NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 90–1029. Argued December 10, 1991—Decided June 8, 1992

After respondent independent service organizations (ISOs) began servicing copying and micrographic equipment manufactured by petitioner Eastman Kodak Co., Kodak adopted policies to limit the availability to ISOs of replacement parts for its equipment and to make it more difficult for ISOs to compete with it in servicing such equipment. Respondents then filed this action, alleging, *inter alia,* that Kodak had unlawfully tied the sale of service for its 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 and parts for such machines, in violation of §2 of that Act. The District Court granted summary judgment for Kodak, but the Court of Appeals reversed. Among other things, 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, and 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.

Held:

1.Kodak has not met the requirements of Fed. Rule Civ. Proc. 56(c) for an award of summary judgment on the §1 claim. Pp.7–27.

(a)A tying arrangement—*i. e.,* an agreement by a party to sell one product 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—violates §1 only if the seller has appreciable economic power in the tying product market. Pp.7–8.

(b)Respondents have presented sufficient evidence of a tying arrangement to defeat a summary judgment motion. A

reasonable trier of fact could find, first, that service and parts are two distinct products in light of evidence indicating that each has been, and continues in some circumstances to be, sold separately, and, second, that Kodak has tied the sale of the two products in light of evidence indicating that it would sell parts to third parties only if they agreed not to buy service from ISOs. Pp.8–9.

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(c)For purposes of determining appreciable economic power in the tying market, this Court's precedents have defined market power as the power to force a purchaser to do something that he would not do in a competitive market, and have ordinarily inferred the existence of such power from the seller's possession of a predominate share of the market. Pp.9–10.

(d)Respondents would be entitled under such precedents to a trial on their claim that Kodak has sufficient power in the parts market to force unwanted purchases of the tied service market, based on evidence indicating that Kodak has control over the availability of parts and that such control has excluded service competition, boosted service prices, and forced unwilling consumption of Kodak service. Pp.10–11.

(e)Kodak has not satisfied its substantial burden of showing that, despite such evidence, an inference of market power is unreasonable. Kodak's theory that its lack of market power in the primary equipment market precludes—as a matter of law—the possibility of market power in the derivative aftermarkets rests on the factual assumption that if it raised its parts or service prices above competitive levels, potential customers would simply stop buying its equipment. Kodak's theory does not accurately describe actual market behavior, since there is no evidence or assertion that its equipment sales dropped after it raised its service prices. Respondents offer a forceful reason for this discrepancy: the existence of significant information and switching costs that could create a less responsive connection between aftermarket prices and equipment sales. It is plausible to infer from respondents' evidence that Kodak chose to gain immediate profits by exerting market power where locked-in customers, high information costs, and discriminatory pricing limited and perhaps eliminated any long-term loss. Pp.11–24.

(f)Nor is this Court persuaded by Kodak's contention that it is entitled to a legal presumption on the lack of market power because there is a significant risk of deterring procompetitive conduct. Because Kodak's service and parts policy is not one that appears always or almost always to enhance competition, the balance tips against summary judgment. Pp.24–26.

2.Respondents 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. Pp.27–33.

(a)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 sufficient to survive summary judgment on the first element of the monopoly

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offense, the possession of monopoly power. Kodak's contention that, as a matter of law, a single brand of a product or service can never be a relevant market contravenes cases of this Court indicating that one brand of a product can constitute a separate market in some instances. The proper market definition in this case can be determined only after a factual inquiry into the commercial realities faced by Kodak equipment owners. Pp.28–29.

(b)As to the second element of a §2 claim, the willful use of monopoly power, 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 service market. Thus, liability turns on whether valid business reasons can explain Kodak's actions. However, none of its asserted business justifications—a commitment to quality service, a need to control inventory costs, and a desire to prevent ISOs from free-riding on its capital investment—are sufficient to prove that it is entitled to a judgment as a matter of law. Pp.29–32.

903 F.2d 612, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR and THOMAS, JJ., joined.