

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.⁴ Any proffered justification, if proven, must be balanced against the harm caused by the challenged conduct.⁵ In this case, however, no pro-competitive efficiency justifies IDEXX's exclusionary and anticompetitive conduct. Further, 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.⁶ 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.⁷

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.

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.

By direction of the Commission, Commissioner Ohlhausen abstaining.

Richard C. Donohue,

Acting Secretary.

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GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0086; Docket 2012-0001; Sequence 18]

General Services Administration Acquisition Regulation; Information Collection; Proposal To Lease Space, GSA Forms 1364A, 1364A-1, 1364B, 1364C, 1364D

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension of an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement for Proposal to Lease Space, GSA Form 1364. The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of leasing contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to (1) evaluate whether the physical attributes of offered properties meet the Government's requirements and (2) compare the owner/offeree's price proposal against competing offers.

DATES: Submit comments on or before: March 4, 2013.

ADDRESSES: Submit comments identified by Information Collection 3090-0086, Proposal to Lease Space, GSA Forms 1364A, 1364A-1, 1364B,

unnecessarily restrictive way") (citations omitted); *Lorain Journal Co. v. United States*, 342 U.S. 143, 151-54 (1951) (condemning newspaper's refusal to deal with customers that also advertised on rival radio station because it harmed the radio station's ability to compete); *United States v. Microsoft*, 253 F.3d 34, 68-71 (DC Cir. 2001) (condemning exclusive agreements because they prevented rivals from "pos[ing] a real threat to Microsoft's monopoly"); *United States v. Dentsply*, 399 F.3d 181, 191 (3d Cir. 2005) ("test is not total foreclosure but whether the challenged practices bar a substantial number of rivals or severely restrict the market's ambit"); *LePage's, Inc. v. 3M*, 324 F.3d 141, 159-60 (3d Cir. 2003) (same).

⁴ *E.g.*, *Microsoft*, 253 F.3d at 59.

⁵ *Id.*

⁶ "Interbrand free-riding" occurs when a manufacturer provides services, training, or other incentives in the promotion of its products for which it cannot easily charge its dealer, and that dealer "free-rides" on these demand-generating services by substituting a cheaper, more profitable product made by another manufacturer that does not invest in comparable services. *See generally*, Howard P. Marvel, *Exclusive Dealing*, 25 J.L. & ECON. 1, 8 (1982).

⁷ *See United States v. Dentsply Int'l, Inc.*, 277 F. Supp. 2d 387, 445 (D. Del. 2003), *aff'd in rel. part*, 399 F.3d at 196-97; Marvel, *Exclusive Dealing*, 25 J.L. & ECON. at 8 (explaining that an interbrand free-riding justification "does not apply if the promotional investment is purely brand specific. In such cases, the dealer will not be in a position to switch customers from brand to brand.").

1364C and 1364D by any of the following methods:

- *Regulations.gov*: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "Information Collection 3090-0086, Proposal to Lease Space, GSA Form 1364D" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0086, Proposal to Lease Space, GSA Form 1364". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0086, Proposal to Lease Space, GSA Form 1364" on your attached document.

- *Fax*: 202-501-4067.

- *Mail*: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090-0086, Proposal to Lease Space, GSA Form 1364D.

Instructions: Please submit comments only and cite Information Collection 3090-0086, Proposal to Lease Space, GSA Form 1364, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Rifkin, Procurement Analyst, General Services Acquisition Policy Division, GSA (816) 823-2170 or via email at kathy.rifkin@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The approval is requested for 5 versions of the form, GSA Forms 1364A, 1364A-1, 1364B, 1364C, and 1364D. These forms are used to obtain information for offer evaluation and lease award purposes regarding property being offered for lease to house Federal agencies. This includes financial aspects of offers for analysis and negotiation, such as real estate taxes, adjustments for vacant space, and offerors' construction overhead fees.

These Form 1364 versions are products of a GSA Lease Reform Initiative to improve the lease acquisition process for GSA, client agencies, and the private sector. Process reform over the past 2 years has brought reform to GSA leasing by implementing a variety of enhancements and improvements to the methods by which GSA procures space. As a direct result of the reform, five new lease contract models have been developed that are targeted to meet the needs of the

national leased portfolio. Four of the lease models require offerors to complete a GSA Form 1364. The new versions of GSA Form 1364 require the submission of information specifically aligned with the leasing models and avoid mandating submission of information that is not required for use in evaluation and award under each model. The Simplified Lease Model uses GSA Forms 1364A and 1364A-1. This model obtains a firm, fixed price for rent, which includes the cost of tenant improvement construction. Therefore, leases using the Simplified model do not include post-award tenant improvement cost information on the form.

The 1364A includes rental rate components and cost data that becomes part of the lease contract and that is necessary to satisfy GSA pricing policy requirements.

The 1364A-1 is a checklist that addresses technical requirements as referenced in the Request for Lease Proposals. The 1364A-1 is separate from the proposal itself and maintained in the lease file; it does not become an exhibit to the lease. The 1364A-1 may contain proprietary offeror information that cannot be released under the Freedom of Information Act.

The Streamlined Lease Model uses GSA Form 1364B. The Streamlined Lease model is a unique model that was designed to support small to mid-size leases up to \$500,000 average net annual rent and occupancies that fall under Interagency Security Committee Security Levels I, II, and III. The Streamlined Lease model is not used for projects requiring lease construction or leases employing the best value trade-off evaluation process.

The Standard Lease Model, which relies on an allowance instead of firm fixed pricing for initial tenant improvements, uses GSA Form 1364C. The 1364C captures an offeror's proposed interest rate and amortization period for the tenant improvements, in addition to the lessor's overhead fees.

The Succeeding and Superseding Lease Model uses GSA Form 1364D. These leases are negotiated with the existing lessor after advertisements and cost benefit analyses result in a determination that such a lease is in the best interests of the government. The form has less data input required than for a Standard lease; it also includes current rental rate information, supplied by the Government.

The 1364A-1, 1364B, and 1364C summarize an offeror's technical compliance with some important statutory and regulatory requirements to make the overall offer process easier for

offerors to understand (e.g., accessibility and seismic standards, flood plain compliance, asbestos). The 1364C also limits the collection of tenant improvement overhead fees to the architect/engineering fees and lessor's project management fees.

B. Annual Reporting Burden

Respondents: 3565.

Responses per Respondent: 1.

Hours per Response: 2.4238 (average).

Total Burden Hours: 8641.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat, 1275 First Street NE., Washington, DC 20417, telephone (202) 501-4755. Please cite OMB Control No. 3090-0086, GSA Form 1364, Proposal to Lease Space, in all correspondence.

Dated: December 21, 2012.

Joseph A. Neurauter,

Director, Office of Acquisition Policy & Senior Procurement Executive (MV).

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GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0284; Docket 2012-0001; Sequence 14]

Office of Citizen Services and Innovative Technologies; Submission for OMB Review; Data.gov Feedback Mechanisms

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for comments regarding an extension of an existing information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding Data.gov Feedback Mechanisms. A notice was published in the **Federal Register** at 77 FR 59614, on September 28, 2012. No comments were received.

DATES: *Submit comments on or before:* February 4, 2013.

ADDRESSES: Submit comments identified by Information Collection 3090-0284, Data.gov Feedback Mechanisms, by any of the following methods:

- *Regulations.gov*: <http://www.regulations.gov>. Submit comments