AAI BUNDLING PANEL

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An Economic Perspective

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WHAT IS A BUNDLE? (1/2)

- Context
  - Firm has market power over one product (“tying”)
  - Sells with a second competitively supplied product (“tied”)
- Examples
  - Kennedy Center pricing of Hamilton
  - Microsoft pricing of Explorer
- Basic ingredients of a bundle
  - Standalone price of tying (“penalty price” or “unbundled price”)
  - In-Bundle price of tying
  - In-Bundle price of tied

WHAT IS A BUNDLE? (2/2)

- Tie-in is a special case where standalone price is set to infinity
- Independent monopoly price ("IMP"): Price that would be charged for the tying product in the absence of the bundle, aka "but-for price"

CAN BUNDLING INCREASE PROFITS? (1/2)

- Market Power Effects
  - When buyers use varying amounts of the *tied* product or when products can be used separately
    - Allows price discrimination
  - When buyers use varying amounts of the *tying* product
    - Extract consumer surplus on tying good

CAN BUNDLING INCREASE PROFITS? (2/2)

- Foreclosure Share Effects
  - When competitiveness of the *tied* market is not fixed
    - Impair tied rival competitiveness
  - When competitiveness of the *tying* market is not fixed
    - Maintain tying market power

ECONOMIC SUPPORT FOR TESTS (1/2)

- Profit-sacrifice test
  - No sacrifice needed
- Cost-based test (Caves Singer 2015)
  - “False positives” (exclusion of rivals with real discounts)
  - “False negatives” (no exclusion of rivals with phantom discounts)
  - Structured rule of reason, burden shifting

ECONOMIC SUPPORT FOR TESTS (2/2)

- Tying rubric for market power effects (Elhauge 2009)
  - If standalone price > IMP → treat bundle like ties, condemned based on market power absent offsetting efficiencies
  - Control for factors that change IMP (Caves & Singer 2012)
- Traditional rule of reason (Elhauge 2009)
  - If standalone price < IMP → condemned only if a substantial foreclosure share is proven
- Exclusive dealing rubric (Moore & Wright 2015)
  - Treat all conditional rebate cases the same
  - No weight attached to discount attribution

DUELING LEGAL RUBRICS

Exclusive Dealing

1. Foreclosure share
2. Duration of the contract
3. Entry conditions
4. Competitive effects

Tying

1. Distinct goods
2. Tying market power
3. Substantial commerce
4. Forcing element

Key difference

- No requirement for substantial foreclosure under tying

Similarities

- Foreclosure share = *f*(Tying market power, Forcing element)
- Competitive effects =*g*(Tying market power, Substantial commerce)
- Consideration of offsetting efficiencies under tying's quasi-per se rule

HOW TO DEMONSTRATE HARM?

- Indirectly via harm to a rival
  - Discount attribution test
  - Significant foreclosure
    - Discourage discounting via market division requires foreclosure
    - Entry deterrence
- Directly via harm to the consumer
  - Squeezing surplus
  - Direct evidence of consumer harm
    - Higher tied prices or reduced output

READING LIST

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