relevant here, high-volume photocopier and micrographics equipment.[1] Kodak equipment is unique; micrographic software programs that operate on Kodak machines, for example, are not compatible with competitors' machines. See App. 424–425, 487–489, 537. Kodak parts are not compatible with other manufacturers' equipment, and vice versa. See *id.*, at 432, 413–415. Kodak equipment, although expensive when new, has little resale value. See *id.*, at 358–359, 424–425, 427–428, 467, 505–506, 519–521.

Kodak provides service and parts for its machines

---

[1]Kodak's micrographic equipment includes four different product areas. The first is capture products such as microfilmers and electronic scanners, which compact an image and capture it on microfilm. The second is equipment such as microfilm viewers and viewer/printers. This equipment is used to retrieve the images. The third is Computer Output Microform (COM) recorders, which are data-processing peripherals that record computer-generated data onto microfilm. The fourth is Computer Assisted Retrieval (CAR) systems, which utilize computers to locate and retrieve micrographic images. See App. 156–158.

to its customers. It produces some of the parts itself; the rest are made to order for Kodak by independent original-equipment manufacturers (OEMs). See *id.*, at 429, 465, 490, 496. Kodak does not sell a complete system of original equipment, lifetime service, and lifetime parts for a single price. Instead, Kodak provides service after the initial warranty period either through annual service contracts, which include all necessary parts, or on a per-call basis. See *id.*, at 98–99; Brief for Petitioner 3. It charges, through negotiations and bidding, different prices for equipment, service, and parts for different customers. See App., at 420–421, 536. Kodak provides 80% to 95% of the service for Kodak machines. See *id.*, at 430.

Beginning in the early 1980s, ISOs began repairing and servicing Kodak equipment. They also sold parts and reconditioned and sold used Kodak equipment. Their customers were federal, state, and local government agencies, banks, insurance companies, industrial enterprises, and providers of specialized copy and microfilming services. See *id.*, at 417, 419–421, 492–493, 499, 516, 539. ISOs provide service at a price substantially lower than Kodak does. See *id.*, at 414, 451, 453–454, 469, 474–475, 488, 493, 536–537; Lodging 133. Some customers found that the ISO service was of higher quality. See App. 425–426, 537–538.

Some of the ISOs' customers purchase their own parts and hire ISOs only for service. See Lodging 144–147. Others choose ISOs to supply both service and parts. See *id.*, at 133. ISOs keep an inventory of parts, purchased from Kodak or other sources, primarily the OEMs.[2] See App. 99, 415–416, 490.

---

[2]In addition to the OEMs, other sources of Kodak parts include (1) brokers who would buy parts from Kodak, or strip used Kodak equipment to obtain the useful parts and resell them, (2) customers who buy parts

In 1985 and 1986, Kodak implemented a policy of selling replacement parts for micrographic and copying machines only to buyers of Kodak equipment who use Kodak service or repair their own machines. See Brief for Petitioner 6; App. 91–92, 98–100, 140–141, 171–172, 190, 442–447, 455–456, 483–484.

As part of the same policy, Kodak sought to limit ISO access to other sources of Kodak parts. Kodak and the OEMs agreed that the OEMs would not sell parts that fit Kodak equipment to anyone other than Kodak. See *id.*, at 417, 428–429, 447, 468, 474, 496. Kodak also pressured Kodak equipment owners and independent parts distributors not to sell Kodak parts to ISOs. See *id.*, at 419–420, 428–429, 483–484, 517–518, 589–590. In addition, Kodak took steps to restrict the availability of used machines. See *id.*, at 427–428, 465–466, 510–511, 520.

Kodak intended, through these policies, to make it more difficult for ISOs to sell service for Kodak machines. See *id.*, at 106–107, 171, 516. It succeeded. ISOs were unable to obtain parts from reliable sources, see *id.*, at 429, 468, 496, and many were forced out of business, while others lost substantial revenue. See *id.*, at 422, 458–459, 464, 468, 475–477, 482–484, 495–496, 501, 521. Customers were forced to switch to Kodak service even though they preferred ISO service. See *id.*, at 420–422.

In 1987, the ISOs filed the present action in the District Court, alleging, *inter alia*, that Kodak had unlawfully tied the sale of service for Kodak machines to the sale of parts, in violation of §1 of the Sherman Act, and had unlawfully monopolized and attempted to monopolize the sale of service for Kodak machines,

---

from Kodak and make them available to ISOs, and (3) used equipment to be stripped for parts. See *id.*, at 419, 517; Brief for Petitioner 38.

in violation of §2 of that Act.[3]

Kodak filed a motion for summary judgment before respondents had initiated discovery. The District Court permitted respondents to file one set of interrogatories and one set of requests for production of documents, and to take six depositions. Without a hearing, the District Court granted summary judgment in favor of Kodak. App. to Pet. for Cert. 29B.

As to the §1 claim, the court found that respondents had provided no evidence of a tying arrangement between Kodak equipment and service or parts. See App. to Pet. for Cert. 32B-33B. The court, however, did not address respondents' §1 claim that is at issue here. Respondents allege a tying arrangement not between Kodak *equipment* and service, but between Kodak *parts* and service. As to the §2 claim, the District Court concluded that although Kodak had a ``natural monopoly over the market for parts it sells under its name,'' a unilateral refusal to sell those

---

[3]Section 1 of the Sherman Act states in relevant part:

``Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.'' 15 U.S.C. §1.

Section 2 of the Sherman Act states: ``Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.'' 15 U.S.C. §2.

parts to ISOs did not violate §2.

The Court of Appeals for the Ninth Circuit, by a divided vote, reversed. 903 F.2d 612 (1990). With respect to the § 1 claim, the court first found that whether service and parts were distinct markets and whether a tying arrangement existed between them were disputed issues of fact. *Id.*, at 615–616. Having found that a tying arrangement might exist, the Court of Appeals considered a question not decided by the District Court: was there ``an issue of material fact as to whether Kodak has sufficient economic power in the tying product market [parts] to restrain competition appreciably in the tied product market [service].'' *Id.*, at 616. The court agreed with Kodak that competition in the equipment market might prevent Kodak from possessing power in the parts market, but refused to uphold the District Court's grant of summary judgment ``on this theoretical basis'' because ``market imperfections can keep economic theories about how consumers will act from mirroring reality.'' *Id.*, at 617. Noting that the District Court had not considered the market power issue, and that the record was not fully developed through discovery, the court declined to require respondents to conduct market analysis or to pinpoint specific imperfections in order to withstand summary judgment.[4] ``It is enough that [respondents] have

---

[4]Specifically, the Court of Appeals explained that the District Court had denied the request for further discovery made by respondents in their opposition to Kodak's summary judgment motion: ``For example, [respondents] requested to depose two ISO customers who allegedly would not sign accurate statements concerning Kodak's market power in the parts market. Not finding it necessary to reach the market power issue in its decision, the district court, of course, had no reason to grant this request.'' 903 F.2d 612, 617, n. 4 (CA9 1990).

presented evidence of actual events from which a reasonable trier of fact could conclude that . . . competition in the [equipment] market does not, in reality, curb Kodak's power in the parts market.'' *Ibid.*

The court then considered the three business justifications Kodak proffered for its restrictive parts policy: (1) to guard against inadequate service, (2) to lower inventory costs, and (3) to prevent ISOs from free-riding on Kodak's investment in the copier and micrographic industry. The court concluded that the trier of fact might find the product quality and inventory reasons to be pretextual and that there was a less restrictive alternative for achieving Kodak's quality-related goals. *Id.*, at 618–619. The court also found Kodak's third justification, preventing ISOs from profiting on Kodak's investments in the equipment markets, legally insufficient. *Id.*, at 619.

As to the §2 claim, the Court of Appeals concluded that sufficient evidence existed to support a finding that Kodak's implementation of its parts policy was ``anticompetitive'' and ``exclusionary'' and ``involved a specific intent to monopolize.'' *Id.*, at 620. It held that the ISOs had come forward with sufficient evidence, for summary judgment purposes, to disprove Kodak's business justifications. *Ibid.*

The dissent in the Court of Appeals, with respect to the §1 claim, accepted Kodak's argument that evidence of competition in the equipment market ``*necessarily* precludes power in the derivative market.'' *Id.*, at 622 (emphasis in original). With respect to the §2 monopolization claim, the dissent concluded that, entirely apart from market power considerations, Kodak was entitled to summary judgment on the basis of its first business justification because it had ``submitted extensive and undisputed evidence of a marketing strategy based on high-quality service.'' *Id*., at 623.

A tying arrangement is ``an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier.'' *Northern Pacific R. Co.* v. *United States*, 356 U.S. 1, 5–6 (1958). Such an arrangement violates §1 of the Sherman Act if the seller has ``appreciable economic power'' in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market. *Fortner Enterprises, Inc.* v. *United States Steel Corp.*, 394 U.S. 495, 503 (1969).

Kodak did not dispute that its arrangement affects a substantial volume of interstate commerce. It, however, did challenge whether its activities constituted a ``tying arrangement'' and whether Kodak exercised ``appreciable economic power'' in the tying market. We consider these issues in turn.

For the respondents to defeat a motion for summary judgment on their claim of a tying arrangement, a reasonable trier of fact must be able to find, first, that service and parts are two distinct products, and, second, that Kodak has tied the sale of the two products.

For service and parts to be considered two distinct products, there must be sufficient consumer demand so that it is efficient for a firm to provide service separately from parts. *Jefferson Parish Hospital Dist. No. 2* v. *Hyde*, 466 U.S. 2, 21–22 (1984). Evidence in the record indicates that service and parts have been sold separately in the past and still are sold separately to self-service equipment owners.[5] Indeed,

---

[5]The Court of Appeals found: ``Kodak's policy of allowing customers to purchase parts on condition that they agree to service their own machines suggests that the demand for parts can be separated from the demand for service.'' *Id.*, at 616.

the development of the entire high-technology service industry is evidence of the efficiency of a separate market for service.[6]

Kodak insists that because there is no demand for parts separate from service, there cannot be separate markets for service and parts. Brief for Petitioner 15, n. 3. By that logic, we would be forced to conclude that there can never be separate markets, for example, for cameras and film, computers and software, or automobiles and tires. That is an assumption we are unwilling to make. ``We have often found arrangements involving functionally linked products at least one of which is useless without the other to be prohibited tying devices.'' *Jefferson Parish*, 466 U.S., at 19, n. 30.

Kodak's assertion also appears to be incorrect as a factual matter. At least some consumers would purchase service without parts, because some service does not require parts, and some consumers, those who self-service for example, would purchase parts without service.[7] Enough doubt is cast on Kodak's

---

[6]*Amicus* briefs filed by various service organizations attest to the magnitude of the service business. See *e.g.*, Brief for Computer Service Network International as *Amicus Curiae*; Brief for National Electronics Sales and Service Dealers Association as *Amicus Curiae*; Brief for California State Electronics Association, et al. as *Amici Curiae*; Brief for National Office Machine Dealers and Association of Service Dealers as *Amicus Curiae*.

[7]The dissent suggests that parts and service are not separate products for tying purposes because all service may involve installation of parts. *Post*, at 9–10, n. 2. Because the record does not support this factual assertion, under the approach of both the Court and the concurrence in *Jefferson Parish Hospital Dist. No. 2* v. *Hyde*, 466 U.S. 1 (1984), Kodak is not entitled to summary judgment on whether parts and

claim of a unified market that it should be resolved by the trier of fact.

Finally, respondents have presented sufficient evidence of a tie between service and parts. The record indicates that Kodak would sell parts to third parties only if they agreed not to buy service from ISOs.[8]

---

service are distinct markets.

[8]In a footnote, Kodak contends that this practice is only a unilateral refusal to deal, which does not violate the antitrust laws. See Brief for Petitioner 15, n. 4. Assuming, *arguendo*, that Kodak's refusal to sell parts to any company providing service can be characterized as a unilateral refusal to deal, its alleged sale of parts to third parties on condition that they buy service from Kodak is not. See 903 F.2d, at 619.

Having found sufficient evidence of a tying arrangement, we consider the other necessary feature of an illegal tying arrangement: appreciable economic power in the tying market. Market power is the power ``to force a purchaser to do something that he would not do in a competitive market.'' *Jefferson Parish*, 466 U.S., at 14.[9] It has been defined as ``the ability of a single seller to raise price and restrict output.'' *Fortner Inc.*, 394 U.S., at 503; *United States* v. *E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956). The existence of such power ordinarily is inferred from the seller's possession of a predominant share of the market. *Jefferson Parish*, 466 U.S., at 17; *United States* v. *Grinnell Corp.*, 384 U.S. 563, 571 (1966); *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594, 611–613 (1953).

Respondents contend that Kodak has more than sufficient power in the parts market to force unwanted purchases of the tied market, service. Respondents provide evidence that certain parts are available exclusively through Kodak. Respondents also assert that Kodak has control over the availability of parts it does not manufacture. According to respondents' evidence, Kodak has prohibited independent manufacturers from selling Kodak parts to ISOs, pressured Kodak equipment owners and independent parts distributors to deny ISOs the

---

[9] ``[T]he essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms. When such `forcing' is present, competition on the merits in the market for the tied item is restrained and the Sherman Act is violated.'' *Jefferson Parish*, 466 U.S., at 12.

purchase of Kodak parts, and taken steps to restrict the availability of used machines.

Respondents also allege that Kodak's control over the parts market has excluded service competition, boosted service prices, and forced unwilling consumption of Kodak service. Respondents offer evidence that consumers have switched to Kodak service even though they preferred ISO service, that Kodak service was of higher price and lower quality than the preferred ISO service, and that ISOs were driven out of business by Kodak's policies. Under our prior precedents, this evidence would be sufficient to entitle respondents to a trial on their claim of market power.

Kodak counters that even if it concedes monopoly *share* of the relevant parts market, it cannot actually exercise the necessary market *power* for a Sherman Act violation. This is so, according to Kodak, because competition exists in the equipment market.[10] Kodak

---

[10]In their brief and at oral argument, respondents argued that Kodak's market share figures for high-volume copy machines, computer-assisted retrieval systems, and micrographic-capture equipment demonstrate Kodak's market power in the equipment market. Brief for Respondents 16–18, 32–33; Tr. of Oral Arg. 28–31.

In the Court of Appeals, however, respondents did not contest Kodak's assertion that its market shares indicated a competitive equipment market. The Court of Appeals believed that respondents ``do not dispute Kodak's assertion that it lacks market power in the [equipment] markets.'' 903 F.2d, at 616, n. 3. Nor did respondents question Kodak's asserted lack of market power in their Brief in Opposition to the Petition for Certiorari, although they acknowledged that Kodak's entire case rested on its understanding that respondents were not disputing

argues that it could not have the ability to raise prices of service and parts above the level that would be charged in a competitive market because any increase in profits from a higher price in the aftermarkets at least would be offset by a corresponding loss in profits from lower equipment sales as consumers began purchasing equipment with more attractive service costs.

Kodak does not present any actual data on the equipment, service, or parts markets. Instead, it urges the adoption of a substantive legal rule that ``equipment competition precludes any finding of monopoly power in derivative aftermarkets.'' Brief for Petitioner 33. Kodak argues that such a rule would satisfy its burden as the moving party of showing ``that there is no genuine issue as to any material

---

the existence of competition in the equipment market. Brief in Opposition 8.

Recognizing that on summary judgment we may examine the record *de novo* without relying on the lower courts' understanding, *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962), respondents now ask us to decline to reach the merits of the questions presented in the petition, and instead to affirm the Ninth Circuit's judgment based on the factual dispute over market power in the equipment market. We decline respondents' invitation. We stated in *Oklahoma City* v. *Tuttle*, 471 U.S. 808, 816 (1985): ``Our decision to grant certiorari represents a commitment of scarce judicial resources with a view to deciding the merits of one or more of the questions presented in the petition.'' Because respondents failed to bring their objections to the premise underlying the questions presented to our attention in their opposition to the petition for certiorari, we decide those questions based on the same premise as the Court of Appeals, namely, that competition exists in the equipment market.

fact'' on the market power issue.[11] See Fed. Rule Civ. Proc. 56(c).

Legal presumptions that rest on formalistic distinctions rather than actual market realities are generally disfavored in antitrust law. This Court has preferred to resolve antitrust claims on a case-by-case basis, focusing on the ``particular facts disclosed by the record.'' *Maple Flooring Mfrs. Assn.* v. *United States*, 268 U.S. 563, 579 (1925); *du Pont*, 351 U.S., at 395, n. 22; *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 70 (1977) (WHITE, J., concurring in judgment).[12] In determining the

---

[11]Kodak argues that such a rule would be *per se*, with no opportunity for respondents to rebut the conclusion that market power is lacking in the parts market. See Brief for Petitioner 30–31 (``There is nothing that respondents could prove that would overcome Kodak's conceded lack of market power''); *id.*, at 30 (discovery is ``pointless'' once the ``dispositive fact'' of lack of market power in the equipment market is conceded); *id*., at 22 (Kodak's lack of market power in the equipment market ``dooms any attempt to extract monopoly profits'' even in an allegedly imperfect market); *id.*, at 25 (it is ``impossible'' for Kodak to make more total profit by overcharging its existing customers for service).

As an apparent second-best alternative, Kodak suggests elsewhere in its brief that the rule would permit a defendant to meet its summary judgment burden under Fed. Rule Civ. Proc. 56(c); the burden would then shift to the plaintiffs to ``prove . . . that there is a specific reason to believe that normal economic reasoning does not apply.'' Brief for Petitioner 30. This is the United States' position. See Brief for United States as *Amicus Curiae* 10–11.

[12]See generally *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U.S. 717, 723–726 (1988); *FTC* v. *Indiana Federation of Dentists*, 476 U.S. 447, 458–

existence of market power, and specifically the ``responsiveness of the sales of one product to price changes of the other,'' *du Pont*, 351 U.S., at 400; see also *id.*, at 394–395, and 400–401, this Court has examined closely the economic reality of the market at issue.[13]

Kodak contends that there is no need to examine the facts when the issue is market power in the aftermarkets. A legal presumption against a finding of market power is warranted in this situation, according to Kodak, because the existence of market power in the service and parts markets absent power in the equipment market ``simply makes no economic sense,'' and the absence of a legal presumption would deter procompetitive behavior. *Matsushita*, 475 U.S., at 587; *id.*, at 594–595.

Kodak analogizes this case to *Matsushita* where a group of American corporations that manufactured or sold consumer electronic products alleged that their 21 Japanese counterparts were engaging in a 20-year conspiracy to price below cost in the United States in the hope of expanding their market share sometime in the future. After several years of detailed discovery, the defendants moved for summary

---

459 (1986); *National Collegiate Athletic Assn.* v. *Board of Regents of Univ. of Okla.*, 468 U.S. 85, 100–104 (1984); *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 59 (1977).

[13]See, *e.g.*, *Jefferson Parish*, 466 U.S., at 26–29; *United States* v. *Connecticut National Bank*, 418 U.S. 656, 661–666 (1974); *United States* v. *Grinnell Corp.*, 384 U.S. 563, 571–576 (1966); *International Boxing Club of New York, Inc.* v. *United States*, 358 U.S. 242, 250–251 (1959); see also *Jefferson Parish*, 466 U.S., at 37, n. 6 (O'CONNOR, J., concurring) (citing cases and describing the careful consideration the Court gives to the particular facts when determining market power).

judgment. 475 U.S., at 577–582. Because the defendants had every incentive not to engage in the alleged conduct which required them to sustain losses for decades with no foreseeable profits, the Court found an ``absence of any rational motive to conspire.'' *Id.*, at 597. In that context, the Court determined that the plaintiffs' theory of predatory pricing makes no practical sense, was ``speculative'' and was not ``reasonable.'' *Id.*, at 588, 590, 593, 595, 597. Accordingly, the Court held that a reasonable jury could not return a verdict for the plaintiffs and that summary judgment would be appropriate against them unless they came forward with more persuasive evidence to support their theory. *Id.*, at 587–588, 595–598.

The Court's requirement in *Matsushita* that the plaintiffs' claims make economic sense did not introduce a special burden on plaintiffs facing summary judgment in antitrust cases. The Court did not hold that if the moving party enunciates *any* economic theory supporting its behavior, regardless of its accuracy in reflecting the actual market, it is entitled to summary judgment. *Matsushita* demands only that the nonmoving party's inferences be reasonable in order to reach the jury, a requirement that was not invented, but merely articulated, in that decision.[14] If the plaintiff's theory is economically

---

[14]See, *e.g.*, *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (``summary judgment will not lie . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party''); *Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S. 752, 768 (1984) (to survive summary judgment there must be evidence that ``reasonably tends to prove'' plaintiff's theory); *First National Bank of Arizona* v. *Cities Service Co.*, 391 U.S. 253, 288–289 (1968) (defendant meets his burden under Rule 56(c) when he ``conclusively show[s] that the facts upon which [the

senseless, no reasonable jury could find in its favor, and summary judgment should be granted.

Kodak, then, bears a substantial burden in showing that it is entitled to summary judgment. It must show that despite evidence of increased prices and excluded competition, an inference of market power is unreasonable. To determine whether Kodak has met that burden, we must unravel the factual assumptions underlying its proposed rule that lack of power in the equipment market necessarily precludes power in the aftermarkets.

The extent to which one market prevents exploitation of another market depends on the extent to which consumers will change their consumption of one product in response to a price change in another, *i.e.*, the ``cross-elasticity of demand.'' See *du Pont*, 351 U.S., at 400; P. Areeda & L. Kaplow, Antitrust Analysis ¶342(c) (4th ed. 1988).[15] Kodak's proposed

---

plaintiff] relied to support his allegation were not susceptible of the interpretation which he sought to give them''); *Eastman Kodak Co.* v. *Southern Photo Materials Co.*, 273 U.S. 359, 375 (1927). See also *H.L. Hayden Co. of New York, Inc.* v. *Siemens Medical Systems, Inc.*, 879 F.2d 1005, 1012 (CA2 1989) (``only *reasonable* inferences can be drawn from the evidence in favor of the nonmoving party'') (emphasis in original); *Arnold Pontiac-GMC, Inc.* v. *Budd Baer, Inc.*, 826 F.2d 1335, 1339 (CA3 1987) (*Matsushita* directs us ```to consider whether the inference of conspiracy is reasonable'''); *Instructional Systems Development Corp.* v. *Aetna Casualty & Surety Co.*, 817 F.2d 639, 646 (CA10 1987) (summary judgment not appropriate under *Matsushita* when defendants ``could reasonably have been economically motivated'').

[15]What constrains the defendant's ability to raise prices in the service market is ``the elasticity of demand faced by the defendant—the degree to which

rule rests on a factual assumption about the cross-elasticity of demand in the equipment and aftermarkets: ``If Kodak raised its parts or service prices above competitive levels, potential customers would simply stop buying Kodak equipment. Perhaps Kodak would be able to increase short term profits through such a strategy, but at a devastating cost to its long term interests.''[16] Brief for Petitioner 12.

---

its sales fall . . . as its price rises.'' P. Areeda & L. Kaplow, Antitrust Analysis ¶342(c) (4th ed. 1988).

Courts usually have considered the relationship between price in one market and demand in another in defining the relevant market. Because market power is often inferred from market share, market definition generally determines the result of the case. Pitofsky, New Definitions of Relevant Market and the Assault on Antitrust, 90 Colum. L. Rev. 1805, 1806–1813 (1990). Kodak chose to focus on market power directly rather than arguing that the relationship between equipment and service and parts is such that the three should be included in the same market definition. Whether considered in the conceptual category of ``market definition'' or ``market power,'' the ultimate inquiry is the same—whether competition in the equipment market will significantly restrain power in the service and parts markets.

[16]The United States as *Amicus Curiae* in support of Kodak echoes this argument: ``The ISOs' claims are implausible because Kodak lacks market power in the markets for its copier and micrographic equipment. Buyers of such equipment regard an increase in the price of parts or service as an increase in the price of the equipment, and sellers recognize that the revenues from sales of parts and service are attributable to sales of the equipment. In such circumstances, it is not apparent how an equipment manufacturer such as Kodak could exercise power in the aftermarkets for parts and service.'' Brief for

Kodak argues that the Court should accept, as a matter of law, this ``basic economic realit[y],'' *id.*, at 24, that competition in the equipment market necessarily prevents market power in the aftermarkets.[17]

Even if Kodak could not raise the price of service and parts one cent without losing equipment sales, that fact would not disprove market power in the aftermarkets. The sales of even a monopolist are reduced when it sells goods at a monopoly price, but the higher price more than compensates for the loss in sales. Areeda & Kaplow, at ¶¶112 and 340(a). Kodak's claim that charging more for service and parts would be ``a short-run game,'' Brief for Petitioner 26, is based on the false dichotomy that there are only two prices that can be charged—a competitive price or a ruinous one. But there could easily be a middle, optimum price at which the increased revenues from the higher-priced sales of service and parts would more than compensate for the lower revenues from lost equipment sales. The fact that the equipment market imposes a restraint on prices in the aftermarkets by no means disproves the existence of power in those markets. See Areeda & Kaplow, at ¶340(b) (``[T]he existence of significant substitution in the event of *further* price increases or even at the *current* price does not tell us whether the defendant *already* exercises significant market power'') (emphasis in original). Thus, contrary to

---

United States as *Amicus Curiae* 8.

[17]It is clearly true, as the United States claims, that Kodak ``cannot set service or parts prices without regard to the impact on the market for equipment.'' *Id.*, at 20. The fact that the cross-elasticity of demand is not zero proves nothing; the disputed issue is how much of an impact an increase in parts and service prices has on equipment sales and on Kodak's profits.

Kodak's assertion, there is no immutable physical law —no ``basic economic reality''—insisting that competition in the equipment market cannot coexist with market power in the aftermarkets.

We next consider the more narrowly drawn question: Does Kodak's theory describe actual market behavior so accurately that respondents' assertion of Kodak market power in the aftermarkets, if not impossible, is at least unreasonable?[18] Cf. *Matsushita*, *supra*.

To review Kodak's theory, it contends that higher service prices will lead to a disastrous drop in

---

[18]Although Kodak repeatedly relies on *Continental T.V.* as support for its factual assertion that the equipment market will prevent exploitation of the service and parts markets, the case is inapposite. In *Continental T.V.*, the Court found that a manufacturer's policy restricting the number of retailers that were permitted to sell its product could have a pro-competitive effect. See 433 U.S., at 55. The Court also noted that any negative effect of exploitation of the intrabrand market (the competition between retailers of the same product) would be checked by competition in the interbrand market (competition over the same generic product) because consumers would substitute a different brand of the same product. Unlike *Continental T.V.*, this case does not concern vertical relationships between parties on different levels of the same distribution chain. In the relevant market, service, Kodak and the ISOs are direct competitors; their relationship is horizontal. The interbrand competition at issue here is competition over the provision of service. Despite petitioner's best effort, repeating the mantra ``interbrand competition'' does not transform this case into one over an agreement the manufacturer has with its dealers that would fall under the rubric of *Continental T.V.*

equipment sales. Presumably, the theory's corollary is to the effect that low service prices lead to a dramatic increase in equipment sales. According to the theory, one would have expected Kodak to take advantage of lower-priced ISO service as an opportunity to expand equipment sales. Instead, Kodak adopted a restrictive sales policy consciously designed to eliminate the lower-priced ISO service, an act that would be expected to devastate either Kodak's equipment sales or Kodak's faith in its theory. Yet, according to the record, it has done neither. Service prices have risen for Kodak customers, but there is no evidence or assertion that Kodak equipment sales have dropped.

Kodak and the United States attempt to reconcile Kodak's theory with the contrary actual results by describing a ``marketing strategy of spreading over time the total cost to the buyer of Kodak equipment.'' Brief for United States as *Amicus Curiae* 18; see also Brief for Petitioner 18. In other words, Kodak could charge subcompetitive prices for equipment and make up the difference with supracompetitive prices for service, resulting in an overall competitive price. This pricing strategy would provide an explanation for the theory's descriptive failings—if Kodak in fact had adopted it. But Kodak never has asserted that it prices its equipment or parts subcompetitively and recoups its profits through service. Instead, it claims that it prices its equipment comparably to its competitors, and intends that both its equipment sales and service divisions be profitable. See App. 159–161, 170, 178, 188. Moreover, this hypothetical pricing strategy is inconsistent with Kodak's policy toward its self-service customers. If Kodak were underpricing its equipment, hoping to lock in customers and recover its losses in the service market, it could not afford to sell customers parts without service. In sum, Kodak's theory does not explain the actual market behavior revealed in the record.

Respondents offer a forceful reason why Kodak's theory, although perhaps intuitively appealing, may not accurately explain the behavior of the primary and derivative markets for complex durable goods: the existence of significant information and switching costs. These costs could create a less responsive connection between service and parts prices and equipment sales.

For the service-market price to affect equipment demand, consumers must inform themselves of the total cost of the ``package''—equipment, service and parts—at the time of purchase; that is, consumers must engage in accurate lifecycle pricing.[19] Lifecycle pricing of complex, durable equipment is difficult and costly. In order to arrive at an accurate price, a consumer must acquire a substantial amount of raw data and undertake sophisticated analysis. The necessary information would include data on price, quality, and availability of products needed to operate, upgrade, or enhance the initial equipment, as well as service and repair costs, including estimates of breakdown frequency, nature of repairs, price of service and parts, length of ``down-time'' and losses incurred from down-time.[20]

Much of this information is difficult—some of it

---

[19]See Craswell, Tying Requirements in Competitive Markets: The Consumer Protection Issues, 62 B. U. L. Rev. 661, 676 (1982); Beales, Craswell, & Salop, The Efficient Regulation of Consumer Information, 24 J. Law & Econ. 491, 509–511 (1981); *Jefferson Parish*, 466 U.S., at 15.

[20]In addition, of course, in order to price accurately the equipment, a consumer would need initial purchase information such as prices, features, quality, and available warranties, for different machinery with different capabilities, and residual value information such as the longevity of product use and its potential resale or trade-in value.

impossible—to acquire at the time of purchase. During the life of a product, companies may change the service and parts prices, and develop products with more advanced features, a decreased need for repair, or new warranties. In addition, the information is likely to be customer-specific; lifecycle costs will vary from customer to customer with the type of equipment, degrees of equipment use, and costs of downtime.

Kodak acknowledges the cost of information, but suggests, again without evidentiary support, that customer information needs will be satisfied by competitors in the equipment markets. Brief for Petitioner 26, n. 11. It is a question of fact, however, whether competitors would provide the necessary information. A competitor in the equipment market may not have reliable information about the lifecycle costs of complex equipment it does not service or the needs of customers it does not serve. Even if competitors had the relevant information, it is not clear that their interests would be advanced by providing such information to consumers. See 2 P. Areeda & D. Turner, Antitrust Law, ¶404b1 (1978).[21]

---

[21]To inform consumers about Kodak, the competitor must be willing to forgo the opportunity to reap supracompetitive prices in its own service and parts markets. The competitor may anticipate that charging lower service and parts prices and informing consumers about Kodak in the hopes of gaining future equipment sales will cause Kodak to lower the price on its service and parts, cancelling any gains in equipment sales to the competitor and leaving both worse off. Thus, in an equipment market with relatively few sellers, competitors may find it more profitable to adopt Kodak's service and parts policy than to inform the consumers. See 2 P. Areeda & D. Turner, Antitrust Law ¶404b1 (1978); App. 177 (Kodak, Xerox, and IBM together have nearly 100% of

Moreover, even if consumers were capable of acquiring and processing the complex body of information, they may choose not to do so. Acquiring the information is expensive. If the costs of service are small relative to the equipment price, or if consumers are more concerned about equipment capabilities than service costs, they may not find it cost-efficient to compile the information. Similarly, some consumers, such as the Federal Government, have purchasing systems that make it difficult to consider the complete cost of the ``package'' at the time of purchase. State and local governments often treat service as an operating expense and equipment as a capital expense, delegating each to a different department. These governmental entities do not lifecycle price, but rather choose the lowest price in each market. See Brief for National Association of

---

relevant market).

Even in a market with many sellers, any one competitor may not have sufficient incentive to inform consumers because the increased patronage attributable to the corrected consumer beliefs will be shared among other competitors. Beales, Craswell & Salop, 24 J. Law & Econ., at 503–504, 506.

State Purchasing Officials et al., as *Amici Curiae*; Brief for State of Ohio et al., as *Amici Curiae*; App. 429–430.

As Kodak notes, there likely will be some large-volume, sophisticated purchasers who will undertake the comparative studies and insist, in return for their patronage, that Kodak charge them competitive lifecycle prices. Kodak contends that these knowledgeable customers will hold down the package price for all other customers. Brief for Petitioner 23, n. 9. There are reasons, however, to doubt that sophisticated purchasers will ensure that competitive prices are charged to unsophisticated purchasers, too. As an initial matter, if the number of sophisticated customers is relatively small, the amount of profits to be gained by supracompetitive pricing in the service market could make it profitable to let the knowledgeable consumers take their business elsewhere. More importantly, if a company is able to price-discriminate between sophisticated and unsophisticated consumers, the sophisticated will be unable to prevent the exploitation of the uninformed. A seller could easily price-discriminate by varying the equipment/parts/service package, developing different warranties, or offering price discounts on different components.

Given the potentially high cost of information and the possibility a seller may be able to price-discriminate between knowledgeable and unsophisticated consumers, it makes little sense to assume, in the absence of any evidentiary support, that equipment-purchasing decisions are based on an accurate assessment of the total cost of equipment, service, and parts over the lifetime of the machine.[22]

---

[22]See Salop & Stiglitz, Bargains and Ripoffs: A Model of Monopolistically Competitive Price Dispersion, 44 Rev. Econ. Studies 493 (1977); Salop, Information and Market Structure—Information and Monopolistic

Indeed, respondents have presented evidence that Kodak practices price-discrimination by selling parts to customers who service their own equipment, but refusing to sell parts to customers who hire third-party service companies. Companies that have their own service staff are likely to be high-volume users, the same companies for whom it is most likely to be economically worthwhile to acquire the complex information needed for comparative lifecycle pricing.

A second factor undermining Kodak's claim that supracompetitive prices in the service market lead to ruinous losses in equipment sales is the cost to current owners of switching to a different product. See Areeda & Turner, at ¶519a.[23] If the cost of switching is high, consumers who already have purchased the equipment, and are thus ``locked-in,'' will tolerate some level of service-price increases before changing equipment brands. Under this scenario, a seller profitably could maintain supracompetitive prices in the aftermarket if the switching costs were high relative to the increase in service prices, and the number of locked-in customers were high relative to the number of new purchasers.

Moreover, if the seller can price-discriminate between its locked-in customers and potential new customers, this strategy is even more likely to prove profitable. The seller could simply charge new customers below-marginal cost on the equipment and recoup the charges in service, or offer packages with life-time warranties or long-term service agreements that are not available to locked-in customers.

Competition, 66 Am. Econ. Rev. 240 (1976); Stigler, The Economics of Information, 69 J. Pol. Econ. 213 (1961).

[23]A firm can exact leverage whenever other equipment is not a ready substitute. F.M. Scherer & D. Ross, Industrial Market Structure and Economic Performance 16–17 (3d ed. 1990).

Respondents have offered evidence that the heavy initial outlay for Kodak equipment, combined with the required support material that works only with Kodak equipment, makes switching costs very high for existing Kodak customers. And Kodak's own evidence confirms that it varies the package price of equipment/parts/service for different customers.

In sum, there is a question of fact whether information costs and switching costs foil the simple assumption that the equipment and service markets act as pure complements to one another.[24]

We conclude, then, that Kodak has failed to demonstrate that respondents' inference of market power in the service and parts markets is unreasonable, and that, consequently, Kodak is entitled to summary judgment. It is clearly reasonable to infer that Kodak has market power to raise prices and drive out competition in the aftermarkets, since respondents offer direct evidence that Kodak did so.[25] It is also plausible, as discussed

---

[24]The dissent disagrees based on its hypothetical case of a tie between equipment and service. "The only thing lacking" to bring this case within the hypothetical case, states the dissent, "is concrete evidence that the restrictive parts policy was . . . generally known." *Post*, at 7. But the dissent's "only thing lacking" is the crucial thing lacking—-evidence. Whether a tie betweeen parts and service should be treated identically to a tie between equipment and service, as the dissent and Kodak argue, depends on whether the equipment market prevents the exertion of market power in the parts market. Far from being "anomalous," *post*, at 8, requiring Kodak to provide evidence on this factual question is completely consistent with our prior precedent. See, *e.g.*, n. 13, *supra*.

[25]Cf. *Instructional Systems*, 817 F.2d, at 646 (finding the conspiracy reasonable under *Matsushita* because

above, to infer that Kodak chose to gain immediate profits by exerting that market power where locked-in customers, high information costs, and discriminatory pricing limited and perhaps eliminated any long-term loss. Viewing the evidence in the light most favorable to respondents, their allegations of market power ``mak[e] . . . economic sense.'' Cf. *Matsushita*, 475 U.S., at 587.

Nor are we persuaded by Kodak's contention that it is entitled to a legal presumption on the lack of market power because, as in *Matsushita*, there is a significant risk of deterring procompetitive conduct. Plaintiffs in *Matsushita* attempted to prove the antitrust conspiracy ``through evidence of rebates and other price-cutting activities.'' *Id.*, at 594. Because cutting prices to increase business is ``the very essence of competition,'' the Court was concerned that mistaken inferences would be ``especially costly,'' and would ``chill the very conduct the antitrust laws are designed to protect.'' *Ibid.* See also *Monsanto Co*. v. *Spray-Rite Service Corp.*, 465 U.S. 752, 763 (1984) (permitting inference of concerted action would ``deter or penalize perfectly legitimate conduct''). But the facts in this case are just the opposite. The alleged conduct—higher service prices and market foreclosure—is facially anticompetitive and exactly the harm that antitrust laws aim to prevent. In this situation, *Matsushita* does not create any presumption in favor of summary judgment for the defendant.

Kodak contends that, despite the appearance of anticompetitiveness, its behavior actually favors competition because its ability to pursue innovative marketing plans will allow it to compete more effectively in the equipment market. Brief for Petitioner 40–41. A pricing strategy based on lower equipment prices and higher aftermarket prices could

---

its goals were in fact achieved).

enhance equipment sales by making it easier for the buyer to finance the initial purchase.[26] It is undisputed that competition is enhanced when a firm is able to offer various marketing options, including bundling of support and maintenance service with the sale of equipment. Nor do such actions run afoul of the antitrust laws.[27] But the procompetitive effect of the specific conduct challenged here, eliminating all consumer parts and service options, is far less clear.[28]

We need not decide whether Kodak's behavior has any procompetitive effects and, if so, whether they outweigh the anticompetitive effects. We note only that Kodak's service and parts policy is simply not one that appears always or almost always to enhance competition, and therefore to warrant a legal presumption without any evidence of its actual economic impact. In this case, when we weigh the risk of deterring procompetitive behavior by proceeding to trial against the risk that illegal

---

[26]It bears repeating that in this case Kodak has never claimed that it is in fact pursuing such a pricing strategy.

[27]See *Jefferson Parish*, 466 U.S., at 12 (``Buyers often find package sales attractive; a seller's decision to offer such packages can merely be an attempt to compete effectively—conduct that is entirely consistent with the Sherman Act''). See also Yates & DiResta, Software Support and Hardware Maintenance Practices: Tying Considerations, 8 The Computer Lawyer 17 (1991) (describing various service and parts policies that enhance quality and sales but do not violate the antitrust laws).

[28]Two of the largest consumers of service and parts contend that they are worse off when the equipment manufacturer also controls service and parts. See Brief for State Farm Mutual Automobile Insurance Company et al. as *Amici Curiae*; Brief for State of Ohio et al. as *Amici Curiae*.

behavior go unpunished, the balance tips against summary judgment. Cf. *Matsushita*, 475 U.S., at 594–595.

For the foregoing reasons, we hold that Kodak has not met the requirements of Fed. Rule Civ. Proc. 56(c). We therefore affirm the denial of summary judgment on respondents' §1 claim.[29]

---

[29]The dissent urges a radical departure in this Court's antitrust law. It argues that because Kodak has only an "inherent" monopoly in parts for its equipment, *post*, at 4, the antitrust laws do not apply to its efforts to expand that power into other markets. The dissent's proposal to grant *per se* immunity to manufacturers competing in the service market would exempt a vast and growing sector of the economy from antitrust laws. Leaving aside the question whether the Court has the authority to make such a policy decision, there is no support for it in our jurisprudence or the evidence in this case.

Even assuming, despite the absence of any proof from the dissent, that all manufacturers possess some inherent market power in the parts market, it is not clear why that should immunize them from the antitrust laws in another market. The Court has held many times that power gained through some natural and legal advantage such as a patent, copyright, or business acumen can give rise to liability if "a seller exploits his dominant position in one market to expand his empire into the next." *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594, 611 (1953); see, *e.g.*, *Northern Pacific R. Co.* v. *United States* 356 U.S. 1 (1958); *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131 (1948); *Leitch Mfg. Co.* v. *Barber Co.*, 302 U.S. 458, 463 (1938). Moreover, on the occasions when the Court has considered tying in derivative aftermarkets by manufacturers, it has not adopted any exception to the usual antitrust analysis,

Respondents also claim that they have presented genuine issues for trial as to whether Kodak has monopolized or attempted to monopolize the service and parts markets in violation of §2 of the Sherman Act. ``The offense of monopoly under §2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as

---

treating derivative aftermarkets as it has every other separate market. See *International Salt Co.* v. *United States*, 332 U.S. 392 (1947); *International Business Machines Corp.* v. *United States*, 298 U.S. 131 (1936); *United Shoe Machinery Co.* v. *United States*, 258 U.S. 451 (1922). Our past decisions are reason enough to reject the dissent's proposal. See *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172–173 (1989) ("Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done").

Nor does the record in this case support the dissent's proposed exemption for aftermarkets. The dissent urges its exemption because the tie here "does not permit the manufacturer to project power over a class of consumers distinct from that which it is already able to exploit (and fully) without the inconvenience of the tie." *Post*, at 13–14. Beyond the dissent's obvious difficulty in explaining why Kodak would adopt this expensive tying policy if it could achieve the same profits more conveniently through some other means, respondents offer an alternative theory, supported by the record, that suggests Kodak *is* able to exploit some customers who in the absence of the tie would be protected from increases in parts prices by knowledgeable customers. See *supra*, at 22–23.

At bottom, whatever the ultimate merits of the

distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.'' *United States* v. *Grinnell Corp.*, 384 U.S., at 570–571.

The existence of the first element, possession of monopoly power, is easily resolved. As has been noted, respondents have presented a triable claim that service and parts are separate markets, and that Kodak has the ``power to control prices or exclude competition'' in service and parts. *du Pont*, 351 U.S., at 391. Monopoly power under §2 requires, of course, something greater than market power under §1. See *Fortner*, 394 U.S., at 502. Respondents' evidence that Kodak controls nearly 100% of the parts market and 80% to 95% of the service market, with no readily available substitutes, is, however, sufficient to survive summary judgment under the more stringent monopoly standard of §2. See *National Collegiate Athletic Assn.* v. *Board of Regents of Univ. of Okla.*, 468 U.S. 85, 112 (1984). Cf. *United States* v. *Grinnell Corp.*, 384 U.S., at 571 (87% of the market is a monopoly); *American Tobacco Co.* v. *United States*, 328 U.S. 781, 797 (1946) (over 2/3 of the market is a monopoly).

Kodak also contends that, as a matter of law, a single brand of a product or service can never be a relevant market under the Sherman Act. We

---

dissent's theory, at this point it is mere conjecture. Neither Kodak nor the dissent have provided any evidence refuting respondents' theory of forced unwanted purchases at higher prices and price discrimination. While it may be, as the dissent predicts, that the equipment market will prevent any harms to consumers in the aftermarkets, the dissent never makes plain why the Court should accept that theory on faith rather than requiring the usual evidence needed to win a summary judgment motion.

disagree. The relevant market for antitrust purposes is determined by the choices available to Kodak equipment owners. See *Jefferson Parish*, 466 U.S., at 19. Because service and parts for Kodak equipment are not interchangeable with other manufacturers' service and parts, the relevant market from the Kodak-equipment owner's perspective is composed of only those companies that service Kodak machines. See *du Pont*, 351 U.S., at 404 (the ``market is composed of products that have reasonable interchangeability'').[30] This Court's prior cases support the proposition that in some instances one brand of a product can constitute a separate market. See *National Collegiate Athletic Assn.*, 468 U.S., at 101–102, 111–112 (1984); *International Boxing Club of New York, Inc.* v. *United States*, 358 U.S. 242, 249–252 (1959); *International Business Machines Corp.* v. *United States*, 298 U.S. 131 (1936).[31] The proper

---

[30]Kodak erroneously contends that this Court in *du Pont* rejected the notion that a relevant market could be limited to one brand. Brief for Petitioner 33. The Court simply held in *du Pont* that one brand does not *necessarily* constitute a relevant market if substitutes are available. 351 U.S., at 393. See also *Boxing Club*, 358 U.S., at 249–250. Here respondents contend there are no substitutes.

[31]Other courts have limited the market to parts for a particular brand of equipment. See *e.g.*, *International Logistics Group, Ltd.* v. *Chrysler Corp.*, 884 F.2d 904, 905, 908 (CA6 1989) (parts for Chrysler cars is the relevant market), cert. denied, 494 U.S. 1066 (1990); *Dimidowich* v. *Bell & Howell*, 803 F.2d 1473, 1480–1481, n. 3 (CA9 1986), modified, 810 F.2d 1517 (1987) (service for Bell & Howell equipment is the relevant market); *In re General Motors Corp*., 99 F.T.C 464, 554, 584 (1982) (crash parts for General Motors cars is the relevant market; *Heatransfer Corp.* v. *Volkswagenwerk A.G.*, 553 F.2d 964 (CA5 1977), cert.

market definition in this case can be determined only after a factual inquiry into the ``commercial realities'' faced by consumers. *United States* v. *Grinnell Corp.*, 384 U.S., at 572.

The second element of a §2 claim is the use of monopoly power ``to foreclose competition, to gain a competitive advantage, or to destroy a competitor.'' *United States* v. *Griffith*, 334 U.S. 100, 107 (1948). If Kodak adopted its parts and service policies as part of a scheme of willful acquisition or maintenance of monopoly power, it will have violated §2. *Grinnell Corp.*, 384 U.S., at 570–571; *United States* v. *Aluminum Co. of America*, 148 F.2d 416, 432 (CA2 1945); *Aspen Skiing Co*. v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585, 600–605 (1985).[32]

As recounted at length above, respondents have presented evidence that Kodak took exclusionary action to maintain its parts monopoly and used its control over parts to strengthen its monopoly share of the Kodak service market. Liability turns, then, on whether ``valid business reasons'' can explain Kodak's actions. *Aspen Skiing Co.*, 472 U.S., at 605; *United States* v. *Aluminum Co. of America*, 148 F.2d, at 432. Kodak contends that it has three valid business justifications for its actions: ``(1) to promote interbrand equipment competition by allowing Kodak to stress the quality of its service; (2) to improve asset management by reducing Kodak's inventory costs; and (3) to prevent ISOs from free riding on

---

denied, 434 U.S. 1087 (1978) (air conditioners for Volkswagens is the relevant market).

[32]It is true that as a general matter a firm can refuse to deal with its competitors. But such a right is not absolute; it exists only if there are legitimate competitive reasons for the refusal. See *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585, 602–605 (1985).

Kodak's capital investment in equipment, parts and service.'' Brief for Petitioner 6. Factual questions exist, however, about the validity and sufficiency of each claimed justification, making summary judgment inappropriate.

Kodak first asserts that by preventing customers from using ISOs, ``it [can] best maintain high quality service for its sophisticated equipment'' and avoid being ``blamed for an equipment malfunction, even if the problem is the result of improper diagnosis, maintenance or repair by an ISO.'' *Id.*, at 6–7. Respondents have offered evidence that ISOs provide quality service and are preferred by some Kodak equipment owners. This is sufficient to raise a genuine issue of fact. See *International Business Machines Corp.* v. *United States*, 298 U.S., at 139–140 (rejecting IBM's claim that it had to control the cards used in its machines to avoid ``injury to the reputation of the machines and the good will of'' IBM in the absence of proof that other companies could not make quality cards); *International Salt Co.* v. *United States*, 332 U.S. 392, 397–398 (1947) (rejecting International Salt's claim that it had to control the supply of salt to protect its leased machines in the absence of proof that competitors could not supply salt of equal quality).

Moreover, there are other reasons to question Kodak's proffered motive of commitment to quality service; its quality justification appears inconsistent with its thesis that consumers are knowledgeable enough to lifecycle price, and its self-service policy. Kodak claims the exclusive-service contract is warranted because customers would otherwise blame Kodak equipment for breakdowns resulting from inferior ISO service. Thus, Kodak simultaneously claims that its customers are sophisticated enough to make complex and subtle lifecycle-pricing decisions, and yet too obtuse to distinguish which breakdowns are due to bad equipment and which are due to bad

service. Kodak has failed to offer any reason why informational sophistication should be present in one circumstance and absent in the other. In addition, because self-service customers are just as likely as others to blame Kodak equipment for breakdowns resulting from (their own) inferior service, Kodak's willingness to allow self-service casts doubt on its quality claim. In sum, we agree with the Court of Appeals that respondents ``have presented evidence from which a reasonable trier of fact could conclude that Kodak's first reason is pretextual.'' 903 F.2d, at 618.

There is also a triable issue of fact on Kodak's second justification—controlling inventory costs. As respondents argue, Kodak's actions appear inconsistent with any need to control inventory costs. Presumably, the inventory of parts needed to repair Kodak machines turns only on breakdown rates, and those rates should be the same whether Kodak or ISOs perform the repair. More importantly, the justification fails to explain respondents' evidence that Kodak forced OEMs, equipment owners, and parts brokers not to sell parts to ISOs, actions that would have no effect on Kodak's inventory costs.

Nor does Kodak's final justification entitle it to summary judgment on respondents' §2 claim. Kodak claims that its policies prevent ISOs from ``exploit[ing] the investment Kodak has made in product development, manufacturing and equipment sales in order to take away Kodak's service revenues.'' Brief for Petitioner 7–8. Kodak does not dispute that respondents invest substantially in the service market, with training of repair workers and investment in parts inventory. Instead, according to Kodak, the ISOs are free-riding because they have failed to enter the equipment and parts markets. This understanding of free-riding has no support in our caselaw.[33] To the contrary, as the Court of Appeals noted, one of the evils proscribed by the antitrust laws is the creation of entry barriers to potential competitors by requiring them to enter two markets simultaneously. *Jefferson Parish*, 466 U.S., at 14; *Fortner*, 394 U.S., at 509.

None of Kodak's asserted business justifications, then, are sufficient to prove that Kodak is ``entitled to a judgment as a matter of law'' on respondents' §2 claim. Fed. Rule. Civ. Proc. 56(c).

---

[33]Kodak claims that both *Continental T.V.* and *Monsanto* support its free-rider argument. Neither is applicable. In both *Continental T.V.*, 433 U.S., at 55, and *Monsanto*, 465 U.S., at 762–763, the Court accepted free-riding as a justification because without restrictions a manufacturer would not be able to induce competent and aggressive retailers to make the kind of investment of capital and labor necessary to distribute the product. In *Continental T.V.* the relevant market level was retail sale of televisions and in *Monsanto* retail sales of herbicides. Some retailers were investing in those markets; others were not, relying, instead, on the investment of the other retailers. To be applicable to this case, the ISOs would have to be relying on Kodak's investment in the service market; that, however, is not Kodak's argument.

In the end, of course, Kodak's arguments may prove to be correct. It may be that its parts, service, and equipment are components of one unified market, or that the equipment market does discipline the aftermarkets so that all three are priced competitively overall, or that any anticompetitive effects of Kodak's behavior are outweighed by its competitive effects. But we cannot reach these conclusions as a matter of law on a record this sparse. Accordingly, the judgment of the Court of Appeals denying summary judgment is affirmed.

It is so ordered.