



Testimony

Before the Committee on Small Business, U.S. Senate

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SLOTTING FEES

Effort to Study the Use of These Payments in the Grocery Industry

Statement of Lawrence J. Dyckman,
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Resources, Community, and Economic Development Division



G A O

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to be here today to discuss our effort to study the use of slotting fees in the grocery industry. In the grocery industry, slotting fees—sometimes called slotting allowances—are generally payments from grocery manufacturers to retailers to introduce new products on the retailers’ shelves. As you are aware, there is a lot of anecdotal information about the use of slotting fees by the industry and its impact on small businesses and consumers, but little hard evidence is available. You therefore asked us to conduct a study illustrating the use of slotting fees by individual companies for various grocery items. In making this request, you recognized that we would have to rely on the voluntary cooperation of the grocery industry to collect this information.

In short, despite repeated attempts over the last 8 months, we have been unsuccessful in gaining the cooperation needed from the industry to conduct this study. Industry officials expressed concern about providing us or any outside group information that they consider sensitive and proprietary and thus critical to their business success.

My testimony today will focus on our efforts to conduct this study for you. In particular, we will highlight (1) our planned approach and methodology and (2) the reasons we were unable to perform the study.

Background

The term “slotting” originally referred to slots or spaces for pallets in warehouses that had to be created when products were added to the line of products stocked by the grocery chain. The most common slotting fees are payments from food manufacturers to grocery chains for new products, called new product introduction fees. Other payments that are also referred to as slotting fees may include payments for premium product placements, such as on eye-level shelves or special displays; fees to have products remain on shelves—called pay-to-stay fees; or fees paid if a product fails.

Some argue that slotting fees are a normal economic response to the costs of putting an expanding number of grocery products on retailers' shelves. They believe the fees are justified to cover the costs of introducing a product and to remove the item that previously occupied space in the warehouse and on the store shelf. Others contend that slotting fees reflect the grocery chains' market power, stifle innovation, squeeze out smaller manufacturers, and, ultimately, raise prices to consumers.

Our Planned Approach to Studying the Use of Slotting Fees

In your letter of October 20, 1999, you requested that we study the grocery industry's use of slotting fees. We agreed with your staff that the overall objectives of our work would be to (1) describe the types of slotting fees being used, (2) document the amounts manufacturers pay for the various types of slotting fees, (3) determine how manufacturers and retailers account for the payment and receipt of these fees, and (4) describe the policies and procedures of grocery manufacturers and retailers regarding slotting fees. Your letter further stated that the Food Marketing Institute (FMI)¹ and the Grocery Manufacturers of America (GMA),² the two primary associations representing the industry, had assured you of their cooperation in our study. At meetings on January 5 and 20, 2000, we discussed with your staff the fact that GAO does not have legal authority to access this private-sector information, and we would thus depend on cooperation from grocery manufacturers and retailers to complete this review.

Our overall plan was to conduct case studies of slotting fee practices in the industry for various supermarket items at several food manufacturing companies and grocery store chains. The industry associations were to work with us to identify companies willing to speak with and provide documentation to us. We would have preferred a more systematic approach for selecting companies in our study. However, companies are not required to provide us access to their internal documents or discuss these trade

¹ The Food Marketing Institute is an association representing food retailers and wholesalers.

² The Grocery Manufacturers of America is an association of food, beverage, and consumer product companies.

practices with us. Once the companies were identified, we planned to visit them to discuss the extent of their use of slotting fees. We also planned to obtain documentation on and analyze the (1) dollar amounts of slotting fees on several food categories, (2) accounting practices for these fees, and (3) related company policies and procedures.

After completing our audit work, we planned to issue a report to the Committee describing what we had learned about slotting fees. Our methodology was designed to produce an informational report that would not contain any conclusions or recommendations. We did not design our study to address the controversial issues surrounding slotting fees, such as the impact of slotting fees on competition, small businesses, and consumers.

From the Committee's hearing last year we knew that confidentiality would be required to enhance industry's cooperation. Therefore, we planned several strategies to safeguard the company data we would be receiving and analyzing. First, we planned to break the link between the information and the source. For example, we would prepare workpapers that were written summaries of meetings and documents from various sources so the information would no longer be tied to a specific company. We have employed this practice on numerous studies before. Also, we would not attribute information in the report to any one company or individual.

Second, we planned to safeguard the information, as required by the company. For example, we would place company data in a locked secure cabinet or safe. Furthermore, we train our staff members in handling and safeguarding government classified, business-sensitive, proprietary, and other types of nonpublic documents.

Third, we explained to the industry associations our policies and procedures on disclosing information. Specifically, we informed them that we are not subject to the Freedom of Information Act. Furthermore, we told them that when members of the

public request records obtained from a federal agency or nonfederal organization in connection with our work, we refer the public to the agency or organization that originated the record.³ We also do not disclose to the public any of our records containing trade secrets and commercial or financial information obtained from a person that is privileged and confidential.⁴

While GAO is not subject to the Freedom of Information Act, Members of Congress can request our workpapers. Therefore, we obtained a pledge of confidentiality from you, Mr. Chairman, to safeguard specific company information from disclosure to your Committee and its staff. In your letter dated May 16, 2000, you pledged that:

“...Neither the Committee nor the Committee staff will seek from GAO information that might identify any particular manufacturer or retail outlet or any information that would allow a knowledgeable person to identify a particular manufacturer or retail outlet.”

In addition, you stated that if any other Member of Congress requests such information, you will inform them of your agreement not to request such information and will encourage the Member to withdraw the request.

Detailed Information on Slotting Fees Was Not Made Available

In separate meetings in January 2000, we met with leaders of FMI and GMA to discuss our study. The trade associations told us that they do not compile detailed information about slotting fees because of its sensitive nature and we would have to obtain slotting fee information from individual manufacturing and retail companies. We explained that individual companies have no obligation to provide us access to their records. Thus, we would have to rely solely on voluntary cooperation. At those initial meetings, each association said it would inquire among its members and put us in contact with those that would be willing to work with us.

³ See 4 C.F.R. Section 81.5(a) (1999).

Over a period of several months, we sought from FMI grocery companies that would be willing to work with us and provide us detailed information on slotting fees. FMI stated that several of the members they contacted did not want to speak with us. However, the association did identify two mid-size grocery chains that might be willing to meet with us. Both of these grocery chains eventually met with us and discussed slotting fees in general terms. They explained that there are real costs and risks associated with putting new products on their shelves and thus charging slotting fees is a necessary business practice. However, neither provided documentation nor specific information about the use of and accounting for slotting fees in their businesses.

GMA was even less successful in helping us gain access to the information we needed. To enhance the probability of their members participating in our study, the association suggested that we obtain from you, Mr. Chairman, the pledge of confidentiality letter. Although we provided GMA with your pledge of confidentiality, the association was unable to identify any of its members willing to cooperate with us or even meet with us. We also provided a copy of your letter to FMI, but this did not result in any additional companies willing to participate in our study.

Without the assistance of FMI or GMA, we discussed slotting fees with a mid-size grocery store chain and a meat products manufacturer as well as a small ethnic foods manufacturer and a small snack foods manufacturer. None of these companies was willing to provide us documentation or specific information about their use of slotting fees.

This concludes my prepared statement. I would be pleased to answer any questions you or Members of the Committee have.

⁴ See 4 C.F.R. Section 81.6(e).

Contact and Acknowledgement

For future contacts regarding this testimony, please contact Lawrence J. Dyckman on (202) 512-5138. Individuals making key contributions to this testimony included Andrea Brown and Thomas Cook.

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