COMPETITIVE EXCLUSION IN CATEGORY CAPTAIN ARRANGEMENTS

Working Monograph[1]

Gregory T. Gundlach
Coggin Distinguished Professor of Marketing
University of North Florida
&
Senior Fellow
American Antitrust Institute
ggundlac@unf.edu

and

Alex G. Loff
Researcher
University of North Florida
Loff.Alex@gmail.com

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Preface

Category management is a retail practice wherein the products of a retail establishment are divided up into different categories and then managed as if each were a free-standing business. The most popular approach to category management involves outsourcing decisions to a single manufacturer in the category (a.k.a., the "category captain"). Category management and category captain arrangements can benefit competition and consumers where they help to enhance the efficiency and effectiveness of retail decision making.

However, given their potential to adversely affect competition and consumers, category captain arrangements have attracted the attention of public policy makers, antitrust enforcement authorities, and marketing and legal scholars. At least two types of competition-related concerns are identified for category captain arrangements. One concern is that a category captain will use its role to coordinate competitor behavior resulting in anticompetitive *collusion*. A second concern is that a captain will use its role to disadvantage competitors leading to anticompetitive *exclusion*.

This monograph focuses on anticompetitive exclusion. Despite expressed concerns for anticompetitive exclusion involving category captain arrangements research offers surprisingly few insights into the issue. The application of antitrust law to category management also continues to remain relatively undeveloped leaving practitioners with little guidance on what is permissible. Given this state of affairs continued effort is required to better understand the nature and competitive consequences of category management and category captain arrangements. The goal of this monograph is to offer this understanding.

Chapter 1 offers an extended introduction to the topic. Chapter 2 describes and elaborates on the nature and practice of category management. Chapter 3 then describes the approach to category management found in category captain arrangements. The key sources of competitive concern for category captain arrangements are identified and elaborated upon in Chapter 4. With the antitrust importance of understanding the power of an organization to harm competition, emphasis and discussion is given to the nature and sources of power and influence held by category captains in Chapter 5. This is followed by Chapter 6 which identifies, organizes and describes the types of exclusionary conduct and practices that may be found in category captain arrangements. Managerial safeguards against competitive exclusion involving category captains are then identified, organized and described in Chapter 7.

The effects for competition and consumers that can result from competitive exclusion involving category captains are described in Chapter 8. The findings of empirical research on competitive exclusion in category captain arrangements are then described in Chapter 9. A brief conclusion to the monograph is provided in Chapter 10. The monograph is comprehensively annotated with citations in order to serve as a resource for interested readers.

Chapter 1. Introduction

Category management is a retail practice wherein the products of a retail establishment are divided up into different categories and then managed as if each were a free-standing business. [2] Category management differs from prior practices (i.e., brand management) in that category management focuses on the management and performance of an entire category of products versus

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[2] Neil Morgan, Anna Kaleka and Richard Gooner, *Focal Supplier Opportunism in Supermarket Retailer Category Management*, 25 JOURNAL OF OPERATIONS MANAGEMENT 512, 512 (2007) ("Category management involves treating sets of complementary and/or competing brands as strategic business units and allocating resources within these categories to maximize planned outcomes."). Arto Lindblom and Rami Olkkonen, *An Analysis of Suppliers' Roles in Category Management Collaboration*, 15 JOURNAL OF RETAILING AND CONSUMER SERVICES 1, 1 (2008) ("CM is a collaborative process between suppliers and retailers, the aim of which is to manage categories as strategic business units, producing enhanced results by focusing on delivering consumer value."). Alan Yasin, Jeffrey P. Dotson and Mumin Kurtulus, On the Competitive and Collaborative Implications of Category Captainship, 81 JOURNAL OF MARKETING 127, 127 (2017) ("Category management is a commonly used retailing practice in which a retailer treats a product category (i.e., a set of similar products) as a strategic business unit."). Suntak Hong, Kanishka Misra and Naufel J. Vilcassim, *The Perils of Category Management: The Effect of Product Assortment on Multicategory Purchase Incidence*, 80 JOURNAL OF MARKETING 34, 36 (2016) ("Category Management is a practice in which retailers manage the performance of individual product categories as independent units."). Subir Bandyopadhyay, Anna Rominger and Savitri Basaviah, *Developing a Framework to Improve Retail Category Management Through Category Captain Arrangements*, 16 JOURNAL OF RETAILING AND CONSUMER SCIENCES 315, 315-6 ("Category management (in short, CM) is a process for managing product categories of merchandise (such as detergent soaps, pet foods, and prepared foods) as strategic business units within a retail store, customizing the category by store location and region to produce improved sales and profits as well as deliver better value to consumers."). Vincent Nijs, Kanishka Misra and Karsten Hansen, *Outsourcing Retail Pricing to a Category Captain: The Role of Information Firewalls*, 33 MARKETING SCIENCE 66, 66 (2014) ("Category management (CM) is used to manage product categories as individual business units in order to enhance consumer benefits."). Mumin Kurtulus and L. Beril Toktay, *Category Captainship: Who Wins, Who Loses*, SSRN (2005) Available at SSRN: https://ssrn.com/abstract=934970 or http://dx.doi.org/10.2139/ssrn.934970 ("Thus, retailers have refocused their efforts on managing entire product categories as a single business unit, a practice called category management."). Mumin Kurtulus and L. Beril Toktay, *Category Captainship vs. Retailer Category Management Under Limited Retail Shelf Space*, 20 PRODUCTION AND OPERATIONS MANAGEMENT 47, 47 (2011) ("Category management is a process for managing entire product categories as business units."). Leo S. Carameli Jr., *The Anti-Competitive Effects and Antitrust Implications of Category Management and Category Captains of Consumer Products*, 79 CHICAGO-KENT LAW REVIEW 1313, 1314 (2004) ("Category Management is a business practice by which a retailer plans its strategy on a product-category level rather than on a brand-by-brand basis."). Upender Subramanian, Jagmohan S. Rhaju, Sanjay K. Dhar and Yusong Wang, *Competitive Consequences of Using a Category Captain*, 56 MANAGEMENT SCIENCE 1739, 1739 (2010) ("Category management can be defined as "a process that involves managing product categories as business units, and customizing them on a store-by-store basis to satisfy customer needs"). Bradley J. Lorden, *Category Management: The Antitrust Implications in the United States and Europe*, 23 LOY. CONSUMER L. REV. 541, 542 (2011) ("Category management is a retail management practice that involves in-depth consumer analysis which enables retailers to tailor their pricing and product selection to best meet consumer preferences. This consumer analysis is concentrated at the product-category level, such as deodorant, cereal, or, more generally, breakfast foods. These product categories are then managed like their own small business (or profit center), ..."). Grocery Manufacturers Association, *Category Management Report: Enhancing Consumer Value in the Grocery Industry* XIX, (1995) (defining category management as a "distributor/supplier process of managing categories as strategic business units"). Nielsen Marketing Research, *Category Management: Positioning Your Organization to Win*, 268 (1992) (defining category management: "It is a process that involves managing product categories as business units and customizing them on a store-by-store basis to satisfy customer needs."). Federal Trade Commission, *Report of the Federal Trade Commission Workshop on Slotting Allowances and Other Marketing Practices in the Grocery Industry* 46 (2001) Available at: http://www.ftc.gov/os/2001/02/slottingallowancesreportfinal.pdf ("Category management' is a business technique for studying consumer demand within a particular category, such as soups, and then allocating shelf space among different products and designing marketing programs to best satisfy that demand as a whole. In effect, it is a way of managing a category of products as if it were a free-standing business.").

the management and performance of a single brand.[3] Applying category management techniques, decisions about product selection, merchandising assortment, product placement, promotion and pricing are made on a category-wide basis with the goal of maximizing the profit of the category as a whole.[4] Beginning in the early[5] to mid-1990s,[6] category management has become the prevailing format for conducting retail business in many major markets and is considered to be an extremely important development.[7]

The most popular approach to category management involves "outsourcing"[8] decisions to a single manufacturer in the category (a.k.a., the "category captain").[9] A category captain is typically the leading supplier to the category.[10] Through their role the category captain offers their knowledge and resources in exchange for the opportunity to actively participate in planning and managing a retailer's product category.[11] The extent of involvement and the level of influence and control held by a category captain can be extensive.[12] However, the power held by a category captain can vary depending on the nature and circumstances of the category captain arrangement.[13]

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3 Debra M. Desrochers, Gregory T. Gundlach and Albert A. Foer 2003, *Analysis of Antitrust Challenges to Category Captain Arrangements*, 22 JOURNAL OF PUBLIC POLICY & MARKETING 201, 202 (2003). ("Within each category, category management involves a shift in focus from the sales and profitability of a particular item or brand in the category to the sales and profitability of the entire category."). AMERICAN BAR ASSOCIATION, SECTION ON ANTITRUST LAW, CATEGORY MANAGEMENT ANTITRUST HANDBOOK 3 (2010) (Describing differences in category management and prior approaches "Rather than the retailer negotiating the best deal with each supplier and relying on consumers to sort between the brands, some retailers began planning in advance for an entire category of products.").

4 FTC (2001), 47 ("Under category management, decisions about product selection, placement, promotion and pricing are made on a category-by-category basis with an eye to maximizing the profit of the category as a whole.").

5 Lorden (2011), 541 ("This practice evolved in the early 1990s as an improvement on the traditional approach, brand Management.").

6 Robert L. Steiner, *Category Management – A Pervasive, New Vertical/Horizontal Format*, ANTITRUST MAGAZINE 77, 77 (2001) ("Category management started in the supermarket industry in the mid-1990s.").

7 Steiner (2001), 77 ("It [category management] has become the prevailing format for conducting business in many major markets and is a hugely important development.").

8 Kurtuluş & Toktay (2005), 1 (Recently, a new trend has emerged: Retailers have started to outsource retail category management to a chosen supplier on whom they rely for strategic recommendations and insights, a practice often referred to as category captainship."). Kurtulus & Toktay (2011), 47 ("Recently, retailers have started to outsource category management to their leading manufacturers, a practice often referred to as 'category captainship.").

9 Mumin Kurtulus, Sezer Ulku, Jeffrey P. Dotson and Alper Nakkas, *The Impact of Category Captainship on the Breadth and Appeal of a Retailer's Assortment,* 90 JOURNAL OF RETAILING 379, 379 (2014) ("Category captainship has become popular during the past decade as the preferred approach for category management and was adopted by large retailers such as WalMart, Kroger, and Safeway."). Alan, Dotson & Kurtulus (2017), 127 ("Category captainship has become a preferred way of executing category management."). Subramanian, Raju, Dhar & Wang (2010), 1741 ("..., this practice has flourished. It [CC] has emerged as the dominant mode of category management for many retailers in the United States and in Europe and has started making inroads in emerging markets such as Brazil and India.").

10 Lorden (2011), 543 ("A category captain is generally a leading manufacturer in the industry that takes responsibility for managing a product category at a designated retailer."). Steiner (2001), 77 (describing a retailer's decision to engage in category management, "It then appoints one of the leading manufacturers in the field as 'Category Captain."). Alan, Dotson & Kurtulus (2017), 127 ("These leading manufacturers are often referred to as category captains, and the practice itself is referred to as category captainship.").

11 Ranga Chimhundu, Eric Kong and Raj Gururajan, *Category Captain Arrangements in Grocery Retail Marketing*, 27 ASIA PACIFIC JOURNAL OF MARKETING AND LOGISTICS 368, 371 (2014) ("The typical arrangement is that the category captain supplies resources and information in exchange for active participation in category planning, development and growth.").

12 Steiner (2001), 78 (quoting one source "In many cases, "the retailer places the well-being of the entire category in the hands of a single supplier to the category."). FTC (2001), 48 ("...some retailers delegate all category management responsibilities to the captain."). Steiner (2001), 78 ("In one variant known as Vendor Managed Inventory (VMI), the retailer entrusts all stocking decisions to a single category manufacturer."). Desrochers, Gundlach & Foer (2003), 206

Category management and category captain arrangements can benefit competition and consumers where they help to enhance the efficiency and effectiveness of retail decision-making.[14] However, the idea of using a category captain to engage in category management is controversial.[15] The use of category captains simultaneously provide the opportunity for major cost savings in the distribution of consumer goods while at the same time creating considerable potential for antitrust mischief.[16] Through ceding decision authority to a single manufacturer, a retailer creates opportunities for the captain to improve its own performance at the expense of its competition.[17]

Given their potential to adversely affect competition and consumers, category captain arrangements have attracted the attention of public policy makers, antitrust enforcement authorities, and marketing and legal scholars.[18] As expressed by one student of antitrust law:

("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.").

13 Steiner (2001), 78 ("In practice, the powers of the Category Captain vary."). Chimhundu, Kong & Gururajan (2014), 371 ("The extent and exclusivity of decision control by the CC largely depends on the specific arrangement, and arrangements may vary.").

14 FTC (2001), 54 ("category management can produce significant efficiencies that will benefit retailers, manufacturers and consumers.").

15 Richard A. Gooner, Neil A. Morgan and William D. Perrault Jr., *Is Retail Category Management Worth the Effort (and Does a Category Captain Help or Hinder)?*, 75 JOURNAL OF MARKETING 18, 18 (2011) ("However, this [retailer use of category captains] idea is controversial."). Alan, Dotson & Kurtulus (2017), 127 ("The trade literature has suggested that both retailers and manufacturers can benefit from CC. However, controversies regarding CC have arisen because the captain provides recommendations to the retailer regarding not only its own products but also those of its competitors.").

16 Steiner (2001), 77 ("Category management [through category captains] simultaneously provides the opportunity for major cost savings in the distribution of consumer goods and a considerable potential for various sorts of antitrust mischief.").

17 Kurtulus, Ulku, Dotson & Nakkas (2014), abstract ("Category captainship is a collaborative channel arrangement wherein a retailer cedes control of category management decisions, such as developing a marketing strategy to grow the category and assortment selection, to one of the category's leading manufacturers."). Kurtulus, Ulku, Dotson & Nakkas (2014), 386 ("However, by ceding decision authority to a single manufacturer, the retailer creates an opportunity for the captain to improve its own performance at the expense of its competition.").

18 American Bar Association (2010), 3 (Describing this potential in category captain arrangements "...a supplier is often given an influential role in decision making, and some believe that that role may have negative implications for competition."). FTC (2001), 49 ("Category management can provide significant benefits to manufacturers, retailers, and consumers. But, as one panel member stated, it can also provide an opportunity for "mischief," particularly when it is practiced with a heavy reliance on a category captain."). Gooner, Morgan & Perreault (2011), 31 (describing category captains, "They are potentially able to restrict competition and thereby damage consumer welfare."). Carameli (2004), 1317 ("But there are complications to this paradigm that merit serious consideration from academia and the court system: the anticompetitive potential and reality, and antitrust implications of Category Management and Captain practices."). Lindblom & Olkonnen (2008), 3 ("On the other hand, more critical views of these arrangements claim that they allow category captains to take advantage of their dominant role to restrict competition and harm consumers."). Bandyopadhyay, Rominger & Basaviah (2009), 316 ("Other researchers ... have also raised concerns about the possible misuse of power by the category captain to circumvent fair competition."). Bandyopadhyay, Rominger & Basaviah (2009), 319 ("It is possible that a category captain may abuse the power vested in it to marginalize or exclude altogether the retailer's private labels or smaller brands, thereby lowering competition."). Morgan, Kaleka & Gooner (2007), 514 (Contrasting conceptions of a retailer's category management relationship with a focal supplier derived from relational exchange theory with predictions derived from agency theory, transaction cost analysis theory, and network theory: "In grocery retailing, the managerial literature echoes these relational exchange theory notions and advocates more collaborative retailer relationships with suppliers to enhance their category management efforts and thereby improve performance. ... However, such presciptions largely ignore predictions from the agency theory, transaction cost analysis (TCA) theory and network theory literature regarding the likelihood and consequences of focal supplier opportunism in this context."). Lindblom & Olkonnen (2008), 3 ("They could also put competitors at a disadvantage through advance

> "In a textbook implementation, this practice may not present an antitrust problem. Nevertheless, the collaborative and trusting nature of the relationship presents numerous opportunities for antitrust violations."[19]

Consequently, despite analysts' prescriptions that retailers can significantly enhance category performance through category captain arrangements, many retailers are either unconvinced or have failed to make such relationships work[20] with some skeptical and even fearful of their potential for opportunism.[21]

At least two types of competition-related concerns are identified for category captain arrangements.[22] One concern is that a category captain will use its role to coordinate competitor behavior resulting in anticompetitive *collusion*. [23] A second concern is that a captain will use its role to

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knowledge of their pricing, merchandising and promotional strategies, and by working to gain an advantage for their own products.").

19 Carameli (2004), 1327 ("In a textbook implementation, this practice may not present an antitrust problem. Nevertheless, the collaborative and trusting nature of the relationship presents numerous opportunities for antitrust violations.").

20 Morgan, Kaleka & Gooner (2007), 513 ("Analysts suggest that retailers can significantly enhance category performance by allowing a key supplier to assume the role of "category captain" where the focal supplier undertakes or has significant input into the retailer's category management efforts. However, despite this widespread prescription, many retailers are either unconvinced or have failed to make such focal supplier category management relationships work.").

21 Gooner, Morgan & Perreault (2011), 19 ("... many retailers report having failed to make their CM efforts and associated supplier relationships work, and many retailers remain skeptical and even fearful of CM [the use of category captains in category management]."). Morgan, Kaleka & Gooner (2007), 525 ("While supermarket retailers have been urged to use category management relationships to leverage focal supplier resources and capabilities, many have been reluctant to do so because of fears of focal supplier opportunism.").

22 Desrochers, Gundlach & Foer (2003), 201 ("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."). American Bar Association (2010), 29 ("... category management has the potential to promote competition, but abuses of the process also may restrain competition by either facilitating collusion among competitors or excluding rivals."). Lorden (2011), 545 (Proposing a similar synthesis, "In the FTC Report, the FTC set forth four specific situations that may create anti-competitive issues. For example, '[t]he category captain might: (1) learn confidential information about rivals' plans; (2) hinder the expansion of rivals; (3) promote collusion among retailers; or (4) facilitate collusion among manufacturers.' The ABA Section on Antitrust Law has also recognized a fifth category, (5) tortious conduct. These five situations can be grouped into two major themes: the exclusion of rival suppliers from the market, and the collusion among suppliers or retailers by means of the category captain relationship. The first two situations above, along with tortious conduct, deal with the "exclusion" theme, and the third and fourth situations fall within the "collusion" theme.").

23 FTC (2001), 49-50 ("There are four ways in which category management – particularly the use of category captains – may lessen competition. The category captain might: ..., (3) promote collusion among retailers; or (4) facilitate collusion among manufacturers."). Desrochers, Gundlach & Foer (2003), 201 ("Antitrust concerns for CC arrangements focus on two potential problems. ... Second, a CC can use its role to facilitate collusion among rivals in the category or between competing retailers that the CC serves."). Carameli (2004), 1319 ("Category Management as retailers and manufacturers sometimes practice it, ... may also lead to collusion amongst grocers that act to restrain competition. FTC Report (2001), 52-53 ("A manufacturer that serves as the captain of a category for all or most of the competing retailers in a market could facilitate tacit collusion among the retailers by providing a common point of reference for pricing, promotion, and product placement decisions. The manufacturer, could, for example, make identical recommendations to all of the retailers, and if each retailer were aware of this practice, there would be less incentive for any one of them to deviate from the recommendation. Second, category management has some potential to harm competition by facilitating collusion among manufacturers. That could occur if retailers encourage important manufacturers to confer and agree on a category management recommendation. The result could be fewer promotions and higher prices.").

disadvantage competitors leading to anticompetitive *exclusion.*[24] Other concerns have also been identified.[25] This monograph focuses on anticompetitive exclusion.

Despite expressed concerns for anticompetitive exclusion involving category captain arrangements research offers surprisingly few insights into the issue.[26] Overall the literature on category captain arrangements is scarce.[27] There have been few empirical studies of supplier involvement in category management[28] and empirical evidence on the collaborative and competitive implications of category captain arrangements is scare.[29] Until recently, there was no empirical evidence regarding whether category captains benefit or hurt competing manufacturers.[30] However, even this literature is limited[31] and contradictory.[32] Thus, the empirical consequences of category captain arrangements remain largely unknown.[33]

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[24] Desrochers, Gundlach & Foer 2003, 201 ("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."). FTC Report (2001), 49-50 ("There are four ways in which category management – particularly the use of category captains – may lessen competition. The category captain might: (1) learn confidential information about rivals' plans; (2) hinder the expansion of rivals,"). Carameli (2004), 1319 ("Category Management as retailers and manufacturers sometimes practice it, however, can help facilitate anticompetitive conduct by one manufacturer intended to exclude other manufacturers' products from the marketplace."). Lindblom & Olkonnen (2008), 2 ("There may be a risk that suppliers with a strong role in CM collaboration may act in an opportunistic manner, i.e., they may promote their own brands at the expense of weaker suppliers within the same category.). American Bar Association (2010), 29. ("Category management also has the potential to limit competition by excluding rivals, particularly those of the category captain."). Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("While there have been many successful captainship implementations, a persistent concern has been potential competitive exclusion, that is, the potential for the captain to engage in opportunistic behavior that favors its own products at the expense of its competitors.").

[25] Carameli (2004), 1319 ("... Category Captaincies as they are often implemented present significant opportunity for larger retailers to coerce Category Management services from manufacturers that a manufacturer does not, or cannot, offer smaller stores on proportionally equal terms, thus presenting Robinson-Patman Act concerns."). Carameli (2004), 1331 ("Nevertheless, as described by at least some large retailers the Category Captain relationship is one that is inherently collaborative. As such, the relationship opens the door for agreements to maintain a minimum or a maximum resale price.).

[26] Morgan, Kaleka & Gooner (2007), 513 (describing the literature on opportunism in lead supplier category captain arrangements "The literature offers surprisingly little insights into this important issue.").

[27] Nijs, Misra, & Hansen (2014), 67 ("The existing literature on CC arrangements is scarce.").

[28] Morgan, Kaleka & Gooner (2007), 513 ("There have been few empirical studies of supplier involvement in category management."). Gooner, Morgan & Perreault (2011), 18 ("Despite this, there is little empirical evidence on retail CM [the use of category captains in category management]").

[29] Alan, Dotson & Kurtulus (2017), 128 (However, empirical evidence on the collaborative and competitive implications of CC is scarce, as retailers are reluctant to share CC data because of antitrust concerns").

[30] Alan, Dotson & Kurtulus (2017), 128 ("From a competitive standpoint, there is no empirical evidence regarding whether CC benefits or hurts the competing manufacturers.").

[31] Subramanaian, Raju, Dhar & Wang (2010), 1741 ("Furthermore, despite concerns about category captains using their position to disadvantage their rivals, there is limited empirical evidence of such bias or harm to rival manufacturers.").

[32] Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("There is some empirical evidence both supporting and refuting the claim that captains engage in opportunistic behavior."). Chimundu, Kong & Gururajan (2014), 369 (Summarizing this literature "Researchers have warned however, that this strategy of employing CCs is risky in the sense that the retailers may end up losing power to their suppliers and the captains may push their own brands or they may either disadvantage competing suppliers or collude with those suppliers. Other researchers have maintained that these fears are unfounded, overblown and outweighed by the benefits to retailers and manufacturers; and other researchers have maintained that, with respect to the addition and/or deletion of products, it is the CCs and the retailers that actually benefit at the expense of rival manufacturers who are not CCs. The literature is therefore contradictory on this aspect.").

[33] Nijs, Misra, & Hansen (2014), 67 ("... the empirical consequences of CC arrangements are unknown.").

The application of antitrust law to category management also continues to remain relatively undeveloped leaving practitioners with little guidance on what is permissible.[34] The Federal Trade Commission (FTC) studied the practice in 2001[35] and at that time offered some general recommendations. [36] The FTC also announced in 2002 that it would research the matter further. [37] However, to date the FTC has not offered guidelines or otherwise addressed the issue in more specific terms. At least one commentator has opined that guidelines should be promulgated with specific factors on which category management practices constitute anticompetitive conduct.[38] According to this commentator, clearer guidelines would lead to a more efficient practice of category management.[39] Moreover, as the practice of category management grows and evolves, the law must also grow and evolve.[40]

Given this state of affairs, continued effort is required to better understand the nature and competitive consequences of category management and category captain arrangements. In particular, antitrust and business stakeholders are in need of more specific understanding of competitive exclusion involving category captain arrangements. The goal of this monograph is to offer this understanding. The monograph first describes the nature of category management and the approach to category management found in category captain arrangements. The underlying key sources of competitive concern for category captain arrangements are then identified and elaborated upon. With the antitrust importance of understanding the power of an organization to harm competition, emphasis and discussion is then given to the nature and sources of power and influence held by category captains. This is followed by the identification, organization, and description of the types of exclusionary conduct and practices that may be found in category captain arrangements. Managerial safeguards against competitive exclusion involving category captains are also identified, organized and described. The effects for competition and consumers that can result from competitive exclusion involving category captains are then described. The findings of empirical research on competitive exclusion in category captain arrangements are also described. Together the insights and analysis offered in the monograph should be of assistance to policymakers and legal practitioners, scholars and business practitioners, and consumers and consumer practitioners involved with category captain arrangements.

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[34] Lorden (2011), 559 ("The area of antitrust law as applied to category management is still a relatively undefined area of law that leaves practitioners with little guidance on what is permissible.").
[35] FTC Report 2001.
[36] Lorden (2011), 559 ("... the FTC provided some general recommendations in its 2001 report,...").
[37] American Bar Association (2010), 30 n. 6 ("The FTC announced on June 21, 2002, that it would not issue guidelines on the payment of slotting allowances, denying a petition, filed on April 14, 2000, by the Independent Bakers Association, the Tortilla Industry Association, and the National Association of Chewing Gum Manufacturers. Acknowledging the complexity of the situation, the FTC said it would research the matter further. See Letter from Donald S. Clark, FTC Secretary, to Robert A. Skitol and Kathleen S. O'Neill (June 19, 2002), Available at: http://www.ftc.gov/os/2002/06/slottingletter.pdf (denying request for guidelines).
[38] Lorden (2011), 560 ("U.S. antitrust law should also promulgate guidelines with specific factors on which category management practices constitute anti-competitive conduct.").
[39] Lorden (2011), 559 ("Although the FTC provided some general recommendations in its 2001 report, clearer guidelines would lead to a more efficient practice of category management.").
[40] Lorden (2011), 560 ("As the practice of category management continually grows and evolves, the law must do the same.").

Chapter 2. Category Management

Definition and nature

Although variations in the structure of category captain arrangements are known to exist,[41] in its most basic form category management involves a managerial philosophy and retail practice wherein the products offered by a retail establishment are broken up into different categories and then managed as if each were a free-standing business.[42] Category management draws on the idea that rather than managing the individual brands of each relevant supplier it is better for retailers to manage entire product categories as strategic business units. [43] Thus, category management concentrates on product-category level analysis[44] and involves the strategic management of retail products by category rather than by brand.[45]

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[41] Steiner (2001), 77 ("While it will be seen that there are a number of variations in the category management structure, in its basic format a retail chain decides to manage its business on a product category basis.").

[42] Morgan, Kaleka & Gooner (2007), 512 ("Category management involves treating sets of complementary and/or competing brands as strategic business units and allocating resources within these categories to maximize planned outcomes."). Lindblom & Olkonnen (2008), 1 ("CM is a collaborative process between suppliers and retailers, the aim of which is to manage categories as strategic business units, producing enhanced results by focusing on delivering consumer value.").

Alan, Dotson & Kurtulus (2017), 127 ("Category management is a commonly used retailing practice in which a retailer treats a product category (i.e., a set of similar products) as a strategic business unit."). Suntak Hong, Kanishka Misra and Naufel J. Vilcassim, *The Perils of Category Management: The Effect of Product Assortment on Multicategory Purchase Incidence*, 80 JOURNAL OF MARKETING 34, 36 (2016) ("Category Management is a practice in which retailers manage the performance of individual product categories as independent units."). Bandyopadhyay, Rominger & Basaviah (2009), 315-6 ("Category management (in short, CM) is a process for managing product categories of merchandise (such as detergent soaps, pet foods, and prepared foods) as strategic business units within a retail store, customizing the category by store location and region to produce improved sales and profits as well as deliver better value to consumers."). Nijs, Misra, & Hansen (2014), 66 ("Category management (CM) is used to manage product categories as individual business units in order to enhance consumer benefits."). Kurtulus & Toktay (2005), 1 ("Thus, retailers have refocused their efforts on managing entire product categories as a single business unit, a practice called category management."). Kurtulus & Toktay (2011), 47 ("Category management is a process for managing entire product categories as business units."). Carameli (2004), 1314 ("Category Management is a business practice by which a retailer plans its strategy on a product-category level rather than on a brand-by-brand basis."). Subramanian, Rhaju, Dhar & Wang (2010), 1739 ("Category management can be defined as "a process that involves managing product categories as business units, and customizing them on a store-by-store basis to satisfy customer needs"). Lorden (2011), 542 ("Category management is a retail management practice that involves in-depth consumer analysis which enables retailers to tailor their pricing and product selection to best meet consumer preferences. This consumer analysis is concentrated at the product-category level, such as deodorant, cereal, or, more generally, breakfast foods. These product categories are then managed like their own small business (or profit center), ..."). Grocery Manufacturers Association, (1995) (defining category management as a "distributor/supplier process of managing categories as strategic business units"). Nielsen Marketing (1992), 268 (defining category management: "It is a process that involves managing product categories as business units and customizing them on a store-by-store basis to satisfy customer needs."). FTC (2001), 46 ("'Category management' is a business technique for studying consumer demand within a particular category, such as soups, and then allocating shelf space among different products and designing marketing programs to best satisfy that demand as a whole. In effect, it is a way of managing a category of products as if it were a free-standing business.").

[43] Lindblom & Olkonnen (2008), 2 ("...CM is generally based on the idea that instead of managing individual brands with each relevant supplier, it is better for retailers to manage entire product categories as strategic business units ...")

[44] Lorden (2011), 542 (describing category management, "This consumer analysis is concentrated at the product-category level.")

[45] Chimhundu, Kong & Gururajan (2014), 368 ("Category management is strategic management of grocery retail products by category rather than by brand."). Brian Harris and Michael McPartland, *Category Management Defined: What it is and Why it Works*, 72 PROGRESSIVE GROCER 5 (1993) ("Strategic category planning is the essence of category management.").

Following category management a product category is viewed as the smallest strategic business unit within a retailer.[46] A typical retail chain's supermarket store may carry hundreds of product categories.[47] A product category is a group of products that consumers perceive to be interrelated and/or substitutable.[48] More formally, a product category is a group of products that have a common consumer end use and is distinct, manageable and perceived by the consumer to be related and substitutable in meeting the needs of the consumer.[49] Product categories can include related product items and brands[50] as well as national and private label brands.[51] Examples of product categories include dairy, soft drinks, household cleaners, paper products, breakfast cereals, and flour,[52] canned vegetables, salty snacks, and carbonated beverages, [53] oral care products, frozen vegetables,[54] breakfast food,[55] deodorant[56] toothpaste, shampoo, and hair care products.[57]

Objectives and goals

The goal of category management is to maximize the sales and profitability of the category as a whole versus the sales and profitability of any one individual item or brand.[58] More generally the goal is to improve business performance through focusing on delivering consumer value.[59]

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46 Kurtulus & Toktay (2005), 1 ("Categories can be viewed as the smallest strategic business unit within a retailer.)

47 Chimhundu, Kong & Gururajan (2014), 368 ("A typical retail chain's supermarket stores would literally be carrying hundreds of product categories.").

48 Kurtulus & Toktay (2005), 1 ("A product category is defined as a group of products that consumers perceive to be interrelated and/or substitutable."). Kurtulus & Toktay (2011), 47 ("A product category is defined as a group of products that consumers perceive to be interrelated and/or substitutable.").

49 Chimhundu, Kong & Gururajan (2014), 368 ("A category is a group of products that have a common consumer end use, and the group is distinct, manageable and perceived by the consumer to be related and substitutable in meeting the needs of the consumer.").

50 Suman Basuroy, Murali K. Mantralu & Rockney G. Walters, *The Impact of Category Management on Retailer Prices and Performance: Theory and Evidence*, 65 JOURNAL OF MARKETING 16, 17 (2001) ("The category definition should include all products that are either highly substitutable or closely related, subject to operational constraints.").

51 Alan, Dotson & Kurtulus (2017), 127 ("A product category (e.g., canned vegetables, salty snacks, carbonated beverages) consists of products offered by national brands and may also include private label products offered by the retailer."). Kurtulus & Toktay (2011), 47 ("Soft drinks, oral care products, and breakfast foods are some examples of retail categories.").

52 Chimhundu, Kong & Gururajan (2014), 368 ("Examples of categories include dairy, soft drinks, household cleaners, paper products, breakfast cereals, flour and so on; the list is endless.").

53 Alan, Dotson & Kurtulus (2017), 127 ("A product category (e.g., canned vegetables, salty snacks, carbonated beverages) consists of products offered by national brands and may also include private label products offered by the retailer."). Kurtulus & Toktay (2011), 47 ("Soft drinks, oral care products, and breakfast foods are some examples of retail categories.").

54 Kurtulus & Toktay (2005), 1 ("Soft drinks, oral care products, and frozen vegetables are some examples of retail categories.").

55 Kurtulus & Toktay (2011), 1 ("Soft drinks, oral care products, and breakfast foods are some examples of retail categories.").

56 Lorden (2011), 542 ("This consumer analysis is concentrated at the product-category level, such as deodorant, cereal, or, more generally, breakfast foods.").

57 Carameli (2004), 1314 ("Products are grouped into commonly understood categories such as toothpaste, shampoo, or more broadly, hair care.").

58 FTC (2001), 47. Desrochers, Gundlach & Foer (2003), 202 ("Within each category, category management involves a shift in focus from the sales and profitability of a particular item or brand in the category to the sales and profitability of the entire category."). Basuroy, Mantralu & Walters (2001), 17 ("... CM is defined as a situation in which a category manager jointly sets prices of all brands in the category so as to maximize total category profits.").

59 Kurtulus & Toktay (2005), 1 (describing the goal of category management, "The goal is to improve business performance through focusing on delivering consumer value.").

Important motivations for adopting category management include increasing revenues and profitability and optimizing the mix of items in a category.[60] One main objective of category management is to assess consumer demand at the category level and stock store shelves in a way that best reflects that demand.[61] Thus, category management shifts a retailer's focus from product level goals to category level goals.[62] In the typical application retailers take a strong interest in category growth and other measures of category performance.[63]

Origin and development

The practice of category management started in the supermarket industry in the mid-1990s.[64] Category management evolved from the early 1990s as an improvement over brand management.[65] As described by Basuroy, Mantrala and Walters:

> "Traditionally, retailers assigned buyers to purchase brands of specific manufacturers, instead of making all purchases within a particular product category. Individual brand-oriented buyers sought to improve their economic performance by procuring large quantities of product on deals and then relying on retail pricing, promotions, and merchandising activities to deplete brand-level inventories as quickly as possible. In contrast, CM recognizes the interrelatedness of products in the category and focuses on improving the performance of whole product categories rather than the performance of individual brands. Under CM, traditional rand (vendor)-oriented buyers are replaced with category managers who are responsible for integrating procurement, pricing, and merchandising of all brands in a category and jointly developing and implementing category-based plans with manufacturers to enhance the outcomes of both parties."[66]

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[60] ACNielsen, EIGHTH ANNUAL SURVEY OF TRADE PROMOTION PRACTICES 5 (1998) ("Retailers practice category management with several ends in mind, but increasing profitability, increasing revenue and optimizing item mix are ... the most important motivators.").

[61] Carameli (2004), 1314 ("One main objective of Category Management is to assess consumer demand at the category level and stock store shelves in a way that best reflects that demand.").

[62] Nijs, Misra, & Hansen (2014), 66 (Describing category management, "It shifts retailers' focus from product- to category level goals.")

[63] Chimhundu, Kong & Gururajan (2014), 371 ("In the typical category management set-up supermarket retailers take a strong interest in category growth and other measures of category performance ...").

[64] Steiner (2001), 77 ("Category management started in the supermarket industry in the mid-1990s"). Chimhundu, Kong & Gururajan (2014), 368 ("Category management (CM) commenced in the grocery retail sector in the early to mid-1990s after which it got adopted by consumer packaged goods (CPG) retail chains and manufacturers in the USA and Europe, and in other parts of the world.").

[65] Lorden (2011), 541 ("This practice evolved in the early 1990s as an improvement on the traditional approach, brand Management.").

[66] Basuroy, Mantralu & Walters (2001), 16 ("Traditionally, retailers assigned buyers to purchase brands of specific manufacturers, instead of making all purchases within a particular product category. Individual brand-oriented buyers sought to improve their economic performance by procuring large quantities of product on deals and then relying on retail pricing, promotions, and merchandising activities to deplete brand-level inventories as quickly as possible. In contrast, CM recognizes the interrelatedness of products in the category and focuses on improving the performance of whole product categories rather than the performance of individual brands. Under CM, traditional rand (vendor)-oriented buyers are replaced with category managers who are responsible for integrating procurement, pricing, and merchandising of all brands in a category and jointly developing and implementing category-based plans with manufacturers to enhance the outcomes of both parties."). See also Basuroy, Mantralu & Walters (2001), 17 ("... CM is defined as a situation in which a category management jointly sets prices of all brands in the category so as to maximize total category profits. Traditional BCM [brand category management] of a category is defined as a situation in which

Category management is considered a logical step in the evolution and development of retail buying and the merchandising function.[67] Most recently, category management has evolved in some instances to include multiple complementary categories.[68]

Perspective and approach

Category management is viewed as a shift in focus from the supplier's perspective to the retailer's perspective.[69] Compared to prior approaches that focused on the management of an individual supplier's items and brands on a product-by- product basis (i.e., brand management[70]), category management involves a more holistic and total approach to managing the items and brands in a category.[71] A retailer using category management makes its decisions based on the category as a whole, rather than by task or by brand.[72] By emphasizing the management of product categories as a whole, category management enables retailers to capture the synergies that may arise when products are grouped together.[73] Synergies such as promotion coordination, store traffic driving strategies, and substitution patterns can be captured by grouping products together.[74]

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each brand's retail price is set independently so as to maximize its own profit contribution and the prices of competing brands in the category are taken as given.").

67 Brian Harris and Mike McPartland, *Category Management Defined: What it is and Why it Works, 72* PROGRESSIVE GROCER 5, 5 (1993) ("Category management is the current and logical step in the evolution of the retailer buying and merchandising function.").

68 Lorden (2011), 562 ("Category management is evolving even further by focusing not only on one category, but on multiple complementary categories.").

69 Christian Dussart, *Category Management: Strength, Limits, and Developments*, 16 EUROPEAN MANAGEMENT JOURNAL 50, 53 (1998).

70 Michael J. Zenor, *The Profit Benefits of Category Management*, 21 JOURNAL OF MARKETING RESEARCH 202 (1994) (describing the nature and history of brand management "Brand management has enjoyed a long and venerable history in the marketing of consumer products.").

71 Alan, Dotson & Kurtulus (2017), 127 ("Category management enables retailers to focus on maximizing category performance, typically measured by the sales or profitability of the entire category, instead of making decisions on a product-by-product basis."). FTC (2001), 47 [available at http://www.ftc.gov/os/2001/02/slottingallowancesreportfinal.pdf. ("Before the use of category management, supermarket chains divided management duties by task (e.g., shelf allocation, promotions, replenishment, etc.) or by brand."). Basuroy, Mantralu & Walters (2001), 17 ("... CM is defined as a situation in which a category manager jointly sets prices of all brands in the category so as to maximize total category profits."). American Bar Association (2010), 6 ("Category management tends to be more holistic than brand management. Rather than a decision being made looking only at the attractiveness of a supplier's offer for a particular SKU [shop keeping unit], category management views the decision from the perspective of how that decision will impact the sale of all products and the retailer's overall profitability in the product category."). Kurtulus & Toktay (2011), 47 ("Unlike the traditional brand-by-brand or SKU-by-SKU focus, category management emphasizes the management of a product category as a whole, allowing the decision maker to take into account the customer response to decisions made about substitutable or interrelated products.").

72 Lorden (2011), 541-2 ("As opposed to brand management, a retailer using category management makes its decisions based on the category as a whole, rather than by task or by brand.").

73 Kurtulus & Toktay (2005), 1 ("Unlike in the traditional approach where retailers managed their product portfolio on a brand-by-brand or SKU-by-SKU basis, category management emphasizes the management of product categories as a whole and allows the retailers to capture the synergies that may arise as a result of grouping the products together.").

74 Kurtulus & Toktay (2005), 1 ("Various synergies such as promotion coordination, store traffic driving strategies, and substitution patterns can be captured by grouping the products together.").

Operation and management

The adoption of category management results in many changes to a retailer's operation and management.[75] While many variables can influence consumer purchasing decisions, category management focuses on those that a retailer can most effectively leverage to drive sales.[76] The most prominent of these are: (1) the assortment of products the store carries; (2) the placement of those individual products on the shelf relative to other products in the category, the placement of entire categories within the store relative to other categories, and how much total shelf space to allot a category and each individual product therein; (3) the price of the product relative to both its reasonable substitutes in the same store and comparable products at other retailers in the same geographic market; and (4) the promotion of the product.[77] Thus, the four main decision points, or components, of category management are choosing the most appropriate product assortment and placement, pricing, and promotion.[78] Each of these factors has a profound impact on individual consumers' purchasing decisions.[79]

Category management analyzes consumer purchase information to make decisions about which brands and products a retailer should carry, where on the shelves these products should be placed, at what prices they should be offered, and when the products should be part of a promotion[80] Category management calls for a high level of price coordination.[81] Applying category management techniques, decisions about product selection, merchandising assortment, product placement, promotion, and pricing are made on a category wide basis.[82] In practice, category management involves several steps including defining the category, defining the retail role of the category, assessing current performance, developing a category scorecard, setting objectives and targets for the category, devising an overall strategy, devising specific targets and implementation.[83]

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[75] Basuroy, Mantralu & Walters (2001), 16. (Adoption of CM results in many changes in the retailer's operations and management.").

[76] Carameli (2004), 1314 ("Countless variables influence consumer purchasing decisions, and Category Management focuses on those that a retailer can most effectively leverage to drive sales.").

[77] Carameli (2004), 1323-24 ("The most prominent factors that a retailer can leverage to improve category performance are: (1) the assortment of products the store carries; (2) the placement of those individual products on the shelf relative to other products in the category, the placement of entire categories within the store relative to other categories, and how much total shelf space to allot a category and each individual product therein; (3) the price of the product relative to both its reasonable substitutes in the same store and comparable products at other retailers in the same geographic market; and (4) the promotion of the product.").

[78] Carameli (2004), 1314 ("The four main decision points, or components, of Category Management are choosing the most appropriate assortment, placement, pricing, and promotion.").

[79] Carameli 2004, p.1324 ("Each of these factors [assortment, placement, pricing and promotion] has profound impact on individual consumers' purchasing decisions.").

[80] Lorden (2011), 541 ("Category management analyzes consumer purchase information to make decisions about which brands and products a retailer should carry, where on the shelves these products should be placed, at what prices they should be offered, and when the products should be part of a promotion.").

[81] Basuroy, Mantralu & Walters (2001), 17 ("Clearly, CM calls for a high level of price coordination, ...").

[82] Kurtulus & Toktay (2005), 1 ("In particular, retail category management involves decisions such as merchandizing product assortment, determining retail prices, and allocating shelf space to each product on the basis of category goals."). Kurtulus & Toktay (2011), 47 ("In particular, category management involves decisions such as product assortment, pricing, and shelf-space allocation to each product on the basis of category goals."). FTC (2001), 47 ("Under category management, decisions about product selection, placement, promotion and pricing are made on a category-by-category basis with an eye to maximizing the profit of the category as a whole.").

[83] Grocery Manufacturers of American 1995.

Thus in managerial terms category management entails the allocation of resources within sets of complementary and/or competing brands to maximize planned outcomes and involves the analysis of category-level data, setting goals for category performance, and the formulation and execution of plans to maximize category-level results.[84]

Adoption and scope

When first introduced the philosophy and practice of category management became widely heralded.[85] The practice transformed the way grocers sell consumer products[86] and has since rapidly swept across non-food categories.[87] The practice has since garnered considerable attention as a cooperative managerial practice between manufacturers and retailers.[88] Category management has also expanded to convenience stores, pharmacies, and other mass outlet chains.[89] The practice has become increasingly popular,[90] adopted by many major U.S. retailers[91] and ubiquitous in some segments of the retailing industry.[92] Category management may now be found in both the U.S. and Europe[93] and in other parts of the world.[94]

Trends and influences

The shift toward category management has been influenced by several trends.[95] These trends include increases in understanding of consumers brought about through advances in marketing research.[96] It also includes the increasing availability of data and large databases for

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[84] Gooner, Morgan & Perreault (2011), 18 ("Category management involves the allocation of resources within sets of complementary and/or competing brands to maximize planned outcomes and involves the analysis of category-level data, setting goals for category performance, and the formulation and execution of plans to maximize category-level results.").

[85] Basuroy, Mantralu & Walters (2001), 30 ("Category management is a widely heralded process...").

[86] Carameli (2004), 1315 ("Category Management has transformed the way grocers sell consumer products.").

[87] Steiner (2001), 77 ("Category management started in the supermarket industry in the mid-1990s and has rapidly swept across non-food categories in the United States, Europe, and elsewhere.").

[88] Lindblom & Olkonnen (2008), 6 ("During the past few years the concept of CM has received considerable attention as a new cooperative managerial practice between manufacturers and retailers.").

[89] Lorden (2011), 543 ("The practice has also expanded to convenience stores, pharmacies, and other mass outlet chains.").

[90] American Bar Association (2010), 3 (describing the "... management philosophy called "category management," this philosophy seems to be increasing in popularity,...")

[91] Shailendra Gajanan, Suman Basuroy and Srinath Beldona, *Category Management, Product Assortment, and Consumer Welfare*, 18 MARKETING LETTERS 135, 135 (2007) ("Today, nearly every major US retailer has adopted CM in some form."). American Bar Association (2010), 1 ("'Category management' is a relatively new concept that has become ubiquitous in some segments of the retailing industry.").

[93] Subramanian, Raju, Dhar & Wang (2010), 1739 ("Since its origins in the early 1990s, category management has become an integral part of retail strategy both in the United States and in Europe.").

[94] Chimhundu, Kong & Gururajan (2014), 368 ("Category management (CM) commenced in the grocery retail sector in the early to mid-1990s after which it got adopted by consumer packaged goods (CPG) retail chains and manufacturers in the USA and Europe, and in other parts of the world."). Lorden (2011), 543 ("Since then [1990s], it has swept across the grocery industry in the United States, Europe, and across the globe.").

[95] For an excellent overview of these trends, *see* American Bar Association (2010), 7-10. See also Lorden (2011), 543.

[96] American Bar Association (2010), 8 ("Category management has gone hand-in-hand with the increasing sophistication of marketing research. An extensive body of research has investigated the range of consumer preferences and incentives. Category management recognizes that different types of shoppers may choose different SKUs of the same product. Brand shoppers will look for well-known brands; price shoppers will look for less expensive alternatives; impulse shoppers will react on the spur of the moment. Although consumers generally value having a varied assortment to consider some categories consumers do not consider variety to be important and reductions in variety can increase sales.

tracking consumer purchases brought about through advances in information technology and methods of analysis.[97] Finally it includes developments in retailing such as the increased sale of private label products (i.e., store brands) by retailers,[98] the use of increasingly sophisticated merchandising and displays,[99] and the increasingly sought-after nature of some retailers due to their large size and market share.[100]

Benefits and efficiencies

Category management can produce significant efficiencies that benefit retailers, manufacturers and consumers.[101] Brand management was geared toward maximizing the profit of a single brand.[102] Thus, brand management ensured substantial inter-brand competition unless the same company owned several brands in the same category.[103] However, brand management did not offer substantial retail efficiency.[104] Category management differs from brand management because decisions are made across multiple competing brands, taking into account the interactions among

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Consumers also can react differently when various product types are promoted; for example, niche products can have greater price elasticity than staple products. Category management recognizes the variety of consumer preferences and analyzes which selection, placement, pricing, advertising, and promotion decisions for products in a category will maximize the profit, volume, and other targets set by the retailer.").

97 American Bar Association (2010), 8 ("Category management decisions are informed by increasingly robust databases maintained by retailers. Computers track consumers' purchases of each product each day. Sophisticated analyses can show whether a change in the availability, price, advertising, or promotion of one product increased or decreased the retailer's profitability or volume in the entire category. Commentators and researchers have proposed models to rationalize these decisions since at least the 1980s. The retailer's goals, logically, are to draw customers from other stores, generate additional purchases from existing customers, or generate sales of higher margin SKUs, rather than just change which equally profitable SKU is chosen by an existing customer.").

98 American Bar Association (2010), 8-9 ("As retailers have increased the sale of private label products, the economic incentives facing retailers have shifted. When a supplier owns a popular brand, the supplier is often able to obtain higher margins on the product vis-a-vis the retailer. The retailer may consider the product necessary to attract consumers and hence may have reduced bargaining power in dealing with the supplier. If the retailer owns or controls a private label brand, the retailer may obtain a higher gross margin on the private label because the retailer owns the goodwill of the brand. If the private label is popular and draws customers away from other brands, the retailer also will have more bargaining power in dealing with suppliers of the other brands. Category management, coupled with computer databases, allows a retailer to determine better the competitive and profitability interplay between its own private label products and other products.").

99 American Bar Association (2010), 9-10 ("Retailing also has become more sophisticated in the display of products. Products with consumer appeal can draw a consumer's attention to an area where a purchase decision will hopefully occur. Once the consumer's attention has been attracted, the consumer may be induced to purchase complementary products (for example, salsa when tortilla chips are being purchased) or higher profit items such as the retailer's private label. Through category management and the use of computer databases, a retailer can optimize its display strategies.").

100 American Bar Association (2010), 10 ("Retail chains, especially those with significant market share, can be highly sought-after venues for suppliers, just as some products can be highly sought-after items for a retailer to carry. Category management gives retailers a perspective to understand better and to maximize the potential of their own stores, not only in the sale of products to consumers but also in negotiations with suppliers on pricing, promotion, and advertising.").

101 FTC (2001), 54 ("category management can produce significant efficiencies that will benefit retailers, manufacturers and consumers.").

102 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("A brand management strategy is geared towards maximizing the profit of a single brand.").

103 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("Brand management, therefore, ensures substantial inter-brand competition unless the same company owns several brands in the same category.").

104 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("Unfortunately, brand management does not offer substantial retail efficiency.").

them.[105] Accounting for the interdependence among products and brands increases the effectiveness of category decisions.[106] Thus, compared to brand management category management ensures higher efficiency by enabling a retailer to coordinate pricing and promotion strategies for the entire category.[107]

Category management can be beneficial for retailers by helping them to simplify, coordinate and thereby improve the process of making assortment pricing and other merchandising decisions.[108] Category management can lead to the product selection and prices most favorable to consumers and can be used to enhance a consumer's shopping experience.[109] Through category management, retailers are able to offer the best product assortment, organized in the most effective way on the shelves, and at the prices consumers are most willing to pay.[110] Following category management, retailers are more likely to carry the brands and products that consumers are most interested in purchasing.[111] Less intuitively, competitors may also benefit from category management where it leads to lower price competition among their own brands.[112] Ultimately, consumers benefit from category management because they get the prices and products they are most interested in purchasing, increasing customer satisfaction and loyalty.[113] The practice of category management facilitates more efficient responses to their needs and thereby yields greater satisfaction.[114]

However, the benefits of category management to retailers, manufacturers and consumers are determined by the structure of market demand, policies regarding competitors, and the retailer's policy.[115] While category management has been practiced for more than two decades by companies both large and small, it is still often employed inefficiently.[116] Moreover, despite that the practice has

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105 Lorden (2011), 542 ("This practice differs from brand management — the traditional form of retailmarketing — because decisions are made across multiple competing brands, taking into account the interactions among them.").
106 Kurtulus & Toktay (2011), 47 ("Taking into account the interdependence between products increases the effectiveness of these decisions.").
107 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("This [taking into account all brands in a category] allows a retailer to coordinate pricing and promotion strategies for an entire category and thus ensure higher efficiency than traditional brand management.").
108 Alan, Dotson & Kurtulus (2017), 127 ("Prior research in marketing has shown that category management can be beneficial for retailers because it enables them to simplify, coordinate, and thereby improve the process of making assortment, pricing, and other merchandising decisions.").
109 Lorden (2011), 561 ("The practice leads to the product selection and prices most favorable to consumers and can be used to enhance a consumer's shopping experience.").
110 Lorden (2011), 543 ("With this category-focused technique, retailers are able to offer the best product assortment, organized in the most effective way on the shelves, and at the prices consumers are most willing to pay.").
111 Lorden (2011), 561-2 ("Through category management, retailers are more likely to carry the brands and products that consumers are most interested in purchasing.").
112 Zenor (1994), 211 (Describing benefits accruing to the adopter and competitors: "Less intuitive is the positive benefit to the competing firms. This positive residual benefit of category management can be attributed to the reduction of price competition that results from adopting category management. In essence, if a manufacturer calls a pricing truce among its brands, the prices and profits of *all* brands are increased.").
113 Lorden (2011), 543 ("In the end, consumers win because they get the prices and products they are most interested in purchasing, and retailers increase customer satisfaction and loyalty.").
114 American Bar Association (2010), 36 ("The category management process may facilitate more efficient responses to consumer needs, yielding higher profits for sellers and greater satisfaction for buyers,..."). Zenor (1994), 211 (Describing that "The positive benefit accruing to the adopter is unsurprising given economic theory.").
115 Zenor (1994), 211 ("In total, then, the results indicate that the benefits of category management (to the adopter, competitor, and retailer) is determined by market demand structure, competitor policy, and retailer policy.").
116 Nijs, Misra, & Hansen (2014), 66 ("Although CM has been practiced for well over a decade by companies both large and small, it is still often employed inefficiently.").

clearly generated many instances of measurable efficiencies in the U.S. and Europe; it has not always proved effective.[117] "Win-win-win" scenarios in which retailers, manufacturers, and consumers all benefit have proven hard to realize in practice.[118] Like other forms of communication among upstream competitors and collaboration with downstream retailers, the boundary between procompetitive and anticompetitive conduct can be unclear.[119] This is the case where category management is performed via a category captain arrangement.

[117] Steiner (2001), 78 ("Although category management has not always proved effective, in many instances it has clearly generated measurable efficiencies in the United States and Europe.")
[118] Nijs, Misra, & Hansen (2014), 66 ("Win-win-win" scenarios in which retailers, manufacturers, and consumers all benefit have proven hard to realize in practice.").
[119] American Bar Association (2010), 36 (describing category management: "yet like every system of enhanced communication among customers and competitors, the boundary between procompetitive and anticompetitive conduct can be unclear.").

Chapter 3. Category Captain Arrangements

Category management and category decision-making may be accomplished by a retailer independent of their relationship with a supplier. [120] Traditionally, category management decisions were made by the retailer.[121] However, retailers can sell thousands of products across hundreds of categories and most lack the resources to intensively manage all the categories they sell. [122] Managing a category requires comprehensive insight into consumer preferences and purchasing patterns.[123] In addition, category management requires that considerable resources dedicated to understanding the responses of consumers to assortment, pricing and shelf placement decisions of products within a category.[124] Consequently, retailers may seek category management advice from a manufacturer on key decisions, referred to as a "category captain."[125] Factors such as the increase in the number of product categories offered at the retailers, combined with the scarcity of the resources required to manage each category have led to the use of category captains.[126] To address the challenges of category management, some experts urge retailers to leverage the resources and capabilities of a lead supplier or to designate a category captain supplier to manage the category (including rivals' brands) for them.[127]

Nature and scope

As a form of category management, category captain arrangements entail a retailer collaborating with one of the manufacturers in a product category to develop and implement a category management strategy.[128] Category captain arrangements encompass situations where

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120 Alan, Dotson & Kurtulus (2017), 129 ("... traditional category management, in which the retailer makes decisions on its own, ...).

121 Kurtulus & Toktay (2011), 47 ("Traditionally, category management decisions were taken by the retailer, a practice that we henceforth call "retailer category management" (RCM).").

122 Gooner, Morgan & Perreault (2011), 18 ("...retailers typically sell thousands of products across hundreds of categories, and as a result, most lack the resources to intensively manage all the categories they sell.").

123 Nijs, Misra, & Hansen (2014), 79 ("Managing a category requires comprehensive insight into consumer preferences and purchasing patterns.").

124 Kurtulus & Toktay (2005), 1 ("However, category management requires that a lot of resources be dedicated to understanding the consumer response to the assortment, pricing and shelf placement decisions of products within a category.").

125 Nijs, Misra, & Hansen (2014), abstract ("Retailers may seek category management (CM) advice from a manufacturer, referred to as a category captain."). Kurtulus, Nakkas & Ulku (2014), 420 ("Recently, retailers in the consumer goods industry have started to engage in a practice often referred to as category captainship(CC), where a retailer relies on a manufacturer to provide recommendations on key decisions to manage a category (which is defined as a group of products with similar characteristics). Subramanian, Rhaju, Dhar & Wang (2010), 1739 ("The partnering manufacturer is commonly referred to as the "category captain."").

126 Kurtulus & Toktay (2005), 1 (describing factors giving rise to category captain arrangements, "Factors such as the increase in the number of product categories offered at the retailers, combined with the scarcity of the resources required to manage each category effectively have given rise to this new trend."). Kurtulus & Toktay (2011), 1 ("Factors such as the increase in the number of product categories offered by retailers, combined with the scarcity of resources to manage each category effectively, have given rise to this new trend.").

127 Gooner, Morgan & Perreault (2011), 18 ("Some experts urge retailers to address their CM challenge and ramp up the intensity of their CM efforts by leveraging the resources and capabilities of a lead supplier—or even to designate a "category captain" supplier to manage the category (including rivals' brands) for them.").

128 Alan, Dotson & Kurtulus (2017), 127 ("Category captainship is a retailing practice wherein a retailer collaborates with one of the manufacturers in a product category to develop and implement a category management strategy.").

category management decisions are outsourced to one of the manufacturers that supply the category.[129] Instead of retailers handling all the shelf planning and shelf space allocation, product assortment, pricing and merchandising-related decisions and activities, many retailers have adopted the category management practice of using manufacturers that supply their categories to manage those categories for the retailers, and the selected manufacturers are referred to as category captains.[130]

The use of category captain arrangements has become increasingly widespread[131] and common[132] in the sale of consumer goods. Category captains are now the norm in some category management situations[133] and an important aspect,[134] the preferred way,[135] and the dominant approach[136] to category management in others. Category captain arrangements are used not only by smaller retailers but also by large and leading retailers such as Walmart, Target, and Safeway.[137] Given their popularity with both manufacturers and retailers, category captain arrangements have become an accepted practice.[138]

In recent years the scope of category captain arrangements have evolved to include market oriented sub-specialties such as "whole aisle captains", "segment captains", "day part captains", and "occasion captains."[139] As their names suggest whole aisle captains provide advice on how to

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129 Kurtulus & Toktay (2005), 1 (Recently, a new trend has emerged: Retailers have started to outsource retail category management to a chosen supplier on whom they rely for strategic recommendations and insights, a practice often referred to as category captainship."). Kurtulus & Toktay (2011), 47 ("Recently, retailers have started to outsource category management to their leading manufacturers, a practice often referred to as 'category captainship.'").

130 Chimhundu, Kong & Gururajan (2014), 368 ("Instead of the retailers having to handle all the shelf planning and shelf space allocation, product assortment, pricing and merchandising-related decisions and activities, many retailers have adopted the CM practice that involves the use of manufacturers supplying the respective categories to manage those categories for the retailers, and the selected manufacturers are referred to as category captains.").

131 American Bar Association (2010), 1 ("When a retailer engages in category management, it often designates a principal supplier in a particular product category as a "category captain" to help the retailer make decisions maximizing profits across all suppliers' products in that category. This practice has become widespread in the marketing of consumer goods.").

132 Chimhundu, Kong & Gururajan (2014), 369 ("A common category management arrangement in this regard in the fast-moving consumer goods/grocery retail sector is the use of category captains."). Kurtulus, Nakkas & Ulku (2014), 420 ("This approach has now become a common practice for managing certain product categories at retailers such as Walmart and Kroger.").

133 Gooner, Morgan & Perreault (2011), 31 ("Category captains are the norm in some CM situations,...").

134 American Bar Association (2010), 3 ("An important aspect of category management is reliance on one or more suppliers to inform the retailer about what is happening in the development and manufacture of a product category and to assist the retailer in making decisions about that category.").

135 Alan, Dotson & Kurtulus (2017), 127 ("Category captainship has become a preferred way of executing category management."). Kurtulus, Ulku, Dotson & Nakkas (2014), 379 ("Category captainship has become popular during the past decade as the preferred approach for category management and was adopted by large retailers such as WalMart, Kroger, and Safeway.").

136 Subramanian, Raju, Dhar & Wang (2010), 1741 ("..., this practice has flourished. It [CC] has emerged as the dominant mode of category management for many retailers in the United States and in Europe and has started making inroads in emerging markets such as Brazil and India.").

137 Subramanian, Rhaju, Dhar & Wang (2010), 1739 ("Such arrangements are used not only by smaller retailers but also by large and leading ones such as Walmart, Target, and Safeway.").

138 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("In all likelihood, the CC arrangement is here to stay due to its popularity with both manufacturers and retailers.").

139 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("In recent years, the CC arrangement has become much more market oriented. For instance, category captains have further evolved into various sub-specialties such as 'whole aisle captains', 'segment captains', 'day part captains', and 'occasion captains'".).

manage shelf space for entire aisles, segment captains offer advice on the management of shelf space for entire product segments, day part captains deal with organizing shelf space for different parts of the day (e.g., morning, midday and evening), and occasion captains handle shelves for special occasions and holidays such as Valentine's day, Halloween, and Christmas.[140]

Selection and structure

Category captains are typically suppliers of one or more products in the category.[141] An outgrowth of category management[142] and an extension of the historical relationships between retailers and manufacturers[143] is the use of the leading supplier for category captain role.[144] Because of the level of coordination involved, retailers generally choose a single category captain.[145] Retailers typically select a large, [146] leading, [147] dominant[148] or the most significant[149] manufacturer or the manufacturer with the greatest or second-greatest sales in the category to be their category captain.[150]

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140 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("Whole aisle captains advise retailers on how to manage shelf space for entire aisles, segment captains advise retailers on managing shelf space for product segments, day part captains deal with organizing shelf space for different parts of the day such as morning, midday and evening, and occasion captains handle shelves for special occasions such as Valentine's day, Halloween, and Christmas.").

141 American Bar Association (2010), 15 ("Because a retailer typically wants someone knowledgeable about the array of products available in the category, category captains typically are suppliers of one or more products in the category at issue.").

142 See Nielsen Marketing Research (1992), 44-45.

143 American Bar Association (2010), 11 ("Suppliers historically have made suggestions and comments to retailers about the sale of the supplier's own products, as well as generally about the product category. Category captaincy is an extension of that historical relationship.").

144 Alan, Dotson & Kurtulus (2017), 127 ("These leading manufacturers are often referred to as category captains, and the practice itself is referred to as category captainship."). Lorden (2011), 543 ("A category captain is generally a leading manufacturer in the industry that takes responsibility for managing a product category at a designated retailer."). Steiner (2001), 77 (describing a retailer's decision to engage in category management, "It then appoints one of the leading manufacturers in the field as 'Category Captain.'").

145 Nijs, Misra, & Hansen (2014), 66 ("Because of the level of coordination involved, retailers generally choose a single CC ...").

146 FTC (2001), 7 ("A category captain is an outside firm, commonly a large supplier, to whom a retailer turns for advice in managing the category."). Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("One of the larger manufacturers in the category is usually chosen as the captain because they have the resources and expertise to help grow the category.").

147 FTC (2001), 48 ("Assistance often comes from a category captain – a leading manufacturer of products in the category who acts as a primary advisor for the retail chain' s management of the category."). Kurtulus, Ulku, Dotson, and Nakkas 2014, p 379-380 ("Category captainship (CC) is a practice wherein a retailer relies on a leading manufacturer (often referred to as the category captain) to make strategic recommendations regarding category management decisions…By partnering with a leading manufacturer through a captainship arrangement, retailers are able to off-load part of the cost of category management..."). Subramanian, Raju, Dhar & Wang (2010), 1 ("Frequently, a retailer partners exclusively with one leading national brand manufacturer in each category to help it manage the entire category."). Bandyopadhyay, Rominger & Basaviah 2009, abstract ("Category management is one such cooperative strategy that often involves the appointment of a leading manufacturer as the "category captain"). Steiner (2001), 78 (Citing the Food Marketing Institute's Category Management Implementation Plan, "Volume 3 of the "Plans" sets out that a supermarket will generally select as Category Captain a leading manufacturer with sophisticated marketing knowledge.").

148 Chimhundu, Kong & Gururajan (2014), 371 ("A category captain is a manufacturer, usually the dominant supplier in a category,...").

149 Lindblom & Olkonnen (2008), 2 ("CM is generally based on the idea that instead of managing individual brands with each relevant supplier, it is better for retailers to manage entire product categories as strategic business units in cooperation with the most significant suppliers.").

150 FTC (2001), 51 ("Retailers typically select as category captain the manufacturer with the greatest or second-greatest sales in the category."). Lindblom & Olkonnen (2008), 4 ("Consequently, it is possible that a manufacturer that is, on the whole, considered large, e.g., in terms of total turnover, could at the same time be market leader or second largest in

Retailers may also select the manufacturer that promises the largest improvement in category performance to serve as the captain.[151]

Retailers tend to assign the leading manufacturer in the category as their category captains because of their resource availability and their expertise in the categories they compete in.[152] Leading manufacturers are viewed to be "savvy,"[153] possess extensive market knowledge, [154] be knowledgeable about the array of products available in the category, [155]hold specialized and in-depth knowledge of products in the category,[156] and have the resources and expertise necessary to grow the category.[157] To be selected and retained as a category captain, a supplier normally has to make considerable investments.[158]

Although category captains are typically leading suppliers in a category, there is wide variation in the structure of category captain arrangements.[159] At a high level, these structures range from those in which the retailer makes its own decisions without a category captain, to where the retailer appoints a single category captain for each category, to where the retailer appoints more than one supplier for each category, and to arrangements in which the same supplier is appointed as the category captain for the same category across different retailers.[160] More particular configurations are

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some categories, and third largest or smaller in some others… The term 'large suppliers' thus refers to companies with the biggest or second-biggest market share in a focal category, and the term 'small suppliers' refers to those with the third-biggest (or smaller) market share. The rationale for this nomenclature was that, in most cases, the two best-selling suppliers dominated the category."). Carameli (2004), 1341 ft. 150 ("The question is, really, whether Manufacturer A would elect to serve, if chosen, as Category Captain, in a store where its product was "second best" from the store's perspective and where that product was appropriately placed. Theoretically, a manufacturer has no incentive other than to make certain a second manufacturer does not provide misleading category information to the retailer, and to improve the efficiency of the overall category."). Lindblom & Olkonnen (2008), 4 ("Consequently, it is possible that a manufacturer that is, on the whole, considered large, e.g., in terms of total turnover, could at the same time be market leader or second largest in some categories, and third largest or smaller in some others… The term 'large suppliers' thus refers to companies with the biggest or second-biggest market share in a focal category, and the term 'small suppliers' refers to those with the third-biggest (or smaller) market share. The rationale for this nomenclature was that, in most cases, the two best-selling suppliers dominated the category.").

151 Kurtulus, Nakkas & Ulku (2014), 420 ("The retailer selects the manufacturer that promises the largest improvement in category performance to serve as the captain.").

152 Kurtulus and Toktay (2005), 3 ("In practice, retailers tend to assign their leader manufacturers as category captains because of their resource availability and their expertise in the categories they compete in.").

153 Nielsen Marketing Research (1992), 103.

154 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("A CC is a manufacturer of one or more brands, usually of a leading brand in the field, who possesses extensive market knowledge, including consumer trends and demands with respect to product categories.").

155 American Bar Association (2010), 15 ("... a retailer typically wants someone knowledgeable about the array of products available in the category, ...").

156 American Bar Association (2010), 10 ("The usual rationale for appointing one or more category captains for a category is the supplier's specialized and in-depth knowledge of products in the category.").

157 Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("One of the larger manufacturers in the category is usually chosen as the captain because they have the resources and expertise to help grow the category.").

158 Chimhundu, Kong & Gururajan (2014), 371 ("To be selected and retained as a CC, a supplier would normally have to make considerable investments; for example, CCs at Wal-Mart have to maintain a dedicated team of managers and analysts, and these would be co-located at Wal-Mart head office.").

159 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("There are, however, many variations in the CM arrangement."). American Bar Association (2010), 11 ("Wide variation in the structuring of category captaincy exists, ...").

160 American Bar Association (2010), 11 ("Possible category management structures include those in which (1) the retailer makes its own decisions without the assistance or involvement of a category captain, (2) the retailer appoints one category captain per category, (3) the retailer appoints two or more suppliers as category captains for a category, and (4) the same supplier is appointed separately by two or more retailers to be their category captains.").

also found in practice. For example, larger retailers often bring in another manufacturer/brand (generally, the second leading brand), called a "validator," to verify and validate the category captain's plans and recommendations.[161] In some cases, retailers may also hire third party "advisors," with no vested interest, for a second opinion.[162] A retailer may also decide to hire a category captain as a mere advisor, and keep all decision making to itself.[163] Viewed along a continuum, category captain arrangements are at the partnership end of the "relationship continuum" often described for supplier-retailer relationships.[164]

Governance and compensation

Differing views regard the governance of category captain arrangements and whether they involve a formal agreement. Views also differ as to whether compensation is involved and what form that compensation may take in category captain arrangements.

On the one hand, most category captain arrangements for the performance of category management activities involve at least some form of an initial agreement on what services will be provided and what, if any, payments will be made.[165] Category management contracts involving a retailer designating a particular manufacturer as the "category captain", who has influence over which products in a product category are stocked, as well as how they are displayed, promoted, and priced[166] have been documented to have become increasingly pervasive in retail distribution.[167] These category captain contracts are said to be generally of short duration and terminable at will.[168] Reports suggest category captain arrangements can range from one to three years and can be renewed or not.[169] Retailers reportedly charge a fee,[170] auction off,[171] and even demand a cash payment in

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161 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("Often, larger retailers bring in another manufacturer/brand (generally, the second leading brand), called the validator, to verify and validate the CC's plans and recommendations.").
162 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("In some cases, retailers may also hire third party advisors, with no vested interest, for a second opinion.").
163 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("A retailer may also decide to hire a CC as a mere advisor, and keep all decision making to itself.").
164 Lindblom & Olkonnen (2008), 2 (describing the nature of category captain relationships: "Generally, it could be stated that supplier–retailer relationships are situated along a 'relationship continuum.' At one end of it are the purely transactional market relationships in which retailers and suppliers focus on short-term economic exchange, and at the other end are long-term-oriented partnerships involving more cooperative interaction strategies between retailers and suppliers. According to the basic tenets of the interorganisational relationship approach, it could be argued that suppliers in CM collaboration [are] positioned at the partnership end of the continuum ...").
165 American Bar Association (2010), 35 (Most category management activities involve at least an initial agreement: the category manager [captain] and retailer will agree on what services will be provided, and what, if any, payments will be made.").
166 Joshua D. Wright, *Antitrust Analysis of Category Management: Conwood v United States Tobacco Co*, 17 SUPREME COURT ECONOMIC REVIEW 311, 312 (2009) ("Category management contracts involve a retailer designating a particular manufacturer as the "category captain", who has influence over which products in a product category are stocked, as well as how they are displayed, promoted, and priced.").
167 Wright (2009), 314 ("Category management contracts ... have become increasingly pervasive in retail distribution."). Federal Trade Comm'n Staff Study, *Slotting Allowances in the Retail Grocery Industry: Selected Case Studies in Five Product Categories* (2003) (Five of the seven retailers surveyed reported that they used category management contracts for some products.).
168 Wright (2009), 317 ("Similarly, category management contracts are generally of short duration and terminable at will.").
169 Xavier Brusset & Per J. Agrell, *Intrinsic Impediments to Category Captainship Collaboration*, 13 JOURNAL OF INDUSTRIAL AND MANAGEMENT OPTIMIZATION 113, 116 ft. 3 (2017). ("In retail, the length of the category management contract can extend from one to three years and can be renewed or not."). Kurtulus and Toktay (2008), 2 ("Retailers usually

exchange for the privilege of serving as a category captain.[172] In addition to these arrangements, some retailers demand that the category captain use their own resources to handle the task of managing the retailer's shelf space.[173] Category captains are often expected to invest in retailer-specific databases, systems, software and planning tools.[174] Finally, it is suggested that where a retailer charges a captaincy fee a category captain pays because it knows that if it does not, its competitor will.[175]

On the other hand, at least one team of researchers report that lead supplier relationships for category management services are informal and these arrangements do not rely on formal governance agreements and controls.[176] Category captains are also reported to often provide category management services to retailers on an unpaid basis[177] or otherwise without any direct compensation.[178] Manufacturers are said to be compensated based upon annual benchmarking of their performance as category captains[179] with top performers being recognized through industry-wide awards (e.g., Progressive Grocer).[180] This recognition and these awards compensate retailers based upon the pride and prestige that such accolades provide within the industry.[181] Others suggest that, even though category captains are not directly compensated for their services, manufacturers

design the category captainship contracts to be short term (one to two years at most) in order to keep the flexibility of being able to renegotiate the contracts or rotate the category captain.").

170 Carameli (2004), 1325 ("Nevertheless, retailers sometimes charge a fee for the privilege."). Carameli (2004), 1327 ("For many logical product groupings, the retailer appoints, sometimes at a fee, a preferred retailer to serve as Category Captain.").

171 Steiner (2001), 79 ("Indeed, many have been willing to pay for the privilege, and the auctioning off of Captaincies by retailers has become a not uncommon practice.").

172 Carameli (2004), 1316 ("Others suggest that sometimes retailers demand a cash payment in exchange for the privilege of serving as a category captain.").

173 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("These brands, or manufacturers [category captains], often pay the retailer for the privilege of becoming a CC, as well as use their own resources to handle the task of managing the retailer's shelf space.").

174 Chimhundu, Kong & Gururajan (2014), 371 ("Category captains are often expected to invest in retailer-specific databases, systems, software and planning tools.").

175 Carameli (2004), 1327 (A second, likely related, possibility is that in charging a Captaincy fee the retailer is actually seeking to recover a portion of the manufacturer's share of consumer surplus. Under this theory, a retailer is well aware that manufacturers need its commodity, limited shelf space. As such, in exchange for a cash payment, the retailer relinquishes control of the shelf decision-making to a Category Captain. Under this scenario, the Captain pays because it knows that if it does not, its competitor will.").

176 Gooner, Morgan & Perreault (2011), 23 ("Finally, our interviews reveal that from a value-claiming perspective, retailer–lead supplier CM relationships are informal and do not rely on formal governance agreements and controls.").

177 American Bar Association (2010), 10 ("The category captain often provides services to the retailer on an unpaid basis."). Carameli (2004), 1313-14 ("One frequent response is to provide Category Management services free to certain retailers that purchase the manufacturers' products.").

178 Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("Although a category captain devotes considerable resources to perform this role, it typically does not receive any direct compensation from the retailer.").

179 Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("Rather, manufacturers are annually benchmarked based on their performance as category captains.").

180 Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("Top performers are recognized through industry awards (e.g., Progressive Grocer).").

181 Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("Such accolades can be a matter of pride and prestige within the industry.").

view captainship as a source of advantage over their competitors because a category captain usually gains significant control over the assortment of products and brands in a category.[182]

Roles and responsibilities

A category captain and the captain's team interface with the retailer's "category manager."[183] The category manager represents the retailer.[184] A category captain works with the category manager to manage the entire category for the retailer.[185] The category captain responsibilities include deciding shelf arrangements, allocating shelf facings and recommending prices for both the captain's own brands and those of competitors.[186] Thus, the scope of category captain arrangements extends beyond the category captain's brands to include those of rivals.[187] A category captain can therefore directly affect the marketing of rivals' products.[188]

In their role, a category manager contributes information on the retailer's operations as well as information on other suppliers in that category.[189] Category managers provide operating statistics and other information such as data on consumer behavior derived from the retailer's loyalty program.[190] Ordinarily a single category manager is responsible for numerous retail categories.[191]

In their role, the category captain collects detailed information on the performance of all brands in the category to create a plan to be presented to the retailer.[192] The category captain must obtain data on the category, including manufacturers' prices, retail prices, unit sales, promotional plans, and other important operating information on all items in the category.[193] In a typical category

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182 Kurtulus, Nakkas & Ulku (2014), 420 ("Even though the captains are not directly compensated for their services, the manufacturers view captainship as a source of advantage over their competitors because the captain usually gains significant control over the assortment in the category.").

183 Steiner (2001), 77 ("The Captain and his team interface with a 'Category Manager' from the retailer.").

184 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("The retail category manager, on the other hand, represents the retailer.").

185 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("The CC works with the retailer's category manager to manage the entire category for the retailer.").

186 Chimhundu, Kong & Gururajan (2014), 371 (Category captain responsibilities include deciding shelf arrangements, allocating shelf facings and recommending prices for both its own brands and competitors.").

187 Subramanian, Rhaju, Dhar & Wang (2010), 1739 ("Interestingly, the scope of such arrangements extends beyond just the category captain's own brands to include those of its rivals.").

188 Gooner, Morgan & Perreault (2011), 31 ("Category captains are the norm in some CM situations, and they directly affect the marketing of rivals' products.").

189 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("The retail category manager, meanwhile, contributes information on the retailer's operations as well as information on other suppliers in that category.").

190 Steiner (2001), 78 ("The Captain and his staff will interface with a Category Manager from the supermarket chain, who would bring to the partnership the firm's own operating statistics and such other information as the supermarket's data on consumer behavior derived from its 'loyalty program.'").

191 Steiner (2001), 80 ("So a single Category Manager for the retailer is ordinarily responsible for numerous categories.").

192 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("The CC starts by collecting detailed information on the performance of all the brands in a category."). Steiner (2001), 77 ("The Captain collects detailed information on the recent performance of all brands in the category in formulating a plan to be presented to the retailer for the entire category—not just for the brands of the Captain's firm.").

193 Steiner (2001), 78 ("The Captain must obtain data on the category, including manufacturers' prices, retail prices, unit sales, promotional plans, and other important operating information on all items in the category.").

captain arrangement, the retailer shares all relevant information such as sales data, pricing, turnover, and shelf placement of the brands with the category captain.[194]

While much of the information provided to category captains by retailers is available from market research firms (IRI, Nielsen, etc.), some information comes from rival manufacturers.[195] This information may include confidential information of other suppliers,[196] strategic information about them,[197] undisclosed information concerning their pricing and marketing initiatives,[198] and other valuable knowledge about competitors[199] and their brands.[200] This information essentially gives the category captain valuable knowledge about competitors on the retailer's shelves.[201] Category captains also have access to information about the retailer's overall plan, including retail pricing and promotional plans, on all products in the category.[202] If the category captain also serves multiple retailers this gives the category captain knowledge of the retailing part of the category.[203] The category captain also brings in its own data on the product category, such as the manufacturer's prices, retail prices, unit sales, promotional plans and other operating information for their items in that category.[204]

In possession of information about their own brands and the brands of other suppliers in the category, the captain reviews and analyzes information about the category and using this information and its own expertise provides the retailer with a performance report and store-level category plan.[205] The category captain's plan is an all-encompassing plan that applies not only to the

194 Kurtulus & Toktay (2005), 1 ("In a typical category captain arrangement, the retailer shares all relevant information such as sales data, pricing, turnover, and shelf placement of the brands with the category captain.").

195 Steiner (2001), 78 ("While much of this information is available from market research firms (IRI, Nielsen, etc.), it appears that some of it would have to come from rival makers.").

196 Desrochers, Gundlach & Foer (2003), 213-214 ("Because confidential information from all suppliers is shared with the CC during the CM process....").

197 Kurtulus and Toktay (2008), 23 ("Category captainship requires that the retailer share a lot of strategic information with its category captain....).

198 American Bar Association (2010), 11 ("Category captaincy also can involve the retailer's sharing with the captain otherwise undisclosed information from other suppliers about their pricing and marketing initiatives.").

199 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("CCs also have access to the information about the retailer's overall plan, including pricing and promotional plans, on all the products in the category. This allows them to develop comprehensive plans for the retailer, which includes a "plan-o-gram" detailing shelf allocation, shelf space, pricing and promotions, for each brand in the category. The plan may also include specifics such as which new brands to include in the category and which poor performing older brands to phase out or to de-emphasize. This essentially gives the category captain valuable knowledge about the competitors on the retailer's shelves.").

200 Kurtulus & Toktay (2011), 47 ("In a typical CC arrangement, the retailer shares pertinent information such as sales data, pricing, turnover, and shelf placement of the brands with the category captain.").

201 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("This essentially gives the category captain valuable knowledge about the competitors on the retailer's shelves.").

202 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("CCs also have access to the information about the retailer's overall plan, including pricing and promotional plans, on all the products in the category.").

203 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("If the CC also serves multiple retailers this gives them knowledge of the retailing part of the category.").

204 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("The CC brings in its own data on the product category, such as manufacturer's prices, retail prices, unit sales, promotional plans and other operating information for their items in that category.").

205 Desrochers, Gundlach & Foer (2003), 204 ("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."). Subramanian, Rhaju, Dhar & Wang (2010), 1739 ("The manufacturer appointed as the category captain is typically responsible for reviewing the performance of the entire category and recommending a store-level sales strategy, including assortment, shelf space assignments, promotion, and pricing.").

category captain's brands, but also to the competitors' brands.[206] The plan establishes the product mix/brand mix to be carried in the category, retail prices and pricing for each item in the category, the placement of products on the shelves comprising the category, and the space allocated to each brand in the category.[207] The plan specifies which stock-keeping-units[208] (SKUs) the retailer should carry and the retail price of each SKU, the layout of the retailer's "plan-o-gram" and frequently also a promotional plan for the retailer to adopt.[209]

The category captain then prepares a market analysis and creates an implementation plan for the entire category.[210] The plan may specify which new brands to add and which old brands to delete, the linear feet of space to be allocated to each brand, where they should be located (e.g., eye level, foot level), and recommended pricing decisions and promotional and advertising schedules.[211] The plan may also include specifics such as which new brands to include in the category and which poor performing brands to phase out or to de-emphasize.[212] Those decisions include which products to stock, how to display them, how to promote and advertise them, and how to price them to final consumers.[213]

In most category captainship implementations, the category captain plays an important role in determining the retailer's product assortment including recommends for the inclusion of certain products and the exclusion of others.[214] These recommendations affect all brands in the category, not just the category captains.[215] The category plan may include recommendations about which

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206 Bandyopadhyay, Rominger & Basaviah (2009), 316 ('This all encompassing plan, therefore, applies not only to the category captain's brands, but also to the competitors' brands."). Chimhundu, Kong & Gururajan (2014), 371 (describing the category captain's role in managing brands "This involves managing own (i.e. CC) brands and competitor brands."). Bandyopadhyay, Rominger & Basaviah (2009), abstract ("A category captain advises the retailer on the best way to price, display, and promote products in a category, including those of the competitors.").

207 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("It [the category captain] establishes a plan for the product mix/brand mix to carry, retail pricing for each item, product placement on the shelves, and space allocation for each brand.").

208 William J. Sawaya and William C. Giauque, PRODUCTION AND OPERATIONS MANAGEMENT (1986), p.122 ("A stock-keeping unit, or SKU is an individually identifiable item stored in a specific location and tracked by an inventory system.").

209 Steiner (2001), 77 ("The plan will specify which stock-keeping-units (SKUs) the retailer should carry and the retail price of each SKU, the layout of the retailer's 'Plan-o-gram' (a kind of architectural drawing of the space each item will occupy on the store's fixtures), and frequently also a promotional plan for the retailer to adopt.").

210 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("The CC then prepares a market analysis and an implementation plan for the entire category which includes periodic promotions for the brands in that category.").

211 Desrochers, Gundlach & Foer (2003), 204 ("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.").

212 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("The plan may also include specifics such as which new brands to include in the category and which poor performing older brands to phase out or to de-emphasize.").

213 American Bar Association (2010), 3 ("Those decisions include which products to stock, how to display them, how to promote and advertise them, and even how to price them to the consumer.").

214 Kurtulus, Nakkas & Ulku (2014), 423 ("In most category captainship implementations, the captain plays an important role in determining the retailer's product assortment by recommending the inclusion of certain products and the exclusion of others."). Kurtulus, Ulku, Dotson & Nakkas (2014), 379 ("In addition, the captain plays an important role in shaping the assortment at retailers by recommending the inclusion of certain products and exclusion of others.").

215 Nijs, Misra, & Hansen (2014), abstract ("A CC's recommendations affect all brands in the category, not just her own."). Nijs, Misra, & Hansen (2014), 66 ("... CC whose recommendations affect all brands in the category, not just her own").

brands to include in the category, where to locate each brand on the shelf, how to display the products, how much space to allocate to each brand, which new brands to include and which old brands to exclude from the category, and how to price the products in the category.[216] In addition, retailers may also rely on category captains to perform various sales and merchandising tasks in their stores such as checking display racks, making sure product is fresh, placing point- of-sale materials, and participating in "resets," which involve the implementation of new display racks, products and advertising and require the captain to rearrange products and display materials under the retailer's supervision.

However, a category captain's duties may vary based on the extent of their relationship with a retailer, but, typically, a category captain provides information and advice based on its in-depth knowledge.[217] Category captains are usually responsible for developing and recommending a category strategy, including recommendations for product assortment and promotion planning to improve the retailer's category performance.[218] A category captain may be asked to analyze category-level data, assist in setting category level goals, and to develop and implement category plans, among other tasks.[219]

Despite some general similarities significant variation exists across retailers and product categories in the nature of category captain arrangements including the responsibilities and influence accorded the category captain.[220] For example, while the supplier provides data and suggestions, often the retailer has a market position and competitive strategy already decided upon, and it is merely up to the supplier to provide information consistent with the position and strategy.[221] Depending on the circumstances category captains may have different degrees of influence or be delegated different responsibilities altogether, such as supplying category sales analysis, making shelf placement suggestions through "plan-o- grams," and making recommendations on product additions or deletions, promotions, and pricing.[222] The recommendations of category captains can

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216 Kurtulus & Toktay (2005), 1 ("The category captain, in return, carries [on] analysis about the category and provides the retailer with a detailed plan that includes recommendations about which brands to include in the category, where to locate each brand on the shelf, how to display the products, how much space to allocate to each brand, which new brands to include and which old brands to exclude from the category, and how to price the products in the category."). Kurtulus & Toktay (2011), 47 ("The category captain, in return, conducts analysis about the category and provides the retailer with a detailed plan that includes recommendations about which brands to include in the category, how to price each product, how much space to allocate to each brand, and where to locate each brand on the shelf.").

217 Lorden (2011), 543-4 ("The category captain's duties can vary based on the extent of the relationship, but, typically, a captain provides information and advice based on its in-depth knowledge about consumer preferences in a particular product category.").

218 Kurtulus, Nakkas & Ulku (2014), 420 ("Category captains are usually responsible for developing and recommending a category strategy, including assortment and promotion planning, to improve the category performance at the retailer.").

219 Nijs, Misra, & Hansen (2014), 66 ("A CC could be asked to analyze category-level data, assist in setting category goals, and develop and implement category plans, among other tasks.").

220 Wright (2009), 314 ("Despite some similarities in the general nature of category management relationships, they exhibit significant variance across retailers and product categories. For example, captains might have different degrees of influence or be delegated different responsibilities altogether, such as supplying category sales analysis, making shelf placement suggestions through "plan-o- grams," and making recommendations on product additions or deletions, promotions, and pricing").

221 American Bar Association (2010), 35-36 ("While the supplier provides data and suggestions, often the retailer has a market positioning and competitive strategy already decided, and it is merely up to the supplier to provide information consistent with that strategy.").

222 Wright (2009), 314 ("For example, captains might have different degrees of influence or be delegated different responsibilities altogether, such as supplying category sales analysis, making shelf placement suggestions through "plan-o- grams," and making recommendations on product additions or deletions, promotions, and pricing").

vary across retailers and categories and this may affect product assortment, merchandising and pricing decisions.[223] Thus, depending on the arrangement the category plan and guidance offered by a category captain can range from simply commenting about present and future products in the category; recommending which products the retailer should carry; to recommending how the retailer should display, price, promote, or advertise products.[224] Sometimes the captain may be given much more responsibility and make final decisions about which brands and products the retailer should sell.[225] It is known, for example, that certain suppliers in category captain arrangements take a significant management role, which includes managing the brands of competing suppliers. [226]

Motivations and goals

Retailers use category captains in category management and category captains participate as category captains for various reasons. Thus, their motivations and goals can differ and may vary.

For retailers, the widespread use of category captains is, in part, a response to rapid growth in the number of categories offered by retailers.[227] Managing many categories and constantly monitoring and interpreting consumer trends is costly and labor intensive.[228] In order to manage each category effectively and align their offerings with changing consumer needs requires the dedication of significant resources to understand consumer trends, which is difficult for retailers that offer large numbers of categories.[229] Category management also requires that significant resources be dedicated for understanding the consumer response to the assortment, pricing, and shelf placement decisions of products within a category.[230] Because retailers carry hundreds or even thousands of product categories, some retailers do not find it practical to maintain dedicated

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223 Alan, Dotson & Kurtulus (2017), 127 (Describing differences across retailers and categories and concluding: "In summary, the captain's recommendations vary across retailers and categories and may affect assortment, pricing, and/or merchandising decisions."). Alan, Dotson & Kurtulus (2017), 127 (describing examples of executions of category management by different category captains "General Mills, for example, assisted one retailer in the dry packaged dinners category by replacing slow-moving stockkeeping units with faster-turning products. Abbott Nutrition helped a retailer in the baby food and consumables category by recommending a new planogram with some new products in the assortment and changing prices to reflect the new product mix. In addition, J.M. Smucker Co. helped several retailers in the canned and packaged beverages category by developing new shelf concepts and endcap displays based on consumer insights.").

224 American Bar Association (2010), 11 ("Duties performed by a category captain can vary widely, including but not limited to (1) merely commenting about present and future products in the category; (2) recommending which products the retailer should carry; or (3) recommending how the retailer should display, price, promote, or advertise products."). Lorden (2011), 541 ("Category management analyzes consumer purchase information to make decisions about which brands and products a retailer should carry, where on the shelves these products should be placed, at what prices they should be offered, and when the products should be part of a promotion.").

225 Lorden (2011), 544 ("However, sometimes the captain may be given much more responsibility and could even make ultimate decisions about which brands and products its retailer should sell.").

226 Lindblom & Olkonnen (2008), 2 ("It is known, for example, that CM collaboration may involve category-captain arrangements—whereby certain suppliers, i.e., category captains, take a significant management role, which includes managing the brands of competing suppliers.").

227 Kurtulus, Ulku, Dotson & Nakkas (2014), 379 ("The widespread use of category captains has been, in part, a response to rapid growth in the number of categories offered by retailers.").

228 Alan, Dotson & Kurtulus (2017), 127 ("Because retailers manage many categories, constant monitoring and interpretation of consumer trends is a costly and labor intensive task for them.").

229 Kurtulus, Nakkas & Ulku (2014), 420 ("In order to manage each category effectively and align their offerings with changing consumer needs, retailers need to dedicate significant resources to understand consumer trends, which is difficult due to the large number of categories.").

230 Kurtulus & Toktay (2011), 47 ("However, category management requires that significant resources be dedicated to understanding the consumer response to the assortment, pricing, and shelf placement decisions of products within a category.").

resources or to build specialized capabilities for each of their categories.[231] Thus, while the expansion in the number of categories has increased the scope of retail operations, it has also made it more difficult for retailers to dedicate the necessary resources to effectively manage each category.[232] Instead, these retailers rely on national brand manufacturers, who often have additional insights about drivers of demand, the shopping behavior of consumers, and overall trends in the market.[233]

Manufacturers typically possess a better understanding of consumer needs than retailers because a manufacturer's expertise is focused on a much smaller set of products and categories.[234] In contrast to retailers, manufacturers focus their attention on fewer categories and regularly conduct studies to understand consumer needs, which guidance for improving their products or introducing new ones.[235] Given their expertise in a few categories and the fact that they already conduct market research for introducing new products as well as for improving the sales of existing products, manufacturers have a deeper understanding of consumer needs and wants in their categories.[236] Thus, manufacturers usually possess a superior understanding of consumer trends in the categories they serve.[237] Depending on the circumstances and compared to retailers, one or more suppliers in a category will often have more resources and stronger capabilities for category management.[238]

It is argued that retailers lack both the incentives and necessary resources to conduct category management research,[239] and the capabilities to maximize category performance.[240] Retailers

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[231] Subramanian, Rhaju, Dhar & Wang (2010), 1739 ("Because retailers carry hundreds or even thousands of product categories, some retailers do not find it practical to maintain dedicated resources or build specialized capabilities for each category.").

[232] Kurtulus, Ulku, Dotson & Nakkas (2014), 379 ("While this expansion in the number of categories has increased the scope of retail operations, it has also made it difficult for retailers to dedicate the resources required to effectively manage each category.").

[233] Subramanian, Rhaju, Dhar & Wang (2010), 1739 ("Instead, these retailers rely on national brand manufacturers, who often have additional insights about demand drivers, consumer shopping behavior, and overall market trends.").

[234] Alan, Dotson & Kurtulus (2017), 127 ("Manufacturers typically have a better understanding of consumer needs because their expertise is focused on a much smaller set of products and categories.").

[235] Kurtulus, Ulku, Dotson & Nakkas (2014), 379-380 ("In contrast to retailers, manufacturers focus their attention on fewer categories and regularly conduct studies to understand consumer needs, which guide them in improving existing products or introducing new ones.").

[236] Kurtulus, Nakkas & Ulku (2014), 420 ("Given their expertise in a few categories and the fact that they already conduct market research for introducing new products as well as for improving the sales of existing products, manufacturers have a deeper understanding of consumer wants and needs in these categories.").

[237] Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("Thus, manufacturers usually possess a superior understanding of consumer trends in their own categories.").

[238] Morgan, Kaleka & Gooner (2007), 513 ("One or more suppliers to a category often have greater resources (e.g., consumer insight, marketing budgets, etc.) and stronger capabilities (e.g., brand management, marketing planning, etc.) required for effective category management than the retailer.").

[239] Lorden (2011), 544 (Elaborating on these incentives and resources, "First, the retailer lacks both the incentive and the necessary resources to conduct this research. A retailer's main goal is to attract customers away from its competitors and to increase the number of purchases its customers will make. A retailer is generally not concerned whether its customers purchase one product over another. Suppliers, on the other hand, are very interested in researching why a customer purchases its competitors' products over its own, so the supplier, rather than the retailer, is more likely to conduct this analysis.").

[240] Morgan, Kaleka & Gooner (2007), 513 ("One or more suppliers to a category often have greater resources (e.g., consumer insight, marketing budgets, etc.) and stronger capabilities (e.g., brand management, marketing planning, etc.) required for effective category management than the retailer."). Nijs, Misra & Hansen (2014), abstract ("It has been argued that retailers lack both the resources and capabilities to maximize category performance."). Nijs, Misra & Hansen (2014), 66 (citing Morgan, Kaleka & Gooner (2007), "In fact, Morgan et al. (2007) argued that most retailers not only lack the resources but also lack the capabilities to maximize category performance.").

have information about the category as a whole, but they need access to suppliers' wealth of in-depth information about products in the category to truly understand consumer behavior.[241] The manufacturer may know things such as the times of year when a product will sell best, the kinds of promotions that are most effective in selling the product, or the kinds of complementary goods that may be advantageously displayed in adjacent space.[242] Consequently, retailers appoint category captains to help them decide which products to carry, how to display them and what prices to charge.[243] Indeed, successful category management is said to be essentially unattainable without a category captain.[244] The supplier has the expertise and the knowledge to most effectively manage a product category.[245] Supermarkets and grocery chains typically spend very minimal amounts on marketing at the store level, thus it is beneficial to rely on suppliers for marketing services.[246] Therefore retailers leverage suppliers' resources and capabilities by seeking advice from a category captain.[247]

Coordinating prices across all products in a category, a key component of category management also necessitates significant retailer investment.[248] Changing prices is costly and with the ever-increasing number of Uniform Product Codes (UPCs), retailers lack sufficient resources to apply category management principles in many categories. Thus, retailers also appoint category captains as a way to lower their costs and pass them on to consumers[249] or to offload[250] part of the costs of category management. In theory, having a supplier perform the task and incur the costs of category management otherwise borne by the retailer permits a retailer to pass along lower costs to consumers. Since it is more efficient for suppliers to handle category management duties, most retailers now turn this responsibility over to the leading supplier and category captain in the category.[251] In the typical category management application, supermarket retailers take a strong interest in category growth and other measures of category performance and therefore have the

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241 Lorden (2011), 563 ("Retailers have information about the category as a whole, but they need access to suppliers' wealth of in-depth information to truly understand consumer behavior.").
242 FTC (2001), 48 ("The manufacturer may know things like the times of year when a product will sell best, the kinds of promotions that are most effective in moving the product, or the kinds of complementary goods that might be advantageously displayed in adjacent space.").
243 American Bar Association (2010), 35 ("Under a category captain arrangement, a retailer selects a supplier and/or their employees to help them decide which products to carry, how to display them and what prices to charge.").
244 Lorden (2011), 545 ("Because successful category management is essentially unattainable without a category captain, securing these services has become a regular practice among retailers.").
245 Lorden (2011), 544 (Elaborating on this expertise and knowledge, "Furthermore, the supplier has the expertise and the knowledge to most effectively manage a product category. With the increased use of scanner data, a supplier can use its multitude of consumer information to determine which factors specifically drive a consumer's purchase (e.g., prices, promotions, and product placement). Suppliers also have the necessary personnel to implement category management suggestions, such as
preparing in-store displays, shelf reorganization, and pricing changes.").
246 Lorden (2011), 544 ("Supermarkets and grocery chains typically spend very minimal amounts on marketing at the store level, so it is beneficial to rely on suppliers for this service.").
247 Nijs, Misra, & Hansen (2014), 66 ("Retailers can leverage suppliers' resources and capabilities by seeking advice from a manufacturer referred to as a category captain.").
248 Nijs, Misra, & Hansen (2014), 66 ("Coordinating prices across all products in a category, a key component of CM, requires significant retailer investment.").
249 American Bar Association (2010), 35 (Retailers often appoint category captains as a way to lower costs ... ").
250 Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("By partnering with a leading manufacturer through a captainship arrangement, retailers are able to off-load part of the cost of category management ...").
251 Lorden (2011), 542 ("Since it is more efficient for suppliers to handle category management duties, most retailers now turn this responsibility over to a "category captain," a leading supplier in the particular category.").

desire to see their category captains grow the entire category.[252] Thus, large retailers are reported to prefer category management by a category captain because of the potential increase in operational efficiency[253] and their tendency to return better retail margins.[254] Category captains are said to be necessary tools in the use of category management because retailers would be unable to create these efficiencies on their own.[255]

To leverage the resources and capabilities of manufacturers, retailers may involve suppliers in the analysis of category-level data, category goal setting, and the formulation and execution of their category-level plans.[256] The combination of retailers' lack of resources and manufacturers' superior category knowledge creates supply chain collaboration opportunities that have led many retailers to manage some of their categories via a category captain arrangement.[257] The category captainship approach acknowledges that manufacturers can help retailers manage categories more effectively and efficiently through leveraging their existing consumer insights.[258] The captainship approach recognizes that by working together, the retailer and the captain can each benefit from the category captain's expertise in the category[259]

For manufacturers, a number of reasons may motivate a supplier to become a category captain and to engage in category management activities for a retailer. Category captains may offer their knowledge and resources in exchange for the opportunity to actively participate in planning and managing the retailer's product category.[260] Suppliers to be a source of advantage over competitors because the captain usually gains significant control over the assortment in the category view being a category captain.[261] The influence obtained by a category captain through their participation has been determined to be an important reason manufacturers choose to take on the role.[262] When viewed in light of the sheer size of today's retail chains, the incentive for a

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[252] Chimhundu, Kong & Gururajan (2014), 371 ("In the CM set-up, supermarket retailers largely take a strong interest in category growth and other measures of category performance and therefore have the desire to see category captains grow the entire categories.").
[253] Bandyopadhyay, Rominger & Basaviah (2009), 316 ("It is not surprising, therefore, that large retailers prefer category management by a category captain because of the potential increase in operational efficiency.").
[254] Bandyopadhyay, Rominger & Basaviah (2009), 316 ("That this process also tends to return better retail margin is an added incentive.").
[255] Lorden (2011), 563 ("Category captains are necessary tools in the use of category management because retailers would be unable to create these efficiencies on their own.").
[256] Morgan, Kaleka & Gooner (2007), 513 ("To leverage these resources and capabilities, retailers may involve suppliers in the analysis of category-level data, category goal setting, and the formulation and execution of category-level plans.").
[257] Alan, Dotson & Kurtulus (2017), 127 ("The combination of retailers' lack of resources and manufacturers' superior category knowledge creates supply chain collaboration opportunities. Accordingly, many retailers manage some of their categories in collaboration with one of their leading manufacturers.").
[258] Kurtulus, Nakkas & Ulku (2014), 420 ("The category captainship approach acknowledges that manufacturers can help retailers manage categories more effectively and at a lower cost by leveraging their existing consumer insights.").
[259] Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("The captainship approach recognizes that by working together, both the retailer and the captain can benefit from the captain's category expertise.").
[260] Desrochers, Gundlach & Foer (2003), 204 ("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.").
[261] Kurtulus, Nakkas & Ulku (2014), 420 ("Even though the captains are not directly compensated for their services, the manufacturers view captainship as a source of advantage over their competitors because the captain usually gains significant control over the assortment in the category.").
[262] Subramanian, Rhaju, Dhar & Wang (2010), 1740. ("Indeed, according to an ACNielsen survey, the most important reason for manufacturers to be involved in category management is to influence retailer category decisions."). Nijs, Misra, & Hansen (2014), 67 ("…it has been argued that some manufacturers take on the role of CC to increase their

manufacturer to contribute category management resources for a retailer that requests them is compelling.[263] The category captain role may also be sought by manufacturers to avoid potential profit losses.[264] Category captains may also pay to be a category captain because the manufacturer knows that if it does not, its competitor will.[265] Other identified motivations and goals include the ability to offset the perceived power imbalance between retailers and manufacturers[266] and the chance to obtain market power in the retail category.[267] Among national brand manufacturers becoming a category captain is considered crucial for success and a top priority.[268]

Outcomes and value

As an outgrowth of category management, category captain arrangements are viewed to provide positive outcomes to retailers where they help to enhance the efficiency and effectiveness of category management decision-making. In this capacity the category captain helps a retailer develop and implement a marketing strategy based on consumer insights with the goal of growing sales in the category.[269] With information from their category captains, retailers can enhance the shopping experience of consumers by placing products in the most convenient location, using displays in the most effective manner, and shelving complementary products next to one another. [270] The category captain process permits the retailer to leverage their own resources and those of their leading supplier in the category to minimize costs and maximize efficiencies.[271] Thus, according to some, a retailer can ensure higher efficiency in its category management if it appoints a category captain and lets the category captain make all pricing and merchandising decisions for all brands in the category.[272] Analysts suggest that retailers can significantly enhance category performance through

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influence on category decisions...”). Kurtulus, Ulku, Dotson & Nakkas (2014), 380 (“By partnering with a leading manufacturer through a captainship arrangement, ... while the captain gains the ability to influence the retailer’s decisions.”). Nijs, Misra, & Hansen (2014), 79 (“However, manufacturers covet the role of CC not only to avoid potential profit losses but also to gain influence on retailer decision making”).

263 Carameli (2004), 1328 (“When viewed in light of the sheer size of today's retail chains, the incentive for a manufacturer to contribute resources for a requesting retailer is compelling.”).

264 Nijs, Misra, & Hansen (2014), 79 (“However, manufacturers covet the role of CC not only to avoid potential profit losses but also to gain influence on retailer decision making”).

265 Carameli (2004), 1327 (“A second, likely related, possibility is that in charging a Captaincy fee the retailer is actually seeking to recover a portion of the manufacturer's share of consumer surplus. Under this theory, a retailer is well aware that manufacturers need its commodity, limited shelf space. As such, in exchange for a cash payment, the retailer relinquishes control of the shelf decision-making to a Category Captain. Under this scenario, the Captain pays because it knows that if it does not, its competitor will.”).

266 Nijs, Misra, & Hansen (2014), 67 (“... it has been argued that some manufacturers take on the role of CC... and offset the perceived power imbalance between retailers and manufacturers.”).

267 Carameli (2004), 1327 (“One possible motivation for a manufacturer to pay is that it is really purchasing a chance at obtaining monopoly or oligopoly power at the retail level.”).

268 Subramanian, Rhaju, Dhar & Wang (2010), 1740. (“category captainship is considered crucial for success and is a top-management priority for many leading national brand manufacturers.”).

269 Kurtulus, Ulku, Dotson & Nakkas (2014), 379 (“The captain helps the retailer develop and implement a marketing strategy based on consumer insights with the goal of growing the sales in the category.”).

270 Lorden (2011), 562 (“With information from their category captains, retailers can enhance a consumer’s shopping experience by placing products in the most convenient location, using displays in the most effective manner, and shelving complementary products next to each other.”).

271 Bandyopadhyay, Rominger & Basaviah (2009), 316 (“This [the category captain] process allows the retailer to leverage its own resources and those of the leading supplier to minimize costs and maximize efficiencies.”).

272 Bandyopadhyay, Rominger & Basaviah (2009), 318 (“A retailer can ensure higher efficiency in its category management if it appoints a category captain and lets it take all pricing and merchandising decisions of all brands in the category.”).

permitting a key supplier to assume the category captain role where the focal supplier undertakes or has significant input into the retailer's category management efforts.[273]

Manufacturers are said to also benefit from category captain arrangements. Industry reports suggest that manufacturers can benefit from category captain arrangements.[274] Many manufacturers practice category captainship and report positive benefits.[275] Both the literature and trade press suggest that a retailer's ability to partner with a focal supplier that has superior category management-related resources and capabilities is key to its category management effort and performance.[276] The more efficient retailer-supplier relationships created by category management are said to yield higher profits, thereby providing the most effective and profitable product decisions.[277] By combining tools and resources in collaboration, category captains can help suppliers and retailers to align their strategies, systems, processes, and people and provide better value to consumers.[278] Where implemented appropriately, category captains are expected benefit through reducing undue supply-side expenses (e.g., excessive inventory, ineffective promotion) to a large extent and thereby ensure greater cost efficiency in the retail sector.[279] Category captain arrangements may also benefit consumers. The beneficial outcomes of category captain arrangements accrue to consumers when the different skills and information of the category captain and retailer are leveraged in ways that result in enhanced category decisions and lower overall costs that are passed on to consumers.

In contrast to these positive and beneficial views of category captain arrangements, more critical views of the value of category captain arrangements claim that they allow category captains to take advantage of their dominant role to restrict competition and consumers.[280] In this respect researchers and others have raised concerns about the possible misuse of power by category captains to circumvent fair competition.[281] As described by the American Bar Association:

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273 Morgan, Kaleka & Gooner (2007), 513 ("Analysts suggest that retailers can significantly enhance category performance by allowing a key supplier to assume the role of "category captain" where the focal supplier undertakes or has significant input into the retailer's category management efforts.").

274 Nijs, Misra, & Hansen (2014), 66 ("Industry reports suggest that both manufacturers and retailers can benefit from CC arrangements.").

275 Kurtulus & Toktay (2005), 1 ("Many retailers and manufacturers practice category captainship and report positive benefits.").

276 Morgan, Kaleka & Gooner (2007), 514 ("In fact, the literature and trade press suggest that a retailer's ability to partner with a focal supplier that has superior category management-related resources and capabilities is key to its category management effort and performance."). Lindblom & Olkonnen (2008), 3 ("Category-captain arrangements, in which certain suppliers take a significant management role, are said to significantly improve the performance of an entire category. By way of explanation, it is assumed that category captains have superior information about the consumer market and its trends, and highly trained specialists to analyze it. On the basis of this knowledge they are able to enhance consumer value and improve the sales and profitability of the whole category.").

277 Lorden (2011), 562 ("The more efficient retailer-supplier relationships created by category management yields higher profits, thereby providing the most effective and profitable product decisions.").

278 Desrochers, Gundlach & Foer (2003), 202 ("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").

279 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("If implemented appropriately, category captains are expected to reduce undue supply-side expenses (e.g., excessive inventory, ineffective promotion) to a large extent thereby ensuring better cost efficiency in the retail sector.").

280 Lindblom & Olkonnen (2008), 3 ("On the other hand, more critical views of these arrangements claim that they allow category captains to take advantage of their dominant role to restrict competition and harm consumers.").

281 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("Other researchers ... have also raised concerns about the possible misuse of power by the category captain to circumvent fair competition.").

"Sharing responsibility and information with a category captain raises competitive issues that are not as pronounced when a retailer manages the category alone. Although a category captain can provide valuable expertise and assistance to a retailer, the category captain also may act in a self-interested fashion that, if not checked by the retailer, may prejudice the interests of other suppliers of the product, the retailer, or consumers." [282]

The most prominent criticism of category captain arrangements is that they can lead to a lack of objectivity and an overall dilution in the quality of the category management process.[283] The primary concern is that category captains may influence outcomes in the category, receive preferential treatment, and exclude competitors from giving input.[284] A category captain could also put competitors at a disadvantage through advance knowledge of their pricing, merchandising and promotional strategies, and by working to gain an advantage for their own products.[285] At the extreme, a category captain may dominate the overall category management process.[286]

Despite that in comparison a category captain arrangement may be more efficient than prior approaches (i.e., brand management), a category captain arrangement may be riskier given the category captain may circumvent competition by making decisions that favor their own brands at the expense of competitive brands.[287] It is possible that a category captain may abuse the power granted it to marginalize or exclude altogether the retailer's private labels or smaller brands, thereby lowering competition.[288] Thus, on the negative side, a category captain arrangement may result in competitive exclusion, and thereby, a decrease in the number of variants offered to consumers.[289] Where consumers value the flexibility of having access to a number of brands, this may result in a lowering of customer satisfaction.[290] The long-term success or any retailer is closely related to the satisfaction of their consumers.[291]

The view that a category captain may act to take advantage of its dominant role to restrict competition and consumers is far from the envisaged ideal "win-win-win" collaboration in which

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282 American Bar Association (2010), 11 ("Sharing responsibility and information with a category captain raises competitive issues that are not as pronounced when a retailer manages the category alone. Although a category captain can provide valuable expertise and assistance to a retailer, the category captain also may act in a self-interested fashion that, if not checked by the retailer, may prejudice the interests of other suppliers of the product, the retailer, or consumers.").
283 Lindblom & Olkonnen (2008), 3 ("The most prominent criticism is that they can lead to a lack of objectivity and an overall dilution in the quality of the CM process.").
284 Lindblom & Olkonnen (2008), 3 ("... the primary concern regarding such arrangements is that category captains influence outcomes in the category, receive preferential treatment, and exclude competitors from giving input.").
285 Lindblom & Olkonnen (2008), 3 ("They could also put competitors at a disadvantage through advance knowledge of their pricing, merchandising and promotional strategies, and by working to gain an advantage for their own products.").
286 Lindblom & Olkonnen (2008), 3 ("In an extreme case, a category captain might dominate the entire CM process.").
287 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("While this strategy will be more efficient for the retailers as compared to brand management, it is risky because the category captain may circumvent competition by making decisions to favor its brands at the expense of competing brands.").
288 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("It is possible that a category captain may abuse the power vested in it to marginalize or exclude altogether the retailer's private labels or smaller brands, thereby lowering competition.").
289 Kurtulus & Toktay (2005), 3 ("However, on the negative side, category captainship may result in competitive exclusion, and as a result, a decrease in the number of variants offered to consumers.").
290 Kurtulus & Toktay (2005), 3 ("Where consumers value the flexibility of having access to a number of brands, this may result in a decrease in customer satisfaction.").
291 Kurtulus & Toktay (2005), 4 ("First, any retailer's long-term success is closely related to its consumers' satisfaction.").

retailers, manufacturers and consumers benefit.[292] However, that a category captain may act in a self-interested fashion and thereby raise competitive issues is grounded in predictions from agency theory, transaction cost analysis theory, and the network theory that addresses the likelihood and consequences of focal supplier opportunism in interfirm relationships.[293] Competitive concerns for category captain arrangements also derive from insights developed in the literatures on power and influence.[294]

Concerns for exclusion arise when a retailer entrusts all decisions of category management to one, single category captain.[295] Retailers have been cautioned to be aware that what is in the best interest of the category captain may not be the best for them.[296] For these reasons, there is considerable rhetoric in the literature on the dangers of making use of category captains to manage product categories on behalf of, or in partnership with, retailers.[297] Indeed, despite anecdotal reports of the successful use of category captains, many retailers fear that the idea carries significant risks, including the risk of opportunistic behaviors by lead suppliers such as manipulating data analyses in order to effect category management decisions that favor their own brands at the expense of the retailer and other suppliers.[298] Consequently, many retailers are said to be concerned[299] and many chains are said to be worried about the risk of category captain opportunism.[300] Some retailers are also cautious because of public policy concerns that reliance on a category captain may inhibit competition and lower consumer welfare.[301]

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292 Lindblom & Olkonnen (2008), 3 ("This kind of CM activity is far from the envisaged ideal 'win-win-win' collaboration in which all parties—retailers, manufacturers, and consumers—benefit.").

293 Morgan, Kaleka & Gooner (2007), 514 (Contrasting conceptions of a retailer's category management relationship with a focal supplier derived from relational exchange theory with predictions derived from agency theory, transaction cost analysis theory, and network theory: "In grocery retailing, the managerial literature echoes these relational exchange theory notions and advocates more collaborative retailer relationships with suppliers to enhance their category management efforts and thereby improve performance. ... However, such presciptions largely ignore predictions from the agency theory, transaction cost analysis (TCA) theory and network theory literature regarding the likelihood and consequences of focal supplier opportunism in this context.").

294 Desrochers, Gundlach & Foer (2001), 204 ("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) other sources of power can play a role in providing a CC with the ability to influence competition.").

295 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("However, concerns arise when a retailer entrusts all decisions of category management to one single category captain.").

296 Kurtulus and Toktay (2005), 4 ("Second, retailers should be aware that what is in the best interest of the category captain may not be the best for them. In particular, if the assortment decision is left to the category captain, the level of differentiation in the category may increase, undercutting the retailer's power over the manufacturers, and leading to lower margins. Therefore, relying on the category captains for recommendations on assortment planning may not be the best approach for the retailer.").

297 Chimhundu, Kong & Gururajan (2014), 380 ("There is rhetoric in the literature, on the dangers of making use of CCs to manage store product categories on behalf of, or in partnership with the retailers.").

298 Gooner, Morgan & Perreault (2011), 18 ("There are anecdotal reports of successes, but many retailers fear that this idea carries significant risks, including opportunistic behaviors by lead suppliers such as manipulating data analyses to lead to CM decisions that favor their own brands at the expense of the retailer and other suppliers.").

299 Nijs, Misra & Hansen (2014), abstract ("Despite an increase in the number of CC collaborations, retailers are still concerned about manufacturer opportunism ... by manufacturers not selected as CCs,..."). Nijs, Misra, & Hansen (2014), 67 ("Even though the number of CC collaborations is increasing,many retailers are still concerned about latent manufacturer opportunism ...").

300 Chimhundu, Kong & Gururajan (2014), 369 ("Many retail chains are worried about the risk of category captain opportunism.").

301 Gooner, Morgan & Perreault (2011), 18 ("Some retailers are also cautious because of public policy concerns that reliance on a category captain may inhibit competition and lower consumer welfare.").

Retailers also fear that giving one supplier an influential role in their category management will prompt damaging push-back from other suppliers, such as reducing trade allowances or delaying access to new products.[302] Retailers fear militant behaviors by manufacturers not selected as category captains[303] and by manufacturers whose performance declines when a category captain arrangement is in place.[304] Opportunistic behavior on the part of the category captain could lead to retaliation from other suppliers that may withhold promotional support, market information, or other resources required to effectively manage the category.[305] Thus, many retailers harbor concerns and doubt successful category captain alliances can be forged.[306]

The use of category captains has been further described to be a risky strategy that may ultimately see the respective retailer losing power to their category captain.[307] By outsourcing category management components to suppliers, retailers not only risk losing touch with consumers, which may be hard to regain, but they also risk losing power in the channel.[308] Thus researchers have warned that using category captains is risky in the sense that the retailers may end up losing power to their suppliers and the captains may push their own brands or they may either disadvantage competing suppliers or collude with those suppliers.[309] However, other researchers have maintained that the costs and risks are unfounded, overblown, and outweighed by the benefits to retailers and manufacturers.[310] The literature is therefore contradictory on this aspect.[311]

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302 Gooner, Morgan & Perreault (2011), 18 ("Many retailers fear that giving one supplier an influential role in their CM will prompt damaging push-back from other suppliers, such as reducing trade allowances or delaying access to new products.").
303 Nijs, Misra, & Hansen (2014), abstract ("Despite an increase in the number of CC collaborations, retailers are still concerned about ... militant behavior by manufacturers not selected as CCs,...").
304 Nijs, Misra, & Hansen (2014), 78 ("Retailers are concerned about legal action and militant behavior by non-CCs whose performance declines when a CC arrangement is in place.").
305 Gooner, Morgan & Perreault (2011), 23 ("Some retailers indicated that they avoid relying on a lead supplier in their CM precisely because they fear retaliation from other suppliers that may withhold promotional support, market information, or other resources required to effectively manage the category."). Nijs, Misra, & Hansen (2014), 67 (citing Gooner, Morgan and Perreault 2011 "Opportunistic behavior on the part of the CC could lead to retaliation from other suppliers that may withhold promotional support, market information, or other resources required to effectively manage the category.").
306 Nijs, Misra, & Hansen (2014), 67 (Even though the number of CC collaborations is increasing, many retailers are still concerned about latent manufacturer opportunism and doubt successful alliances can be forged.").
307 Chimhundu, Kong & Gururajan (2014), 380 ("Using CCs has been described as a risky strategy that may see the respective retailer(s) losing power to CCs.").
308 Nijs, Misra, & Hansen (2014), 79 ("By outsourcing CM components to suppliers, retailers not only risk losing touch with consumers, which may be hard to regain, but also risk losing power in the channel.").
309 Chimhundu, Kong & Gururajan (2014), 369 ("Researchers have warned however, that this strategy of employing CCs is risky in the sense that the retailers may end up losing power to their suppliers and the captains may push their own brands or they may either disadvantage competing suppliers or collude with those suppliers.").
310 Gooner, Morgan & Perreault (2011), 32 (concluding that "... many of the feared downside costs and risks associated with retail CM are overblown and are outweighed by the benefits for retailers and suppliers that serve as category captain."). Chimhundu, Kong & Gururajan (2014), 369 ("Other researchers have maintained that these fears are unfounded, overblown and outweighed by the benefits to retailers and manufacturers,...").
311 Chimhundu, Kong & Gururajan (2014), 369 (summarizing literature on the competitive risks and fears of category captain arrangements and concluding "The literature is therefore contradictory on this aspect.").

Chapter 4. Key Sources of Concern for Category Captain Arrangements

The unique nature of category captain arrangements has given rise to concerns that they may be used to adversely impact competition and consumers.[312] The basis of these concerns has origins in the underlying features of category captain arrangements. These include the facial reduction and elimination of competition that results from the structure of a category captain arrangement, the inherent conflicts of interest that are present between a captain's interests and those of the retailer, the opportunities for self-interest seeking that occur in the category captain role, and the potential for subtle forms of opportunism that accompany the information-based nature of category captain arrangements. See Table 1. Prior approaches (e.g., brand management) by retailers for discerning the products consumers want, making decisions as to their display, and profitably pricing these products posed fewer antitrust concerns due to their narrower focus and the lack of express involvement by upstream suppliers.[313]

Facial reduction or elimination of competition

Category management involves the sharing of information between the retailer and all manufacturers in the category.[314] Category captain arrangements, on the other hand, involve an

[312] Desrochers, Gundlach & Foer (2003), 205. Lorden (2011), 542 ("This practice of a supplier making decisions or giving advice to a retailer about not only its own prices and products but also those of a competitor leads to inherent antitrust concerns."). Steiner (2001), 77 ("In addition to identifying its efficiencies, antitrusters must remain alert to the possibility that category management can produce a number of competitive concerns: the exclusion of small producers and increased market power of the category's leading manufacturer, the creation of welfare-reducing types of vertical practices, and the facilitation of price-fixing arrangements in the retailing sector."). Steiner (2001), 79 ("There is a real danger that the dominant manufacturers in a class of goods, who typically are the Category Captains, will substantially increase their market shares and market power."). FTC (2001), 71 ("The record strongly suggests that category management and the use of category captains can produce important efficiencies, and there was agreement that FTC actions should not call these practices into question in any general way. However, speakers also generally agreed that the use of category captains carried the potential for competitively troublesome exchanges of information."). Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("However, if a manufacturer's intent behind achieving this exclusive position is to influence retailers, and the scope of the role involves managing the entire category including rivals' brands, then this practice raises some obvious concerns for the retailer and the excluded manufacturers."). FTC (2001), 71 ("The record strongly suggests that category management and the use of category captains can produce important efficiencies, and there was agreement that FTC actions should not call these practices into question in any general way. However, speakers also generally agreed that the use of category captains carried the potential for competitively troublesome exchanges of information.").

[313] American Bar Association (2010), 13 (Explaining the differences in category management and brand management and their implications for antitrust concerns. "In both approaches, the retailer's over-arching objectives are the same-namely, to offer products that consumers want to buy, display them in ways that lead consumers to purchase them, and price them at levels that result in maximum profits. A retailer that practices brand management takes a narrower focus with respect to pricing and other competitive decisions than one that practices category management. Given the narrower focus, antitrust concerns are less likely when a retailer makes brand management decisions that by definition are limited to a single upstream supplier. Unlike category management, brand management decisions usually are made without express involvement of an upstream supplier serving as category captain. By contrast, category management involves retailers making decisions (perhaps with recommendations from its category captain) across multiple competing brands, taking into account the interactions among them.").

[314] Kurtulus & Toktay (2008), 7 ("Niraj and Narasimhan (2003)…define category management as an information sharing alliance between the retailer and all manufacturers in the category.").

exclusive information sharing alliance between the retailer and only one manufacturer[315] Thus, category captain arrangements can result in an exclusive, or near exclusive vertical distribution relationship that by its very nature reduces or eliminates competition.[316] As opposed to alternative arrangements, category captain arrangements invite concern given a single manufacturer serves in the role of the category captain and may make retailer's decisions regarding all competing manufacturer's products.[317] Obvious antitrust concerns arise when a single supplier is given the power to influence retailer decisions regarding not only the supplier's own products, but its competitors' products as well.[318] Cooperation of this form can produce both beneficial and harmful results for competition and consumers. A category captain may, for example, assist a retailer in understanding the products most appropriate for consumers and facilitate those products being shelved, priced, and promoted in an optimal manner.[319] However, as observed by Steiner, "the very structure of category management, with its congeries of vertical and horizontal relationships, also invites anticompetitive conduct."[320]

Inherent conflicts of interest

The inherent conflict of interest held by a manufacturer in the category captain role has also been identified as an issue and basis for concern.[321] While a category captain is responsible to the retailer it serves, it is also a member of a supplier firm in possession of its own interests.[322] Consequently, manufacturers that serve as a category captain have an incentive to maximize sales

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315 Kurtulus & Toktay (2008), 7 ("Niraj and Narasimhan (2003)…define category management as an information sharing alliance between the retailer and all manufacturers in the category. Category captainship, on the other hand, is defined as an exclusive information sharing alliance between the retailer and only one manufacturer...").

316 Carameli (2004), 1329 ("Category Captaincies can result in an exclusive vertical relationship between a retail chain and a single manufacturer within the subject category. By its very nature, this exclusive arrangement reduces or eliminates competition.").

317 Carameli (2004), 1318 ("Moreover, the Category Captain practice becomes even more suspicious when one considers that a single manufacturer may be making all of a retailer's decisions regarding competing manufacturers' products.").

318 Lorden (2011), 545 ("Antitrust laws are intended to promote competition, so obvious antitrust concerns arise when a single supplier is given the power to influence retailer decisions regarding not only the supplier's own products, but its competitors' products, too.").

319 Carameli (2004), 1329-30 ("Still, the relationship may not necessarily negatively affect the competitive market to the extent necessary to give rise to antitrust concerns. For instance, cooperation between a manufacturer and a retailer can have pro-competitive effects by helping to ensure that the retailer carries a distribution of products most appropriate for local consumers, and that the products are shelved, priced, and promoted in an optimal manner.").

320 Steiner (2001), 78 ("However, the very structure of category management, with its congeries of vertical and horizontal relationships, also invites anticompetitive conduct.").

321 Desrochers, Gundlach & Foer (2003), 205 ("The potential for opportunistic conduct in CC arrangements is exacerbated by the conflict of interest that a CC faces in its role."). Kurtulus & Toktay (2005), 2 ("At the same time, conflict of interest between the retailer and the category captain or between competing manufacturers could be an issue."). Subramanaian, Raju, Dhar & Wang (2010), 1740-1741 ("Although the use of category captains per se is not considered illegal or anti-competitive by regulatory authorities, researchers in marketing as well as legal scholars have expressed doubts about the objectivity of the category captain and worry about the potential harm to retailer and rival manufacturers' interests…Some retailers share these concerns and are wary of category captains being biased toward their own brands. Understandably, this underlying difference of interests has led researchers and industry analysts to question the rationale for using category captains and to doubt its prospects.").

322 Desrochers, Gundlach & Foer (2003), 205 ("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.").

and market share of their own products over those of their rivals.[323] There is also a strong disincentive for a manufacturer in a category captain arrangement to spend its own money on category management research and labor and then recommend that its own brand be moved out of the store or relegated to the bottom shelf and replaced by a competing product.[324] Retailers and others often stress that it is necessary for a category captain to be trustworthy or otherwise a retailer would sever the relationship.[325] Nevertheless, while it may seem unthinkable for a manufacturer to breach a retailer's trust, the incentive to do so can be significant.[326]

The aforementioned (dis)incentives result in a conflict of interest for a category captain between providing input that improves the performance of the retail category versus improving the performance of the captain's own brands.[327] Carameli (2004) describes the inherent conflict of interest that arises in category captain arrangements:

> "Choosing which products to sell and how to price, shelve, and promote them is a job that most logically and traditionally belongs to the retailer itself, and not a manufacturer. After all, the manufacturer is concerned primarily with its own brands and has a vested interest in seeing competing products fail. The retailer, on the other hand, has a vested interest in maximizing overall profit in its stores, regardless of brand. It seems, then, that there is a fundamental difference between a Category Captain's business goals and those of the retailer it serves."[328]

Coupled with the fact that at least some retailers allow their category captain to make all relevant category decisions creates a situation with both the incentive and opportunity for the category

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[323] Carameli (2004), 1328 ("Manufacturers by their very nature ... have an incentive to maximize sales and market share of their own products to the detriment of their competitors.").

[324] Carameli (2004), 1341 ("Nevertheless, there is a strong disincentive for a manufacturer to spend its money on Category Management research and labor to then recommend that its own brand be moved out of the store or relegated to the bottom shelf only to be replaced by a competing product.").

[325] FTC (2001), 52 ("Another panelist stated that exclusion of rivals by a category captain is unlikely as a practical matter: such tactics are not in the best interest of the retailer, and if a category captain behaves in that manner, it will have progressively less influence as an advisor."). Lorden (2011), 548 ("However, as an FTC panelist points out, the 'exclusion of rivals by a category captain is unlikely as a practical matter: such tactics are not in the best interest of the retailer, and if a category captain behaves in that manner, it will have progressively less influence as an advisor."). Carameli (2004), 1340 ("Retailers often stress that it is necessary for a Category Captain to be trustworthy, because the retailer would otherwise sever the relationship.'").

[326] Carameli (2004), 1341 ("While it may seem unthinkable for a manufacturer to breach a retailer's trust, the incentive to do so can be significant.").

[327] Desrochers, Gundlach & Foer (2003), 205 ("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."). Bandyopadhyay, Rominger & Basaviah (2009), 315 ("Unlike a manufacturer, a retailer is not interested in the profitability of any particular brand but focuses on the profitability across all brands in the category…This conflict of interest has created a continuous power struggle between the manufacturer and the retailer.").

[328] Carameli (2004), 1317-1318 ("Choosing which products to sell and how to price, shelve, and promote them is a job that most logically and traditionally belongs to the retailer itself, and not a manufacturer. After all, the manufacturer is concerned primarily with its own brands and has a vested interest in seeing competing products fail. The retailer, on the other hand, has a vested interest in maximizing overall profit in its stores, regardless of brand. It seems, then, that there is a fundamental difference between a Category Captain's business goals and those of the retailer it serves.").

captain to take advantage of their relationship with a retailer.[329] Combined with the increased influence resulting from a category captain arrangement the aforementioned incentives may entice certain manufacturers to behave in ways that violate the antitrust laws.[330]

Category captains can take advantage of their position and disadvantage competitor manufacturers.[331] The conflict of interest held by a category captain can lead to a lack of objectivity on the part of the category captain and the abuse of category management by otherwise well-meaning captains in possession of differing business goals than the retailer.[332] Thus, researchers have counseled that retailers should be aware that what is in the best interest of the category captain may not be the best for them.[333] That an underlying difference of interests is present also creates tension and can hinder the development and implementation of successful category management.[334] The presence of a conflict of interest in category management arrangements has led some to question the rationale for using category captains and to doubt its prospects.[335]

Opportunities for self-interest seeking

A further basis of concern for category captain arrangements stems from the category captain's role in receiving information and providing input to retailers about all other brands in the category.[336] In almost every potential category captain arrangement the chosen manufacturer performs category management tasks not only for its own brands, but for those of competing manufacturers as well.[337] Furthermore, the same manufacturer may also serve as the category captain

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329 Carameli (2004), 1341 ("This coupled with the fact that at least some retailers allow their Category Captain to make all relevant category decisions, creates a situation with both incentive and opportunity for the Category Captain to take advantage of the relationship.").

330 Carameli (2004), 1328 ("This incentive, combined with the increased influence resulting from the manufacturer's newfound partnership with the retailer, may entice certain manufacturers to behave in ways that violate the Sherman Act.").

331 Kurtulus and Toktay (2005), 2 ("In particular, the category captain may take advantage of its position and disadvantage competitor manufacturers.").

332 Desrochers, Gundlach & Foer (2003), 205 ("This [conflict of interest] circumstance can lead to a lack of objectivity on the part of the CC and the abuse of CM by otherwise well-meaning firms."). Carameli (2004), 1317 ("Intuitively the Category Captain relationship is like the "fox guarding [the] henhouse." Choosing which products to sell and how to price, shelve, and promote them is a job that most logically and traditionally belongs to the retailer itself, and not a manufacturer. After all, the manufacturer is concerned primarily with its own brands and has a vested interest in seeing competing products fail. The retailer, on the other hand, has a vested interest in maximizing overall profit in its stores, regardless of brand. It seems, then, that there is a fundamental difference between a Category Captain's business goals.").

333 Kurtulus & Toktay (2005), 3 ("Second, retailers should be aware that what is in the best interest of the category captain may not be the best for them.").

334 Lindblom & Olkonnen (2008), 2 ("It has been argued that these competing interests—of the suppliers (who seek to increase the share of their products in a given category) and of the retailers (who seek to increase the performance of the overall category)—create a tension that hinders the development and implementation of CM.").

335 Subramanaian, Raju, Dhar & Wang (2010), 1741 ("Some retailers share these concerns and are wary of category captains being biased toward their own brands. Understandably, this underlying difference of interests has led researchers and industry analysts to question the rationale for using category captains and to doubt its prospects.").

336 Desrochers, Gundlach & Foer (2003), 205 ("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.").

337 Carameli (2004), 1316 ("For instance, in almost every potential Category Captain arrangement the chosen manufacturer performs Category Management tasks not only for its own brands, but for those of competing manufacturers as well.").

for multiple retailers who are competing in the same market.[338] These features of category captain arrangements yield considerable opportunity to affect competition.[339] As described by Kurtulus, Ulku, Dotson, and Nakkas (2014, p. 387), "...by ceding decision authority to a single manufacturer, the retailer creates an opportunity for the captain to improve its own performance at the expense of its competition."[340] Controversies have arisen because a category captain provides recommendations to the retailer regarding not only its own products but also those of its competitors and as consequence the category captain may have a positive bias toward its own products to the detriment of the products of its competitors.[341] Providing some evidence of these opportunities and this potential, Desrochers, Gundlach and Foer (2003, p. 205) report that an ACNielsen study found among manufacturers surveyed, a top reason for participating in category management was to "influence decisions on [their] categories."[342]

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338 Carameli (2004), 1316 ("Furthermore, the same manufacturer may also serve as Category Captain for multiple retailers competing in the same market.").

339 Steiner (2001), 78 (Elaborating on the simultaneous requirement of trust and opportunities for the breach of trust in category management relationships: "The trade press and the speeches of consultants in the field stress that mutual trust is prerequisite to the success of category management. First, the traditional adversarial relationship between manufacturers and retailers must be replaced by a cooperative one. Second, there must be mutual trust that the confidential information the retailer provides the manufacturer is not relayed to competing retailers (for whom the same manufacturer is often serving as Category Captain), nor will the confidential information the manufacturer provides to the retailer be relayed to rival category manufacturers with whom the retailer deals. Third, the manufacturer, which typically devotes substantial resources to the development of the category plan, must trust that the retailer will implement it effectively. Finally, the retailer must trust that the plan was competently and objectively prepared—free of significant "opportunism," wherein the Captain has sacrificed their combined interests (and those of rival manufacturers) to those of his own firm in ways that may be difficult for the retailer to detect.").

340 Kurtulus, Ulku, Dotson & Nakkas (2014), 387 ("However, by ceding decision authority to a single manufacturer, the retailer creates an opportunity for the captain to improve its own performance at the expense of its competition.").

341 Alan, Dotson & Kurtulus (2017), 127 ("The trade literature has suggested that both retailers and manufacturers can benefit from CC. However, controversies regarding CC have arisen because the captain provides recommendations to the retailer regarding not only its own products but also those of its competitors. Consequently, the captain may have a positive bias toward its own products to the detriment of the competitors' products."). Chimhundu, Kong & Gururajan 2014 , 369 ("Researchers have warned however, that this strategy of employing CCs is risky in the sense that the retailers may end up losing power to their suppliers and the captains may push their own brands or they may either disadvantage competing suppliers or collude with those suppliers. Other researchers have maintained that these fears are unfounded, overblown and outweighed by the benefits to retailers and manufacturers; and other researchers have maintained that, with respect to the addition and/or deletion of products, it is the CCs and the retailers that actually benefit at the expense of rival manufacturers who are not CCs. The literature is therefore contradictory on this aspect."). Alan, Dotson & Kurtulus (2017), 127 ("However, controversies regarding CC have arisen because the captain provides recommendations to the retailer regarding not only its own products but also those of its competitors. Consequently, the captain may have a positive bias toward its own products to the detriment of the competitors' products."). Chimhundu, Kong & Gururajan (2014), 380 ("...especially given the fact that, with respect to the feared risks of CM and the related CC arrangements, there is controversy in the literature; the controversy being on whether or not the fears are justified."). Chimhundu, Kong & Gururajan (2014), 369 ("... some researchers have equally noted and suggested that, when the retailer is not that powerful compared to the CC, CC practices need to be scrutinised. Logically, the latter type of relationships would not be favourable to retailers who may be employing CCs. Other researchers have however, contradicted this negative view. According to Gooner et al. (2011, p. 32), the feared "risks associated with retail CM [category management] are overblown and are outweighed by the benefits for retailers and suppliers that serve as category captain." There is therefore no agreement in the literature on these issues."). Bandyopadhyay, Rominger & Basaviah (2009), 318 ("If the retailer allows Vendor Managed Inventory (VMI) [a form of category captaincy] and entrusts all stocking decisions to the CC, it may lead to a bias in favor of the CC."). Nijs, Misra, & Hansen (2014), 78 ("Manufacturers that serve as CCs walk a fine line between optimizing the retailer's performance and optimizing their own.").

342 Desrochers, Gundlach & Foer (2003), 205 ("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.'").

Potential for subtle forms of opportunism

The information-based nature of category captain arrangements has also been identified as a basis of concern.[343] The aforementioned nature of category captain arrangements result in a business relationship that is conducive to opportunistic behavior by the category captain.[344] In addition, a good deal of category management is based upon data that is capable of being interpreted in a myriad of different ways.[345] Thus, the analysis and use of this information in category captain arrangements is subject to understated forms of self-interest seeking and opportunism including bias, incompleteness, distortion, and manipulation of information.[346]

343 Desrochers, Gundlach & Foer (2003), 205 ("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.").

344 Carameli (2004), 1316 ("This arrangement often results in business relationships conducive to opportunistic behavior by the Category Captain.").

345 Carameli (2004), 1340 ("A good deal of Category Management is based upon data that can be interpreted in a myriad of different ways.").

346 Desrochers, Gundlach & Foer (2003), 205 ("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.").

Chapter 5. The Power of Category Captains

Power in the behavioral sciences refers to the ability of an individual or group to get another individual or group to do something that they would not otherwise do.[347] Given their position and role, category captain arrangements grant a manufacturer some degree of control over a retailer's environment.[348] The term "category captain," itself, implies control.[349] The term "category captain" also suggests, to a greater or lesser extent, the delegation of responsibility for the category.[350] Thus, the concept of power is central to understanding the implications of category captain arrangements for competition and consumers.

Types of power

Category captain arrangements may be viewed from the perspective of the different types of power relationships held by the category captain.[351] At least two types of power are relevant for understanding category captain arrangements – market (i.e., horizontal) power and interfirm (i.e., vertical) power.[352]

Market (i.e., horizontal) power

Antitrust law is concerned with the power of market participants to distort the competitive process.[353] Economic theory teaches that in order for a category captain's practices to harm competition and consumers, the category captain or the retailer must possess market power in its market, absent a horizontal conspiracy at either level.[354] Relative to other competitors in a market a

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347 See Rober A. Dahl, *The Concept of Power*, 2 BEHAVIORAL SCIENCE 201, 203 (1957).

348 Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("More importantly, category captainship provides the manufacturer with some degree of control over the retailer's store environment.").

349 Desrochers, Gundlach & Foer (2003), 205 ("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.").

350 American Bar Association (2010), 10 ("Generally, a category captain is a supplier to whom the retailer delegates (to a greater or lesser extent) responsibility for a particular category.")

351 Chimhundu, Kong & Gururajan (2014), 371 ("Category captain arrangements can therefore be largely viewed within the overall context of power relationships between the retailer and the manufacturer.").

352 Steiner (2001), 79 (describing vertical and horizontal power in category captain arrangements.).

353 Lawrence Sullivan and Warren Grimes, The Law of Antitrust (2006) ("Antitrust is concerned with the power of market participants to distort the competitive process.").

354 American Bar Association (2010), 15-17 (describing the implications of market power in category captain arrangements: "Economic theory teaches that in order for a category captain's practices to harm competition and consumers, the category captain or the retailer must possess market power in its market, absent a horizontal conspiracy at either level. If both the supplier/category captain and the retailer operate in competitive markets, a category captain's vertical practices are not likely to threaten competition. This follows from the widely accepted proposition that a vertical restraint generally cannot harm competition when applied in otherwise competitive markets. The analysis differs, of course, when one or both parties possess market power. When the supplier/category captain has market power, it might be able to use its position as category captain to disadvantage its competitors in ways that harm competition and consumers. Consumers might be harmed if the category captain's practices led to generally higher prices or reduced product quality or output. Of course, if these outcomes reduced the profits of the retailer that chose the supplier to be the category captain, then the retailer may well take steps to reverse or prevent the reduction in its profitability and, in doing so, reverse or prevent the harm to consumers. A retailer could choose another supplier to be category captain, retain greater control over the category's product selection, display, and pricing decisions, or monitor more closely the conduct of the category captain. In such cases, the retailer's pursuit of profits also would tend to enhance consumers' interests. When the retailer has market power, but upstream suppliers do not, then it seems unlikely that the

category captain occupies a unique position in the category that it serves.[355] Some contend category captains frequently do not possess antitrust market power.[356] Consequently, the extent of market (i.e., horizontal) power held by a category captain is an important consideration in understanding the competitive consequences of category captain arrangements.

Interfirm (i.e. vertical) power

The concept of interfirm power is considered central for understanding the means by which one channel member can change or modify the behavior of another member within its channel of distribution.[357] Power defined in the context of interfirm distribution relationships refers to the ability of one channel member to control the decision variable in the marketing strategy of another member in a given channel at a different level of distribution.[358] This definition of power has been adopted to describe the power held by category captains in their relationships with retailers.[359] The degree of influence held by a supplier in the category captain role has led to the belief by some that the position of category captain may be used to negatively affect competition.[360] An exclusion-related concern is that a category captain's power to control a retailer's marketing decisions may ultimately be used to hinder rivals' expansion.[361] Consequently, the extent of interfirm (i.e., vertical) power possessed by a category captain is an important consideration in understanding the competitive implications of category captain arrangements.[362]

Interplay of market and interfirm power

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appointment of a category captain would diminish competition among the upstream suppliers. While the retailer might gain knowledge to increase the retailer's profits further, perhaps by choosing or presenting a selection of products more attractive to consumers, the category captain would likely not be an independent cause of retailer market power. Further, any retailer, including one with market power, prefers that the suppliers of products available to the retailer compete vigorously. Hence, a retailer with market power normally would not have an incentive to implement practices that create or enhance market power held by its category captain or any of its other upstream suppliers.").

355 Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("Although the level of influence may vary across categories and retailers, the category captain occupies a unique position relative to its rivals.").

356 Wright (2009), 317 ("Further, category captains frequently do not possess antitrust market power.").

357 S. D. Hunt and V. R. Nevin, *Power in a Channel of Distribution – Sources and Consequences*, 11 JOURNAL OF MARKETING RESEARCH 186, 186 (1974) ("The concept of power is considered central in understanding the means by which one channel member can change or modify the behavior of another member within its channel of distribution.").

358 Adel El-Ansary and Louis W. Stern, *Power Measurement in the Distribution Channel,* 9 JOURNAL OF MARKETING RESEARCH 47, 47 (1972) (defining power: "...ability of one channel member to control the decision variable in the marketing strategy of another member in a given channel at a different level of distribution."). John Gaski, *The Theory of Power and Conflict in Channels of Distribution*, 48 JOURNAL OF MARKETING 9, 10 (1984) ("the power of a channel member is the ability to control the decision variable in the marketing strategy of another member in a given channel at a different level of distribution. For this control to qualify as power, it should be different from the influenced member's original level of control over his own marketing strategy.").

359 Chimhundu, Kong & Gururajan (2014), 369 (defining power in the context of category captain arrangements "Power can be defined as the influence or control that one party exerts upon the decisions, attitudes and behaviours of another party or other parties, and such parties can either be individuals, groups or organisations.").

360 American Bar Association (2010), 3 ("...a supplier is often given an influential role in decision making, and some believe that that role may have negative implication, for competition.").

361 FTC (2001), 51-52. Lorden (2011), 547 ("The second area of exclusionary concern is the category captain's power to control a retailer's marketing decisions that might ultimately hinder rivals' expansion.").

362 Desrochers, Gundlach & Foer (2001), 204 ("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) other sources of power can play a role in providing a CC with the ability to influence competition.").

To understand the implications of category captain arrangements for competition and consumers it is also important to understand the interplay of market power and interfirm power. In the context of category captain arrangements, the interfirm (i.e., vertical) power held by a category captain reinforces the category captain's market (i.e., horizontal) power and vice-versa. As Steiner (2001) describes:

> "When a manufacturer can influence a large retailer's decisions over the selection of items from its firm and from its competitors' firms, as well as their pricing, shelf positioning, and promotion, it has gained market power horizontally. Equally, it has gained market power vertically by taking over these vital functions, with their decision-making powers, that were formerly the province of the retailer."[363]

Thus, the market power held by a category captain to exclude competition is based upon the competitive market position of the category captain, but also the ability of the category captain to determine a retailer's plans for competition.[364] Stated differently, the market power held by a category captain extends from both the captain's ability to influence a retailer to act in ways that the retailer would not otherwise in a competitive market and the ability to engage in such behavior to the significant detriment of competition and consumers.[365]

Sources of power

Conventional antitrust analysis focuses on sources of market power derived from calculations of market concentration and a firm's dominance in a defined product market.[366] Thus, a category captain's market power is typically understood by focusing on the category captain's market-based sources of power. These include the competitive presence and position of a category captain in the defined product and geographic market at issue. Given the source of a category captain's market power also derives from their interfirm (i.e., vertical) power,[367] Desrochers et al council that interfirm-based sources of power should also be understood.[368] Table 3 summarizes the differing sources of power found in category captain arrangements.

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363 Steiner (2001), 79 ("When a manufacturer can influence a large retailer's decisions over the selection of items from its firm and from its competitors' firms, as well as their pricing, shelf positioning, and promotion, it has gained market power horizontally. Equally, it has gained market power vertically by taking over these vital functions, with their decision-making powers, that were formerly the province of the retailer."). American Bar Association (2010), 37 ("A large market position, together with the power to determine retailers' plans for stocking shelves and ordering from competing suppliers, may grant the captain the power to exclude its competitors' products.").

364 American Bar Association (2010), 37 ("A large market position, together with the power to determine retailers' plans for stocking shelves and ordering from competing suppliers, may grant the captain the power to exclude its competitors' products.").

365 Desrochers, Gundlach and Foer 2003, p. 205 ("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.").

366 Desrochers, Gundlach & Foer (2001), 204 ("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) other sources of power can play a role in providing a CC with the ability to influence competition.").

367 Steiner (2001), 79 ("When a manufacturer can influence a large retailer's decisions over the selection of items from its firm and from its competitors' firms, as well as their pricing, shelf positioning, and promotion, it has gained market power horizontally. Equally, it has gained market power vertically by taking over these vital functions, with their decision-making powers, that were formerly the province of the retailer.").

368 Desrochers, Gundlach & Foer (2001), 204 ("A useful approach for understanding the sources of market power that may reside in a CC arrangement is that originally identified by French and Raven and further elaborated on by marketing

Market-based sources

Conventional antitrust analysis focuses on market power derived from a firm's dominance in a defined product market.[369] Because retailers typically choose as their captain a large,[370] larger,[371] leading,[372] or more significant[373] branded[374] supplier or a supplier with the greatest or second-greatest sales in the category[375] the competitive market share held by category captain can provide the captain with a considerable basis for influence over category decisions and therefore competition. However, there are other additional market-based sources for understanding the market power held by a category captain.

To the extent a category captain is present across multiple categories the category captain's multi-category clout is enhanced.[376] For example a firm may be dominant in at least one category and

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scholars in the field of distribution management. The sources include reward, coercive, legitimate, referent, expert, and ecological bases of control").

369 Desrochers, Gundlach & Foer (2001), 204 ("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) other sources of power can play a role in providing a CC with the ability to influence competition.").

370 FTC (2001), 7 ("A category captain is an outside firm, commonly a large supplier, to whom a retailer turns for advice in managing the category.").

371 Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("One of the larger manufacturers in the category is usually chosen as the captain because they have the resources and expertise to help grow the category.").

372 FTC (2001), 48 ("Assistance often comes from a category captain – a leading manufacturer of products in the category who acts as a primary advisor for the retail chain' s management of the category."). Kurtulus, Ulku, Dotson, and Nakkas 2014, p 379-380 ("Category captainship (CC) is a practice wherein a retailer relies on a leading manufacturer (often referred to as the category captain) to make strategic recommendations regarding category management decisions…By partnering with a leading manufacturer through a captainship arrangement, retailers are able to off-load part of the cost of category management...") Subramanian, Raju, Dhar & Wang (2010), 1 ("Frequently, a retailer partners exclusively with one leading national brand manufacturer in each category to help it manage the entire category.").

373 Lindblom & Olkonnen (2008), 2 ("CM is generally based on the idea that instead of managing individual brands with each relevant supplier, it is better for retailers to manage entire product categories as strategic business units in cooperation with the most significant suppliers.").

374 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("A CC is a manufacturer of one or more brands, usually of a leading brand in the field, who possesses extensive market knowledge, including consumer trends and demands with respect to product categories.").

375 FTC (2001), 51 ("Retailers typically select as category captain the manufacturer with the greatest or second-greatest sales in the category."). Lindblom & Olkonnen (2008), 4 ("Consequently, it is possible that a manufacturer that is, on the whole, considered large, e.g., in terms of total turnover, could at the same time be market leader or second largest in some categories, and third largest or smaller in some others… The term 'large suppliers' thus refers to companies with the biggest or second-biggest market share in a focal category, and the term 'small suppliers' refers to those with the third-biggest (or smaller) market share. The rationale for this nomenclature was that, in most cases, the two best-selling suppliers dominated the category."). Carameli (2004), 1341 ft. 150 ("The question is, really, whether Manufacturer A would elect to serve, if chosen, as Category Captain, in a store where its product was "second best" from the store's perspective and where that product was appropriately placed. Theoretically, a manufacturer has no incentive other than to make certain a second manufacturer does not provide misleading category information to the retailer, and to improve the efficiency of the overall category."). Lindblom & Olkonnen (2008), 4 ("Consequently, it is possible that a manufacturer that is, on the whole, considered large, e.g., in terms of total turnover, could at the same time be market leader or second largest in some categories, and third largest or smaller in some others… The term 'large suppliers' thus refers to companies with the biggest or second-biggest market share in a focal category, and the term 'small suppliers' refers to those with the third-biggest (or smaller) market share. The rationale for this nomenclature was that, in most cases, the two best-selling suppliers dominated the category.").

376 Desrochers, Gundlach & Foer (2003), 204 ("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."). Bandyopadhyay, Rominger & Basaviah (2009),

supply a retailer across multiple categories, thereby increasing its overall clout with the retailer.[377] Most consumer product goods firms sell across multiple categories and all sell to multiple retailers resulting in multiple points of contact by suppliers.[378] Consequently, a category captain in one category may perform category management activities across multiple categories for one retailer.[379] The same category captain may also perform these category management activities for other retailers.[380] Thus, to understand the market power held by a category captain the impact of a supplier acting as a category captain for the same category across different retailers and a supplier acting as a category captain in different categories for the same retailer must be understood.[381]

By extension, a category captain that has multiple brands in a single category (i.e., a multi-brand manufacturer) may be in a stronger market position than a single brand manufacturer to demand support from a retailer.[382] Typically, a multi-brand company offers financial support in the form of trade discounts and promotional incentives to those retailers who promote all brands of the manufacturer across all categories.[383] Manufacturers often use these "market development funds" as leverage to get the best deals for their brands across categories.[384] This is true especially where the other product categories are related to the category that the captain services or are otherwise important to the retailer.

Finally, a category captain will enjoy more clout in pushing its strategy in a category where the category captain merges with one of its major competitors in the category that it serves.[385] These types of mergers likely eliminate important secondary players that could act in the category captain or related roles.[386] Hence, consumer protection groups and antitrust enforcement agencies have been

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317 ("If the category captain's company makes a portfolio of brands, the category manager may add power through "multi-category clout.").

377 Desrochers, Gundlach & Foer (2003), 204 ("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.").

378 Gooner, Morgan & Perreault (2011), 32 (describing lead suppliers involvement in category management, "In addition, as highlighted previously, there is multipoint contact among suppliers in this channel and likely lead/nonlead supplier role reversals when most CPG firms sell across multiple categories and all sell to multiple retailers."). Gooner, Morgan & Perreault (2011), 32 (Describing "...multipoint contacts in which rival CPG suppliers act as category captain for the same category for different retailers and/or as category captain on different categories for the same retailer.").

379 Subramanian, Rhaju, Dhar & Wang (2010), 1740, Exhibit 2 (showing category captain assignments by retailer and category including for Clorox and Glad).

380 Subramanian, Rhaju, Dhar & Wang (2010), 1740, Exhibit 2 (showing category captain assignments by retailer and category including for Clorox and Glad).

381 Gooner, Morgan & Perreault (2011), 32 (Describing "...multipoint contacts in which rival CPG suppliers act as category captain for the same category for different retailers and/or as category captain on different categories for the same retailer.") Gooner, Morgan & Perreault (2011), 32 ("It is therefore important to examine whether and how such multipoint contact among suppliers may reduce channel competition and efficiency and how it affects wholesale prices.").

382 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("Also, a multi-brand manufacturer may be in a stronger position than a single-brand manufacturer to demand more support from the retailer.").

383 Bandyopadhyay, Rominger & Basaviah (2009), 317 (Typically, a multibrand company offers financial support (ex. trade discounts and promotional incentives) to those retailers who promote all brands of the manufacturer across all categories.").

384 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("Manufacturers often use this "market development fund" as a leverage to get the best deals for their brands across all categories.").

385 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("If the CC merges with one of its major competitors, it will enjoy more clout in pushing its strategy throughout the category.").

386 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("Such mergers would likely eliminate secondary players in the CC role, often called "category advisor", "co-captain" or "validator" by the merged entity's sheer size and presence in the entire category and the information it carries on consumer behavior.").

encouraged to monitor the parameters of deals between manufacturers involving category captains.[387]

Interfirm-based sources

Category captains may obtain the ability to influence and control retailer decisions based upon power derived from their relationship with a retailer. As Desrochers et al. note different sources of power may be present and acted upon within interfirm relationships including interfirm relationships involving category captain arrangements.[388] These sources of power align with French and Raven's taxonomy of power sources[389] but include an additional source elaborated upon within the distribution management literature.[390] They include reward, coercive, legitimate, referent, expert, and ecological sources. These sources of power can reside individually or in combination within a category captain arrangement. Depending on the source and their magnitude, each can grant a category captain influence over retailers.

A category captain may derive influence and control based upon <u>reward</u> where payments and other compensation are linked to being chosen as the captain.[391] Such arrangements provide the category captain 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 category captain.[392] Payments and other compensation by a category captain may be linked to specific goals and outcomes[393] including exclusion.[394] Payments and other compensation may also be withheld thereby

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387 Bandyopadhyay, Rominger & Basaviah (2009), 319 ("Hence, consumer protection groups and the Federal Trade Commission (FTC) must be vigilant to monitor the parameters of deals between manufacturers and retailers (e.g., category captaincy, slotting allowances, and merchandizing support) and between two manufacturers (e.g., mergers and acquisitions of brands).").

388 Desrochers, Gundlach & Foer (2001), 204 ("A useful approach for understanding the sources of market power that may reside in a CC arrangement is that originally identified by French and Raven 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").

389 John French and Bertram Raven, *The Bases of Social Power*, Chapter 20, STUDIES IN SOCIAL POWER. D. Cartwright (Ed.), Ann Arbor, Mich.: Institute for Social Research (1959) ("These five bases of O's power are: (a) reward power, based on P's perception that O has the ability to mediate rewards for him; (b) coercive power, based on P's perception that O has the ability to mediate punishments for him; (c) legitimate power, based on the perception by P that O has a legitimate right to prescribe behavior for him; (d) referent power, based on P's identification with O; (e) expert power, based on the perception that O has some special knowledge or expertness.").

390 Gaski (1984), 10 (There is another manifestation of power which is not dependent on the influencee's perception. This may be called 'manipulative power' or 'ecological control,' and is based on such methods as control of information, restriction of alternatives, condition or in any way modifying the influencee's environment.").

391 Desrochers, Gundlach & Foer (2003), 204-5 ("...CC arrangements may involve payments or other forms of compensation to gain the right to be CC.").

392 Desrochers, Gundlach & Foer (2003), 204-5 ("These [payment and compensation] 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."). See also Carameli (2004), 1326-27 (commenting indirectly on the beneficial nature of paying for being a category captain,"Furthermore, it is safe to assume that, all else being equal, a manufacturer would prefer that a retailer itself perform all necessary Category Management tasks and absorb the corresponding costs. Even in an environment where that is not feasible, however, it is likely that a manufacturer in a competitive marketplace would not see fit to pay for the right to serve as Category Captain, only to then benefit its competitors as much as it does itself.").

393 Carameli (2004), 1327 ("One possible motivation for a manufacturer to pay is that it is really purchasing a chance at obtaining monopoly or oligopoly power at the retail level. While it is not likely that a retailer would permit a manufacturer to eliminate heavily demanded products, certainly the Category Captain's products have a better chance of prevailing at the retailer than those of competing manufacturers").

yielding a coercive source of power. Coercion in the form of payments and other remuneration being withheld can provide a powerful source of influence in category captain arrangements. A category captain may also obtain legitimate influence and control over decisions based upon being recognized as the category captain in the case of a formal contract or other governing mechanism.[395] Category captains may also derive influence and control based upon referent power where the retailer identifies with the captain as a result of the captain's direct and extensive contact with the retailer.[396] Through their role category captains work closely and interactively with retail buyers to manage the category. The retail buyer may not work similarly with other manufacturers in the category. Such contact can lead to an overt or implied expectation as to the captain's influence. Category captain arrangements describe situations in which a single supplier in a category becomes a partner[397] to the retailer in a significant management role[398] and a most-favored[399] resource that is relied on to provide input on category decisions. These descriptions suggest that category captains may derive considerable influence based upon a retailer's identification with them. Where the category captain is the leading supplier in a category (or across categories) or where a manufacturer has category-specific knowledge and resources, the captain may also be viewed as an expert and therefore derive power and influence based upon their perceived expertise.[400] As a collaborative practice, category management via category captain arrangements involves leveraging the unique resources of manufacturers and retailers.[401] 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 may also have additional resources, including highly trained specialists to analyze data,

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394 American Bar Association (2010), 39 ("A very common arrangement will involve the supplier's payment of a promotional allowance to a retailer as consideration for advertising or displaying the product, often at a reduced price. Such an agreement might exclude other suppliers.").

395 Desrochers, Gundlach & Foer (2003), 204 ("... 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.").

396 Desrochers, Gundlach & Foer (2003), 205 (Describing influence over rivals obtained through the ability to influence the retailer "This can occur as a result of the direct contact and decision control that a CC may have in its role.").

397 Kurtulus, Ulku, Dotson, and Nakkas 2014, p 379-380 ("Category captainship (CC) is a practice wherein a retailer relies on a leading manufacturer (often referred to as the category captain) to make strategic recommendations regarding category management decisions…By partnering with a leading manufacturer through a captainship arrangement, retailers are able to off-load part of the cost of category management...") Subramanian, Raju, Dhar & Wang (2010), 1 ("Frequently, a retailer partners exclusively with one leading national brand manufacturer in each category to help it manage the entire category.").

398 Lindblom & Olkonnen (2008), 3 ("Category-captain arrangements, in which certain suppliers take a significant management role, are said to significantly improve the performance of an entire category.") Lindblom & Olkonnen (2008), 2 ("…category captains, take a significant management role, which includes managing the brands of competing suppliers.").

399 Carameli (2004), 1328 ("Holding the position of most-favored manufacturer and serving as Category Captain for even one product category within a given supermarket chain affords the chosen manufacturer a significant voice in that retailer's shelf-level decisions").

400 Desrochers, Gundlach & Foer (2003), 205 ("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.").

401 Patrick Kiernan, *Joint Industry Project on Efficient Consumer Response*, 26 JOURNAL OF FOOD DISTRIBUTION RESEARCH 131, 131 (1995).

which they bring to the category planning process.[402] Category management requires a thorough understanding of consumer preferences and purchase patterns, a knowledge based that is hard to build and hard to replace if that expertise is lost.[403] Consequently a category captain may derive consider influence based upon their recognized expertise in the category. A category many also derive power and influence based upon ecological sources of power based upon their control over the nature and extent of information provided to retailers.[404] Through their role category captains provide information and recommendations to retailers. Consequently they are in a position to control the nature and amount of information in ways that can influence retailers.[405] Given this unique position category captains can derive considerable ecological based influence in their arrangements with retailers.

Role of information asymmetries

Other sources of influence in category captain arrangements include those facilitated through information asymmetries. Information asymmetries provide a special form of interfirm-based power. [406] The presence of information-related asymmetries (either organic or due to the overt control of information by a category captain) make it difficult to evaluate a category captain's information[407] and suggestions.[408] Consequently, information-related asymmetries provide considerable opportunity for influence (and opportunism) including through more subtle forms of bias, incompleteness, distortion, manipulation, and other means.[409]

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402 Desrochers, Gundlach & Foer (2003), 202 ("Typically, suppliers also have more resources, including highly trained specialists to analyze data, which they bring to the category planning process.").

403 Kurtulus & Toktay (2005), 4-5 ("But category management requires a thorough understanding of consumer preferences and purchase patterns, a knowledge base that is hard to build once that expertise is lost.").

404 Desrochers, Gundlach & Foer (2003), 204 ("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.").

405 Desrochers, Gundlach & Foer (2003), 204 ("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.").

406 Desrochers, Gundlach & Foer (2003), 205 ("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."). Desrochers, Gundlach & Foer (2003), 204 ("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.").

407 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("Information asymmetry between the retailer and the CC prevents the retailer from being able to evaluate information provided by the CC who possesses extensive market knowledge.").

408 Carameli (2004), 1340 ("Certainly if a Category Captain is completely honest and approaches its work with only the retailer's best interests in mind then the retailer would be more than justified in relying on the Category Captain. As discussed in this Part, however, such a presumption on the part of a retailer may not be safe or even rational… A good deal of Category Management is based upon data that can be interpreted in a myriad of different ways.").

409 Desrochers, Gundlach & Foer (2003), 205 (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.").

Information asymmetries may exist between a category captain and category managers and buyers due to differing levels of expertise,[410] knowledge,[411] comprehension,[412] attention,[413] staffing,[414] time,[415] experience, and locus of decision-making.[416] These asymmetries can lead to influence based upon the control of information,[417] advancement of self-serving decision criteria,[418] presentation of

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410 Carameli (2004), 1315 ("Despite recent mergers and growth, most supermarket chains still spend relatively modest amounts on marketing at the store level, and rarely possess the staffing and expertise necessary to make educated Category Management decisions for themselves."). Steiner (2001), 80
("For unlike sizeable consumer goods manufacturing firms, even the largest retailing firms have never had big staffs with personnel holding advanced degrees in management, marketing, consumer behavior, statistics, and other relevant skills.").

411 Desrochers, Gundlach & Foer (2003), 205 ("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. As a result, a retailer may be in a disadvantaged position to evaluate the information a CC provides."). Desrochers, Gundlach & Foer (2003), 209 (Describing efforts by United States Tobacco Company to exploit knowledge asymmetries in their role as category captain in the moist snuff category "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.").

412 Carameli (2004), 1344 (Describing efforts by United States Tobacco Company to exploit information asymmetries in their role as category captain in the moist snuff category "When one considers the sheer volume of SKUs a large retailer faces, it is not difficult to imagine how USTC could get away with such activities.").

413 Steiner (2001), 80 ("And yet supermarkets and other mass purveyors of consumer goods can operate in over 200 categories compared to less than 10 in the Category Captain's firm. So a single Category Manager for the retailer is ordinarily responsible for numerous categories."). Carameli (2004), 1344 (Describing how a category captain was able to influence category decision involving moist snuff "In the category of moist snuff, not even Wal-Mart has any personnel exclusively dedicated to its management."). Desrochers, Gundlach & Foer (2003), 209 (Describing efforts by United States Tobacco Company to exploit managerial attention asymmetries in their role as category captain in the moist snuff category "Furthermore, USTC knew that no retailer, even Wal-Mart, had a person solely devoted to the management of moist snuff."). Carameli (2004), 5 ("Assuming that the advocates of Category Captain relationships are correct in asserting that manufacturers provide only honest and accurate suggestions that will best meet the retailer's business objectives, there is little need for recommendations, data, or input from a second manufacturer. In fact, a retailer does not likely have the staff or the time to meet with each manufacturer within a given category to hear detailed input that is substantially the same. Making time to listen to feedback from multiple manufacturers in a category would, then, be redundant. To prevent this redundancy, some retailers instead choose a single manufacturer to be the "Category Captain," conferring the responsibility to make the retailer's Category Management decisions for an entire category of products.").

414 Carameli (2004), 1315 ("Despite recent mergers and growth, most supermarket chains still spend relatively modest amounts on marketing at the store level, and rarely possess the staffing and expertise necessary to make educated Category Management decisions for themselves."). Steiner (2001), 77 ("Even Wal-Mart's Category Managers have sometimes been stretched so thin that they cannot exercise adequate supervision.").

415 Carameli (2004), 1325 ("Assuming that the advocates of Category Captain relationships are correct in asserting that manufacturers provide only honest and accurate suggestions that will best meet the retailer's business objectives, there is little need for recommendations, data, or input from a second manufacturer. In fact, a retailer does not likely have the staff or the time to meet with each manufacturer within a given category to hear detailed input that is substantially the same. Making time to listen to feedback from multiple manufacturers in a category would, then, be redundant. To prevent this redundancy, some retailers instead choose a single manufacturer to be the "Category Captain," conferring the responsibility to make the retailer's Category Management decisions for an entire category of products.").

416Desrochers, Gundlach & Foer (2003), 205 ("An additional influence on this potential [of information asymmetries) is that many retailers have consolidated and transferred category decisions away from store managers to corporate headquarters.").

417 Desrochers, Gundlach & Foer (2003), 2004 ("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.").

418 Desrochers, Gundlach & Foer (2003), 210 (Describing a case study and hypothetical situation involving self-serving criteria 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

inflated data,[419] presentation of skewed data,[420] offering less than accurate data,[421] stretching of the truth,[422] and presenting false data.[423]

Dimensions of power

Various dimensions of power are also relevant for understanding a category captain's power to exclude competition. These include the continuums of power and accommodating practices that may be found in category captain arrangements, the broader context and structure of power relationships that exist between manufacturers and retailers, and the dynamics and evolution of power found in manufacturer-retailer relationships over time.

Continuum of power and practice

Given the diversity of power sources available to a category captain and the variance in retailer practices in accommodating the recommendations of category captains, category captain arrangements have been described to exist along two different continuums. This includes a continuum based upon the strength of influence (i.e. power) held by the category captain ranging from "strong"[424] forms to "weak" forms.[425] This also includes a range based upon the practices of the retailer in accommodating the recommendations of the category captain resulting in a continuum

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50% of the shelf space dedicated to the cate-gory. 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... in combination with the supplier's dominance, ... likely to lessen substantially or to prevent competition because they reduce competitors' ability to expand their market presence.

419 Carameli (2004), 1343 (Describing the efforts of United States Tobacco Company "It even went so far as to inflate actual sales figures.").

420 Carameli (2004), 1343 (Describing the efforts of United States Tobacco Company in presenting retailers with data skewed to the national market rather than more relevant local sales data. "For instance, USTC provided its retailers with sales data skewed to the national market rather than more relevant local sales data. This data presented national-level data in a way that masked local product movement. The result was an inaccurate prediction of moist snuff sales at local stores that unduly favored USTC products. Such a subtle misrepresentation of product data likely appeared perfectly legitimate to an untrained eye and may never have been detected."). Desrochers, Gundlach & Foer (2003), 210 (Describing a case study involving hypothetical situation involving self-serving criteria 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 cate-gory. The hypothetical situation identifies two potential concerns with such "space to sales" arrangements: ... (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. ... in combination with the supplier's dominance, ... likely to lessen substantially or to prevent competition because they reduce competitors' ability to expand their market presence.").

421 Carameli (2004), 1339 ("The most obvious opportunities include a Category Captain that acts to mislead a retailer by offering less than accurate data regarding optimal product assortment, placement, pricing, or promotion; ... thus deciding to forego competition on the merits...").

422 Carameli (2004), 1345 ("A manufacturer might stretch the truth to provide its product a favorable position at the retailer.").

423 Carameli (2004), 1343 (Describing the efforts of United States Tobacco Company "Nevertheless, USTC went one step further and provided false data, inflated to induce stores to stock a slower moving USTC moist snuff product and drop competitors' better selling stock-keeping units ('SKUs').").

424 Steiner (2001), 80 (Describing the nature of "strong" forms of category captain arrangements "where a single category captain from a dominant manufacturing firm calls the shots.").

425Desrochers, Gundlach & Foer (2003), 204 ("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.").

of retailer practices.[426] These continuums are important for understanding the power held by category captains.

From the perspective of the category captain, the breadth and depth of power held by a category captain may be extensive.[427] Holding the position of most-favored manufacturer and serving as category captain for even one product category within a given supermarket chain affords the chosen manufacturer a significant voice in that retailer's shelf-level decisions.[428] However, the power of a category captain can vary depending on the arrangement.[429] The extent and exclusivity of decision control held by a category captain largely depends on the specific relationships, and relationships may vary.[430] Thus, category captain arrangements are described to range from strong to weak depending on depth and breadth of decision responsibility of the category captain and on the availability and ability of other manufacturers to influence the decision.[431]

From the perspective of the retailer, the practices of retailers in accommodating category captain recommendations also exist along a continuum. In theory, a retailer is free to use or discard any of the recommendations provided by a category captain.[432] However, in practice the responses of retailers range from adoption of all recommendations to a process for filtering and selectively adopting manufacturer recommendations.[433] Beginning at one end of the spectrum, some retailers implement the category captain's recommendations as they are; at the other end, some retailers filter the recommendations provided by the category captain and verify their appropriateness before deciding on the implementation.[434] In many, but certainly not all cases, retailers simply accept the category captain's plan with few changes.[435] In other instances category captains act as mere advisors in which cases all decisions remain with the retailer.[436] The retailer may be open to second opinions

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426 Kurtulus & Toktay (2005), 1 ("Category captainship practices vary depending on the retailer, resulting in a continuum of practices.").
427 FTC (2001), 48 ("...some retailers delegate all category management responsibilities to the captain."). Steiner (2001), 78 ("In one variant known as Vendor Managed Inventory (VMI), the retailer entrusts all stocking decisions to a single category manufacturer."). Desrochers, Gundlach & Foer (2003), 206 ("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."). Steiner (2001), 78 (quoting one source "In many cases, "the retailer places the well-being of the entire category in the hands of a single supplier to the category.").
428 Carameli (2004), 1328 ("Holding the position of most-favored manufacturer and serving as Category Captain for even one product category within a given supermarket chain affords the chosen manufacturer a significant voice in that retailer's shelf-level decisions.").
429 Steiner (2001), 78 ("In practice, the powers of the Category Captain vary.").
430 Chimhundu, Kong & Gururajan (2014), 371 ("The extent and exclusivity of decision control by the CC largely depends on the specific arrangement, and arrangements may vary.").
431 Chimhundu, Kong & Gururajan (2014), 371 ("CC arrangements can therefore range from strong to weak, and this largely depends on depth and breadth of decision responsibility of the CC, and on the availability and ability of other manufacturers to influence the decision.").
432 Kurtulus & Toktay (2011), 47 ("The retailer is free to use or discard any of the recommendations provided by the category captain.").
433 Kurtulus & Toktay (2011), 47 ("In practice, retailer response ranges from adoption of all recommendations to a process for filtering and selectively adopting manufacturer recommendations.").
434 Kurtulus & Toktay (2005), 1 ("At one end of the spectrum, some retailers implement the category captain's recommendations as they are; at the other end, some retailers filter the recommendations provided by the category captain and verify their appropriateness before deciding on the implementation.").
435 Steiner (2001), 77 ("In many but certainly not all cases the retailer simply accepts the Category Captain's plan with few changes.").
436 Lindblom & Olkonnen (2008), 3 ("..., or then the category captain may be merely an adviser, in which case all decisions remain with the retailer.").

from other manufacturers in the category (e.g., co-captains, validators, etc.) and the retailer may also consult third party advisors with no vested interests in the respective category.[437] However, sometimes the captain may be given much more responsibility and may make ultimate decisions about which brands and products the retailer should sell.[438] In some instances retailers rely heavily on their category captain to perform category management services.[439] In many cases, the retailer places the well being of the entire category in the hands of a single supplier to the category[440] and entrust all of their category decisions to the category captain.[441] For example, in one variant known as Vendor Managed Inventory (VMI), the retailer entrusts all stocking decisions to a single category manufacturer.[442] These retailers pass along and entrust the category captains with the majority, or all, of their category decisions. They permit the captain to be the final decision maker[443] or they implement the category captain's recommendations without verification due to limited resources.[444]

Context and structure of power

Category captain arrangements also exist within a broader context of power relationships between manufacturers and retailers. Retailers themselves have sources of market power[445] and interfirm power[446] available to them and consequently possess power in their relationship with a

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437 Chimhundu, Kong & Gururajan (2014), 371 ("...the retailer may be open to second opinion from other manufacturers in the category (termed co-captains or validators or consultants), and the retailer may also consult third party advisors with no vested interests in the respective category.").

438 Lorden (2011), 544 ("However, sometimes the captain may be given much more responsibility and could even make ultimate decisions about which brands and products its retailer should sell.").

439 Carameli (2004), 1315 ("Because Category Management strategy and implementation is critical to a retailer's performance, it may be surprising to learn that some retailers rely heavily upon manufacturers to make these decisions for them. Despite recent mergers and growth, most supermarket chains still spend relatively modest amounts on marketing at the store level, and rarely possess the staffing and expertise necessary to make educated Category Management decisions for themselves. While retailers likely understand that perfecting Category Management planning and implementation is critical to the success and profit-maximizing performance of any given supermarket, they often choose to pass the majority of these decisions along to manufacturers from which the retailers purchase.").

440 Steiner (2001), 78 ("In many cases, 'the retailer places the well-being of the entire category in the hands of a single supplier to the category.'").

441 Chimhundu, Kong & Gururajan (2014), 371 ("The CC may be entrusted with all category decisions by the retailer ... "). Lindblom & Olkonnen (2008), 3 ("Thus the retailer may entrust all its category decisions to the category captain, ...").

442 Steiner (2001), 78 ("In one variant known as Vendor Managed Inventory (VMI), the retailer entrusts all stocking decisions to a single category manufacturer.").

443 Carameli (2004), 1328 ft. 69 ("Some retailers take suggestions from the Category Captain and make their own decisions, while others allow the Category Captain to be the final decision-maker.").

444 Kurtulus & Toktay (2008), 19 ("While some retailers continue to work with their category captains and verify their recommendations, other retailers prefer to implement their category captain's recommendations due to lack of resources. While private information on the category captain's part makes it easier for the category captain to provide biased recommendations and control the outcomes in the category, it also makes it more difficult for the retailers to detect category captain's biased recommendations.").

445 Chimhundu, Kong & Gururajan (2014), 371-2 (describing the nature of market power held by a retailer "A grocery retail environment that is highly concentrated gives more power to retailers in relation to manufacturers as the bulk of the market will be in the hands of a few retailers who can decide to flex their muscle against the manufacturers if they wish. Loss of business to only one retail chain by a manufacturer/supplier in such an environment would be catastrophic as each retail chain's chunk of business to a particular supplier would be quite substantial.") Chimhundu, Kong & Gururajan (2014), 378-79 (describing the nature of market power held by a retailer "The highly concentrated grocery retail environment would naturally give the retail chains power over their suppliers/manufacturers because the manufacturers would be dependent on a few retailers.").

446 Chimhundu, Kong & Gururajan (2014), 378 (describing the nature of relational power held by a retailer "In terms of sources of power therefore, in addition to legitimate power (as owners of the retail shelves) the retailers would have a

category captain. Imbalances of power between a category captain and a retailer can affect the influence held by a category captain.[447] For example, smaller and more dependent retailers are more prone to accept the input of a more powerful captain while larger and less dependent retailers are better able to resist inputs from category captains they believe they should not accept.[448] Category captain arrangements therefore should also be viewed from the perspective of the overarching structure of power that exists between the manufacturer and retailer.[449]

Different structures of power may be present in a category captain arrangement with the balance of power between the category captain and retailer impacting the power held by the category captain.[450] For example, it is unlikely that a category captain would possess exclusive power over a category in a highly concentrated grocery retail environment where retail chains would largely be holding the balance of power over manufacturers and suppliers.[451] Similarly, retail chains operating in a low concentration retail environment, as opposed to those in a high-concentration environment, are also not expected to have the same level of strength in dealing with manufacturers.[452] Thus, a strong category captain arrangement in a low concentration retail environment (low retailer market power) is not likely to result in the same power held by a category captain as a strong category captain arrangement in a highly concentrated retail environment (high retailer market power). More generally, a retailer may not be that powerful as compared to a category captain in an environment

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wider array of power bases to tap from in comparison to the CCs. For instance, the coercive power base which is an option for the retailers in a highly concentrated grocery retail environment, even with respect to powerful manufacturers who have strong brands, is likely to be a viable option against weak CCs if need be. ... Also, with respect to the other bases of power (French and Raven, 1959), most of them would reside with the retailer. For instance, the retailer as the legitimate owner of the grocery retail shelves has the power to reward manufacturers with shelf space as the retailers make the final decisions on shelf matters."). Chimhundu, Kong & Gururajan (2014), 379 (describing the nature of market power held by a retailer "For instance, one might want to look at it from a different perspective; the perspective that, for fear of punishment by the powerful retailer who is indeed the legitimate owner of the retail shelves, and who may actually dismiss a CC if, at a later stage, the retailer finds out that the captain took advantage of their entrusted position in one way or the other; this fear may keep the CC honest.").

447 Desrochers, Gundlach & Foer (2003), 205 ("Imbalances of power between the CC and the retailer may also exist and affect a CC's influence.").

448 Desrochers, Gundlach & Foer (2003), 205 ('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.").

449 Chimhundu, Kong & Gururajan (2014), 378-9 ("CC arrangements can therefore be largely viewed within the overall context of power relationships between the retailer and the manufacturer.")

450 Gooner, Morgan & Perreault (2011), 30 (describing potential differences for the occurrence of opportunism by nonlead supplier's involved in category management, "However, in other situations in which nonlead suppliers are less dependent on a small number of large buyers and/or have a higher punitive capacity, such network costs [opportunism] might outweigh CM's benefits."). Chimhundu, Kong & Gururajan (2014), 378-9 (examining different scenarios involving retailer marketing and category captain power, "For instance, ... the first scenario (i.e. high retail concentration, weak CC and no strategic loss of power), the second scenario would be a weak CC arrangement in a low-concentration grocery retail environment; the third would be a strong CC arrangement in a highly concentrated grocery retail environment; and the fourth, a strong CC arrangement in a low-concentration grocery environment.").

451 Chimhundu, Kong & Gururajan (2014), 371 ("It is unlikely that a category captain would have exclusive power over a category in a highly concentrated grocery retail environment where retail chains would largely be holding the balance of power over manufacturers/suppliers.").

452 Chimhundu, Kong & Gururajan (2014), 379 ("Retail chains operating in a low concentration retail environment, as opposed to those in a high-concentration environment, are not expected to have the same level of strength in dealing with manufacturers.").

of low retail concentration where individual retail chains would not be handling a huge chunk of the category captain's business.[453]

Dynamics and evolution of power

Category captain agreements are more likely to be anticompetitive when large suppliers can control distribution for a significant period of time.[454] The dynamics of power in some industries have evolved over time. For example, due to consolidation and concentration, the increasing use of store brands, and the increased utilization of information technology; power in the consumer goods industry has evolved over time to favor retailers.[455] However, it has been suggested that the balance of power may be shifting back to manufacturers as a result of the increased employment of category captain arrangements.[456] Through outsourcing retail category management to their leading manufacturers, retailers may in the long-run lose their capabilities in managing their product categories and their knowledge about consumers resulting in a shift in power back to manufacturers.[457]

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453 Chimhundu, Kong & Gururajan (2014), 379 (" in terms of balance of power, the retailer(s) may not be that powerful as compared to the CC(s), in an environment of low retail concentration where individual retail chains would not be handling a huge chunk of the manufacturer/CC's business.").

454 Lorden (2011), 560 ("Category captain agreements are more likely to be anti-competitive when large suppliers can control distribution for a significant period of time.").

455 Chimhundu, Kong & Gururajan (2014), 371 ("Power dynamics in the grocery retail industry have become an interesting subject especially from the view-point of the possibility that they now resemble a see-saw of some sort. In the past, for instance, fast-moving consumer goods (FMCG) industry manufacturers used to command a lot of power over retail chains, but with increasing retail consolidation and concentration, the increased use of retailer own brands (private labels) as well as increased utilisation of information technology in retailing, the balance of power shifted to the retail chains.").

456 Chimhundu, Kong & Gururajan (2014), 371 ("It has been hinted that the balance of power may be shifting back to manufacturers as a result of the increased employment of CC.").

457 Kurtulus & Toktay (2005), 5 ("But by outsourcing retail category management to their leading manufacturers, retailers may in the long-run lose their capabilities in managing their product categories and their knowledge about consumers. This loss of capability may prepare the basis for a shift of power back from the retailers to the manufacturers. Retailer beware!").

Chapter 6. Exclusionary Conduct and Practices by Category Captains

Category captain arrangements produce various concerns for competition and consumers.[458] One concern that has elicited debate is whether a category captain will take advantage of its position and harm other manufacturers in a category.[459] The term "competitive exclusion" is often used to refer to situations in which a category captain uses its position to put its competitors at a disadvantage.[460] Exclusion has been a persistent concern for category captain arrangements.[461] Most economic analyses of category captain arrangements focus on the possibility that a category captain may have the incentive and ability to reduce competition by favoring its own products relative to its rivals.[462]

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458 Lorden (2011), 545 ("In the FTC Report, the FTC set forth four specific situations that may create anti-competitive issues. For example, "[t]he category captain might: (1) learn confidential information about rivals' plans; (2) hinder the expansion of rivals; (3) promote collusion among retailers; or (4) facilitate collusion among manufacturers." The ABA Section on Antitrust Law has also recognized a fifth category, (5) tortious conduct. These five situations can be grouped into two major themes: the exclusion of rival suppliers from the market, and the collusion among suppliers or retailers by means of the category captain relationship. The first two situations above, along with tortious conduct, deal with the "exclusion" theme, and the third and fourth situations fall within the "collusion" theme."). AMERICAN BAR ASSOCIATION, CATEGORY MANAGEMENT ANTITRUST HANDBOOK 22 (2010) ("The competitive concerns associated with category captains include: (1) foreclosure of potential rival suppliers from access to retailers and consumers, or diminishing the quality of their access (e.g., by providing rivals with less preferred shelf position, or introducing fewer new products produced by rivals); (2) collusion among competing retailers orchestrated through a category captain in a "hub-and-spoke" arrangement, thereby reducing competition at the retail level and raising prices to consumers; and (3) coordination among upstream suppliers facilitated by the category captain's observations of the rivals' activities in multiple retailers in a geographic market, thereby reducing competition at the supplier level and elevating prices to consumers."). Wright (2009), 316 (Citing the FTC Report, "The first concern is that the category manager relationship might facilitate collusion between either manufacturers, retailers, or both in a "hub and spoke" variety conspiracy. The second concern is that the captain may use its position to effectively exclude or significantly disadvantage competitors, exposing consumers to the risk of decreased product variety or increased prices."). Carameli (2004), 1319 ("Category Management as retailers and manufacturers sometimes practice it, however, can help facilitate anticompetitive conduct by one manufacturer intended to exclude other manufacturers' products from the marketplace. It may also lead to collusion amongst grocers that act to restrain competition. Finally, Category Captaincies as they are often implemented present significant opportunity for larger retailers to coerce Category Management services from manufacturers that a manufacturer does not, or cannot, offer smaller stores on proportionally equal terms, thus presenting Robinson-Patman Act concerns."). Desrochers, Gundlach & Foer (2003), 201 ("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."). FTC (2001), 49-50 ("There are four ways in which category management – particularly the use of category captains – may lessen competition. The category captain might: (1) learn confidential information about rivals' plans; (2) hinder the expansion of rivals, (3) promote collusion among retailers; or (4) facilitate collusion among manufacturers.").

459 Kurtulus & Toktay (2011), 48 ("Indeed, there is an emerging debate on whether or not CC poses antitrust challenges such as competitive exclusion, where the category captain takes advantage of its position and harms the other manufacturers in the category.").

460 Alan, Dotson & Kurtulus (2017), 127-128 ("The term 'competitive exclusion' has often been used to refer to situations in which the captain uses its position to put its competitors at a disadvantage.").

461 Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("While there have been many successful captainship implementations, a persistent concern has been potential competitive exclusion, that is, the potential for the captain to engage in opportunistic behavior that favors its own products at the expense of its competitors.").

462 American Bar Association (2010), 22 ("Most economic analyses of category captains focus on the possibility that the category captain will have the incentive and ability to reduce competition by favoring its own products relative to those of its branded and unbranded rivals.").

At the extreme competitive exclusion involves a situation where the category captain allocates zero shelf space to a non-captain's brand.[463] However competitive exclusion can take on many different forms, most of them less extreme than completely excluding competitors.[464] A variety of different category management practices may provide some degree of exclusivity to the category captain.[465] For example, displaying a rival's brands at the bottom of the shelf space allocated to the category, or promoting two non-captain manufacturers' brands at the same time are less obvious forms of competitive exclusion.[466] More generally, a category captain may engage in forms of share-shifting which increase demand for the captain's products at the expense of the competitor's products.[467] Category captains may also behave in other opportunistic ways that favor its own position in the category.[468]

The basic concern for competitive exclusion involving category captain arrangements is straightforward.[469] A category captain that is able to control decisions about product placement and promotions could use that control to hinder the entry or expansion of other suppliers, leading to less variety and possibly higher prices. [470] A related concern is that a category captain could thwart the growth of competitors or lessen their incentive to produce innovative plans, to the ultimate detriment of consumers.[471] Given their role a category captain can potentially deprive its rivals of the opportunity to compete for distribution on the merits.[472]

Competitive exclusion may occur in category captain arrangements where a category captain uses its role and power to: (1) improperly deny others from competing for the role of category captain; (2) receive and misuse rivals' sensitive information; (3) make improper recommendations or engage in related actions that exclude, disadvantage or hinder rivals' entry or expansion; and (4) take improper steps to disadvantage retailers' store brands and the suppliers of store brands. See Table 3.

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463 Kurtulus & Toktay (2005), 3 ("We define competitive exclusion as the situation where the category captain allocates no shelf space to a non-captain brand.").

464 Kurtulus & Toktay (2005), 3 ("In practice, competitive exclusion may take many different forms, most of them less extreme than completely excluding competitors.").

465 American Bar Association (2010), 39 ("A variety of category management practices may provide some degree of exclusivity to the category captain.").

466 Kurtulus & Toktay (2005), 3 ("For example, displaying the non-captain manufacturers' brands at the bottom of the shelf space allocated to the category, or promoting two non-captain manufacturers' brands at the same time would be some less obvious forms of competitive exclusion.").

467 Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("The captain can exert category-expanding effort, which boosts the demand for all products in the category; but the captain can also engage in share-shifting effort, which increases demand for the captain's product at the expense of the competitors' products.").

468 Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("Some of the earlier papers on the topic define competitive exclusion broadly as the captain behaving opportunistically to favor its position in the category.").

469 American Bar Association (2010), 22-23 (The basic concern is straightforward and articulated clearly in a 2001 FTC Staff Report: 'A captain that is able to control decisions about product placement and promotions could hinder the entry or expansion of other suppliers, leading to less variety and possibly higher prices.'").

470 FTC (2001), 49-50 ("A captain that is able to control decisions about product placement and promotions could hinder the entry or expansion of other suppliers, leading to less variety and possibly higher prices.").

471 FTC (2001), 50.

472 American Bar Association (2010), 23 ("a category captain potentially could deprive its rivals of the opportunity to compete for distribution on the merits.").

Denying others from competing for the category captain role

One way in which competitive exclusion can occur in a category captain arrangement is where a category captain takes steps to deny others from the opportunity to compete for the category captain role. In practice, manufacturers compete for the job of category captain.[473] Retailers often ask manufacturers to vie for the position category captain and replace existing category captains with new ones if they are not satisfied with the outcomes.[474] In a typical category captain arrangement, the retailer selects a captain by soliciting proposals from multiple manufacturers on the proposed steps to improve category performance.[475] Thus, suppliers increasingly view jockeying for the category captain position as the basis of inter-supplier competition. [476]

That some manufacturers pay for the opportunity to become a category captain has raised suspicions among some manufacturers.[477] Category captain arrangement can involve payments or other forms of compensation to gain the right to be a category captain.[478]Such arrangements provide the category captain with power by establishing a quid-pro-quo relationship in which the category captain bears the costs of performing its role but also pays for the right to become the category captain.[479] The concern is that substantial costs borne by a category captain may create an expectation and implied requirement of some type of remuneration or favorable consideration in return from the retailer, thereby yielding influence to the category captain.[480]

However, even absent an entrance fee, smaller manufacturers may not have the opportunity to serve as a category captain.[481] Reportedly there is fear among suppliers that powerful

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473 Nijs, Misra, & Hansen (2014), 79 (describing category captain arrangements, "..., in practice, manufacturers compete for the job.").

474 Subramanian, Rhaju, Dhar & Wang (2010), 1740 ("Retailers often ask manufacturers to compete for this position and replace existing category captains with new ones if they are not satisfied with the outcomes."). Chimhundu, Kong & Gururajan (2014), 371 ("Some researchers have even noted that CCs can easily be replaced by the retailer at any time.").

475 Kurtulus, Nakkas & Ulku (2014), 420 ("In a typical captainship implementation, the retailer first selects a captain by soliciting proposals from multiple manufacturers on the proposed steps to improve category performance.").

476 Gooner, Morgan & Perreault (2011), 32 ("In addition, our interviews suggest that suppliers increasingly view jockeying for the category captain position as the basis of intersupplier competition.")

477 Carameli (2004), 1325-1326 ("In light of this, the fact that some manufacturers pay for the opportunity to spend their money to perform research and planning for their retailer customer should by itself raise suspicion. In the words of C. Manly Molpus, president and chief executive officer of the Grocery Manufacturers of America, the fundamental reason to [perform certain Category Management work] ... is [to facilitate] both partners' understanding of the value of working together to reduce costs so they both become more efficient and more profitable and serve the consumer better. That should drive partnerships, rather than [a requirement to] buy your way into a partnership.").

478 Desrochers, Gundlach & Foer (2003), 204-5 ("Still other CC arrangements may involve payments or other forms of compensation to gain the right to be CC.").

479 Desrochers, Gundlach & Foer (2003), 205 ("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.").

480 Desrochers, Gundlach & Foer (2003), 205 ("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.").

481 Carameli (2004), 1326 ("Moreover, even absent an entrance fee, smaller manufacturers may not have the opportunity to serve as Category Captains.").

manufacturers may use the category captain position to engage in activities that lead to stores only using one supplier in the category captain role.[482] In these circumstances smaller competitors may be denied the ability to compete for a category captain position because another supplier makes it more difficult for them to obtain the position or they do not have the necessary resources to serve in the role.[483] This places smaller category competitors in a position less favorable to building and maintaining key relationships with retailers.[484] As reported, typically leading manufacturers are ones that have the requisite means to become category captain.[485] Denying other competitors from competing for the category captain role can be especially impactful given the outcome of this form of exclusion effectively alters the structure of the input market.

Receiving and misusing rivals' sensitive information

Competitive exclusion may also occur where a category captain uses its role to learn sensitive information about rivals' plans and then improperly acts upon the plans to the detriment of the rivals.[486] The information obtained by a category captain can involve strategic information concerning long-term plans for products, promotion, distribution, and pricing. Where this information is important or otherwise sensitive, it can be used in ways that thwart the growth of other manufacturers or lessen their incentive to produce innovative plans, to the ultimate detriment of consumers.[487] The information obtained from one retailer may also be used in other retailers thus compounding these effects. Table 4 identifies exclusionary practices involving the receipt and misuse of rivals' sensitive information. These practices are organized across the mix of controllable marketing variables that a firm may use to pursue its marketing activities: product, place, promotion and price.[488]

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482 Steiner (2001), 79 ("These fears have been expressed in various articles in the trade press here and in The Economist, which found that a number of smaller British producers were "terrified" that category management would lead to stores using only one supplier.").

483 Steiner (2001), 79 ("Smaller manufacturers are frequently unable to compete for Captaincies because they cannot spare the key marketing personnel and cannot afford the expensive software programs or the cost of buying the necessary marketing data. Moreover, smaller producers also fear that the always-difficult task of obtaining entry to the retail shelves of the large chains is exacerbated when the keys to that kingdom are in the hands of their more powerful competitors.").

484 Carameli (2004), 1326 ("This places them in a position less favorable to building and maintaining key relationships with retailers.").

485 Kurtulus (2017), 2 ("The combination of retailers' lack of resources and manufacturers' superior category knowledge create supply chain collaboration opportunities. Accordingly, many retailers manage some of their categories in collaboration with one of their leading manufacturers."). FTC (2001), 51 ("Retailers typically select as category captain the manufacturer with the greatest or second-greatest sales in the category."). Carameli (2004), 1326 ("Analyzing consumer behavior and implementing Category Management plans is a costly venture. Nevertheless, retailers sometimes charge a fee for the privilege. Therefore, it is often only the leading manufacturers that can afford to compete for the captaincy."). Carameli (2004), 1326 ("Moreover, even absent an entrance fee, smaller manufacturers may not have the opportunity to serve as Category Captains. This places them in a position less favorable to building and maintaining key relationships with retailers.").

486 FTC (2001), 48. Desrochers, Gundlach & Foer (2003), 206 (Describing a primary competitive concern for category captain arrangements "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.").

487 FTC (2001), 50 ("If this information is sufficiently important, it can thwart the growth of those manufacturers or lessen their incentive to produce innovative plans, to the ultimate detriment of consumers.").

488 American Marketing Association (2018), *Marketing Mix*, available at: https://www.ama.org/resources/Pages/Dictionary.aspx?dLetter=M ("The mix of controllable marketing variables that

Category management characteristically requires the sharing of sensitive information between manufacturers and retailers.[489] In this process manufacturers may disclose sensitive information about themselves to retailers.[490] Among these disclosures, manufacturers may inform retailers about their upcoming plans, including plans for advertising campaigns, schedules of product innovations, and other related information.[491] These plans may involve long-term strategic initiatives as well as plans involving the execution of more specific strategies and tactics. A retailer often will know the future plans of a supplier as to price changes, promotions, and new product introductions.[492]

In possession of sensitive information from its suppliers a retailer may make this information available to the category captain so that the captain can take it into account in managing the category.[493] Information sharing by the retailer may be necessary to fully realize the benefits of category management, and the retailer is the only actor that knows with accuracy the actual prices charged by, volumes purchased from each of its suppliers, and volumes sold of each product to end users, and prices charged to those consumers in their own stores.[494] Compiled in complete and accurate fashion, that information can be essential for performing category management.[495] Retailers also possess sophisticated databases that in combination with a supplier's expertise can yield more effective category management.[496] However, sensitive information made available to a category captain may be misused by the category captain. This can occur where this information is shared with others in the category captain's organization and where this information is shared with other suppliers.

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the firm uses to pursue the desired level of sales in the target market. The most common classification of these factors is the four-factor classification called the "Four Ps"-price, product, promotion, and place (or distribution)").

489 FTC (2001), 50 ("Category management inherently requires the sharing of sensitive information between manufacturers and retailers.").

490 FTC (2001), 50 ("Category management inherently requires the sharing of sensitive information between manufacturers and retailers.").

491 FTC (2001), 50 ("Among these disclosures, manufacturers may inform retailers about their future promotional plans, including advertising campaigns, schedules of product innovations, and the like.").

492 American Bar Association (2010), 46 ("A retailer often will know the future plans of a supplier as to price changes, promotions, and new product introductions, and it may share that information with the category captain.").

493 FTC (2001), 50 ("The retailers in turn may make this information available to category captains so that the captains can take it into account in managing and stocking the category"). American Bar Association (2010), 46 ("A retailer often will know the future plans of a supplier as to price changes, promotions, and new product introductions, and it may share that information with the category captain.").

494 American Bar Association (2010), 47 ("The bottom line is that information sharing by a retailer may be necessary to realize fully the benefits of category management, and the retailer is the only actor that knows with accuracy the actual prices charged by, and volumes purchased from, each of its suppliers. The retailer also is the most accurate and efficient source of information about the volumes sold of each product to end users and the prices charged to those consumers.").

495 American Bar Association (2010), 47 ("That information, compiled in complete and accurate fashion, can be essential for analyzing consumer preferences and optimizing a retailer's sales and margins. Those practices are the essence of category management.").

496 American Bar Association (2010), 47-48 (describing these databases and potential supplier synergies in the performance of category management "Category captains frequently base their category management recommendations on information contained in sophisticated databases, which are installed and maintained by their client retailer. Those databases track consumer purchases of each product and can generate daily, weekly, monthly, quarterly, or yearly reports at the press of a button. Of course, a retailer can use its own price and volume data in much the same way as a category captain does to track and predict consumer preferences and reactions to price changes and other promotional activity. But the synergy of the supplier's often unique expertise and the retailer's access to essential data promises more effective category management.").

Sharing information with others in the captain's organization

Sensitive information about other suppliers may be misused where a category captain takes advantage of the information in its role as a competing supplier.[497] Concerns arise when, in possession of sensitive information, category captains share sensitive information with other members of the category captain's organization involved with sales and marketing.[498] Members of the category captain's may share "inside" information about rivals with other members of the category captain's organization responsible for furthering competitive goals (e.g. marketing, sales, new product development, distribution, merchandising, promotion, pricing, etc.).[499] These members of the category captain's organization may use sensitive information to beat their competitors to the market with new products or to run a concurrent and competing promotion with the competitors.[500] With advance notice of where its rivals are planning promotional efforts or developing other plans, the captain's organization may be positioned to compete less aggressively or to devise a counter strategy to the rivals' plans.[501] With access to rival's sensitive information a category captain can potentially obtain a competitive advantage.[502] Consequently, interactions involving competitively sensitive information between a category captain and members of the captain's organization in a position to misuse the information can constitute misuse.

Sharing information with other suppliers

In the process of performing their role a category captain may also reveal rivals' sensitive information to other suppliers. First mover advantages of a new product introduction can be undermined by a retailer giving another supplier advance notice of the product's introduction or promotion.[503] Premature sharing of this information with another supplier may allow the second supplier to match or to counteract the first supplier's marketing tactics, or to undercut the effectiveness of the promotion by running its own promotion at or near the same time.[504] Thus, interactions involving competitively sensitive information between a category captain and other suppliers can also constitute misuse.

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[497] FTC (2001), 50 (This information could be misused if the category captain takes advantage of it in its role as a competing manufacturer.").

[498] American Bar Association (2010), 48 (describing concerns where "those involved in category management ... communicate a competitor's confidential information to those involved in sales and marketing.").

[499] FTC (2001), 51 (describing the issues and potential harm from internal sharing of rivals' information by a category captain as involving "inside" information). *See also* American Bar Association (2010), 48 (citing the FTC and describing concerns where "those involved in category management ... communicate a competitor's confidential information to those involved in sales and marketing.").

[500] Lorden (2011), 546 ("A supplier could use this information to beat its competitors to the market with new products or to run a concurrent and competing promotion with its competitors.").

[501] FTC (2001), 50 ("With advance notice of where its rivals are planning promotional efforts, the captain would be positioned in some instances to compete less aggressively and in others to devise a counter to the rivals' plans.").

[502] American Bar Association (2010), 46 ("Category captains may be given access to information concerning their competitors, thus potentially giving the captains a competitive advantage.").

[503] American Bar Association (2010), 47 ("First mover advantages of a new product introduction can also be undermined by the retailer giving another supplier advance notice of the introduction.").

[504] American Bar Association (2010), 46-47 ("Premature sharing of this information with another supplier can allow the second supplier to match or counteract the first supplier's marketing tactics, or undercut the effectiveness of the promotion by running its own promotion at or near the same time.").

According to the American Bar Association, the overall competitive effect of a category captain's access to information is unclear and situation dependent.[505] However, to the extent that disclosures of sensitive information may ultimately chill future promotions or innovations, consumers may be harmed.[506] The FTC has counseled that if through a category captain's improper use or sharing of sensitive information a rivals' efforts are counteracted with enough regularity (i.e., in the retailer or in other retailers) or in matters of enough importance, it can reduce their incentive to devise initiatives that would benefit consumers.[507]

Engaging in improper recommendations and related actions

Competitive exclusion can also occur where a category captain makes improper recommendations about product placement, merchandising, promotions, pricing, and other areas or engages in wrongful actions that exclude, disadvantage, or hinder the entry or expansion of rivals.[508] This includes wrongful acts involving exclusive dealing arrangements[509] and tortious conduct.[510]

In their role a category captain may serve as a gatekeeper for the retailer and create unfavorable conditions for other brands to operate freely.[511] For example, a category captain may control the type of information or manipulate available information so as to influence the retailer in ways that are beneficial to the category captain.[512] A category captain may also be able to injure a rival more directly through its recommendations to retailers.[513] For example, a category captain may block other brands from getting better shelf space and end-of-aisle display opportunities for their products.[514] A category captain may also reach an exclusive dealing agreement with the retailer

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505 American Bar Association (2010), 48 ("The overall competitive effect of a category captain's access to information is therefore unclear and situation-dependent. No case has dealt with this issue.").

506 American Bar Association (2010), 47 ("To the extent that these disclosures may ultimately chill future promotions or innovations, consumers may be harmed.").

507 FTC (2001), 50-51 ("If rivals' promotional efforts are counteracted with enough regularity or in matters of enough importance, it might reduce their incentive to devise initiatives that would benefit consumers.").

508 Desrochers, Gundlach & Foer (2003), 205 ("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."). FTC (2001), 50 ("A captain that is able to control decisions about product placement and promotions could hinder the entry or expansion of other manufacturers, leading to less variety and possibly higher prices."). Desrochers, Gundlach & Foer (2003), 201 ("Concerns about exclusion of com-petition 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.").

509 Lorden (2011), 547 ("A captain can exclude its rivals through one of two ways: (a) by making recommendations "about product placement and promotions [that] could hinder the entry or expansion of other manufacturers, leading to less variety and possibly higher prices,"or (b) through exclusive dealing agreements between a retailer and supplier.").

510 Lorden (2011), 545 (recognizing tortious conduct as a form of exclusion, "The first two situations [learning confidential information about rivals' plans and hindering the expansion of rivals] above, along with tortious conduct, deal with the "exclusion" theme, ..."). See also American Bar Association (2010), 51 (recognizing tortious conduct as a competitive concern).

511 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("The CC may serve as a gatekeeper for the retailer, and create unfavorable condition for other brands to operate freely.").

512 Bandyopadhyay, Rominger & Basaviah (2009), 318 ("The CC may control the type of information or manipulate available information so as to influence the retailer in ways that is beneficial to the CC.").

513 American Bar Association (2010), 48 ("A category captain may also be able to injure a rival through its recommendations to retailers.").

514 Bandyopadhyay, Rominger & Basaviah (2009), 316 ("For example, it [the category captain] may block other brands from getting better shelf space and end-of-aisle display opportunities.").

resulting in exclusion of other competitors.[515] While performing category management duties, a category captain may also engage in tortious actions that exclude rivals.[516]

Given retailers typically select as category captain the manufacturer with the greatest or second-greatest sales in the category, a category captain may have the incentive to abuse its position and improperly recommend that a retailer not carry a rival's products, or it might recommend that the rival's product be placed in a disadvantageous location.[517] The incentive to exclude competitors may exist even when the recommendations offered by a category captain could hurt the overall sales of the category.[518] While improper recommendations may result in the category captain having progressively less influence over time,[519] their use may be appealing to category captains pursuing shorter term goals or other pursuits. Less obvious forms of improper recommendations may also be difficult to detect.[520]

Organized around the common decision-making elements of category management (i.e., product assortment/placement, promotion, and pricing) category captain practices that have been associated with improper recommendations, exclusive dealing and tortious actions are shown in Table 5. These practices include those that may occur in obvious ways as well as those that may manifest in more subtle ways.[521]

Recommendations to remove or reduce rivals' products

A category captain may be able to injure rivals through its recommendations to retailers.[522] The category captain may facilitate exclusion if the captain's recommendations result in the placement of the captain's products and the removal of competitors' products.[523] However, given the category captain role is an extension of a retailer's category management, the retailer's interest is

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515 Lorden (2011), 547 ("A captain can exclude its rivals through one of two ways: (a) by making recommendations "about product placement and promotions [that] could hinder the entry or expansion of other manufacturers, leading to less variety and possibly higher prices,"or (b) through exclusive dealing agreements between a retailer and supplier.").

516 Lorden (2011), 545 (recognizing tortious conduct as a form of exclusion, "The first two situations [learning confidential information about rivals' plans and hindering the expansion of rivals] above, along with tortious conduct, deal with the "exclusion" theme, ..."). See also American Bar Association (2010), 51 (recognizing tortious conduct as a competitive concern).

517 FTC (2001), 51 "Retailers typically select as category captain the manufacturer with the greatest or second-greatest sales in the category. In these circumstances, the captain may have an incentive to recommend that the retailer not carry a rival' s product, or it might recommend that the rival' s product be placed in a disadvantageous location.").

518 FTC (2001), 51 ("This incentive may exist even when the recommendation could hurt the overall sales of the category.").

519 FTC (2001), 52 ("[E]xclusion of rivals by a category captain is unlikely as a practical matter: such tactics are not in the best interest of the retailer, and if a category captain behaves in that manner, it will have progressively less influence as an advisor.").

520 Kurtulus & Toktay (2008), 14 ("it may not be easy for the retailer to detect biased recommendations when they are subtle.").

521 Kurtulus, Ulku, Dotson & Nakkas (2014), 387 ("We find that competitive exclusion sometimes takes obvious forms, but can also be more subtle... competitive exclusion can take place in a subtle form because of the difference in the retailer's and captain's preferences regarding which products to offer in the assortment"). Londblom & Olkonnen (2008), 7 ("... competitive exclusion [involving category captain arrangements] can take various subtle forms.").

522 American Bar Association (2010), 48 ("A category captain may also be able to injure a rival through its recommendations to retailers.").

523 Lorden (2011), 547 ("A category captain may facilitate exclusion if the captain's recommendations result in the placement of the captain's products and the removal of competitors' products.").

that the category captain's recommendations be made in furtherance of their interests. Different retailer goals can result in different assortments, prices, and levels of output. [524]

In furthering a retailer's category interests a category captain may recommend that rivals' products and brands be eliminated. Where recommendations from a category captain are supported with accurate, localized data, and where they do not confer exclusivity on the retailer's shelves, issuing elimination recommendations is one purpose of category captains. [525] Those types of elimination recommendations can be expected to serve both the captain's and the retailer's interests.[526] Indeed, removal or reduction of inferior performing products by a retailer may be rational whether or not suggested by a category captain.[527] Moreover, limiting the number of suppliers in the category to save on coordination costs can also be rational regardless of a category captain's suggestion.[528] Recommendations by a category captain to eliminate a rivals' products should be the result of considering the strengths and weaknesses of all the products within one category and choosing the best among them, i.e., deciding on an interbrand instead of intrabrand basis.[529]

According to the American Bar Association and others when the recommendations of a category captain are based on accurate and impartial data, the category captain is not likely to be found to have acted in an unreasonably anticompetitive manner.[530] However, if the category captain abuses its position through providing misleading or false information, antitrust concerns will exist.[531]

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524 American Bar Association (2010), 50-51 (describing circumstances where the retailers goals involve profit maximization "Both the retailer and the supplier ultimately want to maximize profits. Thus, the supplier may advise the retailer on a product assortment that, arguably, will provide the retailer with greater total profits, even if the result is higher prices and lower total volume. This has been criticized as delivering no consumer benefit, since it merely maximizes profits without increasing output. However, profit maximization also may be seen as the outgrowth of more effectively meeting consumers' needs, by delivering the products that they want in the way they want, and recognizing more accurately what they are willing to pay for those products. Indeed, accurately meeting consumer needs is a key driver of retailer success, and this may be reflected in either a low price, high volume strategy, or a higher price, low volume strategy.").

525 American Bar Association (2010), 50 ("Where recommendations from a category captain are supported with accurate, localized data, and where they do not confer exclusivity on the retailer's shelves, issuing elimination recommendations is one purpose of category captains."). Lorden (2011), 547 (citing the American Bar Association, "The issuance of elimination recommendations is a purpose of category captains when the recommendations are supported with 'accurate, localized data, and where they do not confer exclusivity on the retailer's shelves…'").

526 American Bar Association (2010), 50 ("Where recommendations from a category captain are supported with accurate, localized data, and where they do not confer exclusivity on the retailer's shelves, issuing elimination recommendations is one purpose of category captains. Those recommendations can be expected to serve the captain's interest as well as the retailer's.").

527 American Bar Association (2010), 23-24 ("A retailer's removal or reduction of products of inferior quality or lesser consumer appeal is economically rational, whether or not a category captain recommended the change.").

528 American Bar Association (2010), 23-24 ("Moreover, it can be economically rational to reduce a retailer's costs by limiting the number of suppliers to be managed and coordinated.").

529 American Bar Association (2010), 50 ("These recommendations should be the result of considering the strengths and weaknesses of all the products within one category and choosing the best among them, i.e., deciding on an interbrand instead of intrabrand basis.").

530 American Bar Association (2010), 49 ("...when the recommendations are based on accurate and impartial data, the category captain is likely not acting in an unreasonably anticompetitive manner."). Carameli (2004), 1330 ("Therefore, in a vertical relationship between manufacturer and retailer it may be acceptable for a Category Captain to analyze the category and proffer objective price recommendations to the retailer.").

531 American Bar Association (2010), 51 ("But if the category captain abuses its position by providing misleading or false information to the retailer, or actively engages in tortious conduct by destroying its competitors' products or marketing materials, antitrust concerns certainly will exist.").

The provision of inaccurate information by a category captain may be a factor in a court finding antitrust liability.[532] In this respect, although decisions made by a category captain that have a legitimate business reasons and are based on objective evidence of what is best for the category as a whole can help a defendant's case, this alone may not protect against antitrust violations.[533] According to former FTC Commissioner Thomas B. Leary, a distinction can be drawn between a category captain offering advice for its own brands versus advice on the pricing and promotions for a competitor's brands. [534] According to the former Commissioner the practice of making these types of recommendations for a competitor's brands is "inherently suspect."[535]

The American Bar Association also counsels that retailers provide a check on improper practices by category captains and where retailers maintain ultimate approval authority over price and category design, nonbinding recommendations by category captains are unlikely to be considered anticompetitive.[536] A retailer is free to accept or reject any of the recommendations provided by a category captain[537] and some contend that retailers always retain the ultimate decision rights and may terminate a category captain relationship at will.[538] Thus, when the ultimate decision is not the subject of an agreement and remains with the retailer, courts are also less likely to find the elimination of a competitor's products to be an antitrust violation.[539] Applying this logic others have similarly suggested that courts are less likely to find an exclusive dealing arrangement based on a category captain's recommendations when the ultimate decision rests with the retailer.[540] This limited logic, however, overlooks the role of power and influence in the context of category captain arrangements.

Retailers typically choose a category captain that has the greatest or second-greatest sales in the category.[541] A captain with this amount of market power can achieve an exclusionary effect if it is

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532 American Bar Association (2010), 33 ("A category manager providing inaccurate information may be a factor in a court finding antitrust liability.").
533 Lorden (2011), 546 ("Also, as a general rule, any decision made by a category captain should always have a legitimate business reason based on objective evidence of what is best for the category as a whole.42While this alone will not protect against antitrust violations, it will help a defendant's case.").
534 Lorden (2011), 547 ("The former Commissioner sees a distinct difference between a category captain advising on its own brands versus advising on pricing and promotions for a competitor's brand."). Paul B. Hewitt and Mary Anne Mason, *Category Management: An Interview with FTC Commissioner Thomas B. Leary* NEWSLETTER (2005), 6-7 [available at http://www.ftc.gov/speeches/leary/050328abainterview.pdf].
535 Lorden (2011), 548 ("Leary points out that while there is no case specifically stating that a captain advising on a competitor's prices is per se illegal, the practice is "inherently suspect."). Hewitt & Mason (2005), 6-7.
536 American Bar Association (2010), 51 ("Arguably, retailers provide a check on practices by category captains and where retailers maintain ultimate approval authority over price and category design, nonbinding recommendations by category captains are unlikely to be considered anticompetitive.").
537 Kurtulus & Toktay (2005), 1 ("The retailer is free to accept or reject any of the recommendations provided by the category captain."). Carameli (2004), 1330-31 (describing a retailers ability to an objective price recommendation ("A retailer is then at liberty to use, reject, or alter those recommendations as it sees fit").
538 Wright (2009), 314 ("The retailer, however, retains the ultimate decision rights and may terminate the relationship at will.").
539 American Bar Association (2010), 49 ("However, when the ultimate decision is not the subject of an agreement and remains with the retailer, courts would be less likely to find the elimination of a competitor's products to be an antitrust violation.").
540 Lorden (2011), 547 ("A recommendation, alone, is not sufficient to reach an exclusive dealing claim, and courts are less likely to find so when the ultimate decision rests with the retailer.").
541 Lorden (2011), 548 ("Retailers typically choose a captain that has the greatest or second-greatest sales in the category.").

given the power to decide the product offering, pricing, and placement at its retailers' stores.[542] Thus, even where a retailer maintains ultimate approval authority over decisions and the ultimate decision remains with the retailer, a category captain may gain retailer acceptance of improper exclusionary recommendations. This can occur where a category captain leverages the different sources of interfirm power available to them in a category captain arrangement. As previously noted, in the context of distribution channel relationships interfirm power has long been defined as the ability to affect another's decision making. Considerable literature on distribution channel relationships and interfirm power documents the ability of powerful manufacturers to influence members of their distribution channel including retailers. [543] Thus, the fact that a retailer has the final say or maintains ultimate approval authority over decisions in a category captain arrangement should not be considered determinative in assessing whether a retailer has freely accepted or rejected a recommendation provided by a category captain. To do so would deny the nature of power and its role in manufacturer and retailer interactions including category captain arrangements.

Exclusive dealing

From an antitrust perspective, the most obvious area of exclusionary concern relating to category captain arrangements is "exclusive dealing."[544] Exclusive dealing occurs when a retailer promises to deal exclusively with a supplier and thus agrees not to purchase from other suppliers.[545] Exclusive dealing may also occur when a category captain raises its rivals' distribution costs by eliminating their access to downstream markets.[546] Thus, exclusive dealing can arise if a supplier's actions have the effect of creating an "exclusive" arrangement between the retailer and supplier.[547]

Through an exclusive dealing arrangement, a category captain potentially could deprive its rivals of the opportunity to compete for distribution on the merits.[548] Retailers typically choose a category captain that has the greatest or second-greatest sales in the category.[549] A category captain with this amount of market power can achieve an exclusionary effect if it is given the power to decide the product offering, pricing, and placement at its retailers' stores.[550] The combination of a large market position together with the power to determine retailers' plans for stocking shelves and

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542 Lorden (2011), 548 ("A captain with this amount of market power can achieve an exclusionary effect if it is given the power to decide the product offering, pricing, and placement at its retailers' stores.").

543 Gaski (1984), 10 (Reviewing definitions of power in distribution channel relationships).

544 American Bar Association (2010), 37("Exclusive dealing is perhaps the most obvious area of concern for the category captaincy relationship.").

545 A. Douglas Melamed, *Exclusive Dealing Agreements And Other Exclusionary Conduct — Are There Unifying Principles?*, 73 ANTITRUST LAW JOURNAL 375, 375 (2006). Lorden (2011), 548 "(Exclusive dealing occurs when a retailer promises to deal exclusively with a supplier and thus agrees not to purchase from other suppliers.").

546 Lorden (2011), 548 ("For example, exclusive dealing can occur when a captain 'rais[es its] rivals' distribution costs by eliminating their access to downstream markets.'"). American Bar Association (2010), 37 ("Exclusive dealing has been described as a form of monopolization that occurs through 'raising [one's] rivals' distribution costs by eliminating their access to downstream markets.'").

547 Lorden (2011), 548 ("Exclusive dealing can also arise if a supplier's actions have the effect of creating an "exclusive" arrangement between the retailer and supplier.").

548 American Bar Association (2010), 23 ("A category captain potentially could deprive its rivals of the opportunity to compete for distribution on the merits.").

549 Lorden (2011), 548 ("Retailers typically choose a captain that has the greatest or second-greatest sales in the category.").

550 Lorden (2011), 548 ("A captain with this amount of market power can achieve an exclusionary effect if it is given the power to decide the product offering, pricing, and placement at its retailers' stores.").

ordering from competing suppliers may grant a category captain the ability to exclude competitors' products.[551]

According to the American Bar Association and others, whether recommending the elimination of a competitor's product suffices as an antitrust violation can depend on if the recommendation results in actual exclusivity.[552] Exclusive dealing arrangements are judged under a rule of reason standard, which balances any procompetitive and anticompetitive effects.[553] Exclusive distribution arrangements may produce anticompetitive effects if a dominant supplier controls a sufficient amount of distribution for a sufficient period of time, such that rival suppliers are effectively prevented from reaching minimum efficient scale.[554] However, if a retailer has a relatively small share of retail sales of the products in the category in the relevant geographic area, the installation of a category captain by a retailer is not likely to have a significant harmful effect on competition and consumers.[555] Moreover, because courts consistently recognize that the antitrust laws are concerned with protecting competition and not competitors, excluding one competitor does not mean competition is unreasonably restrained.[556] Consequently, a recommendation, alone, is not sufficient to reach an exclusive dealing claim.[557] Moreover, a supplier's mere suggestion that a dealer abandon a competitor's product line will not be considered exclusive dealing.[558] Comparing the recommendations of a category captain to that of a Manufacturers Suggested Retail Price (MSRP) a similar view has been expressed by others.[559]

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551 American Bar Association (2010), 37 ("A large market position, together with the power to determine retailers' plans for stocking shelves and ordering from competing suppliers, may grant the captain the power to exclude its competitors' products.").

552 American Bar Association (2010), 50 ("Whether recommending the elimination of a competitor's product suffices as an antitrust violation can depend on whether the recommendation results in actual exclusivity."). Lorden (2011), 547 ("A court's decision will mainly focus on whether the recommendation resulted in actual exclusivity.").

553 Federal Trade Commission, *Exclusive Dealing or Requirements Contracts*, available at: https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-supply-chain/exclusive-dealing-or.

554 American Bar Association (2010), 23 ("Exclusive distribution arrangements may produce anticompetitive effects if a dominant supplier can control a sufficient amount of distribution for a sufficient period of time, such that rivals are effectively prevented from reaching minimum efficient scale.").

555 American Bar Association (2010), 23 ("However, if a retailer has a relatively small share of retail sales of the products in the category in the relevant geographic area, the retailer's installation of a category captain likely would not have a significant harmful effect on competition and on consumers.").

556 American Bar Association (2010), 50 ("Because courts consistently recognize that antitrust law is concerned with protecting competition and not competitors, excluding one competitor (who is, of course, the most likely plaintiff) does not mean competition is unreasonably restrained.").

557 Lorden (2011), 547 (describing in the context of category captain arrangement, "A recommendation, alone, is not sufficient to reach an exclusive dealing claim,...").

558 American Bar Association (2010), 49 ("A supplier's mere suggestion that a dealer abandon a competitor's product line is not considered exclusive dealing.").

559 Carameli (2004), 1330-31 ("While antitrust laws prohibit most price fixing, the mere discussion of price between retailer and manufacturer requires further consideration. As discussed, retail pricing is one of the main components of category management decision-making. Therefore, in a vertical relationship between manufacturer and retailer it may be acceptable for a Category Captain to analyze the category and proffer objective price recommendations to the retailer. A retailer is then at liberty to use, reject, or alter those recommendations as it sees fit. Once the retailer determines its retail prices, either party may perform the work necessary to implement the category plan. If a manufacturer does no more than suggest that a retailer charge a given price, similar to printing a Manufacturer Suggested Retail Price directly on a product label, there is not likely liability under Section 1 of the Sherman Act.").

Tortious conduct against rivals

A category captain intent on disadvantaging, hindering or excluding rivals may also resort to vandalizing, destroying, or engaging in related actions that amount to tortious acts.[560] However, a difficulty in applying any tortious conduct standard to category captains is the uncertain line between ordinary tortious conduct and a conduct that involves an antitrust violation.[561] Thus, questions exist as to when does the tortious conduct of a category captain goes beyond normal competition between rivals and when does the tortious conduct of a category captain result in injuries for which the antitrust laws were designed to protect against.[562]

According to the American Bar Association, absent dirty tricks and blatantly anticompetitive behavior, category management practices can be the type of competitive conduct that antitrust law condones.[563] Competitors have been maligning and elbowing out each other's products for as long as economic commerce has taken place.[564] Injuries to rivals may simply be a byproduct of vigorous competition.[565] Thus, questions exist as to when tortious conduct by a category captain amounts to antitrust liability.[566]

The American Bar Association counsels that the use of antitrust to address tortious conduct by a category captain requires that a plaintiff be injured "by reason of a violation of the antitrust laws."[567] The antitrust laws are designed to protect competition not competitors.[568] Applying this

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560 Lorden (2011), 545 (recognizing tortious conduct as a form of exclusion, "The first two situations [learning confidential information about rivals' plans and hindering the expansion of rivals] above, along with tortious conduct, deal with the "exclusion" theme, ..."). See also American Bar Association (2010), 51 (2010) (recognizing tortious conduct as a competitive concern).

561 American Bar Association (2010), 46 ("The difficulty in applying any tortious conduct standard to category captains is the uncertain line between ordinary tortious conduct and a treble-damages antitrust violation.").

562 Lorden (2011), 553 ("For example, when does business defamation and tortious conduct rise to the level of antitrust liability rather than simply tort liability? How widespread does the tortious conduct need to be? Can a single act be enough, or does there need to be a pattern of conduct?").

563 American Bar Association (2010), 46 ("Absent dirty tricks and blatantly anticompetitive behavior, category management practices can be the type of competitive conduct that antitrust law condones.").

564 American Bar Association (2010), 46 ("Competitors have been maligning and elbowing out each other's products for as long as commerce has existed.").

565 American Bar Association (2010), 46 ("After all injuries to rivals can simply be 'byproducts of vigorous competition.'").

566 American Bar Association (2010), 46 (elaborating on these questions "Sometimes the conduct rises to the level of business defamation and tortious interference. But when does business defamation and tortious interference rise to the level of antitrust liability? How widespread does the tortious conduct need be? Can a single act be enough or does there need to be a pattern of conduct? Does a supplier acting as a category captain have some implied obligation to act more neutrally despite still being a competitor? Does a category captain retain the right to meet but not beat the competitive jabs of its competitors? These questions appear to be unresolved. And underlying this legal debate is the issue of whether any competitor's jockeying for position realistically subverts the process by which increasingly sophisticated retailers choose the products for their stores and customers.").

567 American Bar Association (2010), 43 ("One limitation on the use of antitrust to address tortious conduct generally is the requirement of antitrust injury, that a plaintiff be injured 'by reason of' a violation of the antitrust laws.' Applying that requirement, injury to a plaintiff that does not arise from injury to competition will not be the basis for a claim.).

568 American Bar Association (2010), 50 ("Because courts consistently recognize that antitrust law is concerned with protecting competition and not competitors, excluding one competitor (who is, of course, the most likely plaintiff) does not mean competition is unreasonably restrained.").

requirement, injury to a plaintiff competitive that does not arise from injury to competition will not be the basis for a claim under the antitrust laws.[569] Thus, it may be fair to assume that only where the tortious activity of a category captain is part of a pattern of exclusionary conduct will it be helpful evidence of an antitrust claim.[570] Of course, apart from the antitrust laws, tort remedies, including punitive damages, may be available for destructive conduct.[571]

While it is true that vigorous competition among suppliers may involve competitors maligning and elbowing out each other's products and many category management activities can be the type of competitive conduct that antitrust law condones, the category captain role is an extension of a retailer's category management. In that role a category captain stands in a special position of confidence and trust with the retailer that it performs category management services for. Consequently, the category captain's actions should be conducted in furtherance of the retailer's interests rather than its own. A category captain that is engaged in tortious conduct against rivals is not likely to be found to be acting to further a retailer's interests.

Disadvantaging retailer's store brands and the suppliers of store brands

Competitive exclusion may also occur where a category captain uses its role to improperly disadvantage retailer's store (i.e., private label) brands and suppliers of these brands.[572] This can occur where a category captain receives and misuses sensitive recommendations or where a category captain engages in improper recommendations, exclusive dealing or tortious conduct that hinders the marketing of a retailer's store brands. Competitive harm involving store brands may also occur where a category captain influences a retailer to increase the price of its private label brands in line with the category captains own anticipated price increases.[573] In the process, the category captain may circumvent the potential competitive disadvantage against lower priced private labels.[574] In the past several decades, private label brands have gained increasing approval leading to increasing competition for national brands.[575] Given that a category captain is often the marketer of a national brand the category captain may employ its role to diminish the competitiveness of store brands and their suppliers just as it might try to do so with national brand competitors.[576]

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569 American Bar Association (2010), 43 ("Applying that requirement, injury to a plaintiff that does not arise from injury to competition will not be the basis for a claim.").
570 American Bar Association (2010), 46 (It is perhaps fair to assume that only where the general tortious activity is part of a pattern of exclusionary conduct will it be helpful evidence on an antitrust claim.").
571 American Bar Association (2010), 46 ("Of course, tort remedies, including punitive damages, may be available for destructive conduct.).
572 Desrochers, Gundlach & Foer (2003), 206 ("Another exclusion-based concern is that a CC will use its role to disadvantage the retailer's store brands."). Steiner (2001), 80 ("In some cases the manufacturer even gains control over the retailer's private label program, muting the important welfare-enhancing role of direct product competition.").
573 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("The category captain may influence the retailer to increase the price of its private label brands in line with its own anticipated price increase.").
574 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("In the process, the CC may circumvent the potential competitive disadvantage against lower priced private labels.").
575 Desrochers, Gundlach & Foer (2002), 206 ("In the past decade, private label brands have gained increasing favor in the marketplace, and they represent increasing competition for national brands.").
576 Desrochers, Gundlach & Foer (2002), 206 ("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.").

Chapter 7. Managerial Safeguards Against Exclusion in Category Captain Arrangements

Given the potential for anticompetitive exclusion in category captain arrangements, academic scholars, business and legal practitioners, business consultants, competition enforcement authorities (e.g., Federal Trade Commission) and independent nonprofit organizations (e.g., American Antitrust Institute) suggest the need for care,[577] and endorse and advocate for the use of recommendations,[578] guidelines,[579] measures,[580] mechanisms,[581] steps,[582] remedies,[583] and best practice guidelines[584] to safeguard against it. Others, including the American Bar Association, recognize that suppliers, retailers and consumers may be able to take actions to deter category captains from engaging in conduct that raises prices or reduces output.[585] They also acknowledge the competition concerns and safeguarding suggestions of others.[586] However, a minority view that category captain arrangements are almost always self-enforcing against such conduct[587] and that, as a practical matter, exclusion is not likely to occur given it would progressively lead to less influence on the part of a category captain given it is contrary to retailers' interests.[588] Moreover it has been said that retailers

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577 FTC (2001), 7-8 ("... care should be exercised so that a category captain does not improperly receive confidential information about its rival's plans and that a category captain does not bias its advice to the retailer in such a way that it effectively excludes or significantly disadvantages its competitors.").

578 Carameli (2004), 1319 ("Part V of this Note presents recommendations for altering category management implementations in a way that retains legitimate benefits to manufacturers and retailers, but which may reduce the risk of violating antitrust laws.").

579 Lindblom & Olkonnen (2008), 7 ("There is a need to develop guidelines that would prevent category captains from acting in an opportunistic manner that would reduce competition and limit variety of choice for consumers.").

580 Kurtulus & Toktay (2008), 14 ("What measures can the retailer take to avoid competitive exclusion? One obvious solution would be for the retailer to mandate that the category captain not exclude any of the brands in the category. However, as we mentioned already, exclusion may take many different and non-obvious forms, which may make it difficult for the retailer to monitor the exclusion of the non-captain brands from the category. A second measure is for the retailer to filter the category captain's recommendations before implementing them. This would avoid the more blatant forms of exclusion. Of course, for the same reason as before, it may not be easy for the retailer to detect biased recommendations when they are subtle.").

581 Badyopadhyay, Rominger & Basaviah (2009), 317 ("It is quite possible to attain high retail efficiency and high level inter-brand competition if the retailer is willing to put in a mechanism to control the category captain.").

582 Badyopadhyay, Rominger & Basaviah (2009), 317 ("In addition to the retailer, the Federal Government, through the FTC, may take the following steps to ensure a high level of competitiveness: ...").

583 FTC (2001), 54 (Describing "remedies" against anticompetitive exclusion.).

584 American Antitrust Institute, *Antitrust and Category Captains Roundtable Discussion* (June 23 2003) ("A number of experts either advocated for, or agreed with, the notion that there is a need for CC Best Practices guidelines for both industry members and antitrust practitioners."). Nijs, Misra & Hansen (2014), abstract and 67 ("The Federal Trade Commission recommends strictly enforced information firewalls within a CC's organization as a best-practice guideline.").

585 American Bar Association (2010), 22 (Describing actions that may be taken by "...upstream suppliers, downstream retailers and consumers. Each of these parties might be able to take actions, either unilaterally or in conjunction with retailers or other upstream rivals, to defeat or deter any attempt by the category captain to raise prices or reduce output.").

586 American Bar Association (2010), 22 ("... the FTC has suggested that the creation of internal firewalls within the category captain's company would eliminate competitive concerns. The walls would ensure that those involved in category management do not communicate a competitor's confidential information to those involved in sales or marketing.").

587 Wright (2009), 323 ("Category management contracts, ... are almost always self-enforced").

588 FTC (2001), 52 (describing a workshop panelists view that "exclusion of rivals by a category captain is unlikely as a practical matter: such tactics are not in the best interest of the retailer, and if a category captain behaves in that manner, it will have progressively less influence as an advisor.").

would sever the relationship of category captains that were not trustworthy.[589] However, relying on a category captain to be completely honest and approach its work with the retailer's best interests in mind has been cautioned against as not safe or even rational.[590] Thus, incorporating safeguards against the occurrence of competitive exclusion may be a useful course for those involved in category captain arrangements.

In developing safeguards against anticompetitive exclusion manufacturers and retailers should strive to be aware of the conditions and circumstances under which anticompetitive exclusion can occur.[591] Manufacturers and retailers should also be aware that they may possess sources of power that act as safeguards against unwarranted exclusions.[592] Manufacturers and retailers should further be aware of the types of conduct and practices through which exclusion can take place.

Competition concerns raised by a category captain acting to exclude its competition may be addressed upfront through properly structuring the category captain arrangement to increase the arrangements benefits and reduce its risk. A number of alternative structures are available for category captain arrangements. More specific safeguards may also be relied upon and include those that align with the different types of exclusionary conduct and practices. These include safeguards directed at protecting against circumstances where a category captain uses its role to improperly deny others from competing for the role of category captain; receive and misuse rivals' sensitive information; engages in improper recommendations and related actions; and disadvantages retailers' store brands and the suppliers of store brands. Table 6 describes various approaches for safeguarding against competitive exclusion.

Retailers and manufacturers may incorporate safeguards against anticompetitive exclusion through establishing uniform policies and best practices in their category captain arrangements. They may also codify these safeguards in contracts and agreements for category captain services. Other methods of implementation include codes of professional organizations and associations, actions by trade organizations and associations, and the activities of industry groups.

Safeguards involving alternative category captain arrangements

Competition concerns raised by a category captain acting to exclude its competition may potentially be safeguarded against upfront through properly structuring the category captain arrangement to increase its benefits and reduce its risks.[593] For example, a retailer may forego the

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[589] Carameli (2004), 1340 ("Retailers often stress that it is necessary for a Category Captain to be trustworthy, because the retailer would otherwise sever the relationship.").

[590] Carameli (2004), 1340 ("Certainly if a Category Captain is completely honest and approaches its work with only the retailer's best interests in mind then the retailer would be more than justified in relying on the Category Captain. ... however, such a presumption on the part of a retailer may not be safe or even rational.").

[591] Kurtulus, Ulku, Dotson & Nakkas (2014), 387 ("To avoid potential problems, retailers should be aware of the conditions under which competitive exclusion is likely to occur and preventive measures should be taken to mitigate the potential for anti-competitive behavior.").

[592] Chimhundu, Kong & Gururajan (2014), 379 ("For instance, one might want to look at it from a different perspective; the perspective that, for fear of punishment by the powerful retailer who is indeed the legitimate owner of the retail shelves, and who may actually dismiss a CC if, at a later stage, the retailer finds out that the captain took advantage of their entrusted position in one way or the other; this fear may keep the CC honest.").

[593] Carameli (2004), 1354-55 ("Parties should be careful to structure their relationships in a way that achieves the benefits of the Category Captain relationship, but minimizes the anticompetitive risk.").

use of a category captain altogether. The potential for anticompetitive exclusion is minimized when retailers perform their own category management services.[594] Safeguarding may also be achieved through the adoption of category captain arrangements that enlist the use of a co-captain(s), validator(s), advisor(s), or third party consultant(s). Assigning a category captain that is not the leader in the category can also provide some safeguards. Category management involving a category captain with limited power is suggested to offer high levels of both retail efficiency and inter-brand competition.[595]

No category captain

To safeguard against competitive exclusion retailers may choose to follow tradition and perform category management functions themselves, foregoing the use of a category captain all together.[596] Although retailers can practice category management without input from suppliers, it is assumed that the results are enhanced through the collaborative pooling of complementary knowledge to meet the needs of consumers.[597] However, retailers who offer store brands and thus act as competing suppliers may find they also possess the necessary expertise and resources to perform category management. The potential for anticompetitive exclusion is also minimized when retailers perform their own category management services.[598] It may also be rational for a retailer concerned with eliminating all the risk of malfeasance on the part of a category captain and obtaining perfect accuracy in its category management to staff the work themselves and make up the additional costs by carrying only profitable brands.[599] Thus, it is suggested that shifting the work back to the retailer may be one of the safest ways from an antitrust perspective to balance the needs to be reached whereby the most efficient actor performs retail-level category management decisions in a way that best serves consumers and protects competition.[600]

Retailers that forego the use of a category captain could follow various scenarios to obtain the benefits of category management.[601] Retailers could eliminate all category captain relationships

[594] FTC (2001), 54 ("The potential for anticompetitive conduct is minimized when retailers make their own category management decisions...").
[595] Bandyopadhyay, Rominger, & Basaviah (2009), 317 ("We suggest that the category management by a CC with limited power is the system that offers high levels of both retail efficiency and inter-brand competition.").
[596] Alan, Dotson & Kurtulus (2017), 129 (describing "... traditional category management, in which the retailer makes decisions on its own, ...).
[597] Lindblom & Olkonnen (2008), 2 ("Although retailers may practice CM without input from suppliers, it is assumed that the results are enhanced through the collaborative pooling of complementary knowledge to meet the needs of consumers.").
[598] FTC (2001), 54 ("The potential for anticompetitive conduct is minimized when retailers make their own category management decisions...").
[599] Carameli (2004), 1340 ("It seems that if a retailer were ultimately concerned about perfect accuracy in its Category Management activities the rational decision would be to staff the work itself and make up the additional costs by carrying only profitable brands. At that point, a manufacturer could eliminate many of the in-house costs associated with Category Management endeavors and pass these savings on to its retailers in the form of lower priced products. The retailer could use the savings from lower-priced products to invest in Category Management programs of their own. Maybe most importantly, however, the retailer could eliminate all risk of malfeasance on the part of a Category Captain.").
[600] Carameli (2004), 1356 ("In the end, a balance needs to be reached whereby the most efficient actor performs retail-level Category Management decisions in a way that best serves consumers and protects competition. The safest way from an antitrust perspective is to shift the work back to the retailer or to a third party."). Carameli (2004), 1356 ("The safest bet, of course, would be for retailers to staff stronger category management teams to make such decisions internally and demand better prices from manufacturers.").
[601] Carameli (2004), 1355-1356 (describing various scenarios).

and instead demand better prices, using the savings to staff stronger category management teams to make such decisions internally.[602] This scenario makes it simple to remove all possibility of collusive behavior, as the retailer would assume responsibility for category management decisions.[603] However, this scenario may be less appealing to manufacturers as it provides no guarantee that a retailer will invest the savings into category management.[604] To address this concern, retailers could instead ask manufacturers to provide promotional funds conditioned on the requirement that the retailer perform category management activities.[605] This would permit manufacturers a degree of certainty that the funds are paid for the category management work and not for favorable shelf space by competitors, as well as the flexibility to revoke funding if they are not.[606] Other approaches include retailers filtering the category captain's recommendations and verifying their appropriateness[607] including through checking the recommendations against their own data.[608]

Co-captains, validators, advisors, and nonleader captains

Retailers may also enlist the services of co-captains, validators, or advisors to safeguard against competitive exclusion. In organizing their category captain arrangements retailers may formally appoint another category manufacturer[609] and rely upon "co-captains"[610] or call upon other suppliers to check[611] and act as decision "validators"[612] and category "advisors"[613] or otherwise

602 Carameli (2004), 1355 ("Retailers could also eliminate all Category Captain relationships and instead demand better prices, using the savings to staff stronger category management teams to make such decisions internally.").

603 Carameli (2004), 1355 ("This scenario would make it simple to remove all possibility of collusive behavior, as the retailer would assume responsibility for Category Management decisions.").

604 Carameli (2004), 1355 ("This is less appealing, however, to the manufacturer, as it provides no guarantee that a retailer will invest the savings into Category Management.").

605 Carameli (2004), 1355 ("To rectify this dilemma [of a manufacturer paying for category management but not having a guarantee that the monies are being used for category management], manufacturers could instead provide promotional funds conditioned on Category Management activities.").

606 Carameli (2004), 1355 ("This would permit the manufacturer a degree of certainty that the funds are paid for the Category Management work and not for favorable shelf space, as well as the flexibility to revoke funding if they are not.").

607 Kurtulus & Toktay (2005), 1 ("At one end of the spectrum, some retailers implement the category captain's recommendations as they are; at the other end, some retailers filter the recommendations provided by the category captain and verify their appropriateness before deciding on the implementation.").

608 FTC (2001), 48 ("... other retailers use the category captain only for advice about the management of the category and check this advice against the recommendations of other manufacturers and their own data.").

609 Steiner (2001), 78 ("To counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer ...")

610 Desrochers, Gundlach & Foer (2003), 204 ("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."). FTC (2001), 48 ("... other retailers use the category captain only for advice about the management of the category and check this advice against the recommendations of other manufacturers and their own data."). Wright (2009), 314 ("Further, retailers might rely on multiple suppliers to serve as 'co- captains' for the category.").

611 Steiner (2001), 78 ("to counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer."). FTC (2001), 48 ("... other retailers use the category captain only for advice about the management of the category and check this advice against the recommendations of other manufacturers and their own data.").

612 Badyopadhyay, Rominger & Basaviah (2009), 317 ("It is quite possible to attain high retail efficiency and high level inter-brand competition if the retailer is willing to put in a mechanism to control the category captain. Below we have outlined a set of measures available to the retailer: 1. The retailer must appoint a "category adviser" who can validate or question the CC's decisions. This can be the second largest brand in the category. The alternative is to allow input from all major/minor brands to validate the CC's input. This balances a CC's market power and safeguards against CC's self-

provide second opinions.[614] Some retailers have policies that require or permit more than one category captain. Retailers can also decrease the likelihood of competitive exclusion by assigning a non-leader manufacturer as their category captain.[615] Thus, rather than selecting the leading manufacturer as the category captain, the retailer considers other manufacturers for their category captain arrangements, especially if they demonstrate dynamic and innovative approaches to category management.[616] Another alternative is to allow input from all major/minor brands to validate the category captain's input.[617] At minimum, a retailer can seek input from competing manufacturers to ensure accurate category recommendations.[618] A retailer that employs multiple supplier captains or advisors benefits from the input of multiple perspectives. This input can help to balance a category captain's market power and safeguards against category captain's self-interest to the detriment of rival suppliers and consumers.[619] Doing so can also help the retailer avoid inadvertently implementing competitively harmful category decisions.[620]

Third party advisors and consultants

Retailers may also rely upon third party advisors and consultants with no vested interest in the category to safeguard against competitive exclusion.[621] Rather than a manufacturer retailers may enlist the use of third-parties to independently perform their category management services.[622] One version of this approach is to ask a manufacturer that desires to be a category captain pay to fund an

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interest to the detriment of rival suppliers and consumers."). Carameli (2004), 1325, ft. 9 ("Some use a Category Captain and a second manufacturer to check or "validate" the Captain's recommendations.").

613 Badyopadhyay, Rominger & Basaviah (2009), 317 ("It is quite possible to attain high retail efficiency and high level inter-brand competition if the retailer is willing to put in a mechanism to control the category captain. Below we have outlined a set of measures available to the retailer: 1. The retailer must appoint a "category adviser" who can validate or question the CC's decisions. This can be the second largest brand in the category. The alternative is to allow input from all major/minor brands to validate the CC's input. This balances a CC's market power and safeguards against CC's self interest to the detriment of rival suppliers and consumers."). Carameli (2004), 1325, ft. 9 ("Some use a Category Captain and a second manufacturer to check or "validate" the Captain's recommendations.").

614 Lorden (2011), 549 ("Another approach used by some retailers is to arrange for second opinions from another supplier or engage a "third-party advisor" with no vested interest in the category.")

615 Kurtulus & Toktay (2005), 3 ("...the retailer can decrease the likelihood of competitive exclusion by assigning a nonleader manufacturer as category captain.").

616 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("Rather than selecting the leading manufacturer/brand as the CC, the retailer should consider all other manufacturers in the CC arrangement decision, especially if they demonstrate dynamic and innovative approaches to CM.").

617 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("The alternative [to appointing a category advisor] is to allow input from all major/minor brands to validate the CC's input.").

618 Carameli (2004), 1355 ("At minimum, the retailer could seek input from competingmanufacturers to ensure accurate category recommendations.").

619 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("This [allowing input fro all major/minor brands] balances a CC's market power and safeguards against CC's self-interest to the detriment of rival suppliers and consumers.").

620 Lorden (2011), 549 ("These conservative approaches can help a retailer ensure it does not inadvertently implement anti-competitive category decisions.").

621 Lorden (2011), 549 ("Another approach used by some retailers is to arrange for second opinions from another supplier or engage a "third-party advisor" with no vested interest in the category."). Steiner (2001), 78 ("To counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer or engage a "third-party advisor" with no vested interest in the category.").

622 Desrochers, Gundlach & Foer (2003), 204 ("A retail may entrust all category decisions to .... third-party advisors that have no vested interest in the category"). Steiner (2001), 78 ("To counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer or engage a "third-party advisor" with no vested interest in the category.").

external independent consultant to perform the services.[623] In this scenario the manufacturer provides funds to the retailer, who then pays the consultant.[624] The independent consultant works for the retailer, as the category captain claims to do, and the manufacturer absorbs the cost.[625] The benefit of a third party consultant is that they have no vested interest in the category.[626] This type of arrangement helps to avoid any aversion on behalf of the third party to provide inaccurate work and deceive the retailer in an effort to please the manufacturer.[627] Payment of a third party consultant through the retailer may do the most to eliminate risk of each party abusing the relationship.[628] Thus, shifting the work to a third party is suggested to be one of the safest ways from an antitrust perspective to balance the needs to be reached whereby the most efficient actor performs retail-level category management decisions in a way that best serves consumers and protects competition.[629]

Hybrid arrangements

Minor business process reengineering of the category captain arrangement itself may also serve to minimize risks associated with competitive exclusion in category captain arrangements. For example, it has been recommended that retailers should retain ultimate discretion in making category decisions; given placing that amount of power in a supplier's hands is illogical for both business and antitrust reasons.[630] Instead of granting decision-making powers to a captain, it is also advised that a retailer only take recommendations and not solely rely on a captain's category proposal.[631] However, as has been observed, retaining ultimate discretion or decision authority (i.e., the final say) denies the potential and fact of interfirm power and influence known to exist in category captain arrangements.

Other hybrid arrangements have also been recommended. For example, firms could choose to benefit from the collaborative nature of the category captain relationship without ever discussing price.[632] Relatedly, a manufacturer could train retailers to perform the necessary calculations required for category pricing decisions on their own and, where applicable, provide promotional funds to pay

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623 Carameli (2004), 1355 ("Furthermore, the retailer could instead demand that the Category Captain manufacturer itself fund an independent external consultant.").
624 Carameli (2004), 1355 ("In this scenario, it would be useful for the manufacturer to provide funds to the retailer, which would then pay the consultant.").
625 Carameli (2004), 1356 ("The independent consultant would work for the retailer, as the Category Captain claims to do, and the manufacturer would still absorb the cost.").
626 Desrochers, Gundlach & Foer (2003), 204 ("A retail may entrust all category decisions to .... third-party advisors that have no vested interest in the category"). Steiner (2001), 78 ("To counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer or engage a "third-party advisor" with no vested interest in the category.").
627 Carameli (2004), 1356 ("This would eliminate any aversion on behalf of the third party to provide inaccurate work in a desire to please the party footing the bill."). Carameli (2004), 1356 (describing a third party consultant paid through the retailer, "There is also no incentive for the third-party Category Manager to deceive the retailer.").
628 Carameli (2004), 1356 ("It seems that this scenario does the most to eliminate risk of each party abusing the relationship.").
629 Carameli (2004), 1356 ("In the end, a balance needs to be reached whereby the most efficient actor performs retail-level Category Management decisions in a way that best serves consumers and protects competition. The safest way from an antitrust perspective is to shift the work back to the retailer or to a third party.").
630 Lorden (2011), 549 ("In general, retailers should retain ultimate discretion in making category decisions; placing that amount of power in a supplier's hands is illogical for both business and antitrust reasons.").
631 Lorden (2011), 549 ("Instead of granting decision-making powers to a captain, a retailer should only take recommendations and should not solely rely on a captain's category proposal.").
632 Carameli (2004), 1354 ("Firms can still benefit from the collaborative nature of the Category Captain relationship without ever discussing price.").

for data costs.[633] A manufacturer could also provide retailers with third-party software to perform the necessary price calculations.[634] Under each of these scenarios, the category captain still provides the manufacturer with beneficial category management services but without proffering direct price recommendations.[635]

Safeguards against denying others from competing for category captain role

In addition to properly structuring their category captain arrangements competition concerns raised by a category captain acting to deny other suppliers from the ability to compete for the role of category captain can be more directly safeguarded against. Retailers can take steps to insure that other suppliers are considered for the captain role; prohibit monetary payments and negotiated arrangements for the captain role; and include termination clauses, discontinuance rights, and time limits in established category captain arrangements.

Insuring that other suppliers are considered for the role

Competitive problems involving the opportunity of others to compete for the category captain role can be potentially safeguarded to the extent retailers insure that other suppliers are considered for the captain role.[636] Safeguards offered by the AAI to address problems involving the opportunity to compete for the category captain role include that "competition for the right to be CC or the retailer's 'lead resource' should include other major manufacturers who may only rank 2nd, 3rd, 4th or lower in terms of market share but that may have more dynamic, and innovative approaches to moving their product category forward (however they would need to be sufficiently established and large so as to have developed expertise in their product category)." [637] The AAI also recommends that the "use of lead resources or CCs should not preclude all major and minor suppliers from having an opportunity to offer their advice to retailers at any time..."[638]

Prohibitions on payments and negotiated arrangements

To avoid competitive problems involving the opportunity of others to compete for the category captain role the AAI also recommends that retailers incorporate "prohibitions on monetary payments for the right to be CC" [639] in their category captain arrangements. Discouraging the practice of manufacturers paying for the privilege to be the category captain is also recommended by

633 Carameli (2004), 1354 ("For instance, a manufacturer could train any given retailer to perform the necessary calculations on its own and, where applicable, provide promotional funds to pay for data costs.").
634 Carameli (2004), 1354 ("The manufacturer could also provide the retailer with third-party software to perform the necessary calculations. Under this scenario, the Category Captain would still provide the manufacturer with beneficial Category Management services but would not proffer direct price recommendations.").
635 Carameli (2004), 1354 ("Under this scenario, the Category Captain would still provide the manufacturer with beneficial Category Management services but would not proffer direct price recommendations.").
636 Badyopadhyay, Rominger & Basaviah (2009), 317 ("It is quite possible to attain high retail efficiency and high level inter-brand competition if the retailer is willing to put in a mechanism to control the category captain. Below we have outlined a set of measures available to the retailer: ... 3. Rather than selecting the leading manufacturer/brand as the CC, the retailer should consider all other manufacturers in the CC arrangement decision, especially if they demonstrate dynamic and innovative approaches to CM.").
637 American Antitrust Institute (2003), 8.
638 American Antitrust Institute (2003), 8.
639 American Antitrust Institute (2003), 8.

others.[640] Retailers can also include terms in their arrangements that make clear that the selection of a category captain is made independent of any business negotiations between the supplier and retailer.

Termination clauses, discontinuance rights, and time limits

To avoid competitive problems involving the opportunity of others to compete for the category captain role, retailers can also include terms in their category captain arrangements and contracts that permit them to discontinue or terminate a category captain arrangement at will or due to a breach in the agreement. Similarly, retailers can expressly reserve the right to change or discontinue the use of any category captains without notice. Other safeguards include limiting the time period for a category captain arrangement, and setting a time limit for category captain arrangements to expire, or to be subject to renewal.

Safeguards against a category captain receiving and misusing rivals' sensitive information

Beyond properly structuring a category captain arrangement, competition concerns raised by the receipt and misuse of rivals' sensitive information can also be more directly safeguarded against. Retailers and manufacturers can require firewalls and limits on sharing information; confidentiality requirements and protections; prohibitions on the receipt, disclosure and use of information; physical controls and required procedures; and selection criteria and confidentiality assessments intended to limit the receipt and misuse of sensitive information.

Firewalls and controls on sharing information

Competition concerns raised by the receipt and misuse of rivals' sensitive information can be potentially safeguarded against to the extent that protections in the form of "firewalls" and other measures are constructed.[641] The FTC recommends the use of internal firewalls to ensure that sensitive competitor information is not inappropriately distributed by a category captain. [642] These firewalls separate[643] and limit the acquisition[644] and dissemination of sensitive competitive information to others in the captain's organization.[645]

Physical firewalls and related controls and procedures can help to prevent the unauthorized receipt, use, or disclosure of confidential information to other employees or to third parties. Such walls ensure that those involved in category management do not communicate a competitor's

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640 Badyopadhyay, Rominger & Basaviah (2009), 317 ("In addition to the retailer, the Federal Government, through the FTC, may take the following steps to ensure a high level of competitiveness: ... 5. Discourage the practice of paying a retailer for the privilege to be a CC. This may create an expectation of beneficial or favorable consideration by the retailer in exchange. These costs are also likely to be passed on to the consumer.").

641 FTC (2001), 51 ("The issues raised by inside information might be solved through the use of managerial firewalls within the category captain.").

642 FTC (2001), 51. See also, American Bar Association (2010), 46-47. Lorden (2011), 546 ("The FTC recommends the use of internal firewalls to ensure that sensitive competitor information is not inappropriately distributed.").

643 Lorden (2011), 546 ("A supplier should separate employees that make category suggestions from those that receive information about competitors' plans.").

644 Nijs, Misra, & Hansen (2014), 67 (describing firewalls in category captain arrangements, "The firewalls restrict the information available to the category captain.").

645 American Bar Association (2010), 48 (citing the FTC "... the FTC has suggested that the creation of internal firewalls within the category captain's company would eliminate competitive concerns.").

confidential information to those involved in sales or marketing[646] or to competitors. They also help ensure that unbiased decisions are being made and may help a supplier disprove allegations regarding the misuse of competitor information.[647]

Safeguards recommended by the AAI include limitations on the acquisition of information and include that "category captains should not see rival's product development plans."[648] The AAI also recommends that "category captains should not share competitive information among competing retailers whether or not the category captains acts in that capacity for both retailers"[649] To affect these safeguards, AAI recommends the "implementation of strictly-enforced firewalls between category captains and retailers to prevent leaking of competitively sensitive information such as price data of rivals."[650] In addition, the AAI recommends, "co-category captain arrangements should be avoided because of the likelihood of coordination."[651]

Firewalls that limit dissemination of information to others in the captain's organization include internal corporate rules or other safeguarding measures (i.e., policies, agreements, etc.) that require employees who receive information about competitors to not be also involved in the management of the firm's own brands, and that they do not communicate information across the barrier to those who are.[652] These firewalls and related controls may include requirements that the category captain and their support staff be physically separated from employees, departments and business units that perform activities involving pricing, sales, product development, promotions, or marketing for any merchandise in the category. They may also include that the category captain and support staff not attend sales meetings between the retailer and the category captain's sales team, and that the category captain and support staff disclose any compensation tied to their company's sales performance in the captain's retailer. A category captain can also be restricted from serving in a sales capacity during and after their appointment as a category captain. Controls and procedures for safeguarding confidential information further include requirements that hard and electronic copies of documents and records containing confidential information be segregated and secured, that firewalls and other restrictions on access to internal business systems be maintained to prevent unauthorized disclosures or sharing of confidential information, and that access to confidential information be restricted to a "need to know basis."

Confidentiality requirements and protections

To safeguard against the receipt and misuse of rivals' sensitive information retailers can also take steps to insure that the utmost care is taken to maintain confidentiality.[653] This can be done

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646 American Bar Association (2010), 48 ("The walls would ensure that those involved in category management do not communicate a competitor's confidential information to those involved in sales or marketing.").

647 Lorden (2011), 546 (describing the use of firewalls that separate employees that make category suggestions from those that receive information about competitors' plans. "This helps ensure that unbiased decisions are being made and may help a supplier disprove allegations regarding the misuse of competitor information.").

648 American Antitrust Institute (2003), 9.

649 American Antitrust Institute (2003), 9.

650 American Antitrust Institute (2003), 8.

651 American Antitrust Institute (2003), 9.

652 FTC (2001), 51 ("These firewalls would be internal corporate rules, providing that employees who receive information about competitors must not also be involved in the management of the firm' s own brands, and that they not communicate information across the barrier to those who are.").

653 Badyopadhyay, Rominger & Basaviah (2009), 317 ("In addition to the retailer, the Federal Government, through the FTC, may take the following steps to ensure a high level of competitiveness: .... 4. Ensure that the CC and the retailer do

through including requirements and protections in category captain arrangements. Safeguards recommended by the AAI include that "category captains should respect the confidentiality of any information considered by the retailer customer to be proprietary."[654] General statements describing that confidentiality, objectivity and legal compliance are vital to the category captain arrangement, that the parties recognize their obligations under the law and should consult with legal counsel may also be included in the category captain agreement. Statements may also be included that acknowledge that category captains receive information and make recommendations about their competitors' products, and thereby acknowledge the potential risks of doing so. Retailers can also extensively define the nature and scope of information considered confidential in the category captain arrangement. This includes specifying the nature of information, data, documents, disclosures, recommendations, and advice obtained, received, created or provided in the category captain arrangement.

Prohibitions on the receipt, disclosure, and use of information

For safeguarding sensitive and confidential information retailers can also include express prohibitions on a category captain disclosing (directly or indirectly) the information to employees, officers or agents of the category captain's company. The parties can also incorporate prohibitions on directly or indirectly; requesting, receiving, accessing, acquiring, seeking to acquire or accepting confidential information generally or specifically from the category captain or the captain's support staff. Retailers can also prohibit category captains and support staff from sharing confidential information with the captain's sales team or other employees that participate in the marketing effort of the organization. Finally, retailers can include prohibitions on the parties using any confidential information for any other purpose than category captain services.

Selection criteria and confidentiality assessments

Finally, to safeguard their category captain arrangements against a category captain receiving and misusing sensitive information, retailers can enlist selection criteria that include upfront evaluation of a category captain's confidentiality. For example, a retailer may incorporate assessments of whether a category captain is separated from their company's sales team. Assessments involving related criteria can also be relied upon.

Safeguards against a category captain engaging in improper recommendations and related actions

Competition issues raised by rivals engaging in improper recommendations and related actions (e.g., exclusive dealing, tortious conduct, etc.) may also be safeguarded against. Retailer safeguards include requirements that the advice and recommendations of a category captain be objective and impartial, that their guidance is limited in its content and scope, that retailers review the advice and recommendations that are provided, and that the retailer's role as the designated decision maker is clear.

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not share sensitive information such as a rival's pricing, promotion and merchandising information, or, if they do, take utmost care to maintain confidentiality.").

[654] American Antitrust Institute (2003), 9.

Requirements of objectivity and impartiality

Safeguards against category captains engaging in improper recommendations and related actions include requirements that a category captain by objective and unbiased in the advice and suggestions they provide. As a general rule, any decision made by a category captain should always have a legitimate business reason based on objective evidence of what is best for the category as a whole.[655] Safeguards offered by the AAI include insuring that "category captains present objective accurate factual data to retailer,"[656] and that they "not provide data that favor the category captain's brands or SKUs.[657] Related safeguards include requiring that all advice and recommendations be unbiased,[658] and that all advice and recommendations including for the product category, adjacencies, assortments, signage and other topics be of an objective nature. Other safeguards include that all advice and recommendations be backed by analysis and that they be based on factual data that is demonstrably accurate. Safeguards further include that recommendations identifying items for a retailer to consider adding to its assortment or recommendations identifying items for the retailer to consider deleting from its assortment due to underperformance be based on factual data. Other safeguards include that the category captain's recommendations be given with the goal of meeting the retailer's stated business objectives, and that the category captain use reasonable business judgment or best efforts to offer advice designed to grow the category. Relatedly, it may be required that advice and recommendations offered by a category captain regarding business methods, assortment, modular development, replenishment, and/or other related services be required to be those that promote and maximize the retailer's goals and objectives for the category as a whole (versus individual products or brands). Finally, retailers may include statements and clauses requiring that the parties recognize their obligations under the law and consult with legal counsel prior to committing to the arrangement.

Limitations on the guidance provided

To safeguard their arrangements against improper recommendations and related actions by a category captain, retailers can also specify the scope and content of advice and suggestions to be provided by a category captain. This includes setting limitations on the scope and content of advice and recommendations (and acts) that can be provided (or engaged in) by the category captain. Thus, a category captain may be required to only make recommendations focused on a particular supplier or product. The category may also be required to offer advice or recommendations on pricing, marketing strategies, promotions, or product development for individual items of merchandise that compete with the captain's merchandise (including private label merchandise). A financially strong and experienced retailer may request that the category captain only comment on the retailer's plans for category management.[659] Other safeguards include requirements that a category captain not

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655 Lorden (2011), 546 ("Also, as a general rule, any decision made by a category captain should always have a legitimate business reason based on objective evidence of what is best for the category as a whole.").

656 American Antitrust Institute (2003), 9.

657 American Antitrust Institute (2003), 9.

658 FTC (2001), 54 (While these concerns are not so inherently serious as to call into question the entire practice of using category captains, the panel agreed that care should be exercised: ... (2) that the category captain does not bias its advice to the retailer in such a way that it effectively excludes or significantly disadvantages its competitors; ...").

659 American Bar Association (2010), 51 ("A financially strong and experienced retailer might go even further and request that the category captain only comment on the retailer's plans for category management.").

make recommendations on specific item prices except for manufacturer suggested retail prices. Category captains may also be prohibited from offering recommendations that a specific item or brand be carried or discontinued or that a specific item or brand be advertised or promoted without any accompanying analysis. The category captain may also be prohibited from disparaging another company or its brands. The category captain may also be precluded from physically modifying or tampering with the placement or promotion of merchandise in any store of the retailer unless authorized to do so by a representative of the retailer. Lastly, a retailer may mandate that a category captain not make recommendations that exclude any competitors in the category.[660]

Review of advice and recommendations

To safeguard against category captains engaging in improper recommendations and related actions retailers can also take steps to insure that they review the advice and suggestions of their category captains. This includes scanning,[661] monitoring,[662] and filtering[663] recommendations made by the category captain for potential exclusion. As noted, retailers can also rely on co-captains, validators and advisors; third party consultants; or internal reviews and assessments to help them in their review of the advice and recommendations of their category captains.

Clarification and designation of decision maker

Finally, to help safeguard against category captains engaging in improper recommendations and related actions retailers can also clarify and designate in specific terms where final decisions regarding the category reside. Safeguards offered by the AAI include that "where a category captain suggests retail price points," that the "retailer independently make the actual pricing decision," [664] and that retailers "make all final decisions."[665] The AAI also recommends that "the retailer, rather than the category captain, must own the category management process and be the true decision maker." [666] Related safeguards include insuring the retailer is the ultimate decision maker on major decisions[667] and designating that the retailer is the sole decision maker regarding category decisions such as the products carried and pricing, promotion, and presentation strategies. Other safeguards include clarifying that the category captain shall not make decisions on pricing, promotions, or shelf-

660 Kurtulus & Toktay (2008), 14 ("One obvious solution would be for the retailer to mandate that the category captain not exclude any of the brands in the category. However, as we mentioned already, exclusion may take many different and non-obvious forms, which may make it difficult for the retailer to monitor the exclusion of the non-captain brands from the category.").

661 Lindblom & Olkonnen (2008), 7 ("In order to avoid these potential problems, it is important that retailers critically scan category captains' recommendations before implementing them.").

662 Kurtulus, Ulku, Dotson & Nakkas (2014), 387 ("Ultimately, it is the retailer's responsibility to monitor the category captain and reduce opportunities for competitive exclusion as the retailer is the party that is letting the fox into the proverbial henhouse"). Carameli (2004), 1355 ("Secondly, retailers should take affirmative steps to monitor manufacturers to ensure ethical behavior, ...").

663 Kurtulus & Toktay (2008), 14 ("A second measure is for the retailer to filter the category captain's recommendations before implementing them. This would avoid the more blatant forms of exclusion. Of course, for the same reason as before, it may not be easy for the retailer to detect biased recommendations when they are subtle.").

664 American Antitrust Institute (2003), 9.

665 American Antitrust Institute (2003), 9.

666 American Antitrust Institute (2003), 8.

667 Bandyopadhyay, Rominger & Basaviah (2009), 317 ("It is quite possible to attain high retail efficiency and high level inter-brand competition if the retailer is willing to put in a mechanism to control the category captain. Below we have outlined a set of measures available to the retailer: ... 2. The retailer should be the ultimate decision maker about major pricing and merchandising decisions.").

space in the category (as opposed to only providing advice). Specific policies against a category captain gaining control over category decisions may also be enlisted.[668]

Safeguards against a category captain improperly excluding store brands

Competition issues raised by a category captain attempting to improperly exclude a retailer's store brands and their suppliers can also be safeguarded against. Many of the aforementioned safeguards for branded competitors can be called upon to safeguard against a category captain disadvantaging a retailer's store brands and their suppliers. However, more particular safeguards may also be deployed.

Restrictions on advice for store brands

To safeguard against a category captain improperly excluding store brands a retailer may prohibit a category captain from offering advice or recommendations on pricing, marketing strategies, promotions, or product development for individual items of merchandise involving the retailer's store brands. A retailer can also require that the category captain take particular care when making recommendations overall to the extent they affect competition involving the retailer's owned brands.

Limitations and considerations in the use of safeguards in category captain arrangements

Safeguards possess the potential to help address competitive exclusion arising in category captain arrangements. However, safeguards and their use in category captain arrangements also possess limitations. These limitations apply both to safeguards that involve alternative category captain arrangements and safeguards that involve more specific measures directed at the different types of competitive exclusion found in category captain arrangements.

Limitations of alternative category captain structures

Reliance on other manufacturers (e.g., co-captains, validators, advisors, etc.) or third party advisors to weigh in on the category captain's plans can work well to produce benefits to all brands, including the category captain, the retailer and the consumer.[669] However, the use of co-captains, validators, advisors, and, third-party consultants may not always work as designed.[670] For example, the use of multiple suppliers as co-captains, validators or advisors requires sufficient time and resources to obtain their input. A retailer may not always have the time or staff to meet with

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[668] Steiner (2001), 80 (Describing policies by Walmart against category captains gaining control over their store brands "Of course, many retailers do not permit this to happen. For example, despite its close vertical relationship with P&G, Wal-Mart recently introduced with much fanfare its private label competitor to Tide.").

[669] Bandyopadhyay, Rominger & Basaviah (2009), 319 ("In cases where retailers have other manufacturers (e.g., validators) or third party advisors also weighing in on these plans, these arrangements seem to work well to produce benefits to all brands, including the category captain, and the retailer and the consumer.").

[670] Bandyopadhyay, Rominger & Basaviah (2009), 316 (describing the use of validators, "However, by and large, retailers simply accept the CC's recommendations without involving a validator. When that happens the CC essentially takes on a significant role in the retail management of the entire category"). Desrochers, Gundlach & Foer (2003), 212 (Raising questions as to the effectiveness of validators, co-captains, and consultants "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?").

multiple parties.[671] Each supplier may also not have equal standing or influence in category decisions. Tradeoffs may also be present in some arrangements. For example, retailers that use non-leader category captains have to make a tradeoff between assigning a leading manufacturer who may exclude other brands and effectively decrease product variety, and assigning a non-leading manufacturer who may not have as much expertise as the leading brand.[672]However, this concern should be minimal in categories where the two top competitors are both large, established firms who invest in consumer research.[673] Retailers may also filter the category captain's recommendations on their own prior to implementing the recommendations to avoid more blatant forms of exclusion.[674] However, it may not be easy for the retailer to detect biased recommendations when they are subtle.[675] Retailers may also avoid the use of a category captain to begin with or terminate an existing category captain arrangement and return to making their own decisions. However, retailers that make their own category management decisions forego the benefits of category captain arrangements. Moreover, category management requires a thorough understanding of consumer preferences and purchase patterns, a knowledge base this is hard to build once that expertise is lost.[676] The use of self-enforcing safeguards is also an option, but their use is not a guarantee.[677] In addition, retailers that hand over their categories and then rely on their trust in the category captain without monitoring their work are likely to experience strategic loss of power.[678] Finally, the use of agreements to safeguard a category captain arrangement may be difficult to craft,[679] could turn out to be one-sided,[680] and can be violated.

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671 Carameli (2004), 1325 ("In fact, a retailer does not likely have the staff or the time to meet with each manufacturer within a given category to hear detailed input that is substantially the same. Making time to listen to feedback from multiple manufacturers in a category would, then, be redundant.").

672 Kurtulus & Toktay (2005), 3 ("Retailers have to make a tradeoff between assigning a leading manufacturer who may exclude other brands and effectively decrease product variety, and assigning a non-leading manufacturer who may not have as much expertise as the leading brand.").

673 Kurtulus & Toktay (2005), 3 ("This concern should be minimal in categories where the two top competitors are both large, established firms who invest in consumer research.").

674 Kurtulus & Toktay (2005), 3 ("A second measure is for the retailer to filter the category captain's recommendations before implementing them. This would avoid the more blatant forms of exclusion.").

675 Kurtulus & Toktay (2005), 3 ("Of course, for the same reason as before, it may not be easy for the retailer to detect biased recommendations when they are subtle.").

676 Kurtulus & Toktay (2005), 3 ("Finally, a point that is worth considering is the long-term impact of depending on the manufacturer for category management. It may be tempting to say 'It doesn't really matter, the retailer can always terminate a category captainship agreement and return to managing its own categories.' But category management requires a thorough understanding of consumer preferences and purchase patterns, a knowledge base that is hard to build once that expertise is lost.").

677 Wright (2009), 323 ("The mere fact that an agreement is designed to be self-enforcing, of course, does not guarantee that the category manager will always perform in accordance with its obligations.").

678 Chimhundu, Kong & Gururajan (2014), 380 ("Strategic loss of power would probably be experienced by those retail chains that may want to hand over categories to CCs, and then just rely on trust without doing anything else to monitor.").

679 Desrochers, Gundlach & Foer (2003), 210 (Describing an investigation of category captaincy agreements with dominant suppliers finding that "that the arrangements were more to the benefit of the major supplier.").

680 Israel Antitrust Authority 2003, *The General Director's Position on Commercial Practices Among Dominant Suppliers and Major Retail Chains*, summary and translation (dated May 29) prepared for the ROUNDTABLE ON ANTITRUST AND CATEGORY CAPTAINS (June 2003) ("During its multiyear investigation of category captaincy arrangements, the IAA reportedly obtained various retail CM agreements with dominant suppliers and determined that 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 sup-plier 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 dis-play 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

Limitations of more specific safeguarding measures

The safeguarding potential of more specific measures designed to protect against the different types of exclusionary conduct and practices by a category captain also possess limitations. For example, the effectiveness of information firewalls is unclear given the lack of empirical and analytical research on their use in category captain arrangements.[681] Moreover, the successful use of information firewalls is dependent on the ability of retailers and manufacturers to construct barriers and implement measures across category captain arrangements that are sufficient in design and actual effect to protect against potential harms.[682] Designing and implementing information firewalls within a retail organization to address concerns can be challenging. Even more so, creating and enforcing information firewalls in the category captain's organization that limit concerns can be difficult. The effects of category captain arrangements can also differ depending on the information firewalls a category captain implements.[683] Other more specific measures also possess limitations in their design and effect. For example, while monitoring can help to uncover category captain decisions that are based on selfishness and may also deter a category captain from making such decisions, monitoring a category captain can be a demanding task.[684] Competitive exclusion can occur in many different forms and therefore may be difficult to detect[685] and monitor, especially where the exclusion is of a non-obvious form. [686] Finally, monitoring a category captain's recommendations may increase retailer costs and diminish gains.[687]

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major retailer and a leading supplier, and of the kind we have described, raise three significant anticompetitive concerns: (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 supplier").

[681] Nijs, Misra, & Hansen (2014), 67 ("However, it is unclear if this [safeguards restricting the acquisition of information by a category captain] will benefit consumers as intended. Although (legal) scholars have speculated on the importance of these firewalls, their influence has, to the best of our knowledge, been investigated neither empirically nor analytically.").

[682] FTC (2001), 51 (Addressing firewalls and describing "Such a remedy, of course, would depend on the ability to construct firewalls sufficient in design and actual effect to protect against the potential harm.").

[683] Nijs, Misra, & Hansen (2014), 73 ("The effects of category captain arrangements can differ depending on the information firewalls a CC implements.").

[684] Chimhundu, Kong & Gururajan (2014), 380 ("Monitoring the CCs can be a demanding task
but it is mandatory as it not only helps to uncover CC shelf management decisions that are based on selfishness, but it may also deter the CC(s) from making such selfish decisions in the first place.").

[685] Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("Although competitive exclusion is a possible negative con-sequence of category captainship, it can be difficult to detect as it can be manifested in many different forms.").

[686] Kurtulus and Toktay (2005), 3 ("However, as we mentioned already,exclusion may take many different and non-obvious forms, which may make it difficult for the retailer to monitor the exclusion of the non-captain brands from the category.").

[687] Nijs, Misra, & Hansen (2014), 78 ("However, monitoring a CC's recommendations may increase retailer costs and diminish gains.").

Chapter 8. Outcomes and Effects for Competition and Consumers

The goal of U.S. antitrust law is to protect economic freedom and opportunity by promoting free and fair competition in the marketplace.[688] Competition in a free market benefits consumers through lower prices, better quality, greater choice and useful innovation. When performed in accordance with antitrust law, category management is an effective retail marketing practice that provides many benefits to consumers.[689] However, exclusionary conduct by a category captain can impair the process of competition where it impacts a substantial amount of distribution in a market. To the extent the competitive process is harmed, consumers may also be harmed through adverse effects on output, prices, quality, variety, innovation, and consumer choice.

For harm to competition and consumers to result from the exclusionary conduct of a category captain there must be harm to the competitive process rather than merely harm to a single competitor.[690] This can result where a category captain possesses market power[691] Harm to competition and consumers depends on whether a category captain's exclusionary conduct also results in benefits for competition (aka, "efficiencies") that offset the harms and whether the exclusionary conduct is reasonably necessary to achieve these benefits. Harms to competition and consumers further depend on whether there exist practical and significantly less restrictive means to

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688 Harry S. Gerla, *Restoring Rivalry as a Central Concept in Antitrust Law*, 75 NEB. L. REV. 209 (1996) (explaining that antitrust exists to maintain an environment in which rivalry between firms can flourish). Carameli (2004), 1319 (describing the goal of antitrust law in the context of category captain arrangements, "Antitrust laws were instituted to ensure that the American marketplace remained a competitive one."). Lorden (2011), 545 (describing the intentions of antitrust law in the context of category captain arrangements, "Antitrust laws are intended to promote competition,..").

689 Lorden (2011), 561 ("When performed in accordance with antitrust law, category management is an effective retail marketing practice that provides numerous benefits to consumers."). Lorden (2011), 564 ("When performed in accordance with proper antitrust law, category management is an effective retail marketing practice that provides numerous benefits to the consumer.").

690 American Bar Association (2010), 50 ("Because courts consistently recognize that antitrust law is concerned with protecting competition and not competitors, excluding one competitor (who is, of course, the most likely plaintiff) does not mean competition is unreasonably restrained.").

691 American Bar Association (2010), 15-17 (describing the economic implications of category captains with market power: "Economic theory teaches that in order for a category captain's practices to harm competition and consumers, the category captain or the retailer must possess market power in its market, absent a horizontal conspiracy at either level. If both the supplier/category captain and the retailer operate in competitive markets, a category captain's vertical practices are not likely to threaten competition. This follows from the widely accepted proposition that a vertical restraint generally cannot harm competition when applied in otherwise competitive markets. The analysis differs, of course, when one or both parties possess market power. When the supplier/category captain has market power, it might be able to use its position as category captain to disadvantage its competitors in ways that harm competition and consumers. Consumers might be harmed if the category captain's practices led to generally higher prices or reduced product quality or output. Of course, if these outcomes reduced the profits of the retailer that chose the supplier to be the category captain, then the retailer may well take steps to reverse or prevent the reduction in its profitability and, in doing so, reverse or prevent the harm to consumers. A retailer could choose another supplier to be category captain, retain greater control over the category's product selection, display, and pricing decisions, or monitor more closely the conduct of the category captain. In such cases, the retailer's pursuit of profits also would tend to enhance consumers' interests. When the retailer has market power, but upstream suppliers do not, then it seems unlikely that the appointment of a category captain would diminish competition among the upstream suppliers. While the retailer might gain knowledge to increase the retailer's profits further, perhaps by choosing or presenting a selection of products more attractive to consumers, the category captain would likely not be an independent cause of retailer market power. Further, any retailer, including one with market power, prefers that the suppliers of products available to the retailer compete vigorously. Hence, a retailer with market power normally would not have an incentive to implement practices that create or enhance market power held by its category captain or any of its other upstream suppliers.").

achieve the benefits. Countervailing circumstances and considerations may also come into play or be present in a particular case.

Potential harms to competition and consumers

Harms to the competitive process

Competitive concerns associated with category captain arrangements arise where a category captain use its role to foreclose rival suppliers from access to retailers and consumers, or where a category captain uses its role to diminish the quality of rivals access to retailers and consumers by providing rivals with less preferred shelf position, or introducing fewer new products produced by rivals.[692] This can occur where a category captain exercises its power to: (1) improperly deny others from competing for the role of category captain; (2) receive and misuse rivals' sensitive information; (3) engages in improper recommendations and related actions; and (4) take improper steps to disadvantage retailers' store brands and the suppliers of store brands. In each case, to the extent exclusionary conduct by the category captain impacts a sufficient amount of distribution in the market in which the affected rivals participate the competitive process may be harmed.

From the perspective of antitrust law, the most obvious area of competitive concern identified for exclusionary category captain arrangements is "exclusive dealing."[693] Exclusive dealing involves a form of monopolization that occurs through raising rivals' distribution costs by eliminating their access to downstream markets.[694] Through exclusionary conduct a category captain potentially can deprive its rivals of the opportunity to compete for distribution on the merits.[695] The combination of a large market position together with the power to determine retailers' plans for stocking shelves and ordering from competing suppliers may grant a category captain the ability to exclude competitors' products.[696]

The analysis of exclusive dealing in U.S. antitrust law focuses on the degree of impact an exclusive dealing arrangement has on the market in question[697] In analyzing whether there is an illegal exclusive dealing arrangement, a court considers several factors: the actual agreement between the parties, the impact the arrangement has on the market, the market power of the category captain,

692 American Bar Association (2010), 22 ("The competitive concerns associated with category captains include: (1) foreclosure of potential rival suppliers from access to retailers and consumers, or diminishing the quality of their access (e.g., by providing rivals with less preferred shelf position, or introducing fewer new products produced by rivals)...").
693 American Bar Association (2010), 37 ("Exclusive dealing is perhaps the most obvious area of concern for the category captaincy relationship.").
694 American Bar Association (2010), 37 ("Exclusive dealing has been described as a form of monopolization that occurs through "raising [one's] rivals' distribution costs by eliminating their access to downstream markets.").
695 American Bar Association (2010), 23 ("A category captain potentially could deprive its rivals of the opportunity to compete for distribution on the merits.").
696 American Bar Association (2010), 37 ("A large market position, together with the power to determine retailers' plans for stocking shelves and ordering from competing suppliers, may grant the captain the power to exclude its competitors' products."). Steiner (2001), 79 ("When a manufacturer can influence a large retailer's decisions over the selection of items from its firm and from its competitors' firms, as well as their pricing, shelf positioning, and promotion, it has gained market power horizontally. Equally, it has gained market power vertically by taking over these vital functions, with their decision-making powers, that were formerly the province of the retailer.").
697 American Bar Association (2010), 37-38 ("The analysis of exclusive dealing focuses on the degree of impact the exclusive dealing has on the market in question…").

and foreclosure of competitors or injury to competition.[698] As a defense, the defendant may offer evidence of the efficiencies gained by its conduct.[699] A court will most likely balance these factors and determine whether there is a less restrictive alternative.[700] According to the American Bar Association, a plaintiff must show the requisite exclusive agreement, sufficient market power to demonstrate that the challenged agreement threatens reduced output or higher prices, and market foreclosure sufficient for injury to competition.[701] Sufficient market foreclosure is understood to involve questions of both the degree of foreclosure and the duration of the foreclosure.[702] Where a prima facie case for exclusive dealing is made by a plaintiff, a defendant may counter with compelling defenses including beneficial efficiencies that enhance consumer welfare.[703] A court will then consider less restrictive alternatives available to the defendant, and may engage in a balancing to judge whether the benefits of the exclusive dealing arrangement outweigh the anticompetitive effects of the arrangement.[704]

More generally the competitive concern for category captain arrangements is that they will be used to reduce competition and harm consumers through competitive exclusion that falls short of an exclusive dealing arrangement. Most economic analyses of category captains center on the possibility that the category captain will have the incentive and ability to reduce competition by favoring its own products relative to those of its brands and unbranded rivals.[705] The worry is that a category captain that is able to control decisions about product placement and promotions could hinder the entry or expansion of other suppliers, leading to less variety and possibly higher prices.[706]

A general framework for the analysis of anticompetitive exclusion involving practices linked to category management and category captain arrangements has been offered by the FTC. [707] According to the FTC, this analysis first considers the extent of disadvantage that rival suppliers likely would experience from a given marketing arrangement, including consideration of their ability

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698 Lorden (2011), 548-9 ("In analyzing whether there is an illegal exclusive dealing arrangement, a court considers several factors: the actual agreement between the parties, the impact the arrangement has on the market, the market power of the category captain, and foreclosure of competitors or injury to competition.").

699 Lorden (2011), 549 ("As a defense, the defendant may offer evidence of the efficiencies gained by its conduct.").

700 Lorden (2011), 549 ("The court will most likely balance these factors and determine whether there is a less restrictive alternative.").

701 American Bar Association (2010), 37-38 ('To make out an exclusive dealing claim, a plaintiff must show the requisite exclusive agreement, sufficient market power to demonstrate that the challenged agreement threatens reduced output or higher prices, and market foreclosure sufficient for injury to competition.").

702 American Bar Association (2010), 38 ('Sufficient market foreclosure is properly understood as a question of both the degree of foreclosure and the duration of the foreclosure.").

703 American Bar Association (2010), 38 ("If the plaintiff makes a prima facie case for exclusive dealing, the defendant may counter with compelling defenses, which are those that "relate[] directly or indirectly to the enhancement of consumer welfare," such as efficiencies gained by the conduct.").

704 American Bar Association (2010), 38 ("Then a court will consider less restrictive alternatives, and sometimes engage in balancing.").

705 American Bar Association (2010), 22 ("Most economic analyses of category captains focus on the possibility that the category captain will have the incentive and ability to reduce competition by favoring its own products relative to those of its branded and unbranded rivals.").

706 FTC (2001), 50-51 ("'"A captain that is able to control decisions about product placement and promotions could hinder the entry or expansion of other suppliers, leading to less variety and possibly higher prices."). American Bar Association (2010), 22-23 (citing the FTC Report).

707 FTC (2001), 46 (describing the basic elements of an economic theory of anticompetitive exclusion involving slotting allowances, pay-to-stay fees, and payments to limit rivals' shelf spaces and describing category management and category captains as a "linked set of business techniques designed to help a retailer allocate shelf space on the basis of consumer demand patterns.").

to avoid or mitigate the disadvantage.[708] To show harm to competition, rather than merely to competitors, the analysis then inquirers about the likely impact on competition in markets in which the disadvantaged suppliers seek to compete.[709] Finally, if anticompetitive harm is likely, the analysis asks whether the practice produces procompetitive benefits that likely would offset the harm and whether similar benefits could be obtained by practical, significantly less restrictive means.[710]

In both the analysis of exclusive dealing and competitive exclusion that falls short of an exclusive dealing arrangement, total exclusion from the downstream market is not required for the competitive process to be harmed. Exclusive distribution arrangements may result in anticompetitive effects if a dominant or otherwise powerful supplier can control a sufficient amount of distribution for a sufficient period of time, such that rivals are effectively prevented from reaching minimum efficient scale.[711] Alternative outlets might be less efficient or too small to enable rival manufacturers to maintain an efficient scale of operations.[712] For example, if in the role of category captain a dominant or otherwise powerful manufacturer effectively excludes rival manufacturers from a high percentage of desirable retailers in the market harm to the competitive process can result.[713] Similarly, if in the role of category captain a dominant or otherwise powerful manufacturer effectively excludes rival manufacturers from retailers with an importance to manufacturers disproportionate to their numerical share of a market substantial harm to the competitive process can result.[714] However, if a retailer has a relatively small share of product sales in the category and relevant geographic area, the retailer's use of a category captain likely would not have a significant harmful effect on competition and on consumers.[715]

For the competitive process to be harmed total exclusion from retail stores is also not required. Depriving rivals of effective means of distribution can result in harm to the competitive process.[716] For example, exclusionary conduct by a category captain that results in partial exclusion from retail stores can harm the competitive process by making it more difficult and costly for rivals

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708 FTC (2001), 35 ("The analysis first considers the extent of disadvantage that rival suppliers likely would experience from a given marketing arrangement, including consideration of their ability to avoid or mitigate the disadvantage.").

709 FTC (2001), 35 ("To show harm to competition, rather than merely to competitors, the analysis then inquirers about the likely impact on competition in markets in which the disadvantaged suppliers seek to compete.").

710 FTC (2001), 35 ("Finally, if anticompetitive harm is likely, the analysis asks whether the practice produces procompetitive benefits that likely would offset the harm and whether similar benefits could be obtained by practical, significantly less restrictive means.").

711 American Bar Association (2010), 23 ("Exclusive distribution arrangements may produce anticompetitive effects if a dominant supplier can control a sufficient amount of distribution for a sufficient period of time, such that rivals are effectively prevented from reaching minimum efficient scale.").

712 FTC (2001), 37 ("Alternative outlets might be less efficient or too small to enable rival manufacturers to maintain an efficient scale of operation.").

713 FTC (2001), 36 (describing anticompetitive exclusion "..., if the dominant manufacturer or a small group of manufacturers obtains exclusive-dealing contracts with a high percentage of the desirable retailers in a relevant market, or if rivals are excluded from retail outlets with an importance to manufacturers disproportionate to their numerical share of the market, competitive harm might occur.").

714 FTC (2001), 36 (describing anticompetitive exclusion "..., if the dominant manufacturer or a small group of manufacturers obtains exclusive-dealing contracts with a high percentage of the desirable retailers in a relevant market, or if rivals are excluded from retail outlets with an importance to manufacturers disproportionate to their numerical share of the market, competitive harm might occur.").

715 American Bar Association (2010), 23 ("However, if a retailer has a relatively small share of retail sales of the products in the category in the relevant geographic area, the retailer's installation of a category captain likely would not have a significant harmful effect on competition and on consumers.").

716 FTC (2001), 37 ("This might be accomplished by depriving rivals of effective means of distribution.").

to compete even if they technically remain as a fringe presence.[717] To the extent a category captain's conduct results in competing products being taken partially or entirely off the shelves, or placed in unfavorable locations in the retailer's stores, the circumstance begins to look more like exclusive dealing.[718]

Harms to consumers

To the extent the competitive process is harmed by a category captain's exclusionary conduct, harms to consumers may result. The restriction of competition among rivals may lead to higher prices, less variety and choice, and reduced rates of innovation.[719] A captain that is able to control decisions about product placement and promotions could hinder the entry or expansion of rivals, leading to less variety and possibly higher prices.[720] More broadly, the consumer effects of exclusionary conduct in category captain arrangements may manifest through adverse effects on output, prices, quality, innovation, variety, and consumer choice. Output in a market can be adversely affected where because of the exclusionary conduct consumers no longer have access to the quantity of products or brands they would otherwise desire to have available to them. Similarly, prices can be adversely affected where because of exclusionary conduct consumers no longer enjoy prices and pricing strategies and tactics that would otherwise be desired and available. Product quality can be adversely affected where the exclusionary conduct of the category captain results in products or brands possessing attributes in the amount and combination desired by consumers to be no longer available to them. The quality of product-related marketing activities (e.g., promotion, merchandising, shelving, etc.) may also be similarly harmed. Innovation can be harmed where the exclusionary conduct of the category captain adversely impacts the pace and form of appealing advances to products, promotional strategies, merchandising approaches, shelving practices, pricing tactics and or where innovative advances in other marketing and retailing activities are slowed or otherwise do not make their way into the market. Variety can also be adversely affected where the exclusionary conduct of the category captain causes the product items, product lines, or the product mix (i.e., assortment) desired by consumers in the market to be limited or otherwise no longer available. Choice can also be affected where the process of shopping and purchasing is otherwise made more difficult by the category captain's exclusionary practices.

Determining when a category captain's suggested changes increase (decrease) competition in ways that benefit (or harm) consumers can be difficult.[721] Consumers may not favor the reduction in variety that results from the removal of products and suppliers from a category.[722] Understanding consumer response to changes in product selection, display, promotion, and pricing may not always

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[717] FTC (2001), 37 ("A firm could decrease competition, and enhance its ability to increase price, simply by raising its rivals' costs and making it more difficult and costly for rivals to compete even if they technically remain as a fringe presence.").

[718] American Bar Association (2010), 48 ("If the captain's recommendations result in competing products being taken partially or entirely off the shelves, or placed in unfavorable locations in the retailer's stores, the circumstance begins to look more like exclusive dealing.").

[719] Lindblom & Olkonnen (2008), 2 ("The restriction of competition among rivals may lead to higher prices, less variety and choice, and reduced rates of innovation.").

[720] FTC (2001), 51 ("A captain that is able to control decisions about product placement and promotions could hinder the entry or expansion of other manufacturers, leading to less variety and possibly higher prices.").

[721] American Bar Association (2010), 23 ("One of the greatest difficulties in assessing the effects of category captain-suggested changes is determining whether those changes benefit consumers.").

[722] American Bar Association (2010), 24 ("Consumers, however, may not favor the reduction in varieties available at the retailer's stores.").

be immediate and may require consumer observation over a period of time to determine success or failure.[723] Thus, measuring the overall impact of category management decisions is difficult.[724] However, advances in information technology and data analytics have made this assessment less challenging.

Procompetitive benefits and the reasonableness of exclusion

The extent of harm to competition and consumers arising from exclusionary conduct by a category captain depends on whether procompetitive benefits (aka, efficiencies) result from the specific conduct and whether the exclusionary conduct is reasonably necessary to achieve the procompetitive benefits. Whether the exclusionary conduct of a category captain is reasonably necessary to achieve any procompetitive benefits depends on the facts and circumstances of the particular category captain arrangement. Importantly, this determination focuses on the reasonable necessity of the specific exclusionary conduct at issue and not the category captain arrangement overall.

Potential procompetitive benefits attributed to category captain arrangements include benefits relating to productive efficiency. Productive efficiency refers to the optimal utilization of resources within a firm at a point in time.[725] This type of efficiency focuses on the question of whether a firm's resources are being used in the most cost effective way using existing technology.[726] Technical expressions of productive efficiency find that is achieved when a firm's outputs are produced at the lowest possible cost.[727] Firms may achieve productive efficiencies through economies of scale and scope and coordination.[728] Economies of scale occur where a firm is able to lower its average cost of production as its volume of production increases.[729] Economies of scope occur where a firm is able to lower its average cost of production as its variety of production

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723 American Bar Association (2010), 24 ("Consumer response to changes in product selection, display, promotion, and pricing may not be immediate and may require consumer observation over a period of time to determine success or failure.").

724 American Bar Association (2010), 24 ("Additionally, measuring the impact of category management decisions is difficult. Empirical testing of these decisions is relatively rare in the economic literature and can lead to different conclusions. In principle, retail scanner data could be used. Retailers and suppliers, especially if sophisticated, commonly do temporal analyses in the same store or set of stores. These before-and-after reviews can be useful but are quite limited as a basis for market-wide inferences.").

725 Ben Van Rompuy, ECONOMIC EFFICIENCY: THE SOLE CONCERN OF MODERN ANTITRUST POLICY? 28 (2012) ("Productive (or technical) efficiency refers to the optimal utilization of resources by particular firms."). Gregory Gundlach and Diana Moss, *Efficiencies in Antitrust: Introduction and Overview*, 60 ANTITRUST BULLETIN 91, 93 (2015) ("Static efficiencies also include productive efficiency, which involves the optimal utilization of resources within a firm at a point in time.").

726 Gundlach & Moss (2015), 93 ("This type of efficiency is concerned with the question of whether a firm's resources are being used in the most cost-effective way by means of existing technology."). Van Rompuy (2012), 28 ("It [productive efficiency] is achieved when a given output is produced at the lowest possible costs (i.e., using the most cost-effective combination of productive resources available under existing technology)").

727 Gundlach & Moss (2015), 93 ("Technical expressions of productive efficiency find that is achieved when a firm's outputs are produced at the lowest possible cost.").

728 Gundlach & Moss (2015), 93 ("Firms are understood to achieve productive efficiencies through economies of scale and scope and coordination.").

729 Robert S. Pindyck and Daniel L. Rubinfeld, MICROECONOMICS (2008). Roger D. Blair and David L. Kaserman, ANTITRUST ECONOMICS (2009).

increases.[730] Economies of coordination occur where a firm is able to lower its average cost of production through organizing production with others.[731]

Procompetitive benefits credited to category captain arrangements also include benefits relating to allocative efficiency. Allocative efficiency refers to the optimal allocation or distribution of resources in an economic system over the short run.[732] This form of efficiency focuses on the question of whether resources are being employed in tasks where they are most valued.[733] Technical expressions of allocative efficiency find that it is achieved when the production and distribution of that quantity of each specific product (taking into account consumer preferences) is such that the total value of all products in an economic system are at their maximum (i.e., for a given firm – where price is equal to marginal cost).[734]

The particular procompetitive benefits attributed to category captain arrangements include productive efficiencies achieved through a retailer's access to superior information held by the category captain and productive efficiencies achieved through a retailer's efficient utilization of personnel employed by the category captain. The particular procompetitive benefits attributed to category captain arrangements also include allocative efficiencies achieved through aligning incompatibilities in promotional incentives held by a retailer with that of a manufacturer and related allocative efficiencies achieved through alleviating a manufacturer's concerns for rivals' free riding.

Access to superior information

The primary procompetitive efficiency attributed to category captain arrangements is based on the possibility that manufacturers have superior information concerning products and promotion and the benefits that potentially derive from a retailer's access to this information through a category captain arrangement.[735] Under this explanation, a category captain is viewed to possess superior information relative to retailers as to consumer preferences for products in a retail category, and perhaps for those products complementary (i.e., related) to the category. Compared to retailers a

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[730] Joel D. Goldhar and Mariann Jelinek, *Plan for Economies of Scope*, HARVARD BUSINESS REVIEW. (November 1983).
[731] Donald S. Watson, PRICE THEORY AND ITS USES, 178–79 (1968) (describing examples of coordination-based productive efficiencies).
[732] Gundlach & Moss (2015), 93 ("Static efficiencies include allocative efficiency, which refers to the optimal allocation or distribution of resources within an economic system in the short run.").
[733] Van Rompuy (2012), 28 ("It [Allocative efficiency] is concerned with the question whether resources are employed in tasks where consumer value their input the most...").
[734] Gundlach & Moss (2015), 93 ("Technical expressions of allocative efficiency find that it is achieved when the production and distribution of that quantity of each specific product (taking into account consumer preferences) is such that the total value of all products in an economic system are at their maximum (i.e., for a given firm—where price is equal to marginal cost)."). Van Rompuy (2012), 33 ("Because resources are put to their highest valued use, and output is adjusted accordingly, the competitive equilibrium achieved under the conditions of perfection competition fosters an optimal allocation of resources.").
[735] Wright (2009), 318 ("The primary efficiency justification for category management contracts offered by commentators has been the possibility that manufacturers have superior information concerning products and promotion, and therefore, delegation to the "captain" represents a pro-competitive and efficient information-sharing arrangement between the manufacturer and retailer."). American Bar Association (2010), 18 ("The primary efficiency attributable to category captains derives from the superior information possessed by the upstream supplier as to consumer preferences for the products in the category, and perhaps for those products complementary to the category as well.").

category captain is presumed to have stronger incentives to track and analyze this information[736] and to have more extensive access to this information.[737] Thus, an asymmetry of information exists between the category captain and the retailer. Productive efficiencies arise to the extent the category captain possesses superior information and expertise, this information is made available to a retailer, and the retailer makes category decisions regarding product selection, placement, and pricing that consumers prefer.[738]

Various limitations have been identified for the explanation that category captain arrangements are procompetitive based upon the view that manufacturers have superior information concerning products and promotion and category captain arrangements provide retailers access to this information. For one, while potentially offering a partial explanation for the use of category captains, it has been suggested that information asymmetries are not likely to explain the pervasive adoption of category captain arrangements across various retail formats and product categories.[739] In addition, while a manufacturer may have superior information about the demand for its own products, it is also not obvious to some that manufacturers would have superior information about the demand for rival products.[740] Finally, retailers are increasingly participating as suppliers in various product markets through the offering of private label products.[741] Thus, like manufacturers, retailers have incentives to understand category demand as well.[742]

The view that a category captain has superior information as to consumer preferences for either their own products or rivals products in the category is complicated. A retailer can use their own price and volume data in much the same way as the category captain to track and predict

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736 American Bar Association (2010), 19 (Elaborating on the relative incentives of retailers and suppliers to track and analyze consumer preferences "At any given time, a retailer can sell tens of thousands of separate items. It is therefore a considerable task to choose which items to carry, how to display them, and how to price them. At the same time, a retailer does not have the economic incentive to track and analyze consumer preferences in each of the categories of products carried in its stores. A retailer's primary goal is to attract the consumer to the store and stimulate a purchase of products within the store-the retailer often cares relatively little whether a consumer chooses brand X or brand Y. Suppliers, by contrast, care very much which brand is chosen and are incentivized to collect and analyze detailed data on consumer preferences within a product category.").

737 American Bar Association (2010), 19 (Elaborating on the relative access of retailers and suppliers to information on consumer preferences "Scanner data from multiple retailers track consumer purchases on a product-by-product basis and provide a means for a supplier to track the sales of its own products relative to those of its rivals. A supplier's review of data from multiple retailers can provide a robust basis to predict consumer response to changes in the relative prices, display, and promotion of the category's various products in a retailer's stores. Such information, in addition to being valuable to the supplier, can put the upstream supplier in a position to help downstream retailers make decisions regarding pricing and new product introductions that benefit consumers."). See also FTC (2001), 48 ("The manufacturer may know things like the times of year when a product will sell best, the kinds of promotions that are most effective in moving the product, or the kinds of complementary goods that might be advantageously displayed in adjacent space.").

738 American Bar Association (2010), 18-19 ("When this information is made available to a downstream retailer, the retailer is more likely to make decisions regarding product selection, placement, and pricing that consumers prefer.").

739 Wright (2009), 318 ("While this alternative explanation may offer a partial explanation for such delegation, informational symmetries are not likely to explain the pervasive adoption of "category captain" arrangements across various retail formats and product categories.").

740 Wright (2009), 318 ("It is not obvious that manufacturers would have superior information about the demand for rival products in addition to their own products.").

741 American Bar Association (2010), 3 ("Some retailers also have made a greater effort to stock their own brands ('house brands' or 'private labels'").

742 Wright (2009), 318 ("Further, retailers increasingly participate as suppliers in various product markets through the offering of private label products and thus have incentives to understand category demand as well.").

consumer preferences and reactions to price changes and promotional activity in their own stores.[743] Where a retailer does so, a category captain may still possess expertise not held by the retailer that in combination with the retailer's access to data can result in beneficial synergies.[744] However, retailers that sell their own private label brands may have both access to information and expertise about the category. Over time, retailers have increased their offering of private label brands.[745] Retailers of private label brands therefore have access to this information for their own stores.[746] Retailers that market and sell their own private label brands also possess incentives to track and analyze information as to consumer preferences.[747] These circumstances complicate the reasoning that a retailer that employs a category captain gains efficiencies through access to superior information as to consumer preferences for products in the retailer's category. A retailer that markets and sells its own private label brand may also possess different objectives and goals for the category than those held or known to the category captain.[748] These factors and circumstances can complicate the view that a category captain has superior information as to consumer preferences for products in the category and that when shared with the retailer beneficial efficiencies arise.

Efficient utilization of personnel

Another procompetitive efficiency attributed to category captain arrangements involves the benefits that potentially derive from a retailer's use of the category captain's personnel in performing the function and tasks of category management. Category management functions include reviewing the category, targeting consumers, planning merchandising, implementing strategy, and evaluating results. Category management tasks include more specific activities in performance of the functions of category management. In the absence of a category captain arrangement these functions and tasks are performed by the retailer. Depending on the nature of a category captain arrangement a retailer may delegate all or a portion of these functions and tasks to the category captain.[749] To the extent the category captain and their personnel are able to perform these functions and tasks at a lower cost a retailer is likely to be able to perform category management more efficiently.

Whether a category captain and their personnel can perform the functions and tasks of category management more economically then a retailer is dependent on the resources of the category captain and the retailer and also the particular circumstances involved. Ordinarily, the shifting of the category management function and related tasks from a retailer to a category captain

743 American Bar Association (2010), 48 ("Of course, a retailer can use its own price and volume data in much the same way as a category captain does to track and predict consumer preferences and reactions to price changes and other promotional activity.").
744 American Bar Association (2010), 48("...the synergy of the supplier's often unique expertise and the retailer's access to essential data promises more effective category management.").
745 American Bar Association (2010), 3 ("Some retailers also have made a greater effort to stock their own brands ('house brands' or 'private labels'").
746 American Bar Association (2010), 3 ("With the advent of computerized databases and scanned product bar codes, retailers have huge amounts of information about consumer purchases available on a daily basis.").
747 Wright (2009), 318 ("Further, retailers increasingly participate as suppliers in various product markets through the offering of private label products and thus have incentives to understand category demand as well.").
748 Alan, Dotson & Kurtulus (2017) (studying differences in category captain implementation under different retailer objectives and goals).
749 American Bar Association (2010), 19-20 (Describing these tasks and their delegation to a category captain "A category captain can be delegated a variety of tasks by the retailer-e.g., preparation of shelf display diagrams, preparation of promotional calendars, oversight of shelf resets or shelf relabeling, policing compliance by local stores and other suppliers with shelf display diagrams and other retailer policies, and reviews of displays and consumer pricing at competitive retailers.").

has no net effect on product cost, as whatever reduction of personnel time and effort was gained by the retailer could be offset by the increase in personnel time and effort borne by the captain. [750] Nonetheless, to the extent that a category captain is able to use its employees already in the field, a category captain may be able accomplish the function and task of category management more efficiently than the retailer. This may also occur where a category captain and its personnel perform functions and tasks of category management across multiple retailers thereby lowering costs in synergistic ways. However, in some circumstances the category captain and additional personnel involved in the function and tasks of category management may include personnel responsible for marketing, sales, distribution, logistics, and fulfillment activities. As noted, competition concerns are created if these personnel engage in the tasks and function of category management involving rivals' products while at the same time they are also responsible for performing functions and tasks aimed at increasing demand for their own products (e.g., marketing, sales, etc.).

Alignment of incompatibilities in incentives

Another procompetitive efficiency credited to category captain arrangements is that they help to align incompatibilities in promotional incentives by serving as a partial or limited exclusive distribution arrangement.[751] Category captain arrangements are explained to shift responsibility for shelf space decisions to the manufacturer and allocate the policing function to the retailer.[752] This efficiency extends prior explanations first offered to describe the use of vertical restraints to address the problem of insufficient retailer supply of promotion[753] and then later to explain the use of slotting (shelf-space) contracts.[754] Because a category captain arrangement is a limited, rather than a full exclusive, the arrangement is also argued to be inherently less restrictive agreement in terms of its potential to foreclose rivals.[755]

According to the explanation, when some customers possess high demand for particular rival brands it does not make economic sense for a retailer to allocate and sell their shelf space exclusively to other rivals.[756] However, when consumer demand for variety in other brands within a product category is high, the efficient shelf space contract will involve a "limited exclusive" where the manufacturer determines the quantities of other, highly demanded products to be stocked.[757] As

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[750] American Bar Association (2010), 20 ("The shifting of these tasks from retailer to category captain ordinarily would have no net effect on product cost, as whatever reduction of personnel time was gained by the retailer could be offset by the increase in personnel time borne by the captain.").

[751] Wright (2009), 320 ("We analyze category management as a form of such a limited exclusive distribution arrangement and consider the conditions under which it makes economic sense for a retailer to shift some control of shelf space allocation decisions regarding rival brands to a manufacturer.").

[752] Wright (2009), 336 ("This paper analyzes category management contracts as a form of limited exclusive that shifts responsibility for shelf space decisions to the manufacturer and allocates the policing function to the retailer.").

[753] Benjamin Klein and Kevin M. Murphy, *Vertical Restraints as Contract Enforcement Mechanisms*, 31 J.L. & ECON. 265 (1988).

[754] Benjamin Klein and Joshua D. Wright, *The Economics of Slotting Contracts*, 50 J.L. & ECON. 421 (2007).

[755] Wright (2009), 324 ("Because a category management shelf space contract is a limited rather than a full exclusive, it is an inherently less restrictive agreement in terms of its potential to foreclose rivals.").

[756] Wright (2009), 321 ("When some customers have a high demand for particular rival brands, it will not make economic sense for a retailer to sell exclusive shelf space.").

[757] Wright (2009), 336 ("When consumer demand for variety within the product category for other brands is high, the efficient shelf space contract will involve a limited exclusive."). Wright (2009), 336 ("Category management contracts are best viewed as a form of limited exclusive, where the manufacturer determines the quantities of other, highly demanded products to be stocked."). Wright (2009), 321-322 ("Category management contracts belong to the larger family of

explained, limited exclusives, including those that result from category management contracts, offer retailers an alternative method of committing promotional sales to a single manufacturer, thereby intensifying competition for shelf space through increasing the elasticity of demand faced by each manufacturer and increasing the retailer's return on its shelf space.[758]

However, a consequence of limited exclusives involving a category captain arrangement is that the parties understanding of performance in the arrangement is not exactly clear.[759] Therefore, the possibility of non-performance exists on both sides of the transaction.[760] For example, a retailer may supply more shelf space to a competitor's brands than contractually arranged for.[761] Alternately, a manufacturer category captain may restrict the supply of competing brands more than contracted for or otherwise use its influence on shelf space allocation and promotion decisions and reduce total category profits.[762] To avoid these types of non-performance the parties must rely on some type of self-enforcement mechanisms.[763] Category management contracts involving a category captain provide this self-enforcement.[764]

In their capacity as a self-enforcement mechanism category captain arrangements efficiently assure that the manufacturer receives the limited exclusive it has paid for in the arrangement and that the retailer's profits are not reduced by category captain's decisions that overly restrict rival

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partial or limited exclusives that increase the value of retailer shelf space by providing retailers with the ability to commit its marginal consumers to a particular manufacturer when some consumers value other rival brands.").

758 Wright (2009), 336 ("Limited exclusives, including category management contracts, offer the retailer an alternative method of committing promotional sales to a single manufacturer, thereby intensifying competition for shelf space by increasing the elasticity of demand faced by each manufacturer and increasing the retailer's return on its shelf space."). Wright (2009), 322, nt. 31 ("One way to think about a category manager designation is as the retailer providing an "exclusive promotion" contract rather than an exclusive on the retailer's shelf space. The implicit understanding between the manufacturer and retailer is essentially that the retailer will only promote the manager's [category captain's] product through the provision of a greater quantity and quality of shelf space. In turn, the manager's [category captain's] obligation is to make recommendations to the retailer or design shelf space allocations that will not harm the retailer in terms of reduced variety.").

759 Wright (2009), 321 ("Thus, the implicit contractual understanding regarding performance is not as clear under these conditions as in shelf space contracts where retailers supply a particular quantity, location, or particular fraction of shelf space.").

760 Wright (2009), 321 ("Because performance with regard to shelf space is not precisely defined in these circumstances, the possibility of non- performance on the margin exists on both sides of the transaction.").

761 Wright (2009), 321 ("Retailer nonperformance might occur if the retailer supplies greater shelf space to competing brands than implicitly contracted and paid for. This would involve the retailer, in effect, "selling the same space twice," for instance, by shifting some promotional sales of the featured brand to rivals by changing the allocation of rival products or failing to promptly re- stock sold out facings of the featured product.").

762 Wright (2009), 321 ("Alternatively, the category manager manufacturer might not perform by restricting the supply of competing brands more than implicitly contracted for, or otherwise using its influence on shelf space allocation and promotion decisions in a manner that reduces total category profits.").

763 Wright (2009), 321 ("The parties must rely on a self- enforcement mechanism to avoid these types of non-performance.").

764 Wright (2009), 322 ("Category management contracts, like most shelf space contracts, are almost always self-enforced. This means that transactors will continue to perform in a manner consistent with the implicit understanding so long as the expected premium stream earned by the party over the life of the agreement is greater than the gains from cheating.""). Wright 2009, nt. 31, p. 322 ("One way to think about a category manager designation is as the retailer providing an "exclusive promotion" contract rather than an exclusive on the retailer's shelf space. The implicit understanding between the manufacturer and retailer is essentially that the retailer will only promote the manager's [category captain's] product through the provision of a greater quantity and quality of shelf space. In turn, the manager's [category captain's] obligation is to make recommendations to the retailer or design shelf space allocations that will not harm the retailer in terms of reduced variety.").

offerings.[765] Designating a category captain for a category reduces the retailer's incentives to cheat by (1) placing shelf-space decisions in the hands of the category captain and thereby making retailer violations easier to detect, (2) permitting the retailer to earn greater manufacturer payments through the category captain designation and (3) minimizing costs associated with the reduction in variety due to the limited exclusive.[766] Designating a category captain also reduces the gains from cheating[767] by the manufacturer category captain because the category captain stands to lose the increased profits from increased promotion of its brands earned by the manufacturer through the arrangement.[768] In addition, manufacturers are assumed to have a greater brand name than the retailer and thereby their delegation as a category captain permits the parties to take advantage of the manufacturer's brand name capital to assure performance.[769] Retailers are explained to have lower policing costs in detecting violations by the manufacturer thereby adding to the efficiencies.[770] Providing this self-enforcing framework category captain arrangements that shift shelf space decisions to manufacturers (and therefore the opportunity to violate the implied contract) are said to be efficient.[771]

As an explanation for the procompetitive benefits of category captain arrangements, the efficient limited exclusive distribution explanation is highly stylized. Conceiving of category captain arrangements as procompetitive partial or limited exclusive distribution arrangements implies certain assumptions and requirements. In particular, the explanation assumes that retailers are able to increase the value of their shelf space by committing marginal consumers to a particular

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765 Wright (2009), 322 ("A category management contract assures the manufacturer of receiving the limited exclusive it has paid for and the retailer relies on the manufacturer brand name to assure manufacturer performance, that is, to assure that overall retailer profit is not reduced by the category captain's decisions that make rival offerings too restrictive.").

766 Wright (2009), 322 ("Designating a category manager can be thought of as reducing the retailer's incentive to cheat by placing the shelf- space decisions in the hands of the manufacturer, thereby increasing the probability that nonperformance will be detected and increasing the probability that the relationship remains within the self- enforcing range over the maximum number of possible contingencies. On the other hand, the premium stream earned by the retailer, consists of the per unit time or per unit sale payments paid by the manufacturer over the duration of the agreement. From the retailer's perspective, designating a category manager allows the retailer to earn greater manufacturer payments than without the designation, while minimizing the costs associated with the reduction in product variety.").

767 Wright (2009), 322 ("Manufacturer cheating may be defined as the supply of less than the "agreed upon" level of product variety by restricting rivals. The gains from the category manager associated with short- run cheating are the extra profits earned by the manager from shifting sales from restricted rivals to its' own product.").

768 Wright (2009), 322-323 ("The magnitude of the sanction that can be imposed on the manufacturer is the "extra" profits earned by the manufacturer over the course of the relationship from increased promotional sales. Because the category manager stands to lose these profits upon termination, the manager will perform so long as these long run gains are greater than the sanction for nonperformance.").

769 Wright (2009), 323 ("One reason that this shift may be efficient is because the manufacturer has a greater brand name than the retailer and the delegation allows the parties to take advantage of the manufacturer's brand name capital to assure performance.").

770 Wright (2009), 323 ("Furthermore, it is likely that the retailer has lower policing costs than the manufacturer. While it may be costly for the manufacturer to monitor and detect subtle violations of the implicit promotional agreement by the retailer in the form of rearranging rival products or failure to promptly restock sold out facings, the retailer may more efficiently detect manufacturer violations such as restricting rival offerings in a manner that reduces overall retailer profit.").

771 Wright (2009), 323 ("The self- enforcement framework helps to explain why category management contracts, unlike other limited exclusives, shift shelf space decisions (and therefore the opportunity to violate the implicit contract) to the manufacturer while the retailer becomes the policer of the contract.").

manufacturer when some consumers value the brands of other rivals[772] For this to occur, promotional shelf space must induce some consumers to purchase the displayed product who would not otherwise do so, but not induce consumers to shift between stores.[773] In the parlance of the author, there must be little or no inter-retailer competitive effects from promotional shelf-space.[774] The assumption that promotional shelf space can induce consumers to purchase a displayed product is generalizable. However, the assumption that in providing a limited exclusive to a category captain and its brands, consumers will not value the brands of rivals to such a degree as to switch to another store to purchase the rivals brand when it is not prominently displayed[775] depends on the brand loyalty of the affected consumers. Thus, the explanation is restricted to circumstances where a sufficient number of consumers are not loyal to the brands of rivals. Perhaps more significant the efficiency of the explanation rests largely on the self-enforcing elements of category captain arrangements. However, as the author concedes "the mere fact that an agreement is designed to be self- enforcing, of course, does not guarantee that the category manager [captain] will always perform in accordance with its obligations."[776] Thus, while manufacturers and retailer may attempt to design their category management arrangements to minimize the probability of future nonperformance, unanticipated events can occur and in some circumstances defeat the self-enforcing nature of the arrangements.[777]

Alleviation of free-riding concerns

Another procompetitive efficiency credited to category captain arrangements is the benefits that potentially derive from the alleviation of a category captain's concerns about free riding.[778] This efficiency extends aforementioned explanations first offered to describe the use of vertical restraints to address the problem of insufficient retailer supply of promotion,[779] then later to explain the use of slotting (shelf-space) contracts[780] and most recently to explain how category captain arrangements create a partial or limited exclusive dealing arrangement and thereby address incompatibilities in promotional incentives between a retailer and a supplier.[781]

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772 Wright (2009), 321-322 ("Category management contracts belong to the larger family of partial or limited exclusives that increase the value of retailer shelf space by providing retailers with the ability to commit its marginal consumers to a particular manufacturer when some consumers value other rival brands.").

773 Wright (2009), 319 ("Promotional shelf space induces some consumers to purchase the displayed product who would not otherwise do so, but it does not induce consumers to shift between stores.").

774 Wright (2009), 319 (describing that "... there are little or no inter- retailer competitive effects from the supply of promotional shelf space..."). Wright 2009, nt. 23, p. 319 ("However, it is reasonable to assume that a retailer's decision to prominently display a particular brand does not generate significant inter- retailer effects in the form of consumers switching to competing retailers because their desired brand is not prominently displayed.").

775 Wright (2009), 319, nt. 23 ("However, it is reasonable to assume that a retailer's decision to prominently display a particular brand does not generate significant inter- retailer effects in the form of consumers switching to competing retailers because their desired brand is not prominently displayed.").

776 Wright (2009), 323 ("The mere fact that an agreement is designed to be self- enforcing, of course, does not guarantee that the category manager will always perform in accordance with its obligations.").

777 Wright (2009), 323 ("Transactors attempt to design contract terms to minimize the probability of future nonperformance, but unanticipated events can take performance outside the self- enforcing range in some circumstances.").

778 American Bar Association (2010), 20-22 ("A third possible procompetitive benefit is the alleviation of the category captain's concerns about free-riding.").

779 American Bar Association (2010), 21 (citing Klein and Murphy 1988).

780 American Bar Association (2010), 20-22 (citing Klein and Wright 2007).

781 Wright (2009).

According to the explanation marketing studies document that suppliers can increase sales by purchasing shelf space.[782] Promotional shelf space is therefore important to suppliers, especially those that supply differentiated products and use promotional expenditures to increase sales rather than reducing their wholesale price.[783] A retailer, however, does not necessarily benefit when a consumer shifts from one brand to another in the retailer's store where the retailer likely would have made money either way.[784] Thus, it is explained that a suppliers uses shelf space payments to align the interests of retailers with their own interest in promotional shelf space with each gaining incremental revenue from the supplier's use of the shelf space for the promotion.[785] This same dynamic is said to exist for a supplier's participation in a retailer's advertisements and in-store promotions[786] that are often the subject of category captain arrangements. Under the explanation, certain forms of promotional and shelf space exclusivity can address the concern that the retailer might have incentives that differ from the supplier making the promotional payment[787]

Extended to category captain arrangements, it is explained that the sales increase generated by a supplier's promotion, advertisement, or promotional shelf space can be undercut if the retailer does not execute the promotion effectively or if a retailer is involved in other promotional activity in the category at the same time.[788] More particularly, when decisions regarding promotion, pricing, and product placement reside with the retailer or with a rival supplier serving as a category captain, the parties' incentives to maximize their own products could lead them to undercut the promotional expenditures made by the original supplier, thereby diluting the value of this investment by the original supplier.[789] By assuming the role of category captain, the supplier gains additional assurance that its promotional expenditures to the retailer effectively promote the sale of its products and that its programs will not be undercut.[790] In this way, a category captain arrangement is said to lead to the equivalent of a de facto limited or full exclusive contract where the captain has the responsibility for allocating shelf space or promotions, the captain does so to the exclusion of other competitors, and

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782 American Bar Association (2010), 20-21 ("Marketing studies have demonstrated that suppliers can increase sales by using promotional expenditures to purchase valuable shelf space.").

783 American Bar Association (2010), 20-21 ("Marketing studies have demonstrated that suppliers can increase sales by using promotional expenditures to purchase valuable shelf space. Promotional shelf space is therefore important to suppliers, especially when the supplier supplies differentiated products and uses promotional expenditures to increase sales instead of reducing its wholesale price.").

784 American Bar Association (2010), 21 ("A retailer, however, does not necessarily benefit when a consumer shifts from one brand to another in the retailer's store; the retailer likely would have made money either way.").

785 American Bar Association (2010), 21 ("A supplier uses shelf space payments to align the interests of retailers with its own interest in promotional shelf space; both gain incremental revenue from the supplier's use of the shelf space for the promotion.").

786 American Bar Association (2010), 21 ("The same dynamic exists for a supplier's participation in a retailer's advertisements and in-store promotions.").

787 American Bar Association (2010), 21 ("Certain forms of promotional and shelf space exclusivity can address the concern that the retailer might have incentives that differ from the supplier making the promotional payment.").

788 American Bar Association (2010), 21 ("The sales increase generated by a promotion, advertisement, or promotional shelf space can be undercut if the retailer is involved in other promotional activity in the category at the same time or does not execute the promotion effectively.").

789 American Bar Association (2010), 21 ("In particular, when decisions regarding promotion, pricing, and product placement reside with the retailer or with a rival supplier serving as a category captain, the parties' incentives to maximize their own products could allow them to undercut the promotional expenditures made by the original supplier, thereby diluting the value of this investment by the original supplier.").

790 American Bar Association (2010), 21 ("By assuming the role of category captain, the supplier has additional assurance that its payments to the retailer effectively promote the sale of its products and that its programs will not be undercut.").

the category captain is not constrained by the retailer.[791] To the extent the category captain or any other supplier faces less risk of uncertainty as to its use of promotions, promotional payments to retailers will tend to increase, and hence tend to lower the cost of their products to consumers.[792]

As an underlying explanation for the procompetitive benefits of category captain arrangements, the alignment of incompatibilities in incentives explanation and by extension the alleviation of free-riding concerns explanation espouses a standard that equates the interests of the category captain with the best interests of retail consumers. This standard extends the assumption that a manufacturer's interests are almost always aligned with that of consumers. However, such a standard has been criticized in other contexts as amounting to "if-it-makes-money-for-the-producer, it-must-be-good" for consumers.[793] As pointed out by Grimes, applying the standard, a monopoly firm's exercise of exclusionary conduct that increases the monopolist's own output and profitability would necessarily be considered procompetitive. Thus, the standard tends to promote the interests of individual competitors over that of competition as is focused upon in antitrust.[794] Consequently, whether the sequence of events described by the explanation inures to the benefit of the consumer has been suggested to depend on whether the category captain arrangement leads to any of the anticompetitive outcomes identified for category captain arrangements.[795]

Less restrictive alternatives and options

The extent of harm to the competitive process and to consumers arising from exclusionary conduct by a category captain depends further on whether, given the occurrence of legitimate procompetitive benefits that offset the harms, there exist practical and significantly less restrictive ways to achieve the procompetitive benefits. Potentially less restrictive alternatives to category captain arrangements have been identified including alternative ways of structuring the arrangement (e.g., co-captains, validators and advisors; third party consultants; foregoing the use of a category captain, etc.). Other potentially less restrictive alternatives involve options to the specific types of exclusionary conduct and practices found to be occurring in the category captain arrangement. The existence of practical and significantly less restrictive ways to achieve the benefits involves a determination based on the circumstances and facts of a particular category captain arrangement.

Alternatives to category captain arrangements

Potentially less restrictive alternatives for achieving the benefits of a category captain performing category management include the use of co-captains, validators and advisors; third party

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791 American Bar Association (2010), 18 ("The category captain arrangement can lead to the equivalent of a de facto limited or full exclusive contract if the captain has the responsibility for allocating shelf space or promotions, does so to the exclusion of other competitor, and is not constrained by the retailer.").

792 American Bar Association (2010), 22 ("To the extent a category captain or any other supplier faces less risk of uncertainty as to its promotions, promotional payments to retailers will tend to increase, and hence tend to lower the cost of the product to the consumer.").

793 Warren S. Grimes, *A Dynamic Analysis of Resale Price Maintenance: Inefficient Brand Promotion, Higher Margins, Distorted Choices, and Retarded Retailer Innovation*, 55 ANTITRUST BULLETIN 110, 146 (2010) ("The "if-it-makes-money-for-the-producer, it-must-be-good" test would, if applied in other antitrust contexts, have rather startling implications. Under this test, a monopoly firm's exclusionary conduct would be procompetitive—the powerful firm could increase both output and price once rivals are excluded.").

794 Grimes (2010), p. 146-148.

795 American Bar Association (2010), 22 ("Whether that sequence of events inures to the benefit of the consumer depends, to some degree, on whether the category captain arrangement leads to any of the anticompetitive outcomes described" for category captain arrangements.).

consultants; and foregoing the use of a category captain in the performance of category management. As described, for organizing their category captain arrangements retailers may formally appoint and rely upon "co-captains"[796] or otherwise call upon other suppliers to check[797] and act as decision "validators"[798] and category "advisors."[799] A retailer that employs multiple suppliers as captains or advisors gains the benefit of the parties' multiple perspectives. Some retailers may require or permit more than one category captain. Retailers may also use third part consultants independently perform their category management services.[800] The benefit of a third party consultant is that they have no vested interest in the category.[801] A retailer can also forego the use a category captain altogether and perform the category management function themselves. The potential for anticompetitive exclusion is minimized when retailers perform their own category management services.[802] Retailers who offer store brands may find they possess the necessary expertise and resources to perform their own category management.

Alternatives to specific types of exclusion

Potentially less restrictive alternatives for achieving the benefits of a category captain performing category management also include options to the specific types of exclusionary conduct and practices occurring in the category captain arrangement. This includes alternatives to a category

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796 Desrochers, Gundlach & Foer (2003), 204 ("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."). FTC (2001), 48 ("... other retailers use the category captain only for advice about the management of the category and check this advice against the recommendations of other manufacturers and their own data.").

797 Steiner (2001), 78 ("to counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer."). FTC (2001), 48 ("... other retailers use the category captain only for advice about the management of the category and check this advice against the recommendations of other manufacturers and their own data.").

798 Badyopadhyay, Rominger & Basaviah (2009), 317 ("It is quite possible to attain high retail efficiency and high level inter-brand competition if the retailer is willing to put in a mechanism to control the category captain. Below we have outlined a set of measures available to the retailer: 1. The retailer must appoint a "category adviser" who can validate or question the CC's decisions. This can be the second largest brand in the category. The alternative is to allow input from all major/minor brands to validate the CC's input. This balances a CC's market power and safeguards against CC's self interest to the detriment of rival suppliers and consumers."). Carameli (2004), 1325, ft. 9 ("Some use a Category Captain and a second manufacturer to check or "validate" the Captain's recommendations.").

799 Badyopadhyay, Rominger & Basaviah (2009), 317 ("It is quite possible to attain high retail efficiency and high level inter-brand competition if the retailer is willing to put in a mechanism to control the category captain. Below we have outlined a set of measures available to the retailer: 1. The retailer must appoint a "category adviser" who can validate or question the CC's decisions. This can be the second largest brand in the category. The alternative is to allow input from all major/minor brands to validate the CC's input. This balances a CC's market power and safeguards against CC's self interest to the detriment of rival suppliers and consumers."). Carameli (2004), 1325, ft. 9 ("Some use a Category Captain and a second manufacturer to check or "validate" the Captain's recommendations.").

800 Desrochers, Gundlach & Foer (2003), 204 ("A retailer may entrust all category decisions to .... third-party advisors that have no vested interest in the category"). Steiner (2001), 78 ("To counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer or engage a "third-party advisor" with no vested interest in the category.").

801 Desrochers, Gundlach & Foer (2003), 204 ("A retailer may entrust all category decisions to .... third-party advisors that have no vested interest in the category"). Steiner (2001), 78 ("To counterbalance the natural bias of the Captain towards his company's products, some retailers formally arrange for second opinions from another category manufacturer or engage a "third-party advisor" with no vested interest in the category.").

802 FTC (2001), 54 ("The potential for anticompetitive conduct is minimized when retailers make their own category management decisions...").

captain using its role to deny others from competing for the role of category captain; receiving and misusing rivals' sensitive information; engaging in improper recommendations, exclusive dealing and tortious conduct; and improperly disadvantaging retailers' store brands and the suppliers of store brands. In each case, a likely practical and significantly less restrictive alternative is for the category captain to forego the exclusionary conduct and practice at issue. Effective and efficient category management through category captain arrangements can be achieved without unwarranted exclusionary conduct and practices.

Countervailing considerations and circumstances

When assessing the harmful effects of exclusionary practices by a category captain important countervailing considerations can come into play if the outcome deviates from conventional concerns in antitrust terms (e.g., exclusive dealing, tying, etc.).[803] Special countervailing circumstances may also be present in a particular case.[804] Potential countervailing considerations and circumstances identified for exclusionary category captain arrangements include counteracting interests in promoting the free flow of information between suppliers and retailers and the freedom of a retailer to choose how to run its business in a highly complicated retailing environment.[805] Other countervailing considerations and circumstances may be present in a particular case.

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803 American Bar Association (2010), 51 ("Where category management leads to an outcome such as tying or exclusive dealing, the category manager's conduct can be judged in conventional antitrust terms. Where category management is challenged in the absence of such outcomes, important countervailing considerations can come into play, such as promoting the free flow of information and the freedom of a retailer to choose how it will run its business in a highly complicated retailing environment. Care should be taken not to misjudge the process of category management just because the category captain may have market power.").

804 FTC (2001), 35 ("It may also be important to consider whether special countervailing circumstances make competitive harm unlikely in a particular case.").

805 American Bar Association (2010), 51 ("Where category management is challenged in the absence of such outcomes [conventional antitrust concerns for tying or exclusive dealing], important countervailing considerations can come into play, such as promoting the free flow of information and the freedom of a retailer to choose how it will run its business in a highly complicated retailing environment.").

Chapter 9. Empirical Research on Exclusion in Category Captain Arrangements

Empirical research that examines the competitive implications of category captain arrangements is scarce.[806] Five empirical studies were identified as relevant from a review of the literature. These studies and their relevant findings are summarized in Tables 7a-e. Together, the studies and their findings offer useful insights for understanding competitive exclusion involving category captain arrangements.

Overview of studies

The identified studies span a diversity of research settings, apply an assortment of methodologies, and include a range of sample sizes. In their 2007 study Morgan, Kaleka and Gooner surveyed 73 retail managers about focal suppliers across 35 categories in the "very concentrated" United Kingdom retail supermarket industry.[807] See Table 7a. In their 2008 study Lindblom and Olkonnen surveyed 89 manufacturer managers in various positions about their company's role in category management decision making in the "highly concentrated" Finland consumer goods market.[808] See Table 7b. In their 2011 study Gooner, Morgan and Perreault surveyed 347 retail managers about 35 food and nonfood categories in U.S. supermarket chains representing approximately 60% of U.S. supermarket sales and 46% of all U.S. grocery sales wherein approximately ½ of the settings relied upon category captains.[809] See Table 7c(1) and Table 7c(2). In their 2014 study Chimhundu, Kong, and Gururajan interviewed 2 retail manufacturers and various manufacturer managers, some of whom were category captains, in the New Zealand fast moving consumer goods industry.[810] See Table 7d. Finally, in their 2017 study Yasin, Dotson, and Kurtulus studied the second largest manufacturer and "soon-to-be" category captain in a single retail category using archival data from one of the largest regional U.S. grocery chains.[811] See Table 7e.

Key findings

Antecedent conditions and circumstances

The studies provide findings about the strategic importance of categories managed by category captains and the relative category management resources and marketing capabilities held by retailers in categories managed by category captains. In their survey of U.S. supermarket chains, Gooner, Morgan and Perreault report that on average category management settings managed by

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806 Alan, Dotson & Kurtulus (2017), 128 (as explained by the authors "The existing research on CC is based on legal theory; surveys; game theoretic models of retailer–manufacturer interactions under CC; and structural estimation, which enables counterfactual analyses regarding how a hypothetical CC implementation would have affected category decisions and performance. However, empirical evidence on the collaborative and competitive implications of CC is scarce, as retailers are reluctant to share
CC data because of antitrust concerns.").

807 Morgan, Kaleka & Gooner (2007), 520 ("The U.K. supermarket industry is very concentrated with 11 large chains accounting for over 95% of all U.K. supermarket sales.").

808 Lindblom & Olkonnen (2008), 4 ("Furthermore, the Finnish fast-moving consumer-goods market is highly concentrated in terms of both manufacturers and retailers.").

809 Gooner, Morgan & Perreault (2011).

810 Chimhundu, Kong & Gururajan (2014).

811 Alan, Dotson & Kurtulus (2017), 131 ("The category we study is a mature, shelf-stable food category (i.e., a center-store grocery product). As per the retailer's request, the soon-to-be captain manufacturer provided the retailer with a strengths, weaknesses, opportunities, and threats (SWOT) analysis of the category.").

category captains are more strategically important to retailers than those managed without a captain.[812] In addition, Gooner, Morgan and Perreault report that in category management settings managed by category captains, the involved categories are on average those in which the retailer has lower relative category management resources[813] and lower marketing capabilities.[814] These findings suggest that category captains are relied upon by retailers to bolster their category management efforts in categories that are important to them and where retailers possess lower relative category management resources and marketing capabilities.

Nature of category captain arrangements

The studies offer findings about the frequency of category captain arrangements and the factors relied upon by retailers when selecting a category captain. The studies also offer findings about the performance of category captain arrangements and the behavior of other suppliers.

The studies report findings about the frequency of category captain arrangements and the factors relied upon by retailers when selecting a category captain. In their survey of U.S. supermarket chains, Gooner, Morgan and Perreault report that "half of the retail CM situations we examine involved reliance on a category captain."[815] In their study of the New Zealand fast moving consumer goods industry, Chimhundu, Kong, and Gururajan report that of the manufacturer managers interviewed, "some were category captains in some of the categories that they supplied to retailers."[816] In their study, Chimhundu, Kong and Gururajan also report that prominent criterion in the selection of a category captain include "market leaders"[817] and "relationships."[818] These findings suggest that category captain arrangements are a prevalent form of category management and that category captains are selected based upon criteria that include their market presence and interfirm relationships in a category.

The studies also report findings about the performance of category captain arrangements. Gooner, Morgan and Perreault report in settings involving category captains, on average the performance of retailers in meeting their category objectives[819] and achieving financial growth[820] is

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812 Gooner, Morgan & Perreault (2011), 29 ("On average, retail CM settings managed by category captains are more strategically important to retailers ... than those managed without a captain,...").
813 Gooner, Morgan & Perreault (2011), 29 ("On average, [in] retail CM settings managed by category captains .... retailers acknowledge that these are categories in which they on average have lower relative resources ...").
814 Gooner, Morgan & Perreault (2011), 29 ("On average, [in] retail CM settings managed by category captains .... retailers acknowledge that these are categories in which they on average have lower ... marketing capabilities.").
815 Gooner, Morgan & Perreault (2011), 24 ("After responding to questions about other lead supplier characteristics, we also asked the retailer's category manager to indicate if the lead supplier was considered the retailer's "category captain" for the category"). Gooner, Morgan & Perreault (2011), 29 ("Note that in our sample, which is representative of a large number of categories and supermarket chains, half the retail CM situations we examine involve reliance on a category captain.").
816 Chimhundu, Kong & Gururajan (2014), 373 ("The study also incorporated manufacturers, some of whom were CCs in some of the categories that they supplied to the retailers...").
817 Chimhundu, Kong & Gururajan (2014), 375 ("On the criteria used to select CCs, two prominent criteria emerged from the interviews [with retailer A, retailer B and manufacturer C]. The first was that of appointing the market leader in the category.").
818 Chimhundu, Kong & Gururajan (2014), 375 (Retailer A "The second prominent criterion with respect to the selection of CCs is based on relationships.").
819 Gooner, Morgan & Perreault (2011), 30 ("Category captain situations exhibit significantly higher mean category performance outcomes for ... retailers."). Gooner, Morgan & Perreault (2011), 29-30 ("category captains are associated with much higher average performance for the retailer in meeting its category objectives (5.05 vs. 4.15)...").

higher than in settings involving more traditional roles. Gooner, Morgan and Perreault also report that in settings involving category captains, on average the category performance of the lead supplier (i.e., typically the category captain) is higher than in settings involving more traditional roles.[821] These findings suggest that category captain arrangements increase category performance for both a retailer and a lead supplier including those in category captain roles.

The studies further report findings about the behavior of other suppliers in category captain arrangements. Gooner, Morgan and Perreault report that in settings involving category captains, retailers report lower levels of militancy (e.g., sabotaging good ideas, arguing with decisions, obstructing programs, and interfering with meeting objectives) by other suppliers compared to settings involving more traditional roles.[822] These findings suggest that category captain arrangements reduce the occurrence of sabotage, arguing, obstruction, and interference on the part of other suppliers.

Category captain influence and control

The studies offer findings about the influence and control of suppliers in category management decision-making, factors affecting a supplier's influence, the process of category management decision-making, and the effects of a supplier's influence on category performance.

The studies report findings about the influence and control of category captains and suppliers in category management decision-making. In their survey of Finland's consumer goods market, Lindblom and Olkonnen report that 35.6% of the suppliers perceived their company had a greater role in category management decision-making than their competitors, 33.3% viewed their role was equal to that of competing suppliers, and 31.1% felt they had no explicit role in category management decision- making.[823] Lindblom and Olkonnen also report that suppliers who perceived themselves as having a greater role in category management decision-making felt they had more decision responsibility over assortment planning,[824] promotional planning,[825] and space allocation.[826] Lindblom and Olkonnen further report suppliers who perceived themselves as having

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820 Gooner, Morgan & Perreault (2011), 29-30 ("category captains are associated with much higher average performance for the retailer in ... achieving financial growth (1.97 vs. 1.02).

821 Gooner, Morgan & Perreault (2011), 30 ("category captain mean [lead supplier category] performance gains are on average higher (4.86 vs. 4.40)," "Category captain situations exhibit significantly higher mean category performance outcomes for ... lead suppliers.").

822 Gooner, Morgan & Perreault (2011), 29 ("retailers report that militancy by other suppliers is on average significantly lower with category captains").

823 Lindblom & Olkonnen (2008), 5 ("... three roles were identified: role 1—suppliers who had a greater role in CM decision-making than their competitors (35.6%), role 2—those whose role was equal to that of the competing suppliers (33.3%), and role 3—those who were excluded from CM collaboration (31.1%).").

824 Lindblom & Olkonnen (2008), 5 ("With respect to assortment planning, the respondents from companies perceiving their role in CM collaboration as stronger than that of their competitors ... had greater decision-making responsibility ... than those from companies perceiving their role as equal to that of their competing suppliers ... and from companies with no role in CM collaboration...").

825 Lindblom & Olkonnen (2008), 5 ("With respect to promotional activity ..., the respondents from companies perceiving their role in CM collaboration as greater than that of their competitors ... had greater decision-making responsibility ... than those from companies with no role…").

826 Lindblom & Olkonnen (2008), 5 ("With respect to ... space allocation, the respondents from companies perceiving their role in CM collaboration as greater than that of their competitors ... had greater decision-making responsibility ... than those from companies with no role ... Furthermore, companies perceiving their role as equal to that of the

a greater role in category management decision-making felt their products sales,[827] market share, [828] product turnover time,[829] consumer traffic, [830] product visibility,[831] product shelf space,[832] product location,[833] and product launch[834] were more positive than other suppliers. Finally, Gooner, Morgan and Perreault report findings that in settings involving category captains, on average, lead suppliers exhibit significantly higher levels of influence in retail category management decisions compared to suppliers in more traditional roles.[835] These findings suggest that suppliers can differ in their role in category management decision making, but those that have a greater role, including category captains, have more decision responsibility, obtain more positive results for their performance, and possess more influence.

The studies also report findings about the factors affecting a lead supplier's category management influence. Gooner, Morgan, and Perreault report that a category's strategic importance to the retailer is positively related to a lead supplier's category management influence.[836] Gooner, Morgan, and Perreault also report that the retailer's relative category management resources are negatively related to a lead supplier's category management influence.[837] These findings suggest that both the importance of a category to a retailer and the relative category management resources held by a retailer can impact a supplier's influence on category management decisions.

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competing suppliers had greater decision-making responsibility than the respondents from companies with a weak role in CM collaboration ...").

827 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... the supplier's product sales, ... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

828 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... the product's market share, ... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

829 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... the product's turnover time, ... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

830 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... consumer traffic, ... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

831 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... product visibility, ... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

832 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... product shelf space .... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

833 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... product location, ... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

834 Lindblom & Olkonnen (2008), 6 ([perceptions of the effects of category management on] ... product launch in a focal category) .... were higher among the respondents from companies perceiving their role in CM collaboration as more significant than .... among those from companies with a weak role.").

835 Gooner, Morgan & Perreault (2011), 29 ("Category captain situations exhibit significantly higher levels of ... lead supplier influence on retail CM." "Category captains enjoy dramatically higher ... mean CM influence than suppliers in traditional roles, ...").

836 Gooner, Morgan & Perreault (2011), 28 ("H3a and H3b, which link category strategic importance ... and lead supplier CM influence, are strongly supported, with [positive] coefficients of... .242 and .220 ($p< .001$), respectively").

837 Gooner, Morgan & Perreault (2011), 25 ("[the negative] relationship between the retailer's relative CM resources and lead supplier CM influence is strongly supported."). Gooner, Morgan & Perreault (2011), 25 ("the H1b relationship between the retailer's relative CM resources and lead supplier CM influence is strongly supported in both models, with coefficients of –.609 and –.638 ($p< .001$), respectively.").

The studies further report findings about the process of category management decision-making. In their interviews with two retail managers and various manufacturers (some of whom were category captains in some of the categories they supply), Chimhundu, Kong and Gururajan report that while the categories are managed by a category captain in partnership with the retail organization's category managers, the retail organization (via its category managers) actually had the final say on what happens in the categories, on the shelves, and in the store product categories and that retailers generally retain all the power to make the final decisions.[838] These findings suggest that with respect to the sequence of category management decision-making, in categories managed by a category captain in partnership with a retail organization's category managers, the retailer organization, through its category managers, has the "final say" on decisions.

Finally, the studies report findings about the effects of a lead supplier's (potentially a category captain) influence on category performance. Gooner, Morgan, and Perreault report that the influence of a lead supplier (potentially a category captain) is positively related to a retailer's category performance in meeting nonfinancial category goals.[839] Gooner, Morgan, and Perreault also report that the influence of a lead supplier (potentially a category captain) is positively related to the lead supplier's own performance in the category.[840] These findings suggest that the influence of a lead supplier, including a category captain, yields positive implications for a retailer's, as well as the supplier's, performance in the category.

Exclusionary conduct and practices

The studies offer findings about the frequency of exclusionary conduct on the part of category captains and other suppliers and the factors that affect the occurrence of this conduct. The studies also offer findings about the effects of exclusionary practices on retailer performance. Finally the studies offer findings about the effects of exclusionary conduct on the behaviors of other suppliers.

The studies report findings about the frequency of exclusionary conduct on the part of category captains and others suppliers and the factors that affect the occurrence of this conduct. In their survey of U.S. supermarket chains Gooner, Morgan, and Perreault report that conduct in the form of altering facts, acting to benefit itself at the retailer's expense, and a lack of integrity when

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838 Chimhundu, Kong & Gururajan (2014), 376 ("In retail chain A, while the categories are managed by the CCs in partnership with the retail organisation's category managers, it emerged that the retail organisation (via its category managers) actually has the final say on what happens in the categories. ... In retail chain B, it is more or less the same situation where the retail organisation has the final say with respect to what happens on the shelves, despite the active involvement of manufacturers/suppliers. ... Manufacturers who supply these retail organisations also expressed similar comments,that despite manufacturer involvement in managing the categories, the retailers have the final say on what happens in the store product categories. ... Based on the triangulation of these results from retail organisation A, retail organisation B and manufacturers; one can conclude that the manufacturers/suppliers are involved in the management of the store product categories, as category champions, but the retailers generally retain all the power to make the final decisions on what happens in the categories. Overwhelmingly, this is the state of affairs.").

839 Gooner, Morgan & Perreault (2011), 28 ("We also find some support for the H6a proposition that retailers can benefit from lead supplier CM influence beyond the benefits that accrue through greater CM intensity, with a coefficient of .139 (p< .05) in the retailer category performance model. However, the insignificant coefficient in the objective financial growth model indicates that this benefit may apply to objectives other than those related to financial growth.").

840 Gooner, Morgan & Perreault (2011), 28 ("Our results also indicate strong support for H6b, which links lead supplier influence on retailers' CM directly to the lead supplier's performance, with path coefficients of .396 and .401 (both p< .001) in the two models.").

not closely monitored (labeled "opportunism") was "relatively low" for both category captains and other lead suppliers,[841] but that the "conduct does exist."[842] In their study of the UK retail supermarket industry, Morgan, Kaleka, and Gooner also report that conduct by a focal supplier (potentially a category captain) in the form of a deceit, acting to benefit itself at the retailer's expense, and a lack of integrity when not closely monitored (labeled "opportunism") was not "rampant."[843] Morgan, Kaleka and Gooner also report that a focal supplier's (potentially a category captain) influence in category management decision making is positively related to opportunism by the focal supplier.[844] These findings suggest that the occurrence of exclusionary conduct in category captain arrangements is relatively low and not rampant, but that exclusionary conduct does occur, and its occurrence is related to a supplier's influence.

The studies also report findings about the effects of exclusionary practices on retailer performance. Morgan, Kaleka, and Gooner report that opportunism by a focal supplier (potentially a category captain) yields negative outcomes for retailer performance in the category.[845] Similarly, Gooner, Morgan, and Perreault report that opportunism by a lead supplier (potentially a category captain) is negatively related to retailer performance in the category.[846] Gooner, Morgan and Perreault also report findings that show opportunism by a lead supplier (potentially a category captain) is negatively related to the lead supplier's performance in meeting the retailer's category goals.[847] These findings suggest that when exclusionary conduct does occur in a category captain arrangement, it poses negative implications for retailer performance.

Finally, the studies report findings about the effects of exclusionary conduct on the behaviors of other suppliers. Morgan, Kaleka, and Gooner report that opportunism by a focal supplier is positively related to militant behaviors (e.g., sabotaging good ideas, arguing with decisions, obstructing programs, and interfering with meeting objectives) by other suppliers.[848]

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841 Gooner, Morgan & Perreault (2011), 29 ("Retailers report that the mean level of opportunism is relatively low for both category captains and other lead suppliers—and importantly, the difference (2.45 vs. 2.54) does not approach statistical significance (p< .517).").

842 Gooner, Morgan & Perreault (2011), 31 ("... although we find that ... average levels of opportunism are low, some opportunism does still exist.").

843 Morgan, Kaleka & Gooner (2007), 522 ("Our descriptive statistics do not indicate rampant opportunism among focal suppliers to U.K. supermarket retailers at the category-level. In fact, the mean score of 2.98 (median 2.75, mode 2.5) on a seven-point response scale for the focal supplier opportunism measure was the lowest rating by retailer managers on any of our constructs.").

844 Morgan, Kaleka & Gooner (2007), 521 ("the hypothesized positive relationship between focal supplier influence in retailers' category management and focal supplier opportunism in H1 was supported in our data (b= 0.317, t-value 2.60)." Morgan, Kaleka & Gooner (2007), 522 ("Consistent with retailer managers' fears in our fieldwork, our results indicate that supplier influence on retailer category management is significantly related to focal supplier opportunism.").

845 Morgan, Kaleka & Gooner (2007), 521-522 ("From a category performance outcome perspective, H6 linking focal supplier opportunism negatively with the retailer's category performance was supported in our data (b=0.227, t-value 2.97).") Morgan, Kaleka & Gooner (2007), 522 ("where focal supplier opportunism exists, it has a significant direct negative effect on retailers' category performance.").

846 Gooner, Morgan & Perreault (2011), 28 ("Gooner, Morgan & Perreault (2011), 28 ("Consistent with Morgan, Kaleka, and Gooner (2007), our SEM results show that when opportunism emerges, it can both damage the retailer's category performance directly (R2) ....").

847 Gooner, Morgan & Perreault (2011), 28 ("We find some support for the hypothesized negative relationship between lead supplier opportunism and lead supplier performance (H7) with a significant negative coefficient of –.143 (p< .05) in the meeting retailer category goals model.").

848 Morgan, Kaleka & Gooner (2007), 522 ("H7, indicating a positive relationship between opportunistic behaviors by a focal supplier and militant behavior among nonfocal suppliers to the category was also supported (b= 0.264, t-value

Similarly, Gooner, Morgan and Perreault report that opportunism by a lead supplier (potentially a category captain) is positively related to militant behaviors (e.g., sabotaging good ideas, arguing with decisions, obstructing programs, and interfering with meeting objectives) by other suppliers.[849] These findings suggest that when exclusionary conduct does occur in a category captain arrangement, it can engender sabotage, arguing, obstruction and interference by other suppliers.

Safeguards against exclusion

The studies offer findings about the utility of safeguards (e.g., monitoring and verification) against the occurrence of exclusionary conduct.

In their study of the UK retail supermarket industry, Morgan, Kaleka, and Gooner report opportunism (including exclusionary conduct) by a focal supplier is negatively related to a retailer's ability to monitor opportunism by the focal supplier.[850] Similarly, in their interviews with 2 retail managers and various manufacturers (some of whom were category captains in some of the categories they supply), Chimhundu, Kong and Gururajan report that the occurrence of a category captain making decisions that favors itself is negatively related to the ability of a retailer to verify and monitor the decisions of the category captain. The authors report that retailers check to verify that the shelf decisions made by category captains are acceptable, so any attempt by a category captain would more than likely be discovered by a retailer directly or indirectly through other manufacturers.[851] However, the authors also report sentiments that to the extent retailers do not closely monitor a category captain the category captain will take advantage of the situation to do favors for themselves.[852] These findings suggest that safeguards in the form of monitoring and verification can reduce exclusionary conduct in category captain arrangements.

Outcomes and Performance

In addition to aforementioned findings about the outcomes and performance of category captain arrangements, the studies offer additional findings about the outcomes and performance of category captain arrangements under different management objectives. See Table 7.

The studies report findings about the performance of category captain arrangements under different performance objectives. In their study of a "soon-to-be" category captain, Yasin, Dotson, and Kurtulus report outcomes when the retailer's objective is to protect their private label products and when the retailer's objectives is <u>not</u> to protect their private label products in a category. Yasin,

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2.44).") Morgan, Kaleka & Gooner (2007), 522 ("we also find that focal supplier opportunism is positively associated with non-focal supplier militancy.).

849 Gooner, Morgan & Perreault (2011), 28 ("Consistent with Morgan, Kaleka, and Gooner (2007), our SEM results show that when opportunism emerges, it can ... incite militant behaviors by other suppliers").

850 Morgan, Kaleka & Gooner (2007), 521 ("H4, linking the retailer's monitoring ability with reduced focal supplier opportunism was supported in our data (b=0.231, t-value 2.53).").

851 Chimhundu, Kong & Gururajan (2014), 377 ("In reality though, the retail chains do check to verify that the shelf decisions made by category champions are acceptable. In that respect, the retail chains are in control of things; so any such attempts by a CC would more than likely be discovered by the retailers, or by the other manufacturers in the category, and put to the attention of the retailer who has the final say.").

852 Chimhundu, Kong & Gururajan (2014), 377, ("On another note however, sentiments pointed to a level of suspicion that, given a chance, CCs would take advantage of the situation to do favours to themselves if the retail organisations would not closely monitor the CM activities and recommendations/decisions of the CCs. ... These sentiments are actually a pointer to the potential of what could happen.).

Dotson and Kurtulus report that in a setting where the objective was to protect the retailer's private label, overall category sales increased as a result of pricing and assortment changes and merchandising efforts[853] and volumetric prices in the category declined.[854] In addition, sales of both the retailer's private label[855] and the category captain's products increased.[856] However, sales results for individual manufacturers varied[857] with competitors offering products with similar attributes to the retailer's private label product experiencing sales declines[858] and competitors offering product with similar attributes to the category captain's product experiencing sales increases.[859] Yasin, Dotson and Kurtulus explain that their findings are consistent with the objective to protect a retailer's private label products.[860] In particular, decreasing the assortment presence of manufacturers in direct competition with the private label because of their low prices left the private label as the most affordable option in the category. Consequently, private label performance improved. Furthermore, increasing the assortment presence of manufacturers, which offered premium products, enabled the retailer to enrich its assortment and thereby increase overall category sales. [861] Alternatively, Yasin, Dotson and Kurtulus report that in a setting where the objective is not to protect a retailer's private label,[862] overall category sales increased (and more so than under the prior

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853 Alan, Dotson & Kurtulus (2017), 137 ("Table 3 shows that the increase in category sales that can be associated with CC is 19.1%, which is statistically significant. The pricing changes boost category sales by 7.6%. The assortment changes increase sales by 2.9%. Finally, merchandising efforts lead to a 8.6% increase in category sales. The impacts of pricing, assortment, and merchandising on category sales are all statistically significant.").

854 Alan, Dotson & Kurtulus (2017), 137 ("The CC indicator coefficient in the price equation indicates that CC leads to a 9.2% decline in volumetric prices, which is statistically significant.").

855 Alan, Dotson & Kurtulus (2017), 137 ("Table 3 also shows that CC leads to a 13.9% increase in private label sales.").

856 Alan, Dotson & Kurtulus (2017), 137 ("Table 3 shows that CC leads to a ... 42.4% increase in the captain's sales..").

857 Alan, Dotson & Kurtulus (2017), 137 ("Our analysis shows that some manufacturers benefit from CC, whereas others suffer as manifested by declining sales. For instance,For instance, Table 3 shows that CC decreases manufacturer 3's sales by 18.2%. This decrease is driven by the decline in the presence of manufacturer 3'sproducts in the assortment. Manufacturer 6 experiences a sales decline as well. The decrease in manufacturer 6's sales due to CC is 33.4%. A large portion of this decrease (i.e., 15.6%) is driven by the decline of manufacturer 6's presence in the assortment. Contrary to manufacturers 3 and 6, manufacturer 4 benefits because CC increases its sales by 37.1%. Most of this increase (i.e., 19:3%) is due to assortment changes. The impact of CC on manufacturer 5's sales is statistically insignificant. The remaining four manufacturers have relatively small sales, which makes it difficult to provide reliable estimates at a manufacturer level. However, the total impact ofCCon these fourmanufacturers is positive, as manifested by a 13.1% increase in their total sales that can be attributed to CC.").

858 Alan, Dotson & Kurtulus (2017), 138 ("The coefficient ... which measures the similarity between UPC i and the private label products in the same subcategory, is negative and significant. That is, a product is more likely to experience a decline in its assortment presence if there is a similar private label product in the assortment.").

859 Alan, Dotson & Kurtulus (2017), 138 ("the coefficient ... which measures the similarity between UPC i and the captain's products in the same subcategory, is positive and significant. This finding implies that the competing manufacturers' products that are similar to the captain's products are more likely to increase their presence in the assortment during the post implementation period.").

860 Alan, Dotson & Kurtulus (2017), 138 ("These findings are consistent with the objectives of the CC implementation we study. In particular, decreasing the assortment presence of manufacturers 3 and 6, which are in direct competition with private label because of their low prices, leaves the private label as the most affordable option in each subcategory. Consequently, private label performance improves. Furthermore, increasing the assortment presence of manufacturer 4, which offers premium products, enables the retailer to enrich its assortment and thereby increase overall category sales.").

861 Alan, Dotson & Kurtulus (2017), 138 (It should be noted that the researchers include further, "While the protection of private label is in line with the existing literature (e.g., Chintagunta 2002), the increased presence of manufacturer 4 contrasts the literature's predictions on the negative impact of CC on the competing manufacturers.").

862 Alan, Dotson & Kurtulus (2017), 139 ("We operationalize this conjecture by considering a scenario in which the coefficient for Sim PL I equals zero instead of its estimated value, -.249. Setting this coefficient to zero implies that a product's similarity to private label does not lead to a decline in its assortment presence after CC.").

objective).[863] However, sales of the retailer's private label decreased[864] while sales of the private label's main competitor's brands increased.[865] Finally, sales results for other competitors were mixed.[866] These findings suggest that the performance implications of category captain arrangements vary depending on their objective to protect or not protect a retailer's private label product.

Summary of research

Five empirical studies relevant for understanding competitive exclusion in category captain arrangements were identified and examined. Spanning a diversity of research settings, applying an assortment of methodologies and including a range of sample sizes, the studies offer insights for understanding exclusionary conduct and practices involving category captain arrangements.

The examined research provides insights about the antecedent conditions and circumstances of category captain arrangements. The findings of the research suggest that category captains are relied upon by retailers to bolster their category management efforts in categories that are important to them and where the retailer possesses lower relative category management resources and marketing capabilities.

The examined research also provides insights about the nature of category captain arrangements. The findings of the research suggest that category captain arrangements are a prevalent form of category management and category captains are selected based upon criteria that include their market presence and interfirm relationships in a category. The findings also suggest category captain arrangements increase category performance for both a retailer and a lead supplier including those in category captain roles. Finally, the findings suggest that category captain

863 Alan, Dotson & Kurtulus (2017), 139 (In the alternative setting, the overall category sales would have been 4.1 percentage points higher than the increase we estimate under the original setting. That is, the impact of CC on category sales is 19.1% in the original setting as reported in Table 3, whereas it is 23.2% in the alternative setting. ... The sales changes for the remaining manufacturers in the category are mixed because changing SimPLi affects not only a product's own distribution but also the distribution of the remaining products in the category.").

864 Alan, Dotson & Kurtulus (2017), 139 ("Figure 5 reports how switching from the original CC implementation setting [objective to protect private label] to an alternative setting in which the private label is not protected changes the impact of CC on the entire category as well as each manufacturer. … Private label sales decline by 3.2 percentage points when private label is not protected. However, its main competitor, manufacturer 3, experiences a 13.8-percentage-point increase in its sales. … It is important to note that although total category sales are expected to increase under this alternative regime, this finding does not necessarily imply that the retailer made a mistake in protecting the private label. Because we do not observe product margins, it is possible that the increase in sales could be associated with a decrease in profitability.").

865 Alan, Dotson & Kurtulus (2017), 139 ("Figure 5 reports how switching from the original CC implementation setting [objective to protect private label] to an alternative setting in which the private label is not protected changes the impact of CC on the entire category as well as each manufacturer. … Private label sales decline by 3.2 percentage points when private label is not protected. However, its main competitor, manufacturer 3, experiences a 13.8-percentage-point increase in its sales. … It is important to note that although total category sales are expected to increase under this alternative regime, this finding does not necessarily imply that the retailer made a mistake in protecting the private label. Because we do not observe product margins, it is possible that the increase in sales could be associated with a decrease in profitability.").

866 Alan, Dotson & Kurtulus (2017), 139 (In the alternative setting, the overall category sales would have been 4.1 percentage points higher than the increase we estimate under the original setting. That is, the impact of CC on category sales is 19.1% in the original setting as reported in Table 3, whereas it is 23.2% in the alternative setting. ... The sales changes for the remaining manufacturers in the category are mixed because changing SimPLi affects not only a product's own distribution but also the distribution of the remaining products in the category.").

arrangements reduce the occurrence of sabotage, arguing, obstruction, and interference on the part of other suppliers.

The examined research further provides insights about category captain influence and control. The findings of the research suggest that suppliers can differ in their role in category management decision making, but those that have a greater role, including category captains, have more decision responsibility, obtain more positive results for their performance, and possess more influence. The findings also suggest that both the importance of a category to a retailer and the relative category management resources held by a retailer can impact a supplier's influence on category management decisions. The findings further suggest that with respect to the sequence of category management decision-making, in categories managed by a category captain in partnership with a retail organization's category managers, the retailer organization, through its category managers, has the "final say" on decisions. Finally, the findings suggest that the influence of a lead supplier, including a category captain, yields positive implications for a retailer's, as well as the supplier's, performance in the category.

The examined research, in addition, provides insights about exclusionary conduct and practices in category captain arrangements. The findings of this research suggest that although the occurrence of exclusionary conduct in category captain arrangements is relatively low and not rampant, exclusionary conduct does occur, and its occurrence is related to a supplier's influence. These findings also suggest that when exclusionary conduct does occur in a category captain arrangement, it poses negative implications for retailer performance. Finally, the findings suggest that when exclusionary conduct does occur in a category captain arrangement, it can engender sabotage, arguing, obstruction and interference by other suppliers.

The examined research also provides insights about safeguards against exclusion in category captain arrangements. The findings of this research suggest that safeguards in the form of monitoring and verification may reduce exclusionary conduct in category captain arrangements.

Finally, the examined research provides findings about the outcomes and performance of category captain arrangements. In addition to research findings already described, the findings of this research suggest that the outcome and performance of category captain arrangements vary depending on their objective to protect or not protect a retailer's private label product.

Chapter 10. Conclusion

Category captain arrangements and their implications for competition and consumers have drawn increasing attention over time. Focusing on concerns that category captain arrangements may be used to exclude competition this monograph more closely examined category management and its approach through category captain arrangements. Focus was given to understanding the basis of concerns for exclusion in category captain arrangements, the nature and sources of power held by category captains, exclusionary practices found in category captain arrangements, the effects of competitive exclusion for competition and consumers, and safeguards that may be used to protect against competitive exclusion in category captain arrangements. The insights and analysis offered in the monograph should be helpful to policymakers and legal practitioners, scholars and business practitioners, and consumers and consumer practitioners.

Table 1. Key Sources of Concern for Category Captain Arrangements

Feature	Description
Facial reduction and elimination of competition	Category captain arrangements result in an exclusive, or near exclusive vertical (i.e., distribution) and horizontal (i.e., competitive) relationship
Opportunities for self-interest seeking	Category captains receive competitively sensitive information about all other brands in the category and then provide recommendations to retailers for how they should be managed in the category
Inherent conflicts of interest	Category captains are responsible to the retailer that they serve as category captain to, but also to the manufacturer that they are an employee of.
Potential for subtle forms of opportunism	Category captain arrangements involve information that is subject to bias, incompleteness, distortion, and manipulation.

Table 2. The Power of Category Captains

Source	Description
Market-based sources	
Market power	Power derived from a category captain's presence in the product category
Multi-category clout	Power derived from a category captain's presence in multiple product categories
Relationship-based sources	
Dependence	Power derived from the retailer's and/or retailer buyer's relative dependence on the category captain
Reward	Power derived from a category captain's ability to mediate rewards to the retailer and/or retail buyer
Coercive	Power derived from a category captain's ability to mediate punishments to the retailer and/or retail buyer
Legitimate	Power derived from a category captain's legitimate right to make decisions in the category
Expert	Power derived from the perception that a category captain has special knowledge or expertise in the category
Referent	Power derived from a retailer's or retail buyer's identification with a category captain
Ecological	Power derived from the category captain's ability to control critical aspects of the environment in which the retailer or retail buyer works
Other sources	
Information asymmetries	Power derived from information asymmetries existing between the retailer and category captain

Table 3. Exclusionary Conduct and Practices by Category Captains

Conduct	Description
Denying others the ability to compete for the captain role	A category captain uses its position to engage in activities that lead to the exclusion of rivals from competing to participate in the captain role
Receiving and misusing rivals' sensitive information	A category captain uses use its position to obtain and misuse sensitive information about rival manufacturers and their plans
Engaging in improper recommendations and wrongful actions	A category captain uses its position to improperly exclude, disadvantage or hinder the product placement, merchandising, promotions, pricing and other plans of rival manufacturers
Disadvantaging retailer's store brands and the suppliers of store brands	A category captain uses its position to obtain and misuse sensitive information and/or engage in improper recommendations and wrongful actions against a retailer's store brands or the suppliers of store brands

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Table 4. Receipt and Misuse of Rivals' Sensitive Information

Practice	Description	
	Receipt	Misuse
General	Category captain receives information about competitor's plans and performance (e.g., directly, indirectly, information systems, etc.)	Captain misuses the information to mitigate or preempt a rival's efforts; to exclude, disadvantage or hinder rivals; or to otherwise reduce their incentives to compete in the retailer or across other retailers.[867]
Product	Category captain is given information about a rival's upcoming new product development or introductions plans (e.g., new products, new brands, brand extensions, etc.)	Captain misuses the information to develop and introduce related products, alter existing products; to exclude, disadvantage or hinder rivals; or to otherwise reduce their incentives to compete in the retailer or across other retailers. [868]
Place	Category captain obtains information or plans regarding a competitor's distribution (e.g., new retail outlets, changes in displays, ideas on shelving, prospective shelf deletions/additions, etc.)	Captain misuses the information to preempt, mitigate, or otherwise obtain an advantage in the distribution of their own products; to exclude, disadvantage or hinder rivals; or to otherwise reduce their incentives to compete in the retailer or across other retailers. [869]
Promotion	Category captain learns about the content or timing of a competitor's promotional campaigns and merchandising plans (e.g., advertising, circulars, signage, shelf signs, etc.) for their brands.	Captain misuses the information to alter its own plans so as to lessen or neutralize the rival's promotional campaigns and merchandising plans; to exclude, disadvantage or hinder rivals; or to otherwise reduce their incentives to compete in the retailer or across

[867] Desrochers, Gundlach & Foer (2003), 210 (Describing concerns identified in the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, "obtaining information on the terms of competitors' contract offers. ... This information could be misused if the category captain takes advantage of it in its role as a competing manufacturer").

[868] Lindblom & Olkonnen (2008), 3 ("They could also put competitors at a disadvantage through advance knowledge of their pricing, merchandising and promotional strategies, and by working to gain an advantage for their own products."). Desrochers, Gundlach, and Foer 2003, p. 206 ("When rivals know and depend on that information, they may price less aggressively, merchandise differently, and selectively promote.").

[869] Lindblom & Olkonnen (2008), 3 ("They could also put competitors at a disadvantage through advance knowledge of their pricing, merchandising and promotional strategies, and by working to gain an advantage for their own products."). Desrochers, Gundlach, and Foer 2003, p. 206 ("When rivals know and depend on that information, they may price less aggressively, merchandise differently, and selectively promote.").

		other retailers[870]
Price	Category captain or others in related roles obtains information about a competitor's product pricing (e.g., price margins on branded products, contemplated price changes, promotional discounts, bid prices for private label, etc.)	Captain misuses the information to set or alter their own prices, alter its plans so as to avoid competing during the rival's promotional periods; to exclude, disadvantage or hinder rivals, or to otherwise reduce their incentives to compete in the retailer or across other retailers. [871]
Other	Category captain obtain information about the terms of a competitor's agreements or bids (e.g., terms of offers, provisions of agreement, conditions of trade, etc.)	Captain misuses the information to alter their agreements or bids so as to mitigate or preempt a rival's efforts; to exclude, disadvantage or hinder rivals; or to otherwise reduce their incentives to compete in the retailer or across other retailers. [872]

[870] FTC (2001), 50 ("Among these disclosures, manufacturers may inform retailers about their future promotional plans, including advertising campaigns ..., and the like. ... This information could be misused if the category captain takes advantage of it in its role as a competing manufacturer. With advance notice of where its rivals are planning promotional efforts, the captain would be positioned in some instances to compete less aggressively and in others to devise a counter to the rivals' plans. If rivals' promotional efforts are counteracted with enough regularity or in matters of enough importance, it might reduce their incentive to devise initiatives that would benefit consumers."). Desrochers, Gundlach, and Foer 2003, p. 206 ("When rivals know and depend on that information, they may price less aggressively, merchandise differently, and selectively promote.").

[871] Desrochers, Gundlach & Foer (2003), 206 ("When rivals know and depend on that information, they may price less aggressively, merchandise differently, and selectively promote.").

[872] Desrochers, Gundlach & Foer (2003), 210 (Describing concerns identified in the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, "obtaining information on the terms of competitors' contract offers. ... This information could be misused if the category captain takes advantage of it in its role as a competing manufacturer").

Table 5. Improper Recommendations and Wrongful Acts

Practice	Description
Product assortment/placement practices	
General	A category captain improperly excludes, disadvantages, or hinders a competitor's assortment/placement
Allocation	A category captain improperly decreases shelf allocation of their competitors' products[873]
	A category captain improperly recommends that the retailer not carry a rival's product[874]
	A category captain improperly recommends to exclude competitors' stock keeping units[875]
	A category captain improperly recommends the exclusion of one or more products from the assortment without replacement[876]
	A category captain improperly recommends that a single, less significant competing product disappear[877]
Allocation Metrics	A category captain improperly limits competitors to a specific number of stock keeping units[878]
	A category captain improperly ties up a specific percentage share of shelf space devoted to a product category[879]
	When redesigning the shelf and displays, a category captain improperly allots more than its fair share of prime shelf locations to its own brand[880]

873 Kurtulus, Ulku, Dotson & Nakkas (2014), 381 ("Existing research has shown that competitive exclusion can be driven by…smaller shelf allocation to the non-captain manufacturers...."). Kurtulis (2014), 380 ("Kurtulis and Toktay 2001 point to the possibility of competitive exclusion via smaller shelf space allocation to the non-captain's products.").
874 FTC (2001), 51 ("...the captain may have an incentive to recommend that the retailer not carry a rival's product).
875 Desrochers, Gundlach & Foer (2003), 210 (Describing concerns identified in the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, "exclude competitors' stockkeeping units").
876 Kurtulus, Ulku, Dotson & Nakkas (2014), 387 (... the captain excludes one or more of the products from the assortment without replacement.").
877 Carameli (2004), 1341 ("A Category Captain could easily recommend that a single, less significant competing product disappear.").
878 Desrochers, Gundlach & Foer (2003), 210 (Describing concerns identified in the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, "limit competitors to a specific number of stockkeeping units").
879 Desrochers, Gundlach & Foer (2003), 210 (Describing concerns identified in the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, "tie up a specific percentage share of shelf space devoted to a product category").
880 Ubramanian, Rhaju, Dha & Wang (2010), 1744 ("for example, when redesigning the shelf and displays, the category captain may allot more than its fair share of prime shelf locations to its own brand...").

	A category captain influences retailers to improperly allocate shelf space on the basis of biased metrics[881]
	A category captain influences retailers to improperly allocate shelf space on the basis of sales[882]
Replacement	A category captain improperly engages in share shifting (increasing demand for the captain's products at the expense of competitors) efforts[883]
	A category captain improperly recommends replacement of a major product from the category with several smaller, less popular products resulting in an increase in the breadth of the assortment but a decrease in the assortment's attraction[884]
	A category captain improperly suggests that its own slower moving brand receive better shelving than would be optimal for the store[885]
	A category captain improperly recommends that a retailer carry one of the rival manufacturer's solid but slower moving products or brands[886]
Position	A category captain improperly recommends that a rival's product be placed in a disadvantageous location[887]

881 Carameli (2004), 1343 (Describing the efforts of United States Tobacco Company in presenting retailers with data skewed to the national market rather than more relevant local sales data. "For instance, USTC provided its retailers with sales data skewed to the national market rather than more relevant local sales data. This data presented national-level data in a way that masked local product movement. The result was an inaccurate prediction of moist snuff sales at local stores that unduly favored USTC products. Such a subtle misrepresentation of product data likely appeared perfectly legitimate to an untrained eye and may never have been detected.").

882 Desrochers, Gundlach & Foer (2003), 210 (Describing the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, describing a hypothetical case study 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 cat-gory. 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 there-fore 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.").

883 Kurtulus, Ulku, Dotson & Nakkas (2014), 381 ("Existing research has shown that competitive exclusion can be driven by share shifting effort by the captain...") Kurtulus, Ulku, Dotson & Nakkas (2014), 380 ("The captain can exert category-expanding effort, which boosts the demand for all products in the category; but the captain can also engage in share-shifting effort, which increases demand for the captain's product at the expense of the competitors' products.") Ubramanian, Rhaju, Dhar & Wang (2010), 1747 ("With share-shifting service, the base level of demand of the category captain's brand increases, whereas that of the rival's decreases.").

884 Kurtulus, Ulku, Dotson & Nakkas (2014), 387 (... the captain can exclude a major product from the category and replace it with several smaller, less popular products resulting in an increase in the breath of the assortment [but a decrease in its attraction]").

885 Carameli (2004), 1341 ("The Captain might also suggest that its own slower moving brand receive better shelving ... than would be optimal for the store.").

886 Carameli (2004), 1341 ("A Category Captain could easily recommend that ... the retailer carry one of the manufacturer's solid but slower moving products or brands.").

887 FTC (2001), 51 ("the captain ... might recommend that the rival's product be placed in a disadvantageous location.").

	A category captain improperly reduces the variety offered in the category[888]
	A category captain improperly offers recommendations that make it more difficult for consumers to locate competing brands in the store[889] When redesigning the shelf and displays, a category captain improperly relegates rival's brand to less attractive shelf positions[890]
Destruction	A category captain improperly directs actions that result in the sabotage of in-store product of competitors[891]

Promotion practices

General	A category captain improperly excludes, disadvantages or hinders a competitor's promotion
Sabotage	A category captain improperly directs actions that results in sabotage of the in-store promotional materials of competitors[892]
Removal	A category captain improperly directs actions that results in the removal of a competitors promotional materials[893]
Emphasis	A category captain improperly recommends that the category captain's own slower moving brand receive better promotion than would be optimal for the store[894]
Confusion	A category captain improperly offers recommendations that make it more difficult for consumers to locate competing brands in the store[895] A category captain improperly seeks to have competing products displayed in the category captain's labeled racks[896]

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888 Kurtulus, Ulku, Dotson & Nakkas (2014), 381 ("Existing research has shown that competitive exclusion can be driven by…reduction in variety offered in the category.").
889 Carameli (2004), 1341 ("...making it difficult for consumers to locate competing brands at stores.").
890 Subramanian, Rhaju, Dhar & Wang (2010), 1744 ("for example, when redesigning the shelf and displays, the category captain may ... relegate the rival's brand to less attractive shelf positions."). Lindblom & Olkonnen (2008), 7 ("For example, category captains might display the non-captains' brands at the bottom of the allocated shelf space, or they might promote two non-captains' brands simultaneously.").
891 Carameli (2004), 1339 ("The most obvious opportunities include a Category Captain that .... acts to sabotage the in-store product or promotional materials of competitors, thus deciding to forego competition on the merits...").
892 Carameli (2004), 1339 ("The most obvious opportunities include a Category Captain that .... acts to sabotage the in-store product or promotional materials of competitors, thus deciding to forego competition on the merits...").
893 Carameli (2004), 1343-44 (Describing the efforts of United States Tobacco Company "Furthermore, USTC frequently removed Conwood display racks and corresponding point-of-sale materials, ... At times, USTC personnel even destroyed Conwood display racks.").
894 Carameli (2004), 1341 ("A Category Captain could easily recommend that …the retailer carry one of the manufacturer's solid but slower moving products or brands. The Captain might also suggest that its own slower moving brand receive better ... promotion than would be optimal for the store.").
895 Carameli (2004), 1341 ("...making it difficult for consumers to locate competing brands at stores.").
896 Carameli (2004), 1343 (Describing the efforts of United States Tobacco Company "USTC sought to have competing products displayed in USTC labeled racks.").

	A category captain improperly recommends that two rival's brands be promoted simultaneously[897]
Control	A category captain specifies when and how competitors can advertise[898]
Pricing practices	
General	A category captain improperly excludes, disadvantages or hinders a competitor's pricing
Control	A category captain improperly exerts control over the prices of competitor's products[899]
Parity	A category captain improperly requires some form of price parity with competitors[900]
Confusion	A category captain improperly recommends that two rival's brands be promoted simultaneously[901]
Other practices	
Scheduling	A category captain coordinates with others to schedule store visits when retailer employees are not working in order to improperly effect the exclusion of competitors[902]

897 Lindblom & Olkonnen (2008), 7 ("For example, category captains might…promote two non-captains' brands simultaneously.").
898 Desrochers, Gundlach & Foer (2003), 210 (Describing concerns identified in the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, "specify when and how competitors can advertise.").
899 Desrochers, Gundlach & Foer (2003), 207 ("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.").
900 Desrochers, Gundlach & Foer (2003), 210 (Describing concerns identified in the Canadian Competition Bureaus report 'Enforcement Guidelines: The Abuse of Dominance Provisions as Applied to the Canadian Grocery Sector, "require some form of price parity with competitors.").
901 Lindblom & Olkonnen (2008), 7 ("For example, category captains might…promote two non-captains' brands simultaneously.").
902 Carameli (2004), 1343-44 (Describing the exclusionary efforts of United States Tobacco Company "Furthermore, USTC ... going so far as to schedule store visits when protesting retailer employees were not working.").

Table 6. Managerial Safeguards Against Exclusion in Category Captain Arrangements

Safeguard	Description
Alternative category captain arrangements	No category captain Co-captains, validators, advisors, and non-leaders Third party advisors & consultants Hybrid arrangements
Safeguards against denying others from competing for the category captain role	Insuring other suppliers are considered for the role Prohibitions on payments & negotiated arrangements Termination clauses, discontinuance rights, & time limits
Safeguards against a category captain receiving and misusing rivals sensitive information	Firewalls & information controls Confidentiality requirements & protections Prohibitions on the receipt, disclosure, & use of information Selection criteria & confidentiality assessments
Safeguards against a category engaging in improper recommendations and related actions	Requirements of objectivity & impartiality Limitations on the guidance provided Review of advice & recommendations Clarification & designation of decision maker
Safeguards against a category captain improperly excluding store brands	Restrictions on advice for store brands

Table 7a. Research: Morgan, Kaleka & Gooner (2007)

Research			Key Results					
Authors	Setting	Method	Antecedents	Behaviors				Outcomes
			Conditions & factors	*Arrangement*	*Influence & control*	*Exclusionary conduct & practices*	*Safeguards*	*Effects for competition & consumers*
Morgan, Kaleka, Gooner (2007)	"Highly concentrated UK retail supermarket industry"	Mail survey of 73 retail managers			Focal suppliers influence (+)	Focal supplier opportunism	(-) Retailer monitoring ability	(-) Retailers category performance (+) Non-focal supplier militancy

Table 7b. Research: Lindblom and Olkonnen (2008)

Research			Key Results					
Authors	Setting	Method	Antecedents	Behaviors				Outcomes
			Conditions & factors	*Arrangement*	*Influence & control*	*Exclusionary conduct & practices*	*Safeguards*	*Effects for competition & consumers*
Lindblom and Olkonnen (2008)	Finnish fast-moving consumer goods market	Mail survey of 89 manufacturer managers						

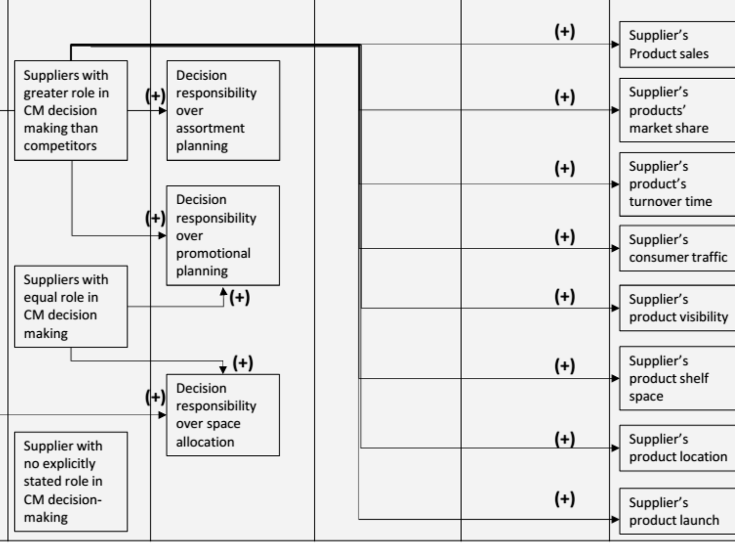

Table 7c (1). Research: Gooner, Morgan and Perreault (2011)

Research			Key Results					
Authors	Setting	Method	Antecedents	Behaviors				Outcomes
			Conditions and factors	*Nature of Arrangement*	*Influence & control*	*Exclusionary conduct & practices*	*Safeguards*	*Effects for competition & consumers*
Gooner, Morgan, and Perreault (2011)	U.S. supermarket chains	Mail survey of 347 retailer managers						

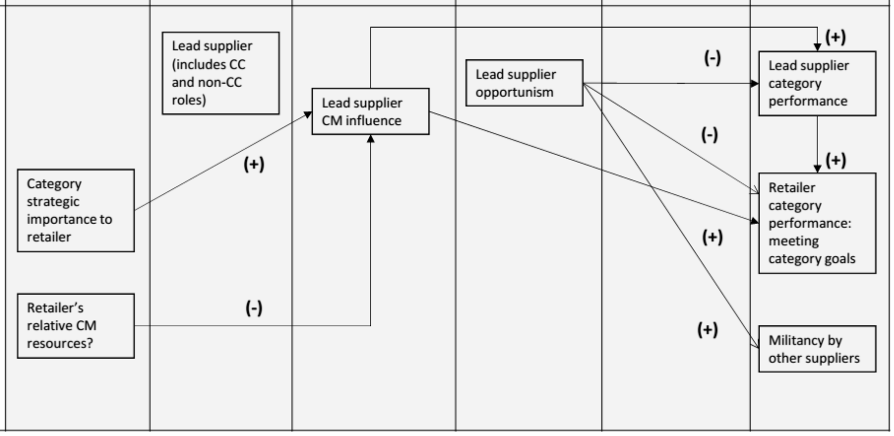

Table 7c (2). Research: Gooner, Morgan and Perreault (2011)

Research			Key Results					
Authors	Setting	Method	Antecedents	Behaviors				Outcomes
			Conditions and factors	*Arrangement*	*Influence & control*	*Exclusionary conduct & practices*	*Safeguards*	*Effects for competition & consumers*
Gooner, Morgan, and Perreault (2011)	U.S. supermarket chains	Mail survey of 347 retailer managers						

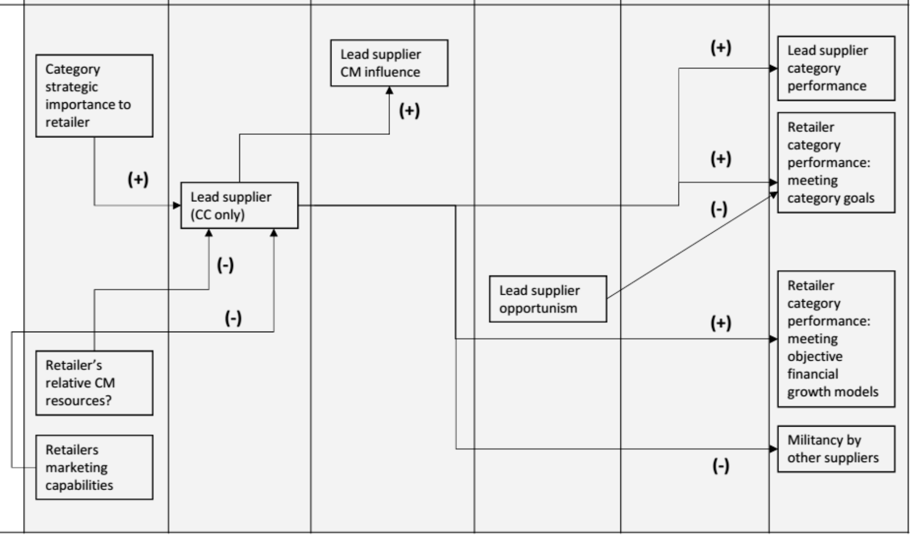

Table 7d. Research: Chimhundu, Kong and Gururajan (2014)

Research			Key Results					
Authors	Setting	Method	Antecedents	Behaviors				Outcomes
			Conditions and factors	*Arrangement*	*Influence & control*	*Exclusionary conduct & practices*	*Safeguards*	*Effects for competition & consumers*
Chimhundu, Kong, and Gururajan (2014)	Fast moving consumer goods industry of New Zealand	Interviews of 2 retailer managers and various manufacturer managers (some of whom were CCs in some of the categories they supply)	Manufacturer market leader (+) Manufacturer-retailer working relationship (+)	Manufacturers (some of whom were CCs in some of the categories that they supplied to the retailers	Retailer - "final say" on what happens in category	(-) CC favoring themselves (-)	Verification Monitoring	

Table 7e. Research: Alan, Dotson, and Kurtulus (2017)

Research			Key Results					
Authors	Setting	Method	Antecedents	Behaviors				Outcomes
			Conditions and factors	*Arrangement*	*Influence and control*	*Exclusionary conduct & practices*	*Safeguards*	*Effects for competition and consumers*
Alan, Dotson, and Kurtulus (2017)	U.S. grocery chain	Retailer's archival data for	Objective 1: To protect retailer's private label*	Manufacturer ("soon-to-be captain manufacturer")			(-)*	Prices - Category overall
			Objective 2: To not protect retailer's private label**				(+)* (+)**	Sales - Category overall
							(+)*	Sales – CC
							(+)* (-)**	Sales – Retailer private label
							(+)*	Sales – nonCC manufacturers overall
							(+,-)*	Sales – nonCC manufacturers individually
							(+)**	Sales – nonCC manufacturers in competition with CC
							(-,+)**	Sales – nonCC manufacturers in competition with private label