



Exclusivity, Loyalty Discounts and Competitive Effects Analysis

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*CRA International Conference
December 9, 2009*



Exclusionary Conduct Paradigms

- 2 Competing Paradigms
 - Predatory Pricing
 - Raising Rivals' Costs
- RRC raises greater competitive concerns
 - More likely attempted/successful
 - No inherent consumer benefits



Exclusionary Conduct

Paradigms: Predatory Pricing

- “Rarely attempted, and even more rarely successful” (*Brooke Group*)
 - Predator’s profits reduced by more than victim’s during predatory period
 - Recoupment involves time delay and uncertainty
 - Recoupment requires rival to exit or be disciplined
 - Recoupment vulnerable to entry (or re-entry)
- Consumers benefit during predatory period
 - Inherent short-run benefits from lower prices



Exclusionary Conduct Paradigms: Raising Rivals' Costs

- More likely to succeed
 - Often less costly or costless to excluding firm
 - Recoupment more certain
 - Competitor exit not required for success
 - Higher costs lead to higher prices
 - Less vulnerable to entry
 - Exclusion often affects entrants too
 - Simultaneous recoupment
 - Higher costs lead immediately to higher prices
 - Exclusionary conduct may not create benefits



Application to Exclusives and Loyalty Discounts

- Bundled Rebates and Loyalty Discounts
 - Predatory pricing or RRC?
 - Relevance of price/cost analysis?
- Recent US cases
 - Peace Health
 - Massimo
 - Intel (AMD private case settled)
- To do: Conceptual framework and application to Intel case



Types of Exclusives

- Target group
 - Input supplier exclusives
 - Customer exclusives
- Mechanism for exclusivity
 - Required/Coerced
 - Loyalty discounts or payments as inducement
- Consumer benefits
 - Loyalty discounts to customers benefit consumers
 - Loyalty payments to input suppliers do not



Input Supplier Exclusives and Payments

- Raises rivals' costs
 - Loss of access to efficient suppliers
 - Reduction in input market competition
 - "Frankenstein Monster" effect
- Potential downstream effects on consumers
 - Higher cost rivals may lead to higher consumer prices
 - Higher prices *if* insufficient unrestrained competitors
- Payments to input suppliers do not benefit consumers
 - Not passed-on as lower prices
- Competitor counter-bidding to avoid exclusion also raises rival's costs



Customer Exclusives and Discounts

- Reduces rivals' revenues
 - May cause exit or marginalization; raise variable costs in some cases
 - May induce reduced investment
- Loyalty discounts vs. coerced exclusivity
 - Loyalty discounts more likely to benefit consumers
 - Discounts more likely passed-on to consumers
 - Competitor counter-bidding also benefits consumers
- Loyalty discounts as predatory pricing vs. RRC?
 - Lower prices to consumers inherently beneficial in short-run
 - Exclusionary conduct vs. competition on the merits
 - How to draw the line?

Evaluating Loyalty Discounts to Customers

■ Proving consumer harm requires rigorous analysis, *not presumption*

- Were arrangements buyer-driven to induce lower prices?
- Were “effective prices” below avoidable cost?
 - “Profit-sacrifice”
 - “Protecting equally efficient competitors” ???
 - “Counterbidding” (discussed below)
- Was foreclosure rate substantial enough to adversely affect competition?
 - Did competitor exit? Marginalized? Reduce investment?
- What evidence of consumer harm?
 - Higher prices? Reduced innovation?
- Did competitor attempt counter-bidding?
 - Would successful counter-bidding have been unprofitable, given competitor’s actual costs?