

Analysis of Antitrust Challenges to Category Captain Arrangements

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Category management (CM) is a widely practiced supplier–retailer process for managing entire product categories as strategic business units and for customizing them on a store-by-store basis to produce enhanced business results through a focus on delivering consumer value. A particular form of CM involves “category captain” (CC) arrangements, in which a supplier, often the category leader, takes on a significant role in the retail management of the category, including the brands of competing suppliers. Although CC arrangements are capable of yielding benefits to competition, they may also enable a CC to take advantage of its role in ways that restrict competition and harm consumers. Recent antitrust litigation that targets CC arrangements illustrates the nature and magnitude of competitive issues that can arise in the arrangements. Competitive concerns about CC arrangements have also attracted the attention of public policymakers in the United States and abroad. In response to public policy developments and in recognition of the significance of CM and CC arrangements in the marketing field, Journal of Public Policy & Marketing recently collaborated with the American Antitrust Institute to convene the Roundtable on Antitrust and Category Captains. This article assembles and archives the findings, analysis, and commentary from the roundtable, and it examines antitrust issues that may attend CC arrangements.

Category management (CM) is a supplier–retailer process for managing entire product categories as strategic business units and customizing them on a store-by-store basis to produce enhanced business results through a stated focus on delivering consumer value (see Blattberg and Fox 1995; Joint Industry Project on Efficient Consumer Response 1995; Nielsen Marketing Research 1992). A widely implemented business practice in many retail sectors, CM is theorized to provide benefits to retailers by empowering them to operate a category as a business, identifying the optimal product mix and merchandising in each category to meet consumer needs (Nielsen Marketing Research 1992).

A particular form of CM involves “category captain” (CC) arrangements, in which a supplier, often the category leader, takes on a significant role in the retail management of the category, including the brands of competing suppliers. Collaborating with a leading supplier in this process enables the retailer to leverage the unique resources of both trading partners (Joint Industry Project on Efficient Consumer Response 1995). Suppliers often study consumers in the categories in which they compete, they possess information about broader market trends and other factors that affect

retail sales, and they often have greater access to resources for acquiring and analyzing this type of information (Blattberg and Fox 1995). Because of such collaboration and because a CC may have a significant role in retailer decisions that affect rivals, collaborative arrangements can enable a CC to take advantage of its role in ways that restrict competition and harm consumers.

Antitrust concerns for CC arrangements focus on two potential problems. First, a CC can use its role to exclude rivals or otherwise to increase significantly rivals’ costs of competing. Second, a CC can use its role to facilitate collusion among rivals in the category or between competing retailers that the CC serves. In each case, such conduct can restrict competition in ways that harm consumer welfare. The restriction of competition among rivals can lead to higher prices, more limited variety and choice, and diminished rates of innovation. Concerns about exclusion of competition include the possibility that because of its role, a CC can effectively control outcomes in the category; receive preferential treatment for its brands; and effectively foreclose rivals from access to shelf space, merchandising opportunities, and promotional advertising. Concerns about collusion among competitors include the possibility that a CC will use its role to facilitate coordination among rivals by learning about and transferring proprietary and other sensitive information among competitors in the category or by coordinating recommendations across the rivals or the retailers for which it serves as CC.

Recent antitrust litigation that targets CCs illustrates the nature and magnitude of competitive concerns that can arise in CC arrangements. In a recent case that reportedly involves the largest antitrust jury verdict in U.S. history, the

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U.S. Supreme Court refused to review a \$1.05 billion antitrust award to Conwood Company in its suit against its rival United States Tobacco Co. (USTC) in the smokeless-tobacco category (*U.S. Tobacco Co. v. Conwood Co., L.P.* 2003). Among other practices, the jury found that USTC had used its CC arrangements to bias systematically information provided to retailers, leading to the exclusion of rivals' products from store shelves. Conduct on the part of a CC is also part of a recent case that involved the four largest tobacco producers (*R.J. Reynolds Tobacco Co. v. Philip Morris Inc.* 2003). In the suit, R.J. Reynolds, joined by Brown & Williamson and Lorillard, alleged that Philip Morris's "Retail Leaders" retail trade program and its involvement in CM excluded competition. Although a district court dismissed the suit on summary judgment, the same court had originally enjoined parts of the program through a preliminary injunction.

Competitive concerns about CC arrangements have also attracted the attention of public policymakers in the United States and abroad. In the spring of 2000, the Federal Trade Commission (FTC) held a two-day workshop and subsequently issued a report that identifies potential concerns for slotting allowances and related trade practices, including CC arrangements (FTC 2001). The Canadian Competition Bureau (CCB), which focuses on business practices in the grocery industry, also issued a report that sets forth potentially problematic practices that would prompt investigation under its competition act, including certain CC arrangements (CCB 2002). More recently, the Israel Antitrust Authority (IAA) issued a sweeping statement that requires preapproval of all CM retail agreements by the three largest chains selling in the country (IAA 2003).

In response to these public policy developments and in recognition of the significance of CM and CC arrangements in the marketing field, *Journal of Public Policy & Marketing* collaborated with the American Antitrust Institute in the spring of 2003 to convene the Roundtable on Antitrust and Category Captains.¹ With the support of Cornerstone Research and the University of North Florida's Coggin College of Business, the daylong event, held in Washington, D.C., brought together several key public policymakers, leading practitioners in business and law, and academics who have studied the issues. The objectives of the roundtable were to (1) examine the antitrust questions in CC arrangements, (2) enhance understanding of CC arrangements' antitrust implications, (3) develop an informed approach for assessing the implications, and (4) chart a course for further understanding through research.

This article assembles and archives the analysis, findings, and recommendations of the roundtable, and it examines antitrust issues that may attend CC arrangements. The assessment highlights the contribution that insights from marketing can have in furthering the understanding of CC arrangements and their antitrust implications.

CM

Prompted by fundamental changes in the retail environment and trade relations, CM emphasizes a shift in focus from the sales and profitability of a particular item or brand in a cat-

egory to the sales and profitability of the entire category. This change is making the consumer packaged goods marketplace more complex than ever (Nielsen Marketing Research 1992, p. 8).

For retailers, CM involves determining the pricing, merchandising, promotions, and product assortments for a category on the basis of established category goals, the competitive environment, and consumers' needs and wants (Blattberg and Fox 1995). With CM, managers can identify the optimal product mix and stock each store with the specific products that demographics and other types of information indicate customers want to purchase (Nielsen Marketing Research 1992).

Table 1 describes several CM frameworks that are identified in the academic and trade literature. In the leftmost column is the process described by the Joint Industry Project on Efficient Consumer Response (1995). Although this particular process is widely cited, the other processes follow the same general procedure; however, some stages may be combined, and others may be separated into smaller, distinct steps. Each process involves considerable analysis and planning before the design and implementation of strategies and tactics, including the visible activities of merchandising, promotion, and pricing.

Supplier-Retailer Collaboration

As a collaborative process, CM attempts to leverage the unique resources of supplier and retailer trading partners (Joint Industry Project on Efficient Consumer Response 1995, p. 3). Blattberg and Fox (1995) explain that retailers have point-of-sale data, knowledge about their own merchandising efforts, and total store consumer measures. Manufacturers often study consumers in the category and know who consumers are demographically and what motivates them. Manufacturers also have broader information about the market and its trends, as well as factors that are outside of retailers' understanding but affect sales. On the basis of their knowledge of the factors that drive category sales, manufacturers are often able to project future category growth. Typically, suppliers also have more resources, including highly trained specialists to analyze data, which they bring to the category planning process. By combining tools and resources in collaboration, CM is believed to help suppliers and retailers align their strategies, systems, processes, and people to provide better value to consumers (Winston Weber & Associates 1999).

Although retail managers can begin to achieve CM goals without a supplier's input by using in-house information and technology augmented by research as well as analyses purchased from third parties (Nielsen Marketing Research 1992), some consultants argue that the results are likely to be enhanced through collaboration. Benefits accrue in the CM process when the suppliers' and retailers' different skills and information are leveraged in ways that result in enhanced decision making and lower costs.

CC Arrangements

A particular form of CM supplier-retailer collaboration involves CC arrangements, in which a single supplier in a category becomes a partner to the retailer and favored resource that is relied on to provide input on both the mar-

¹A report by Gabrielle Herderschee-Hunter on the roundtable can be found at <http://www.antitrustinstitute.org>.

Table 1. Synthesis of CM Process Frameworks

	Blattberg and Fox (1995, p. viii)	Nielsen Marketing Research (1992, p. 12)	Cannondale Associates (2002, p. 11)	Ernst & Young (<i>Progressive Grocer</i> 1997)	Partnering Group (Raskin 2002, p. 73)
Joint Industry Project on Efficient Consumer Response (1995, p. 18)					
Category Definition	Define the category	Review the category	Issue identification	Category setup and scorecard	Define the category
Category Role	Set category role and goals		Research and analysis		Determine the category role
Category Assessment	Assess the category	Target customers			Assess performance
Category Scorecard	Develop scorecard	Plan merchandising	Action translation		Set goals
Category Strategies	Develop strategies				Choose the audience
Category Tactics	Develop tactical plan Develop financial plan				Plan tactics
Plan Implementation	Outline implementation plan	Implement strategy	Execution		Implement the plan
Category Review	Monitor and review	Evaluate results	Performance Monitoring	Modeling/review	

ketplace and category decisions (Nielsen Marketing Research 1992). According to Blattberg and Fox (1995, pp. 38–39), the typical process is for a strong supplier to provide information and resources in exchange for the opportunity to participate actively in planning the category with the retailer. In this role, the CC has joint responsibility with the retailer for category development and growth, providing product trend information and recommending prices and shelf-space allocations for both its own products and those of its competitors (Cohen 2002). The best CCs are considered those that bring retailers keen insights about the most profitable shoppers and a perspective that truly builds category and store sales (Valkenburgh 2001).

For a CC to accomplish its role, it typically receives information pertinent to the category from the retailer, including sales, pricing, turnover, shelf placements, and promotions of all brands offered by the retailer. On an annual basis or other agreed-on time frame, the CC conducts a thorough analysis of the information and, using the information and its own consumer behavior expertise, provides the retailer with both a report and a plan. The plan can be quite detailed, including a “plan-o-gram” for each of the retailer’s stores, specifying which brands should be located where (e.g., eye level, foot level), the linear feet of space to be allocated to each brand, which new brands to include, which old brands to reduce or terminate, and recommended pricing and promotional schedules (Foer 2001b).

“Strong” and “Weak” CCs

A CC’s extent and exclusivity of decision control varies depending on the arrangement with a retailer and the degree to which the retailer uses the CC’s recommendations. For example, a retailer may entrust all category decisions to the CC; in contrast, in addition to the CC, a retailer may arrange to receive second opinions and input from other category manufacturers (often labeled “cocaptains,” “validators,” or “consultants”) or even from third-party advisers that have no vested interest in the category. In addition, the CC may be merely an adviser, in which case all decisions remain with the retailer. Thus, CC arrangements can be defined along a continuum from “strong” forms to “weak” forms, depending on the breadth and depth of decision responsibility accorded to the CC and on the availability and ability of other parties to affect the CC’s decisions (Steiner 2001).

Competition Concerns and Antitrust Analysis

The collaborative nature of CC arrangements and a CC’s potentially significant role in retailer decisions that affect its rivals can lead to adverse results for competition and yield the potential for antitrust concerns (Foer 2001a, b; FTC 2001; Steiner 2001). Concerns arise in circumstances when a CC possesses *market power*, which is defined as the ability to influence retailers or affect rival suppliers to act in ways that they otherwise would not in a competitive market and to engage in such behavior to the significant detriment of competition and consumers. A CC may exercise its market power in ways that are of antitrust concern because of the potential that the CC’s conduct restricts or limits competition in consequential ways. One of two primary concerns for a CC’s exercise of market power is conduct that

leads to *competitive exclusion*, that is, the prospect that a CC with market power will use its role to exclude other category rivals. A second concern is that a CC with market power will engage in conduct that facilitates *competitive collusion*, either in the category or across retailers. To assess the impact of CC conduct fully, its effects for competition and consumers must be examined. The CC arrangements that restrict or limit competition in consequential ways and to the detriment of consumers should also be examined for the potential that such conduct yields benefits that, on balance, outweigh the harmful effects. When CC conduct is, on balance, found to benefit competition and consumers, further consideration is given to whether a less restrictive alternative is available to achieve the benefits. In this section, we discuss these and other antitrust questions.²

Market Power Held by a CC

Market power is the ability to restrict competition (Sullivan and Grimes 2000). A key tenet in antitrust is that a firm requires power in a defined market to affect competition in ways that are of consequence and of concern to consumer welfare. Axiomatically, therefore, observers have suggested that a CC that does not have market power is not in a position to affect competition in consequential ways. This proposition leads to an analysis of the sources of power that may be present in a CC arrangement and that give rise both to the CC’s ability to influence competition and to its scope and depth of influence over a retailer and rivals, which can result in adverse outcomes for competition and consumers.

Sources of Market Power

Although conventional antitrust theory focuses on what is labeled the “concentration thesis” (i.e., firms obtain market power as a result of their dominance in a market) (see Weller 2001), other sources of power can play a role in providing a CC with the ability to influence competition.³ A dominant firm may possess power because of its clout in the category for which it serves as CC. In addition, a firm in the CC role may possess power because of its multicategory presence. For example, a firm may be dominant in at least one category and supply a retailer across multiple categories, thereby increasing its overall clout with the retailer.

However, many CC arrangements also involve legitimate power (i.e., originating in a contractual arrangement or other formal or informal mechanisms that establish and recognize the CC’s role and decision authority); in these arrangements, the retailer identifies the CC and formally yields decision control to it. Because a CC arrangement can involve extensive control of information on the part of a CC, this control and the presence of information asymmetries can also generate market power. A CC may control the nature and amount of information in its relationship in such a way that it exercises influence over retailers or manipulates information to gain similar outcomes. Still other CC arrangements may involve payments or other forms of compensation to

²The authors extend their appreciation to members of the roundtable for their insightful contributions, many of which are included in this section.

³A useful approach for understanding the sources of market power that may reside in a CC arrangement is that originally identified by French and Raven (1959) and further elaborated on by marketing scholars in the field of distribution management. The sources include reward, coercive, legitimate, referent, expert, and ecological bases of control.

gain the right to be CC. These arrangements provide the CC with power by establishing a quid pro quo in the relationship, in which the CC not only bears the costs of performing its role but also pays for the right to become CC. The substantial costs borne by a CC can create an expectation and implied requirement of some type of remuneration or favorable consideration in return from the retailer, thereby yielding influence to the CC.

Thus, various sources of market power may be present in a CC arrangement and provide CCs with the ability to influence retailers and competition. A fuller assessment of these sources is likely to result in greater understanding of a CC's market power.

Influence over Retailers

Although most observers agree that it is important for retailers to make decisions about their own management strategies and tactics, a key issue in assessing CC arrangements is the nature and extent of influence that a CC exerts over the retailers it serves. Disagreement exists about whether CCs merely advise and whether retailers can freely accept or reject the input of a CC with market power. The term "category captain" itself might give the impression of a captain controlling the helm of the category and deciding on its direction and the speed of rivals.

Given retailers' increasing sophistication, few observers regard retailers as passive or as lacking the ability to control their own operations. However, it is doubtless that different forms of CC arrangements affect the CC's level of influence. Steiner's (2001) dichotomy of strong and weak CC arrangements suggests a continuum of influence from a CC having little input to having full decision control that ranges across competitively relevant decisions.

As with most interfirm relationships, a CC's depth and scope of influence depends on the nature of power sources that it holds and on the presence of countervailing factors. As we mentioned previously, depending on the CC arrangement, there may be sources of power, including agreements and other evidence, that provide the CC with influence and supersede any assumption that retailers make independent judgments.

Information asymmetries may also be present and affect a CC's extent of influence. Indeed, the basis of CC arrangements both in theory and in practice is the acknowledgment that a CC often has greater knowledge about the category than the retailer does (Blattberg and Fox 1995). As a result, a retailer may be in a disadvantaged position to evaluate the information a CC provides. An additional influence on this potential is that many retailers have consolidated and transferred category decisions away from store managers to corporate headquarters.

Imbalances of power between the CC and the retailer may also exist and affect a CC's influence. Smaller retailers are more prone to accept the input of a more powerful CC. Larger retailers are better able to resist input that they believe they should not accept. As we noted previously, for managing the complex dimensions of their relationship with a CC, some retailers enlist the aid of other suppliers to serve as cocaptains or consultants. In this way, such arrangements provide a mechanism for balancing a CC's market power and for safeguarding against the potential exercise of such power in a self-interested way.

Influence over Rivals

Just as a CC can influence rivals indirectly through its arrangement with a retailer, it can also influence rivals directly in the category. This can occur as a result of the direct contact and decision control that a CC may have in its role.

CC Conduct

A firm can exercise its market power in ways that are of concern to antitrust because of the potential that its exercise may increase the firm's market power or restrict or limit competition in ways that harm the welfare of consumers (Sullivan and Grimes 2002). Although, in general, most observers view CM as contributing to competition, some contend that the CC arrangement's distinct nature from prior forms of brand management and its other aspects give rise to concerns that it may be employed in ways that undermine competition. As we mentioned previously, a CC arrangement is considered different from previous approaches wherein a supplier provided input on its own brands but not as directly on its rivals' brands.

A distinct feature of many CC arrangements is that the CC's role is to provide input to retailers about the management of all category brands. Although such input can help enhance competition through cost savings and other benefits, it also yields considerable opportunity to affect competition adversely by means of self-interested conduct. Indirectly providing some evidence of this potential, an ACNielsen (2002, p. 45) study found that among manufacturers surveyed, a top reason for participating in CM was to "influence decisions on [their] categories."

The potential for opportunistic conduct in CC arrangements is exacerbated by the conflict of interest that a CC faces in its role. Although a CC is responsible to the retailer it serves, it is also responsible to its own firm's interests, which results in a conflict of interest between providing input to benefit the retailer by furthering its category goals and providing input to benefit the goals of the CC's own category brands. This circumstance can lead to a lack of objectivity on the part of the CC and the abuse of CM by otherwise well-meaning firms.

The complex vertical and horizontal aspects of CC arrangements provide considerable opportunity for self-interested conduct on the part of a CC. Given the information-based nature of CC arrangements, this conduct is likely to involve more subtle forms of opportunism exhibited through bias, incompleteness, distortion, manipulation, and other means.

Together, the inherent conflict of interest found in CC arrangements, their complex vertical and horizontal aspects, and the CC's role in managing information and providing input to retailers for category decisions yield two primary concerns for CC arrangements: A CC will use its role to (1) disadvantage competitors, leading to *competitive exclusion*, and (2) coordinate competitor behavior, resulting in *competitive collusion*.

Competitive Exclusion

Concerns about the restriction or limiting of competition by means of exclusion include smaller competitors being denied the ability to compete for a CC position because they

do not have the necessary resources to serve in the role. Some observers contend that as a result, only dominant manufacturers or ones that have the requisite means become CCs and, in turn, can use their position to further their market power by engaging in activities that lead to the exclusion of rivals.

The prospect that suppliers with more resources can purchase the right to become a CC raises particular concerns. Although the prevalence of such arrangements is not known, paid CC arrangements can be problematic when a retailer selects the CC on the basis of ability to pay the most rather than to serve the category best. These criteria may not be related. Such arrangements can lead to a lack of objectivity and overall dilution of quality in the CM process.

Moreover, from an economic perspective, paying for the right to be a CC, regardless of payment type (e.g., cash, discount, either retailer or supplier motivated), represents an additional cost to the CC beyond the cost of actually performing its role (which reportedly can be costly). A CC is likely to pass the incurred cost to others and ultimately to consumers through higher prices or lower nonprice benefits.

When a firm has obtained the CC role, a primary concern is that the CC will control outcomes in the category, receive preferential treatment, and exclude competitors from having input. For example, a CC may use its role to disadvantage competitors by knowing their pricing, merchandising, and promotional strategies in advance and by working to gain an advantage for its own products and making it more difficult for rivals. At the extreme, some observers contend that a CC can “own” the entire CM process by controlling outcomes in the category to its advantage and to the disadvantage of current and potential rivals.

Another exclusion-based concern is that a CC will use its role to disadvantage the retailer’s store brands. In the past decade, private label brands have gained increasing favor in the marketplace, and they represent increasing competition for national brands. Given that a CC is often the marketer of a national brand, it may employ its role to diminish the competitiveness of such brands just as it might attempt to do to another competitor.

Competitive Collusion

Concerns about the restriction of competition by means of collusion include a CC using its role to facilitate coordination and to limit competition among rivals in a category or among retailers that it serves. The concerns are similar to those that are commonly voiced about conspiracies and cartels (see Sullivan and Grimes 2002). For example, a CC may dampen horizontal competition by learning about and transferring information among rivals in the category or by coordinating recommendations across retailers. Because of the collaborative nature of CC arrangements, there are also concerns about use of vertical coordination to limit competition.

As a result of the “hub-and-spoke” nature of CC arrangements, rivals may learn about one another’s pricing, merchandising, and promotion plans. When rivals know and depend on that information, they may price less aggressively, merchandise differently, and selectively promote. Cocaptain arrangements may inadvertently exacerbate collusion by serving as a conduit for the transfer of information and complicit recommendations. This type of coordination

can take place in the context of a single retailer and across multiple retailers that have the same CC (Foer 2001b; Steiner 2001).

Although no evidence of CC-facilitated collusion has been made public, the danger of such conduct is a recognized concern. Its potential is believed to be more likely in a concentrated market in which there are not substitutes for products that may be the subject of the collusive arrangement.

Concern about collusion in CC arrangements, including cocaptain arrangements, has prompted the FTC to recommend that retailers use firewalls to safeguard against the deliberate or inadvertent transfer of competitively sensitive information to rivals. Other advisers counsel that a CC should not coordinate its input with another competitor even if requested by a retailer. Moreover, they advise that a supplier should not request a cocaptain arrangement. Observers also suggest that a CC should not convey to a retailer information about another retailer. The same observers also point out that retailers themselves should be vigilant in safeguarding against collusion.

Analyzing CC Conduct

In analyzing CC conduct, some observers contend that CC arrangements should be viewed primarily as a form of vertical rather than horizontal collaboration. In antitrust, vertical relationships among distribution channel members are viewed as yielding significant procompetitive benefits because of the cost savings and other efficiencies that such arrangements can facilitate through quasi integration. Conformists to this view recommend the FTC’s (2001) report that addresses CC arrangements as a good starting point for such analyses. The FTC report suggests examining whether (1) a practice disadvantages competitors, (2) the disadvantage is likely to affect competition in the defined market in which the rivals compete, (3) there are any efficiencies that outweigh the anticompetitive effects, and (4) there are less restrictive alternatives for achieving the benefits.

However, other people contend that CC arrangements are distinctive in that they include both vertical and horizontal aspects. Conformists to this view point to many cases in which the brands sold by a CC compete horizontally against the retailer’s private label brands. As a result, the analysis of CC arrangements strictly from a vertical perspective is problematic. Thus, proponents counsel that the analysis of CC arrangements should focus more broadly on their effects on competition.

Regardless of the approach, analysis of CC conduct appears to benefit from scrutiny of the various stages that are common to many CM processes. These steps are described in Table 1. Examination of CC conduct at each stage provides a systematic way to assess the competitive effects of such conduct.

Effects of CC Conduct for Competition and Consumers

The criterion variable of interest in modern antitrust is competition with the goal of ensuring that markets remain competitive (Hovenkamp 1999). Although the antitrust field is cognizant of the welfare benefits of some types of collaboration, especially those among members of a distribution

system, antitrust views competition as the form of exchange that is best capable of enhancing consumer welfare by providing lower prices, improved innovation, and greater variety and choice (Sullivan and Grimes 2002). As a result, firm conduct, including that of CCs, is assessed for its implications to the structure and process of competition and its impact on the outcomes of competition for consumers.

Assessment of CC conduct involves the examination of its harmful and beneficial effects on the structure and process of competition, including the number of competitors in the defined market and the effect of the conduct on barriers to entry. The study of competitive effects also focuses on the process of rivalry, including the incentives and abilities of competitors to engage in competition. Consumer outcomes in the form of price, innovation, variety, and choice are also examined. Because some forms of harmful conduct are understood to have the capacity to contribute positively to competition and its outcomes, the assessment also includes identification of the benefits to competition in the form of “efficiencies” that may result from the conduct at issue and the beneficial effects for consumers (Hovenkamp 1999).

To assess the overall effects, harms to competition and consumers are balanced against any beneficial effects. If, on balance, the harms outweigh the benefits, the conduct is determined to be anticompetitive and harmful to consumer welfare. If the benefits outweigh the harms, further consideration is given to whether a less restrictive, alternative business practice is reasonably available and whether there exists a business justification for not employing it.

Given the dominance of economics in antitrust, particularly of neoclassical price theory, the benefits and harms to competition are primarily measured by means of the price mechanism. However, nonprice aspects of competition increasingly are viewed with greater interest as measures (Gundlach 2002; Kwoka and White 1999).

Harms to Competition and Consumers

To assess competitive effects, conventional antitrust thought is dominated by a concern for the exercise of market power that leads to the restriction or limiting of *horizontal* competition (e.g., rivalry among firms at one level of the distribution system) (see Hovenkamp 1999; Sullivan and Grimes 2002). This form of rivalry involves firms competing with one another for a larger share of profits from the aggregate exchanges in a defined market. For example, retailers compete with one another for a share of profits obtained from the overall sales in a market; suppliers similarly compete with one another.

Category captain arrangements can adversely affect horizontal competition by restricting inter- and intrabrand competition. Interbrand competition across brands in a category can be adversely affected if a CC exercises its power in the category. As we have described, a CC may affect competition among the brands in a category by influencing the retailer’s decision making with respect to competing brands of other suppliers. Intrabrand competition across stores can be adversely affected if a CC exercises its power across several stores. As we noted previously, a CC may serve as the “hub” in a hub-and-spoke arrangement and exercise its power through its role and influence over multiple retailers,

or “spokes.” Restrictions on inter- or intrabrand competition can lead to adverse outcomes for consumers in the form of higher prices, diminished innovation, and restricted variety and choice.

Concern for *vertical* competition has received less emphasis than horizontal competition in antitrust (Steiner 2000). Vertical competition involves rivalry between firms that occupy different levels of a distribution system but compete against one another across roles. Rivalry between firms at different levels of a distribution system involves firms that compete with one another for a larger share of profits from a single exchange in a defined market. For example, a retailer effectively competes with a supplier for a share of profits obtained from a single sale. Some observers contend that vertical competition also involves rivalry among firms that occupy different levels of a distribution system but act and compete horizontally with one another. For example, a retailer’s private label brands may compete with its suppliers’ brands.

Historically, understanding in antitrust has assumed that for the most part, vertical competition is dominated by suppliers that possess asymmetrical power over their downstream partners or that vertical competition is generally not of concern in that restrictions or limits on it are largely pro-competitive forms of vertical integration that yield positive consequences for consumers. Recent literature has questioned this view and has been directed at understanding how the restriction of vertical competition through collaboration can pose contrary implications for competition overall and for consumer welfare (see Bresnahan 1998).

For example, theorists suggest that some forms of close collaboration between a retailer and a CC can lead to reduced vertical competition and, in turn, negative welfare consequences. One possibility is that a CC influences vertical competition in ways that favor itself, yielding greater overall power (which it can then use to affect horizontal competition). It is also possible that a CC with market power uses its role to collaborate and dampen vertical competition between itself and a similarly situated retailer (e.g., a retailer with market power), leading to higher prices at each stage and ultimately higher prices for consumers. The recognition that a supplier CC also competes with the retailer’s private label brands highlights this potential.

Benefits to Competition and Consumers

As a marketing practice, CM is generally considered to yield significant benefits for competition and consumers, including enhanced value to consumers through improved category benefits and reduced marketing and distribution costs. These benefits arise as a result of both the expert advice that knowledgeable manufacturers in the CC role provide and the efficiencies that occur from one competitor among those in a category making recommendations to a retailer.

However, the scope of inquiry in assessing the benefits to competition that extend from a CC arrangement is properly focused on the benefits that result from the specific CC conduct at issue and not from CM overall. In this respect, some observers question whether the benefits and harms of a CC arrangement can be effectively unbundled from CM. Other observers raise the issue of whether the harmful and beneficial effects of a CC arrangement can be distinguished or

whether the perceived efficiencies of a CC arrangement are capable of truly being realized, given the inherent conflict of interest that the arrangements create.

Balancing of Harms and Benefits

Balancing of the harms and benefits that extend from a CC arrangement requires an understanding of both the specific arrangement and the nature of conduct at issue. As a general matter, the ambiguous nature of CC arrangements requires an understanding of the specific circumstances in order to assess whether, on balance, the harms from the practice outweigh its benefits.

Less Restrictive Alternatives

Even when, on balance, a CC arrangement provides benefits to competition and consumers, a pivotal question is whether the benefits can be obtained through less restrictive means so as to avoid the harms altogether. In this regard, some observers suggest that third-party advisers can provide CC services without the conflict of interest that a category competitor might possess. Observers point to food brokers and similar parties that possess or have access to information, and even to retailers themselves, as being capable of taking on the CC role. However, others contend that manufacturers have a greater understanding of products in the categories in which they compete and therefore are best able to be CCs.

Cases and Public Policy Developments

Several legal cases and enforcement authority activities that address CC conduct illustrate the nature and magnitude of competition-related concerns that can arise in CC arrangements.⁴ In this section, we briefly describe key cases and activities (see Table 2; see also Balto 2002).

Case Law

Two of the cases we describe subsequently address CC conduct in the tobacco category. Because of restrictions on the advertising of tobacco products, in-store shelf placement, merchandising, and point-of-sale advertising are significant for competition in this category. As a result, a CC's role in and input on these decisions are important and, consequently, have been the subject of litigation. Cases in other categories also involve CCs and their arrangements with retailers.

Conwood Co. v. United States Tobacco Co.

The Supreme Court recently recognized the potential competition issues in CC arrangements when it refused to

⁴These cases and enforcement activities also involve slotting allowances, which may be found together with CM in a supplier–retailer relationship. Slotting allowances have also been identified as a business practice that can be used to limit or restrict competition (FTC 2001).

Table 2. Cases and Public Policy Developments Relevant to CC Arrangements

Activity	Results and Developments
Case Law	
<i>Conwood Co. v. United States Tobacco Co.</i>	Conwood successfully argued that USTC strayed far afield from its role as category manager (e.g., CC) and used its role to exclude competition deliberately from the market for moist snuff.
<i>R.J. Reynolds Tobacco Co. v. Philip Morris</i>	Plaintiffs claimed that as part of the Retail Leaders program, Philip Morris espoused certain CM principles that were not followed or were interpreted in ways that disadvantaged competition in favor of Philip Morris; in dismissing the case, U.S. District Judge Frank Bullock focused on the Retail Leaders program and found the program not to be anticompetitive.
Tortillas, cranberries, carbonated soda, smokeless tobacco	There are ongoing cases containing allegations regarding CC arrangements.
Enforcement	
Federal Trade Commission	A CC should not receive confidential information about its rivals, bias its advice to retailers in order to exclude or disadvantage rivals, orchestrate collusion between retailers, or orchestrate collusion between manufacturers. A retailer must be responsible for competition, make its own decisions, and require firewalls to limit the information about its rivals that passes to the captain (FTC 2001). Category captain arrangements have been a topic in many merger acquisitions.
Canadian Competition Bureau	Developed a list of “red flags” about anticompetitive behavior in grocery marketing practices. Although the CCB did not find much evidence of such abuses, various types of contractual practices, such as “most favored nation” or “meet-or-release” clauses, can facilitate tacit collusion (CCB 2002).
Israel Antitrust Authority	Following an extensive investigation, the IAA found that CM agreements may raise significant anticompetitive concerns. The IAA issued a statement that required preapproval of all CM agreements by three leading suppliers (IAA 2003).

review a \$1.05 billion antitrust award to Conwood in its suit against its rival USTC in the smokeless-tobacco (e.g., moist snuff) category (*U.S. Tobacco Co. v. Conwood Co., L.P.* 2003). As Greenberger and Fairclough (2003) report, the large award marks the first time a U.S. appeals court condemned as an antitrust violation a system in which a company and category leader was given some control over displays of its own and competitors' products. The magnitude of the *Conwood* verdict has caused attorneys to focus on the question of how to minimize the antitrust exposure for their clients who engage in CC arrangements and has prompted closer examination of CC arrangements by practitioners and academics in marketing.

Conwood sued USTC, the CC, and claimed that its practices resulted in unlawful monopolization. Conwood successfully argued that USTC strayed far afield from its role as CC and used its role to exclude competition deliberately from the market for moist snuff. Conwood claimed, and documentary evidence showed, that USTC, which marketed premium moist-snuff products, intended to use its position as CC to control and limit the number of increasingly popular price-value brands introduced by competitors and to control the merchandising and point-of-sale placements for the products. According to USTC documents (p. 12), the company's objective was "to control the smokeless house, ... [to] control facings and positioning, and [to] make [its] presence larger via [point-of-sale]" and "to control expanded competitive distribution and competitive [point-of-sale]." A USTC regional vice president stated (p. 10), "[i]t is imperative that we continue with this Category Management action plan to eliminate competitive products."

Evidence and testimony also show that USTC went about excluding price-value competition by using its role as category manager to gerrymander the CM process. The company provided misleading and false information and skewed and inflated sales data to retailers to lead them to maintain USTC's poorer-selling items and drop competitors' products. For example, according to a 1996 internal report (p. 8), USTC would "need to be more aggressive where [price-value] has a higher share of the segment and will actively pursue strategies to limit the growth of the price-value segment."

Expert testimony at trial also indicated that USTC understood that retail category managers did not know as much as USTC did about pricing, product knowledge, and profitability of the products. Furthermore, USTC knew that no retailer, even Wal-Mart, had a person solely devoted to the management of moist snuff and that because of time constraints retailers usually delegated the CM task to larger firms in the belief that a larger manufacturer would and could devote the resources to help build the category. For example, a USTC document stated (pp. 9–10) that "most retailers want the top dog running things because the dominant share of market customers will look to us for leadership."

The company argued that its CM practices constituted ordinary demand-enhancing conduct that helped ensure that retailers used shelf space efficiently, built consumer loyalty, and improved the presentation of products at retail. In addition, USTC contended that the evidence presented at trial was merely anecdotal and no more than normal marketing.

However, the Court rejected each argument and found USTC's conduct exclusionary to competition without a legitimate business justification and ultimately harmful to consumers because it limited the availability of price-value brands and led to higher prices.

R.J. Reynolds Tobacco Co. v. Philip Morris

A CC's conduct was also part of the recent case by R.J. Reynolds Tobacco against the category leader Philip Morris (*R.J. Reynolds Tobacco Co. v. Philip Morris Inc.* 2003). The rivals Brown & Williamson and Lorillard joined R.J. Reynolds in alleging that Philip Morris's Retail Leaders retail program and its involvement in CM excluded competition. Although the case was dismissed in district court on summary judgment, parts of the Retail Leaders program were originally enjoined through a preliminary injunction issued by the same court.

Under the Retail Leaders program, retailers received progressively larger retail display allowances in exchange for progressively greater commitments of display, advertising, and promotion space. The plaintiffs claimed that as part of the Retail Leaders program, Philip Morris espoused certain CM principles that were not followed or were interpreted in ways that disadvantaged competition in favor of Philip Morris.

In dismissing the case, U.S. District Judge Frank Bullock focused on the Retail Leaders program and found that the program was not anticompetitive because participating stores were still free to sell competitors' cigarettes at any price they chose or to enter merchandising agreements with other companies (*Antitrust Litigation Reporter* 2002).

Other Cases

In addition to the preceding cases, other matters involving CC arrangements are currently before the courts. These include cases involving the distribution and retail sale of tortillas, cranberries, carbonated soft drinks, and smokeless tobacco. Each case includes allegations of CC misconduct, including that the CC status of a dominant firm facilitated the firm's ability to control and ultimately limit competition in the category. Allegations in these cases typically focus on a dominant CC's misconduct, such as provision of false or misleading information about the category and the performances of rivals in it and the use of the information and the CC's market power to influence shelf, merchandising, and promotion decisions in ways that favor the CC, disadvantage competition, and injure consumer welfare.

Enforcement Activity

Category captain arrangements have also been examined by governmental bodies that are responsible for competition-related practices, including the FTC, the CCB, and the IAA. In this section, we describe the activities and findings of these governmental bodies.

FTC

In the spring of 2000, the FTC convened a hearing and workshop that focused on the antitrust implications of slotting allowances and other grocery marketing practices, including CM. A session was devoted to a discussion of CM and CC arrangements and their impact on competition. An

outcome of the hearing was the FTC's (2001) staff report "Report on the Federal Trade Commission Workshop on Slotting Allowances and Other Marketing Practices in the Grocery Industry." Although the report recognized a lack of empirical information about the nature and scope of CM and CC practices, it included recommendations for how CCs and retailers could avoid anticompetitive concerns. The FTC recommended that CCs not receive confidential information about rivals, bias advice to retailers in order to exclude or disadvantage rivals, orchestrate collusion between retailers, or orchestrate collusion between manufacturers. The report also recommended that retailers be responsible for competition, make their own decisions, and require firewalls to limit information about rivals passing to the CC.

A key contribution of the report was its articulation of an analytical framework for assessing marketing practices, including CC arrangements. The framework follows a recognized theory of anticompetition known as "raising rivals' costs," wherein firms engaging in anticompetitive conduct attempt to disadvantage and limit competition by increasing the costs of competition that their rivals bear. As we described previously, the framework inquires as to whether a practice disadvantages competitors, whether the disadvantage is likely to have an effect on competition in the defined market in which the rivals compete, whether there are any efficiencies that outweigh the anticompetitive effects, and whether there are less restrictive alternatives for achieving these benefits.

Both CM and CC arrangements have also been a topic in the FTC's investigation of mergers, including those between Pepsi and Quaker Oats, Heinz and Beech-Nut, Clairol and Procter & Gamble, Pillsbury and General Mills, and Ralston Purina and Nestlé (see Balto 2002). These investigations focus on the potential anticompetitive effects of the merger. An increasing subject of investigation is the effects on competition that may occur when a firm acquires a key rival in the category in which it is CC. The question is whether there exists a greater potential for anticompetitive effects because the CC may use its role to limit rivals' market access. The concern is that traditional measurement of a CC's market power in a defined market may actually underestimate the CC's true market power and that the role of CC may provide it with additional capacity to engage in conduct that might impede competition. The latter implication is also important in considering remedies in mergers. Questions arise in such circumstances about the impact of a divestiture in a market in which a CC is present and possesses market power because of its multicategory presence. The focal question is whether another firm that acquires the divested asset will be able to compete given the existence of a CC with such market power.

CCB

In 2002, the CCB submitted a report titled "Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector." The report lists practices in the grocery industry, including those involving CC arrangements, that raise competition concerns, and it is intended to clarify how, from an enforcement perspective, the CCB will address allegations that a dominant firm or group of firms is harming competition. Identified practices include arrangements that (1) tie up a specific percentage

share of shelf space devoted to a product category, (2) limit competitors to a specific number of stockkeeping units, (3) exclude competitors' stockkeeping units, (4) require some form of price parity with competitors, (5) specify when and how competitors can advertise, and (6) obtain information on the terms of competitors' contract offers. The report also notes that though the CCB has not found evidence of interdependent or tacit collusion among firms, various practices, such as "most favored nation" or "meet-or-release" clauses in contracts, could facilitate tacit collusion.

In the report, the CCB provides hypothetical case studies, including one that focuses on CM. The case study describes a CC arrangement in which a nationally dominant firm offers a CM program to retailers. In the program, the dominant firm wants retailers to allocate shelf space on the basis of sales. For example, if a firm has 50% of category sales, it would receive 50% of the shelf space dedicated to the category. The hypothetical situation identifies two potential concerns with such "space to sales" arrangements: (1) They create the incentive for and enable a dominant firm to maintain its shelf and market position, and (2) if the data employed for shelf-space allocation are national data, they may not reflect actual sales in the local market, and therefore any allocation could be skewed in favor of a dominant national firm. Both concerns, in combination with the supplier's dominance, are viewed as likely to lessen substantially or to prevent competition because they reduce competitors' ability to expand their market presence.

IAA

The IAA has also addressed CC arrangements. After a multiyear investigation into agreements among major retail chains and dominant food and nonfood suppliers, including CM arrangements and their impact on competition in food and nonfood markets, the IAA (2003) issued a statement directed at eliminating a dominant supplier's ability to increase or preserve its power by way of agreements with a major retail chain. Israel's economy has witnessed a precipitous increase in chain-based retail sales in the past several years. Sales by retail chains (rather than nonchain sales) account for more than 50% of all retail sales, and they are perceived as having considerable market power. Agreements the IAA identifies as of particular concern are those that directly or indirectly result in blocking or limiting competing suppliers' access to the major chains' shelves.

During its investigation, the IAA reportedly obtained various retail CM agreements with dominant suppliers and determined that the agreements did not show significant benefits for managing the category. Rather, the arrangements were more to the benefit of the major supplier. The IAA reported that at least one agreement included terms that provided that in return for CM services, the dominant supplier was entitled to an annual increase in the share of its sales in the relevant category. The IAA found other agreements that gave the dominant supplier the right to send its own "ushers" to fill and merchandise the entire category display area. The IAA concluded that such arrangements give the supplier the power to determine *de facto* the outcome of competition in the category.

Overall, the IAA found that CM agreements between a major retailer and a leading supplier, and of the kind we have described, raise three significant anticompetitive con-

cerns: (1) The supplier will gradually drive its rivals off of the shelves, (2) the supplier and the chain will collude in a manner that violates Israel's Restrictive Practices Act, and (3) the markets will be more conducive to coordination among rival suppliers.

As a follow-up to its findings, the IAA issued requirements binding the three largest retail chains and all food and nonfood suppliers to seek preapproval for their CM agreements. In addition, more specific and far-ranging requirements precluded them from accepting or offering benefits and making agreements with the following aims:

- Changing the identity of the supplier's rivals on the chain's shelves, reducing its number, or diminishing the size or attractiveness of its display area and precluding the supplier and chain from negotiating the identity, number, terms of agreement, or scope of sales of the supplier's rivals on the shelves;
- Affecting the chain's decisions regarding the introduction, discontinuance, or decreasing of sales of private labels or parallel imports;
- Making available to the supplier a display area on the shelves that exceeds 50% of all display area for the category or that has exclusivity in display areas off the shelves for more than three months a year cumulatively, 30 consecutive days, or during the entire high holidays or a major part thereof;
- Determining allocation of display areas for more than one year;
- Enabling the dominant supplier to achieve a preset sales target, unless the target is limited to a specific product and the benefit is given only for units sold after the target has been achieved;
- Setting the supplier's minimum market share or a rival's maximum market share in the chain's sales;
- Constraining directly or indirectly either the ability of a rival supplier to hold a special sale together with the chain or the ability of a rival chain to hold a special sale together with a supplier; and
- Establishing the consumer price of the supplier's or its rival's products (notwithstanding that a supplier may agree for promotional purposes on a maximum resale price or recommend to the chain an introduction price for a new product for a period not exceeding nine months).

Furthermore, under the specific requirements, the chains cannot contact a supplier with any inquiries about the consumer price of the supplier's products at another chain or ask the supplier retroactively or unilaterally for compensation for any form of discounts the supplier has offered to the chain's rivals. Moreover, a supplier cannot submit and a chain cannot accept information about the sold quantity or terms of sale of the supplier's products at a competing chain, and a chain cannot submit and a supplier cannot accept information about the sold quantity or terms of sale of other suppliers' products on the chain's shelves.

Finally, the IAA also required retail chains to manage all categories independently and without any supplier involvement, including, but not limited to, determination of the product and supplier variety and the display areas' size and place and enforcement of only the chain or a person on its behalf bringing items to the display area.

Research and Future Directions

Given the competitive concerns that may attend CC arrangements and the legal and public policy developments that have focused on them, continued investigation of their antitrust implications appears warranted. However, compli-

ating the call for continued examination of CC arrangements are the great variations in how the arrangements are designed and implemented today and their continued evolution to address the changing circumstances facing retailers, suppliers, and consumers. For example, according to a respondent in Cannondale's (2002, p. 10) survey, because managers are focusing on providing solutions for consumers, "The next generation of CM needs to be occasion or usage based [versus category based], which will lead to managing the aisle." Furthermore, demographic and lifestyle changes have caused marketplace fragmentation, and the number of retail-store formats is exploding (Nielsen Marketing Research 1992). These types of factors are increasing the pressure on grocery retailers to find new methods to achieve better business results.

Because of CC arrangements' wide variation and rapidly changing structures, people seeking a legislative or regulatory solution to the competitive concerns for CC arrangements must do so with care to ensure that the solutions are capable of adapting to the changing developments in and evolution of CM and CC arrangements. In the absence of such care, by the time the solutions are applied, they may be outpaced by the innovations in CM and CC made by tomorrow's managers, thereby challenging the solutions' overall effectiveness.

Research in Marketing

The work of researchers and antitrust counselors is especially important in the identification and structuring of solutions to address the competition concerns in CC arrangements. In this regard, the contributions to date of those who have articulated these concerns and their antitrust implications are noteworthy (see Balto 2002; Cross 2002; Foer 2001a, b; Steiner 2001).

At the same time, researchers in marketing have contributed greatly to the overall understanding of CM and CC arrangements as tools of marketing management. Their research provides useful insights into CM practices and the nature of relationships between CCs and their retailer partners. These findings are helpful for furthering the understanding of the antitrust issues in CC arrangements, though they do not directly address them.

Market Power

With regard to market power, Johnson (1999) observes how resources for gathering and analyzing information commonly held by suppliers differ from those typically held by retailers. She contends that this is a source of power for CCs in their relationships with retailers. According to Johnson, although many retailers limit their research to understanding factors that affect their specific chain, store cluster, or department, suppliers (including CCs) often conduct research on the category and broader market trends. As a result, CCs that provide such information hold influence in their CM relationships with retailers. Relatedly, Christopher and Jüttner (2000) find that, in general, it is difficult for a weaker party to negotiate and to define proactively the terms of a relationship between a buyer and an upstream supplier. They note that buyers in such circumstances may adopt a "good-at-being-led" strategy, which is perceived as an adjustment strategy and as an alternative to being passive. An implication of this finding for understanding the market

power held by a CC is that in the event a retailer adopts such a strategy, the CC may gain additional power in its relationship with the retailer.

Conduct

Focusing on the conduct of CCs in their role and on concerns about objectivity in their input to retailers, Gruen and Shah (2000) report various forms of opportunistic conduct in their empirical study of 128 suppliers. For example, a CC that knows a category review is pending may recommend promotions for its own brands to yield sales data that favor its brands during the review period. Moreover, CCs may misapply data in developing category plans or, in their role, decide close calls in their own favor. Gruen and Shah find that opportunistic conduct has a negative effect on perceptions of CC objectivity and on overall category performance.

Effects for Competition and Consumers

Although the long-term effects of CM and CC arrangements on competition and consumers can be revealed only over time, some implications have already been discovered through research. However, these findings are somewhat mixed. On the one hand, studies suggest that CM can produce positive financial and qualitative results for retailers and manufacturers. For example, in a recent study by Cannondale Associates (2003), retailers attribute a 16% increase in average dollar sales to CM, and manufacturers attribute a 10% increase to CM. Moreover, many companies agree that CM can improve trading relationships and consumer understanding and lead to customer satisfaction to the extent that it is an integral part of business planning and strategy (Gregory 2001). On the other hand, some practitioners are reassessing the value that CM brings to their organization and are weighing that value against the tremendous resources needed to maintain its functionality (Dusek 1999). In addition, managers have voiced complaints that the CM process is unwieldy and time consuming, that categories can look the same in all stores, and that CM does not deliver the category growth it is intended to promote (Gregory 2001). Dussart (1998) concludes that a pitfall of CM is that it may not be good for consumers because it may limit choices and inhibit their ability to compare prices. Moreover, at least one study has found that for retailers adopting CM, there is a gradual, permanent increase in the weekly average price of brands as well as a decline in the sales volume in the product category; the study also found that the prices were significantly higher than those charged by retailers that did not adopt CM (Basuroy, Mantrala, and Walters 2001).

Future Research Directions

Further research is necessary to advance the understanding of the antitrust questions about CC arrangements. In this regard, further research could take several directions. Table 3 identifies several research questions organized around the key areas of antitrust inquiry; however, the questions should be considered only a starting place. The dynamic environment of CM and CC arrangements may inspire additional questions not yet considered.

Market Power

Market power, or the ability to influence competition, is an important element of antitrust inquiry. The issues pertaining to market power in CC arrangements include its sources and a CC's scope and depth of influence. Further insights into these facets of CC arrangements are needed. For example, what are the sources of a CC's market power? How do the sources differ across CC arrangements? Are there additional sources of power beyond those described? How are the sources derived in CC arrangements?

A key source of power in CC arrangements is information, and CCs that provide information possess influence in their relationships with retailers involved in CM. For what percentage of CC arrangements is this true? What are the dynamics of information gathering and exchange that lead to this source of power? Can CC market power be attributed to other facets of information, such as information asymmetry? For example, do differences between retailers and CCs, such as knowledge and statistical training, workload, or compensation incentives, yield sources of power?

The dynamic aspect of the retail environment reveals two new avenues through which a supplier can gain market power. For example, some of today's retailers (and suppliers) are seeking larger and differently defined category responsibilities (e.g., aisle management, occasion management). However, there also is an increasing number of suppliers that market brands in multiple categories. In many cases, the same suppliers are CCs across the categories. How will the expanding multicategory presence of suppliers and the evolving role of CCs affect a CC's market power?

In terms of the exercise of market power, a continuing question pertains to a CC's scope and depth of influence. To what decision areas do CCs provide input? What is the depth of influence across these decision areas? An important question is how accepting retailers regard a CC's input. Do strong versus weak CCs exist? A related question involves the countervailing role of cocaptains, consultants, and validators. What role do these members play in the CC arrangement? How effective are they? Furthermore, do retailers recognize the subtleties of influence that can arise in CC arrangements? Is there a gap between what management perceives and what actually happens in the arrangements?

Conduct

Opportunistic conduct by a CC that limits competition and harms consumer welfare is of primary concern to antitrust. Such conduct is believed to originate in the inherent conflicts of interest that attend CC arrangements. What is the nature and extent of CCs' conflicts of interest? Is it possible for a retailer to identify and mitigate conflicts? Do cocaptains, consultants, validators, and other advisers effectively help reduce the opportunism to which such conflicts can lead? Are there other innovations being employed to address such conduct?

Two forms of opportunistic conduct that are of antitrust concern are competitive exclusion and competitive collusion. Are there other forms of conduct that should be of concern? If so, what are they? Are they predictable, observable, or avoidable? Although much is already known about competitive exclusion, further elaboration on the methods

Table 3. Summary of Future Research Directions

Market Power	Conduct	Effects
<p>Sources</p> <ul style="list-style-type: none"> •What are the sources of power? •How do the sources differ across CC arrangements? •How are they derived from CC arrangements? •Does information asymmetry account for the CC's power? If so, for what percentage of CC arrangements? If so, what are the dynamics of information gathering and exchange? •Can CC power be attributed to other differences between the retailer and the supplier? •How is the evolving trend toward a multicategory presence by the CC affecting market power? <p>Influence</p> <ul style="list-style-type: none"> •For what decision areas does the CC have input? What is the depth of influence in these areas? •How accepting are retailers of the CC's recommendations? Do strong versus weak CC arrangements exist? •What roles do cocaptains, consultants, and validators play in CC arrangements? •Do retailers recognize the subtleties of influence that arise in CC arrangements? •Is there a gap between what management believes will happen in a CC relationship and what actually happens? 	<p>Conflicts of Interest</p> <ul style="list-style-type: none"> •What is the nature and extent of existing conflicts of interest in CC arrangements? •Is it possible for the retailer to identify and mitigate conflicts of interest? •Do cocaptains, consultants, and validators effectively reduce opportunism? •What other innovations are being employed to address these conflicts of interest? •Are the conflicts of interest manifest beyond exclusion and collusion? If so, what are some of these other forms of conduct, and are they predictable, observable, or avoidable? <p>Exclusion</p> <ul style="list-style-type: none"> •What are some of the emerging and evolving methods through which rivals are foreclosed or disadvantaged through CC arrangements? •What is the impact of merely disadvantaging rivals through CC arrangements versus total foreclosure? •What is the impact of the trend toward a multicategory presence by the CC on the ability to exclude rivals? <p>Collusion</p> <ul style="list-style-type: none"> •How can CC arrangements facilitate collusion? •Does the information sharing in CC arrangements encourage collusion? •Are there other opportunities evolving that may facilitate collusion? •With respect to private labels, are communications between the CC and the retailer considered communications between rivals? 	<p>Effects for Competition and Consumers</p> <ul style="list-style-type: none"> •What are the effects of a CC arrangement on the number and concentration of rivals in the category? •How does this affect the incentives of competition and the ability to enter the category and remain viable after entering? <p>Harms to Competition and Consumers</p> <ul style="list-style-type: none"> •What are the effects of CC arrangements on the prices, costs, and profits of all suppliers? •Can data from categories with CC arrangements be compared with data from categories without a CC? •What are the effects of CC arrangements on innovation and new product introduction? Are CCs, rather than non-CCs, at an advantage in introducing new products? •What are the effects of a CC arrangement on the entry of new brands and new suppliers? Are existing rivals able to expand their offerings? •Are there more brands offered by fewer suppliers? How does this affect competition? <p>Benefits to Competition and Consumers</p> <ul style="list-style-type: none"> •How can the efficiency gains of a CC arrangement be distinguished from the gains of CM overall? <p>Balancing Harms and Benefits</p> <ul style="list-style-type: none"> •Can the benefits of CC arrangements be disentangled from the harms that result? If so, how can this be accomplished given the benefits of collaboration and information exchange? •Can the benefits ever be truly realized? <p>Less Restrictive Alternatives</p> <ul style="list-style-type: none"> •Are viable alternatives available that preserve the benefits but reduce harms to competition? •Are third parties viable alternatives? If so, how would they work? Are they as beneficial?

through which rivals can be foreclosed or disadvantaged by CCs is needed. Moreover, there is a need for a greater understanding of the nature and impact of merely disadvantaging rivals in their merchandising, shelf space, and promotional strategies versus their total foreclosure at retail.

The multicategory presence of many suppliers and their role as CCs may exacerbate concerns for competitive exclusion. An implication of this type of arrangement is that the

unit of CM planning may be expanding. It is possible that over time, the number of suppliers that are CCs will dwindle, leading to greater concentration of CCs across retailers. In turn, this concentration might facilitate the exclusion of rivals. Is it possible to anticipate and avoid such a scenario?

Although little public evidence exists of competitive collusion in CC arrangements, the possibility is theoretically present and necessitates further study. Because confidential

information from all suppliers is shared with the CC during the CM process, opportunities for collusion exist. Information sharing may encourage such conduct. Are there other opportunities created in CC arrangements? How does the CC's role increase the feasibility and availability of opportunities? Finally, with respect to private label brands, it should also be noted that retailers are de facto rivals of other category suppliers. Therefore, communications between a CC and a retailer could be construed as communications between rivals.

Effects for Competition and Consumers

Antitrust assessment of CC arrangements focuses on the effects for competition and consumers, including the structure and process of competition and its outcomes for consumers in terms of price, innovation, variety, and choice. Although an understanding of the specific impact of a CC arrangement on a CC's rivals is not wholly dispositive of these effects, it is an important consideration. More broadly, how does a CC arrangement affect the number of competitors in the category or their concentration? How do such arrangements affect competitors' incentives to compete or their ability to enter the category or to remain viable?

Although suppliers and retailers expect improved economic results from CC arrangements, questions remain as to the realization of these outcomes. Consequently, there is a need for data on the price, cost, and profit effects that result from CC arrangements. The data should include not only everyday prices but also promoted prices. Can data from CC arrangements be compared with data from non-CC arrangements?

The impact of CC arrangements on innovation is also important. How do CC arrangements affect the incentives, nature, and progress of innovation? Are the incentives to introduce and market new products affected by CC arrangements? Are CCs advantaged in the introduction of new products? Are non-CCs disadvantaged? Is the overall number of new products and rate of innovation in a category affected by CC arrangements?

A further consideration is the impact of a CC arrangement on the choice and variety available to consumers in a defined category or market. Has the overall value to consumers, as reflected in choice and variety, increased because retailers and suppliers have adopted CC arrangements? In this regard, it is important to understand how a CC's role can affect the set of brands and nonbrand choices (e.g., package size) that are available to consumers. What are the effects of a CC arrangement on the entry of different brands and new suppliers? Are existing firms able to expand their offerings? Is there a need to distinguish between new products created by existing rivals, which already have some allocation of shelf space, and the products created by new entrants? Must antitrust analyses consider the number of brands per supplier? Does CM result in more brands from fewer suppliers? Fewer independent suppliers and centralized planning by a manufacturer means that there may be less overlap between consumer segments. Can this result in many different brands on the shelf, each aimed at a clear-cut customer niche so that there is minimal competition?

A focus on the procompetitive and welfare-enhancing benefits that CC arrangements can produce also reveals sev-

eral research questions that deserve further inquiry. How can the efficiency gains of CC arrangements be distinguished from CM overall? How can the benefits be disentangled from the harms that can result? In this regard, particular attention should be given to horizontal exchanges of information and how the confidentiality of competitively sensitive information can be maintained in CC arrangements while firms still gain the benefits of collaboration. Given the conflict of interest that exists in CC arrangements, can these benefits ever truly be realized?

Finally, in an effort to maintain the benefits of CM and safeguard against the potential harms of CC arrangements, it is vital that alternatives to CC arrangements be investigated. Are there viable alternatives in third parties? If so, how would they work? Are they capable of yielding the same benefits as CC arrangements?

Conclusion

As a widely practiced management innovation in retailing, CM has the potential to provide significant benefits for competition and consumers through collaboration between retailers and suppliers. Category captain arrangements involve a particular form of retailer-supplier collaboration in which a supplier, often the category leader, takes on a significant role in the management of the category, including the brands of competing suppliers. Although CC arrangements are capable of yielding benefits, they also present the opportunity for a CC to take advantage of its role in ways that can restrict competition and injure consumer welfare. Recent legal cases and activity by enforcement authorities in the United States and abroad illustrate the nature of these concerns. Responding to these developments and drawing on the insights and understanding of key public policymakers, leading practitioners in law and marketing, and knowledgeable academics in attendance at the Roundtable on Antitrust and Category Captains, together with other relevant knowledge, this article describes and archives the nature of these concerns and their antitrust analysis and key questions for further research. Scholars in marketing and related fields are encouraged to turn their attention to these questions in their research.

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