

Comments on the DOJ Report on Monopolization

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My biases

- Grandfather's maxim
 “Moderation in all things”
- Sometimes Plaintiffs are right, sometimes
Defendants are right

Federal Trade Commissioner Comments (Harbour, Leibowitz & Rosch)

- “Blueprint for radically weakened enforcement.”
- Places monopolists interests ahead of consumer interests

DOJ Report on Monopolization

- Risks from overenforcement outweigh risks from underenforcement
- Disproportionality standard
 - Plaintiffs must show anticompetitive effects substantially disproportionate to procompetitive effects
- Safe Harbors with per se legality
 - E.g, P>AAC.
- Why such sympathy for defendants?

Pricing Cases: Loyalty Discounts, Bundled Discounts, Alleged Predatory Pricing

- Behaviors “typically benefit consumers”
- Worries about over-enforcement emphasized.
 - “Chilling pro-competitive Bundled discounts”
 - “Chilling the very conduct the antitrust laws are designed to protect. “
- Why?

Glass Half Full or Half Empty?

- Consider Two Prices: H,L
H>L
- DOJ sees L
 - Low prices are good.
 - Loyalty discounts, bundled discounts, alleged predatory pricing all involve L and typically benefit consumers.
- Contrarian sees H

Loyalty Discounts

- Buy X, pay p
- Buy 2X, pay $2p(1-d)$
- Price of 2nd unit is $p-2d$.
 - Discount on later units benefits consumers
 - Need tough burden on plaintiffs
- My question
 - Why not say: first unit sold at premium (surcharge)?
 - If can't surcharge, wouldn't first unit be sold cheaper?
- Effects of banning discrimination
 - Share benefits of low prices or competition among customers
 - More entry/competition?

Predatory Pricing

- Monopoly charges H
 - L when entrant arrives
- DOJ worries about predatory pricing law banning L (the “discount”)
 - “chilling competition”
- Why not think of predatory pricing law as banning H (the “surcharge”)?
 - Expand benefits of competition to pre-entry period.
 - Can encourage entry

Conclusion

- U.S. Law has moved far toward favoring Defendant Monopolies.
 - odd time for a “blue-print for weakened antitrust enforcement”
 - Not if defendants are almost always right and glasses always appear half-full
- FTC Commissioners may be optimistic.
- Maybe Europe can hold the line.

Price Discrimination

- Perfect price discrimination takes all consumer surplus
 - hurts consumers unambiguously
- Effect worse if price discrimination limits competition.
 - Perfect price discrimination will limit competition.

- Accused of charging prices too low. (According to Edlin it is too high earlier!)
- Spirit burden shifting. Plaintiff can prove predatory if above AVC but below ATC .
- Equation of Procompetitive with Economically Rational apart from exclusionary effects.
- AAC vs. p or Avg. Extra Revenue.
- Conflation of two things.
 - Profit sacrifice (67)
 - Exclusion of equally efficient competitor.(67)

- Blueprint for radically weakened enforcement.
- Risk of overenforcement exceeds risk of under-enforcement.
 - Fear of liability leads firms to compete less aggressively.
- Costs of Administration
- Benefits of Per Se Legality and Safe Harbors
- Disproportionate standard.
- AAC standard on Predatory Pricing and Loyalty Discounts
- Bundled discounts
 - Must show no procompetitive benefit
 - Or harm disproportionate to benefit.

Bundled pricing

- Buy A&B, get 1/3 off.
 - $p_A = 2/3p_A - 1/3p_B$
- DOJ: Discount is good in itself.
 - Conceivably so large that limits competition anticompetitively
- Flip it: there is a surcharge on buying A alone.
 - Surcharges in themselves bad
 - Could there be more competition if bundling banned?