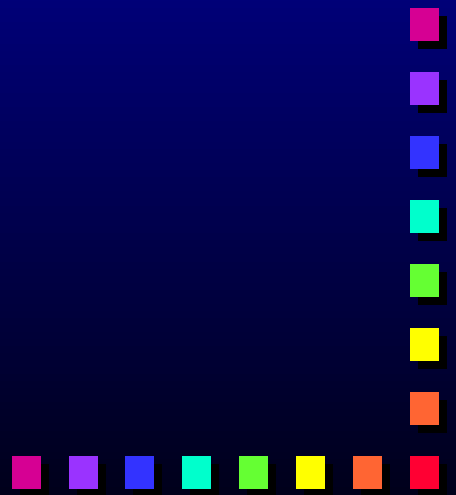
Restricting and leveraging complementary products after *Kodak*

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Several distribution relationships are closely related

- Aftermarket monopolization
- Durable good monopolies
- Franchise restrictions
- Exclusive territories
- Resale price maintenance
- Vertical integration



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Common economic features

- Complementarities
- Lock-in or switching costs
- Full rent often cannot be extracted from first market alone
- Opportunity to exclude competition through leveraging



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Some standard results

- Durable goods monopolists create their own future competition: recycling and remanufacturing
  - want to limit responsiveness of used product lifetime to new product price
  - use leasing, service monopolization, trade-in values



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Some standard results 2

- Downstream competition generally helps the consumer, but may hurt the upstream producer. To limit competition:
  - vertically integrate
  - refuse to deal / deal exclusively
  - grant exclusive territories
  - impose resale price maintenance
  - impose a tie-in to a separate product
  - price squeeze

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What did *Kodak* resolve?

- The theory is largely undisputed now:

  There are circumstances under which a competitive equipment manufacturer can harm consumers and competition overall by monopolizing an aftermarket.

- *When* harm occurs, and *whether* sufficient for antitrust intervention, are hotly disputed, but those are factual questions typically left to a jury

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Agreement on Theory

- Several reasons aftermarket monopolization may be overall profitable even if primary market is competitive
  - information costs (including policy surprises)
  - lock-in
  - limited contractual commitment
  - price discrimination
- N.B. Never much disputed that firm with primary market power might do better by leveraging into an aftermarket

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Important Issues on Appeal

- Is it proper to analyze an "all parts" market?
  - Kodak: fuser rollers not interchangeable with paper rollers
  - ITS:
    - *Grinnell* focuses on "commercial realities": customers want access to "all parts"
    - Kodak policy directed to all parts, and overall impact anticompetitive -- shouldn't have to prove up for each of 10,000 parts

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Important Issues on Appeal 2

- Should Kodak be required to deal on "all parts, all the time"?
  - Kodak:
    - some are available from other sources
    - some are protected by patent
  - ITS:
    - only Kodak can satisfy consumer demand for access to "all parts"
    - absolute patent immunity would eliminate monopoly leveraging as a patent misuse

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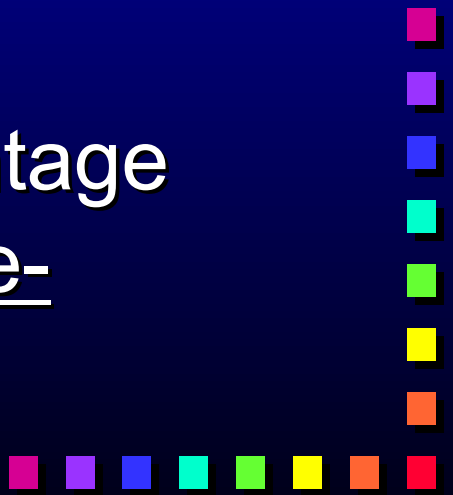
Important Issues on Appeal 3

- Does aftermarket monopolization require proof of supracompetitive pricing or profits in combined markets?
  - Kodak: aftermarket relevant only if aftermarket harm could be greater than compensation in primary market
  - ITS: competitive harm has to be *possible*, but ex post proof that firm successfully made monopoly profits is never required

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Lessons Going Forward

- Patent is a limited property right: exercise continues to be constrained by other laws including antitrust
- Consumers typically benefit from competition on the merits
- Look to gain competitive advantage through value-adding, not value-restricting



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