

## Complaint

## IN THE MATTER OF

**IDEXX LABORATORIES, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4383; File No. 101 0023**Complaint, February 11, 2013 – Decision, February 11, 2013*

This consent order addresses allegations that Respondent IDEXX Laboratories, Inc. (“IDEXX”) entered into exclusive dealing arrangements in violation of Section 5 of the FTC Act. IDEXX develops, manufactures, and sells diagnostic products to veterinarians. The complaint alleges that IDEXX has monopoly power in the market for point-of-care (“POC”) diagnostic testing products, which includes equipment and supplies that allow veterinarians for small animals to test, diagnose, and treat conditions such as heart worm in a single visit. More than three-quarters of veterinarians in the United States use POC diagnostic products, and more than 85 percent of all products and supplies that small animal veterinarians purchase are sourced through one of IDEXX’s top five distributors. The complaint further alleges that IDEXX used its monopoly power to reduce competition by threatening to terminate those distributors unless they sold IDEXX’s products exclusively. The order prohibits IDEXX from maintaining concurrent exclusive distribution agreements with the three top tier distributors for the next 10 years. Further, IDEXX is prohibited from retaliating against non-exclusive distributors, withholding products, or using other means to limit the distributor’s sales of other manufacturer’s products. The order also outlines the requirements for all future non-exclusive agreements between IDEXX and any national distributor.

*Participants*

For the *Commission*: Dana Abrahamsen, Joel Christie, David Conn, Peggy Bayer Femenella, Patricia Galvan, and Lisa Kopchik.

For the *Respondent*: Craig Seebald and William Vigdor, Vinson & Elkins LLP.

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that IDEXX Laboratories, Inc. (“IDEXX” or “Respondent”) has violated

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Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

**NATURE OF THE CASE**

1. IDEXX has maintained a monopoly in the market for point-of-care (“POC”) diagnostic products used by veterinarians who treat companion animals (“POC Diagnostic Products”) through the use of exclusive contracts with its distributors. POC Diagnostic Products include rapid assay tests, equipment and supplies that permit a companion animal veterinarian (“Veterinarian”) to test, diagnose and treat certain conditions such as heart worm during a single office visit. POC Diagnostic Products provide real-time results that cannot be obtained through other testing alternatives, such as services offered by outside reference labs.

2. Nearly all Veterinarians buy their supplies, including POC Diagnostic Products, from distributors who specialize in supplying veterinary clinics, and most of their purchases are made from a small number of “top tier” distributors. IDEXX has used its monopoly power, the threat of termination, and explicit agreements to prevent those top tier distributors from selling rival POC Diagnostic Products that the distributors would otherwise choose to sell. As a result, IDEXX has foreclosed its competitors from distributors that sell over 85% of all products purchased through distribution by companion animal veterinary clinics in the United States.

3. Veterinarians prefer to buy diagnostic products, equipment and supplies through top tier distributors because other purchasing options are less efficient and more costly. As a result, IDEXX’s competitors are impeded from effectively and efficiently marketing competing POC Diagnostic Products to Veterinarians.

4. IDEXX’s exclusionary practices have blocked rivals from the most efficient sales channel. IDEXX has used its exclusionary practices to successfully diminish, marginalize or force its competitors from the U.S. market.

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5. IDEXX intentionally engages more distribution than it needs, causing it to suffer certain inefficiencies. Nevertheless, IDEXX continues its exclusionary conduct because that conduct insulates IDEXX from competition from its rivals. Thus, IDEXX maintains its monopoly at the expense of distributors who would prefer to offer a greater variety of POC Diagnostic Products, and Veterinarians who could buy cheaper, superior, and more convenient POC Diagnostic Products.

### RESPONDENT

6. Respondent IDEXX is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at One IDEXX Drive, Westbrook, Maine. IDEXX develops, manufactures and sells diagnostic products and services to Veterinarians. It has worldwide operations with 2011 revenues in excess of \$1.2 billion, of which \$700 million were from sales in the United States. IDEXX's United States companion animal diagnostics business produced 2011 revenues of approximately \$644 million.

7. IDEXX's core business is companion animal diagnostics, including POC instruments and their related consumables, rapid assay test kits (SNAP© tests), digital radiography equipment, practice management software, and diagnostic services through wholly owned and operated reference laboratories.

### JURISDICTION

8. At all times relevant herein, IDEXX has been, and is now, a corporation as "corporation" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9. The acts and practices of IDEXX, including the acts and practices alleged herein, are in commerce or affect commerce in the United States, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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**RELEVANT MARKET**

10. The relevant product market in which to evaluate IDEXX's conduct is the development, manufacture and sale of POC Diagnostic Products, and narrower relevant markets as contained therein (collectively, the "Relevant POC Markets"), including:

- a. rapid assay single-use test kits; and
- b. diagnostic instruments and their associated single-use products ("consumables") designed for in-clinic testing of biological samples.

11. The relevant geographic market is the 48 states of the continental United States.

12. Veterinarians are the primary consumers of POC Diagnostic Products. Veterinarians use POC Diagnostic Products to assess the general health of animals and to identify pathologies. Veterinarians perform diagnostic testing at veterinary clinics with instruments or test kits manufactured and sold by IDEXX and its competitors. POC testing provides Veterinarians and pet owners the medical advantage and convenience of almost-immediate results.

13. As of 2009, more than 75% of Veterinarians used POC diagnostic testing. Each year, Veterinarians in the United States purchase approximately \$500 million worth of POC Diagnostic Products.

14. There are no close substitutes for POC Diagnostic Products. Although Veterinarians can purchase some diagnostic services by sending specimens to outside laboratories, POC testing provides state-of-the-art diagnostics. Veterinarians value faster results, particularly when testing is associated with emergencies, pre-surgery, and for diagnoses of conditions that may require the Veterinarians to perform follow-up testing or dispense or prescribe medicine as soon as possible after the results have been received.

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**IDEXX HOLDS MONOPOLY POWER IN THE  
RELEVANT MARKET**

15. IDEXX has monopoly power in the POC Diagnostic Products market. IDEXX has the most comprehensive set of offerings in the relevant market. IDEXX's share of the relevant market has been at least 70% during each of the past five years (2006-2011). No other firm had more than a 20% share of the relevant market in those same five years.

16. IDEXX directly demonstrates its monopoly power in the Relevant POC Markets by forbidding its distributors from carrying any competing products, thereby excluding IDEXX's competitors from sales of those products to any IDEXX distributor. Because IDEXX has a dominant position in the Relevant POC Market, distributors have no practical choice but to agree to carry IDEXX's line of products exclusively. Distributors would prefer to sell competing products as well as IDEXX products.

17. IDEXX's control of distributors means that it forecloses its competition from effectively and efficiently reaching large segments of the Veterinarian market, thereby forcing Veterinarians to incur greater costs to obtain non-IDEXX products, or to use only IDEXX products.

**DISTRIBUTORS**

18. Nearly all Veterinarians purchase equipment and supplies from Veterinary products distributors. Veterinarians overwhelmingly prefer to buy through distributors because of the efficiency and customer service they offer.

19. Most Veterinarians buy a majority of their equipment and supplies from a preferred distributor. More than 75% of Veterinarians name Butler Schein Animal Health ("Butler"), Webster Veterinary Supply, Inc. ("Webster"), MWI Veterinary Supply Co. ("MWI"), Midwest Veterinary Supply, Inc. ("Midwest"), or Victor Medical Company ("Victor") as their preferred distributor. Combined, these distributors sell more than

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85%, by revenue, of the products sold to Veterinarians in the United States.

20. IDEXX and other POC Diagnostic Product manufacturers use distributors because distributors provide important services to the manufacturer and are the most efficient way for the manufacturer to channel their products to Veterinarians. Manufacturers who do not use distributors face more significant obstacles to sales, marketing and delivery than manufacturers who use distributors.

21. IDEXX's distributors provide better services to their manufacturer clients than other distributors. Those better services can include, but are not limited to, higher sales volume, better sales and inventory data transfer, more experienced sales representatives, better market forecasting, more timely payments, and more frequent visits to Veterinarian clients.

22. Butler, Webster and MWI are recognized by manufacturers, distributors and Veterinarians as the pre-eminent companion animal veterinary supply distributors in the United States. There are no other distributors that provide equivalent levels of service to manufacturers and regularly visit Veterinarians in as wide a geographic area as Butler, Webster or MWI.

**IDEXX'S CONCERTED ACTION AND EXCLUSIVE  
DEALING**

23. IDEXX has contracted with its distributors to sell IDEXX products to Veterinarians and other users. Each firm's contract states that IDEXX may discontinue providing a category of products to the distributor if the distributor sells any product, with small exceptions, that competes with an IDEXX product within the category.

24. IDEXX's distributors have a clear and well-founded understanding that IDEXX will cut off the supply of all categories of IDEXX products and terminate its contract with the distributor if the distributor sells or promotes any competing product in the Relevant POC Market.

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25. IDEXX's dominant market position, its practice of demanding exclusivity, and its imposition of an "all-or-nothing" policy give distributors of veterinary products powerful economic incentives that require them to deal with IDEXX on an exclusive basis.

26. IDEXX's exclusionary acts and practices require competing manufacturers to settle for less efficient means to sell their products to Veterinarians.

### **ANTICOMPETITIVE EFFECTS OF IDEXX'S CONDUCT**

27. IDEXX's concerted action and exclusionary acts and practices erect significant barriers to entry for those manufacturers that have developed, would otherwise have developed, or offered for sale POC Diagnostic Products that would compete with IDEXX products.

28. The acts and practices of IDEXX as alleged herein have the purpose, capacity, tendency, and effect of impairing the competitive effectiveness of IDEXX's competitors in the relevant market.

29. The acts and practices of IDEXX as alleged herein reasonably appear capable of making a significant contribution to the enhancement or maintenance of IDEXX's monopoly power.

30. IDEXX's conduct adversely affects competition and consumers by:

- a. reducing the output of POC Diagnostic Products;
- b. deterring, delaying and impeding the ability of IDEXX's actual or potential competitors to enter or to expand their sales in the market for POC Diagnostic Products;
- c. reducing innovation; and
- d. reducing consumer choice among users of POC Diagnostic Products.

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31. IDEXX's acts and practices as alleged herein were intended to, and have, restrained competition unfairly and unreasonably, and enhanced or maintained IDEXX's monopoly power.

32. There are no legitimate procompetitive efficiencies that justify IDEXX's conduct or outweigh its substantial anticompetitive effects.

**VIOLATION ALLEGED**

33. The acts and practices of IDEXX, as alleged herein, contribute to the enhancement or maintenance of IDEXX's monopoly power, and constitute unfair methods of competition in or affecting commerce, all in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

34. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this eleventh day of February, 2013, issues its complaint against Respondent.

By the Commission, Commissioner Ohlhausen abstaining and Commissioner Wright not participating.

## Decision and Order

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of IDXX Laboratories, Inc., hereafter referred to as “Respondent IDXX,” and Respondent IDXX having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent IDXX with violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent IDXX, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent IDXX of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent IDXX that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondent IDXX has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent IDXX is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place

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of business located at One IDEXX Drive, Westbrook, Maine.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent IDEXX, and the proceeding is in the public interest.

**ORDER****I.**

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “Respondent” or “Respondent IDEXX” means IDEXX Laboratories, Inc.; its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by IDEXX Laboratories (including, but not limited to IDEXX Distribution, Inc.), and the respective directors, officers, employees, agents, representatives, successors and assigns of each.
- B. “Butler” means Butler Schein Animal Health, which is controlled by Henry Schein, Inc., a Delaware corporation, with its principal place of business located at 135 Duryea Road, Melville, NY 11747 and any successors to Butler’s business related to the distribution of Products.
- C. “MWI” means MWI Veterinary Supply, Inc., a Delaware corporation, with its principal place of business located at 3041 W. Pasadena Drive, Boise, Idaho 83705 and any successors to MWI’s business related to the distribution of Products.
- D. “Webster” means Webster Veterinary, a subsidiary of Patterson Companies, Inc., a Minnesota corporation, with its principal place of business located at 1031 Mendota Heights Road, St. Paul, MN 55120 and any successors to Webster’s business related to the distribution of Products.

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- E. “Commission” means the Federal Trade Commission.
- F. “Distributor” means MWI, Webster, Butler, or any other Person who has entered into an agreement with Respondent IDEXX to distribute any Products to end-user veterinary customers regardless of whether that agreement is based on Exclusivity with regard to such Products.
- G. “Exclusivity” or “Exclusive” means any requirement, whether formal or informal, or direct or indirect, by Respondent IDEXX that a Distributor refuse to distribute or limit its distribution, marketing, promotion, sales, or purchases of any Person’s Products other than IDEXX products.
- H. “MWI Distribution Agreement” means the September 28, 2012, Distribution Agreement entered into between Respondent IDEXX and MWI and which is attached as Confidential Appendix A to this Order.
- I. “National Distributor” means MWI, Webster, and Butler so long as each respectively is a Distributor of Products.
- J. “Distribution Agreement” means any agreement between Respondent IDEXX and any Distributor to distribute any Products to end-user veterinary customers.
- K. “Exclusive Distribution Agreement” means any agreement between Respondent IDEXX and any Distributor that contains terms requiring that Distributor to act as an Exclusive distributor of Respondent IDEXX’s Products.
- L. “Non-Exclusive Distribution Agreement” means any agreement between Respondent IDEXX and any National Distributor that does not contain terms requiring that National Distributor to act as an

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Exclusive distributor of Respondent IDEXX's Products.

- M. "Person" means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government entity. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.
- N. "Products" means any in-house diagnostic testing products sold to and used by companion animal veterinarians.
- O. "Product Pricing" means Respondent IDEXX's standard list prices, less a margin discount, the amount of which is negotiated between Respondent IDEXX and the National Distributor.
- P. "Renewal Date" means each date upon which the Non-Exclusive Distribution Agreement automatically renews.

**II.**

**IT IS FURTHER ORDERED** that, except as otherwise provided herein, if Respondent IDEXX has an Exclusive Distribution Agreement with any National Distributor, Respondent IDEXX:

- A. Shall cease and desist from having concurrent Exclusive Distribution Agreements with all of the National Distributors;
- B. With regard to any Non-Exclusive Distribution Agreement with a National Distributor, such agreement:
  - 1. Shall provide an initial term of no less than two (2) years;

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2. Shall provide renewal for one or more additional one (1) year terms on or before each Renewal Date;
3. Shall provide Distribution of IDEXX Products on a fully non-Exclusive basis;
4. Shall not include any term or understanding that the National Distributor refuse or limit the purchase or sale of Products of any Person other than IDEXX;
5. Shall not withhold the sale of Products to the National Distributor based on that National Distributor's sale, or intention to sell, Products of any Person other than IDEXX;
6. Shall not urge, induce coerce, threaten, or pressure, or attempt thereto, the National Distributor to refuse to sell Products of any Person other than IDEXX, or to limit its sales of Products of any Person other than IDEXX; and
7. Shall not penalize, or otherwise retaliate against the National Distributor because that National Distributor sells or intends to sell Products of any Person other than IDEXX.

*Provided, however,* that IDEXX may charge different prices to any Non-Exclusive Distributor;

*Provided, further, however,* that the MWI Distribution Agreement is a Non-Exclusive Distribution Agreement that satisfies this Paragraph II.B;

*Provided further, however,* that for all notifications received or sent by Respondent IDEXX regarding a termination, election not to renew, or material breach of a Non-Exclusive Distribution Agreement, Respondent IDEXX shall provide a copy of each such notification to the Federal Trade Commission at the

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same time it provides such notice to the National Distributor, or within five (5) days of receiving such notice from the National Distributor;

*Provided further, however, that, if the Non-Exclusive National Distributor merges with, acquires, or is acquired by a Distributor whose distribution agreement with Respondent IDEXX is Exclusive, Respondent IDEXX shall continue to honor the Non-Exclusive Distribution Agreement in accordance with the terms of this Order.*

- C. Shall submit any Non-Exclusive Distribution Agreement that is not the MWI Distribution Agreement to the Commission at least thirty (30) days prior to entering into such Distribution Agreement.

**III.****IT IS FURTHER ORDERED** that:

- A. Sixty (60) days after the date this Order is issued, Respondent IDEXX shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order.
- B. Beginning twelve (12) months after the date this Order is issued, and annually thereafter on the anniversary of the date this Order is issued, for the next four (4) years, and at such other times as the Commission requests, Respondent IDEXX shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order.

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**IV.**

**IT IS FURTHER ORDERED** that Respondent IDEXX shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent IDEXX;
- B. Any proposed acquisition, merger or consolidation of Respondent IDEXX; or
- C. Any other change in Respondent IDEXX, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

**V.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent IDEXX, Respondent IDEXX shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent IDEXX and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondent IDEXX related to compliance with this Order, which copying services shall be provided by Respondent IDEXX at the request of the authorized representative(s) of the Commission and at the expense of Respondent IDEXX; and
- B. Upon five (5) days' notice to Respondent IDEXX and without restraint or interference from Respondent IDEXX, to interview officers, directors, or employees of Respondent IDEXX, who may have counsel present, regarding such matters.

## Analysis to Aid Public Comment

**VI.**

**IT IS FURTHER ORDERED** that this Order shall terminate on February 11, 2023.

By the Commission, Commissioner Ohlhausen abstaining and Commissioner Wright not participating.

**ANALYSIS OF PROPOSED CONSENT ORDER  
TO AID PUBLIC COMMENT**

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order to Cease and Desist (“Agreement”) with IDEXX Laboratories, Inc. (“IDEXX”). The Agreement seeks to resolve charges that IDEXX engaged in exclusionary conduct to maintain its monopoly power in the companion animal diagnostic testing equipment and supplies industry in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

Specifically, the proposed Complaint that accompanies the Agreement (“Complaint”) alleges that IDEXX has used its monopoly power to impose exclusive deals with its distributors. As a result, IDEXX has foreclosed rivals from key distribution channels and limited competition in the relevant market, leading to higher prices, lower output, reduced innovation and diminished consumer choice.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed Order, subject to final approval, contained in the Agreement. The Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will

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decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement. IDEXX has already entered into a non-exclusive distribution agreement with MWI Veterinarian Supply Co., Inc. (“MWI”), and that distribution agreement has been incorporated into the terms of the proposed Order.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed Order. It is not intended to constitute an official interpretation of the Agreement and proposed Order or in any way to modify their terms.

The Agreement is for settlement purposes only and does not constitute an admission by IDEXX that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

## **I. The Complaint**

The Complaint makes the following allegations.

### **A. Industry Background**

Point of care (“POC”) diagnostic products include rapid assay tests, equipment and supplies that permit a companion animal veterinarian to test, diagnose and treat certain conditions such as heartworm during a single office visit. POC diagnostic products provide real-time results that cannot be obtained through other testing alternatives, such as services offered by outside reference labs.

Veterinarians are the primary consumers of POC diagnostic products. Veterinarians use POC diagnostic products to assess the general health of animals and to identify pathologies. Veterinarians perform diagnostic testing at veterinary clinics with instruments or test kits manufactured and sold by IDEXX and its competitors. POC testing provides veterinarians and pet owners the medical advantage and convenience of almost-immediate results.

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As of 2009, more than 75% of veterinarians used POC diagnostic testing. Each year, veterinarians in the United States purchase approximately \$500 million worth of POC diagnostic products.

There are no close substitutes for POC diagnostic products. Although veterinarians can purchase some diagnostic services by sending specimens to outside laboratories, POC testing allows veterinarians to provide timely, state-of-the-art care. Veterinarians value faster results, particularly when testing is associated with emergencies, pre-surgery, and for diagnoses of conditions that may require the veterinarians to perform follow-up testing or dispense or prescribe medicine as soon as possible.

Nearly all veterinarians buy their supplies, including POC diagnostic products, from distributors who specialize in supplying companion animal veterinary clinics. Veterinarians overwhelmingly prefer to buy through distributors because of the efficiency and customer service they offer. Other purchasing options are less efficient and more costly.

Most veterinarians buy a majority of their equipment and supplies from a preferred distributor. More than 75% of veterinarians name Butler Schein Animal Health (“Butler”), Webster Veterinary Supply, Inc. (“Webster”), MWI, Midwest Veterinary Supply, Inc. (“Midwest”), or Victor Medical Company (“Victor”), as their preferred distributor. Combined, these top tier distributors sell more than 85%, by revenue, of the products sold to companion animal veterinarians in the United States.

Butler, Webster and MWI are recognized by manufacturers, distributors and veterinarians as the pre-eminent national companion animal veterinary supply distributors in the United States. There are no other distributors that provide equivalent levels of service to manufacturers and regularly visit veterinarians in as wide a geographic area as Butler, Webster or MWI. Midwest and Victor are large, regional distributors, also with strong reputations for high-quality service.

IDEXX and other POC diagnostic product manufacturers use distributors because distributors provide important services to the manufacturer and are the most efficient way for the manufacturer

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to channel their products to veterinarians. Manufacturers who do not use distributors face more significant obstacles to sales, marketing and delivery than manufacturers who use distributors.

The top tier distributors provide better services to their manufacturer clients than other distributors. Those better services can include, but are not limited to, more sales, better sales and inventory data transfer, more experienced sales representatives, better market forecasting, more timely payments, and more frequent visits to veterinarian clients.

#### B. The Respondent

IDEXX Laboratories, Inc. is a corporation with its principal place of business located in Westbrook, Maine. IDEXX develops, manufactures and sells diagnostic products to veterinarians through distributors. IDEXX has monopoly power in the POC diagnostic products market.

IDEXX's core business is companion animal diagnostics, including POC instruments and their related consumables, rapid assay test kits (SNAP8 tests), digital radiography equipment, practice management software, and diagnostic services through wholly owned and operated reference laboratories. IDEXX's share of the POC diagnostic products market has been at least 70% during each of the past five years (2006-2011). No other firm had more than a 20% share of the relevant market in those same five years.

#### C. IDEXX's Conduct

IDEXX bars its distributors from carrying any competing POC diagnostic testing products. IDEXX distributors include all three of the major, national distributors of these products and the two large, regional distributors named above. As noted previously, these distributors sell 85% of equipment and supplies that companion animal veterinarians buy through distributors.

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## D. Competitive Impact of IDEXX's Conduct

Because IDEXX has a broad line of products and a dominant position in the POC market, large distributors need to carry the IDEXX line. While distributors need to carry the IDEXX line, they would prefer to carry competing products as well. However, by insisting that distributors make an “all-or-nothing” choice, IDEXX compels distributors to forgo competitors’ products. The features of the market that make anticompetitive exclusion possible – IDEXX’s status as a “must carry” supplier coupled with its insistence on exclusivity – have endured for many years, and thus the relatively short nominal duration of IDEXX’s distribution contracts has not mitigated the anticompetitive effects of the exclusive deals.

IDEXX’s control of distributors means that it forecloses its competition from effectively and efficiently reaching large segments of the veterinarian market, and forces veterinarians to incur greater costs to obtain non-IDEXX products.

IDEXX has used its monopoly power, the threat of termination, and explicit agreements to prevent those top tier distributors from selling rival POC diagnostic products that the distributors would otherwise choose to sell. As a result, IDEXX has foreclosed its competitors from distributors that sell over 85% of all products purchased through distribution by companion animal veterinary clinics in the United States, and those competitors are impeded from effectively and efficiently marketing their POC diagnostic products to veterinarians.

IDEXX’s exclusionary practices have blocked rivals from the most efficient sales channel. IDEXX has used its exclusionary practices to successfully diminish, marginalize or force its competitors from the U.S. market.

IDEXX intentionally engages more distribution than it needs, even though that excess distribution is costly and inefficient for IDEXX. Nevertheless, IDEXX continues to engage the excess distribution because it allows IDEXX to block its rivals from using those distributors and insulates IDEXX from competition from its rivals. Thus, IDEXX maintains its monopoly and harms both distributors who would prefer to offer a greater variety of

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POC diagnostic products, and veterinarians who could buy cheaper, superior, and more convenient POC diagnostic products. IDEXX's exclusionary acts and practices require competing manufacturers to settle for less efficient means to sell their products to veterinarians.

IDEXX's exclusionary acts and practices erect significant barriers to entry for those manufacturers that have developed, would otherwise have developed, or offered for sale POC diagnostic products that would compete with IDEXX products, thereby resulting in reduced choice for veterinarians.

## II. Legal Analysis

The offense of monopolization under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market; and (2) the willful acquisition, enhancement or maintenance of that power through exclusionary conduct. Exclusive dealing by a monopolist is condemned when the challenged conduct significantly impairs the ability of rivals to compete effectively with the respondent and thus limits the ability of those rivals to constrain the exercise of monopoly power.

The Complaint alleges that IDEXX has monopoly power and used it to create competitive harm. IDEXX's policy of requiring exclusivity from its distributors has foreclosed its rivals from over 85 percent of available sales opportunities at this level of the distribution chain. This foreclosure is particularly significant because nearly all POC diagnostics are sold to veterinarians through distributors, and other channels to the veterinarians are inconvenient, impractical and more expensive for both the veterinarians and IDEXX's competitors.

A monopolist may rebut a showing of competitive harm by demonstrating that the challenged conduct is reasonably necessary to achieve a pro-competitive benefit. Any proffered justification, if proven, must be balanced against the harm caused by the challenged conduct.

In this case, however, no pro-competitive efficiency justifies IDEXX's exclusionary and anticompetitive conduct. Further,

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IDEXX cannot show that the exclusive arrangements were reasonably necessary to achieve a procompetitive benefit.

A concern about interbrand free-riding also does not justify the substantial anticompetitive effects found here. Free-riding might occur if, for example, IDEXX provided a great deal of training or services to its distributors, and if the training or services help promote the product category as a whole rather than just IDEXX's product. In such an instance, promotion of the competitors' products would "free-ride" on IDEXX's activities. In this case, however, the vast majority of IDEXX's promotional efforts are relevant to IDEXX's products only, thereby reducing the risk of free-riding by IDEXX's competitors. While IDEXX's marketing efforts may generate some consumer interest in the product category as a whole – and not just in IDEXX's own products – this is a part of the natural competitive process. This type of consumer response does not raise a free-riding concern sufficient to justify the substantial anticompetitive effects found here.

**III. The Order**

Together with the distribution agreement between IDEXX and MWI Veterinary Supply, Inc., signed in September 2012, the proposed Consent Order is designed to make the market for POC diagnostic testing products more competitive. Generally, the Order prohibits IDEXX from maintaining exclusive distribution arrangements with all three national distributors. Specifically, Part II of the Order addresses this core provision. Part III imposes reporting requirements for four years. Parts IV and V impose other reporting and compliance requirements. Unless otherwise indicated, the Order will expire in ten years.

The Order defines the "national distributors" as Butler, MWI and Webster, so long as they continue to distribute companion animal POC diagnostic equipment and supplies. Starting in January, 2013, MWI can distribute both IDEXX products and competitive products. Either IDEXX or MWI can terminate the agreement. If the parties agree that MWI will return to an exclusive arrangement with IDEXX, IDEXX must have a non-exclusive agreement with one of the two other national distributors.

## Analysis to Aid Public Comment

All future non-exclusive agreements between IDEXX and a national distributor must meet the requirements of the Order. Paragraph II.B requires that such an agreement begin with a two year term, and provide for additional renewal terms of at least one year; that IDEXX shall not urge, induce, coerce, threaten, pressure, penalize, withhold the sale of product, or otherwise retaliate against the non-exclusive national distributor in order to limit its sales of other manufacturers' products.

Paragraph II.B also requires IDEXX to notify the Federal Trade Commission about the termination of any non-exclusive distribution agreement. Paragraph II.C orders that IDEXX show any future non-exclusive distribution agreement to the Commission at least thirty (30) days before it is signed.

Further, if the non-exclusive national distributor merges with, acquires, or is acquired by a distributor that has an exclusive distribution arrangement with IDEXX, the non-exclusive distribution agreement stays in effect.

## Complaint

**IN THE MATTER OF**  
**COMPETE, INC.****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT**

*Docket No. C-4384; File No. 102 3155*  
*Complaint, February 20, 2013 – Decision, February 20, 2013*

This consent order addresses allegations that Respondent Compete, Inc. utilized its web-tracking software to collect personal data in violation Section 5(a) of the Federal Trade Commission Act. Compete is a market research company that collects data from consumers through two products: (1) the Compete Toolbar, which consumers install to gain “instant access” to information about websites as they browse the Internet; and (2) the Consumer Input Panel, which allows the consumers to win rewards from sharing their opinions regarding products and services. Compete represented to consumers that the information it collected would be anonymous and would be limited to browsing behavior and web page addresses. The complaint alleges that Compete misrepresented the extent of its data collection efforts. In fact, Compete captured personal consumer data, including credit card numbers, financial account numbers, security codes, usernames, passwords, and Social Security numbers. The complaint further alleges that Compete failed to implement reasonable and appropriate measures to protect consumer information, and this failure was likely to cause substantial injury to consumers. The consent order requires Compete to disclose fully the information it collects and obtain consumers’ express consent before collecting any personal data. The order further requires that the company delete or anonymize the consumer data it has collected; and that it provide directions to consumers for uninstalling the software. Finally, the order bars Compete from misrepresenting its privacy and data security practices, and requires that it implement a comprehensive information security program with biannual independent third-party audits for the next 20 years.

*Participants*

For the *Commission*: *Jamie Hine and Ruth Yodaiken.*

For the *Respondent*: *Stuart Friedel and Gary Kibel, Davis & Gilbert LLP; Michelle A. Kisloff and Christopher Wolf, Hogan Lovells US LLP.*

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Compete, Inc. (“Compete” or “respondent”), a corporation, has