

Exclusionary pricing: unpacking the theories of harm



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Outline

- Towards an effects-based approach
- Capability versus incentives
 - Capability: fidelity rebates can deter entry
 - Is that a sensible strategy?
- Theories of harm
 - Predatory pricing
 - Horizontal foreclosure
 - tying, bundling, conglomerates, ...
 - Vertical foreclosure
 - exclusive deals, fidelity rebates, vertical integration, ...

Towards an effects-based approach

● Form-based approach

- Legal certainty: Michelin I, II, ...
- “Simplicity” has a costly (type I / type II error)

● Effects-based approach

- Spell out consistent story
 - negative effect on consumers
 - based on sound economics
 - supported by facts and empirical evidence
- Check for efficiency gains
 - passed on to consumers
 - consistent story, grounded on facts
- If needed, assess overall balance

Towards an effects-based approach

● Where are we standing?

- Case law
- DG Comp (guidance paper)
- Courts

● Effects assessment

- Capability: object / effect
- Story?

Capability versus incentives

● Stylized example

- Dominant firm has a list price of 100 €
- Dominant firm offers a rebate of 15% in return for exclusivity
- Dominant firm sells 1.000 units
- The customer thinks that 100 of its own customers (final users) would prefer a rival product, the rest would prefer the product of the dominant firm
- Rival is willing to sell at marginal cost (50 €)

Capability versus incentives

- Capacity

	Dominant firm	
List price	1.000 units x 100 €	100.000 €
Rebate	15%	-15.000 €
Total		85.000 €

	Dominant firm	
List price	900 units x 100 €	90.000 €
	Rival	
	100 units x 50 €	5.000 €
Total		95.000 €

as long as the 100 final users who prefer the rival product are not willing to pay more than an extra 100 € per unit, customer sticks with the incumbent

Capability versus incentives

● Incentives?

- Suppose
 - Final users are willing to pay 100 € for incumbent product
 - The users that favour the rival product are willing to pay an extra 50 €
 - Both firms face the same unit cost 50 €
- The fidelity rebate yields achieves exclusivity
 - Would increase procurement cost by 10.000 €
 - Would only increase revenues by 5.000 €
- But the dominant firm would be better off charging the “full” price per unit
 - Would yield a profit equal to:
$$\text{revenue} - \text{cost} = 90.000 - 45.000 = 45.000 \text{ €}$$
 - This exceeds the profit generated by the fidelity rebate:
$$\text{revenue} - \text{cost} = 85.000 - 50.000 = 35.000 \text{ €}$$

Theories of harm

● Vertical foreclosure

- Chicago critique
- Vertical integration
 - o raising rivals' costs: Ordover-Salop-Saloner 1990, Salinger 1988
(Allain *et al.* 2010)
 - o exploiting better monopoly power: Hart-Tirole 1990
- Exclusive dealing, fidelity rebates
 - o appropriating entrant's efficiency gains: Aghion-Bolton 1987
 - o exploiting buyers' coordination problems
 - o customers: final users vs intermediaries:
 - Fumagalli-Motta 2006
 - Inter / AMD
- Exploitative vs exclusionary abuses