

EC 360: Industrial Organization

Lecture 7 - exclusionary practices

Brett Garcia

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Sherman Act: exclusionary practices

- The Sherman Act states that being a monopoly is not an antitrust violation, but **exclusionary** behavior is a violation
- The courts believe...
 - Aggressive, **competitive** conduct by a monopolist is highly beneficial to consumers, and that courts should prize and encourage this conduct via antitrust laws
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 - Aggressive, **exclusionary** conduct by a monopolist is deleterious to consumers, and courts should condemn this conduct via antitrust laws
- However, identifying exclusionary behavior is extremely difficult
 - Competitive and exclusionary conduct often look alike

Predatory pricing

Predatory pricing

- **Predatory pricing:** the act of setting a price below cost to force competitors to exit a market
 - A large, dominant firm enters a market with a smaller firm
 - The large firm starts to cut prices low enough that **both** firms sustain losses
 - The smaller firm can't sustain the losses and exits the market
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- This result relies on several conditions
 - The large firm must have some significant market power
 - The large firm must have enough excess profit to sustain some temporary loss

Conditions to rationalize predatory pricing

- Several demanding conditions must be met in order to make predatory pricing a rational strategy
 - The predator must enjoy some threshold of market power, so that they may sufficiently affect the price
 - Exit barriers (sunk costs) must be low enough that prey firms can exit the industry easily
 - Entry barriers must be high enough that firms cannot easily re-enter the market after the predator firm raises prices

Empirical evidence

Empirical evidence of predatory pricing

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- Creating a rule against predatory pricing is difficult
 - What practices should constitute the offense?
- Although allegations of predatory pricing are common, very few antitrust cases have found the defendant guilty
 - Predatory pricing is hard to prove, resulting in a misallocation of judicial resources
 - Potential conviction of innocent firms could discourage competitive pricing

Areeda Turner rule

- The **Areeda Turner rule** can help us analyze whether or not a firm is engaging in predatory pricing
 - Calculate a firm's average total cost (ATC) and marginal cost (MC)
 - If the price charged by the firm is less than both ATC and MC, then the firm is engaging in predatory pricing
 - Graph 7.1

Court cases

Barry Wright Corp. v. ITT Grinnell Corp. (1983)

- ITT Grinnell was accused of excluding Barry Wright from the market for mechanical snubbers (a component in pipe systems in nuclear power plants)
 - Grinnell offered to sign an exclusive contract with Barry Wright from 1977-1979, and help fund their startup if Barry Wright could have a full product line ready
 - Barry Wright could not keep up with Grinnell's demands, and Grinnell instead bought from Pacific Scientific Co. at a bulk discount
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 - Barry Wright alleged that Pacific's bulk discount was meant to exclude Barry Wright from the market
- The courts ruled in favor of ITT Grinnell
 - The prices Pacific offered were above Pacific's ATC
 - Pacific had a lot of excess capacity, so producing more snubbers would lower Pacific's ATC
 - Encouraging a price cut in this fashion brings us closer to the competitive outcome

Masushita Electric Industrial Co. v. Zenith Radio Corp. (1986)

- Zenith Radio alleged that Masushita Electric had formed a coalition monopoly in Japan and used the excess profits to finance predatory pricing in the US
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- Zenith Radio alleged that Masushita Electric had formed a coalition monopoly in Japan and used the excess profits to finance predatory pricing in the US
 - Zenith argued that if the practice were to be allowed, US consumers would eventually face monopoly prices
- The judge ruled in favor of Matsushita, as he believed their market share was not large enough to exhibit significant pricing power
 - Zenith still accounted for 20% market share, while another competitor accounted for 24% market share
 - Masushita did not have a US monopoly, and there was no explicit evidence of collusion
 - This case set precedent for the **incentive logic filter**: the only cases that should go to court are ones where the economic incentives match the evidence

Brook Group Ltd. v. Brown & Williamson Tobacco Corp. (1993)

- Brook Group alleged that a rival cigarette producer, Brown & Williamson, engaged in predatory pricing
 - Brook Group won in a jury court, but it was later overturned by the court of appeals and the Supreme Court
- This case set two precedents
 - The plaintiff must show the defendant charged prices below some “appropriate measure of cost”
 - The plaintiff must show the defendant planned on recouping its losses from charging a price below cost

Recoupment

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- NPV is the net present value of their strategy
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 - An interesting instance where discounts can be anticompetitive is in **bundled discounts**
- Consider the case of LePage Inc. v. 3M (2004)
 - 3M and LePage were competitors in the market for tape
 - As LePage's market share grew, 3M started to bundle its tape with other unrelated products at a bundled discount (i.e. health care, home care, auto care, stationary products)
 - The bundle discount incentivized retailers to carry 3M tape products over LePage's
 - "The defendant bears the burden of persuading the jury that its conduct was justified by any normal business purpose" Supreme Court

Bundling: an anticompetitive example

Consider a firm that bundles the following three products:

Product	Price	Cost
Pencils	4.00	2.50
Soap	6.00	4.00
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- Thus, the bundle excluded an efficient firm from the market

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- The total discount the original firm gave was $(.25 \cdot \$15,000) = \$3,750$
 - The producer of the soap could argue that this \$3,750 should all be allocated to the price cut on the soap, whose production cost is \$4.00
 - Thus, the soap manufacturer would argue the firm set a predatory price of soap of $\$6.00 - 3.75 = \2.25
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- **Economies of scope** are excluded from antitrust violations
 - If bundling reduces the cost of goods sold, then it's an increase in efficiency and not anticompetitive

Modern exclusionary practices

Modern exclusionary practices: Amazon and antitrust

- Promotion of private label products
 - Hal Singer, managing director of EconOne and adjunct professor at Georgetown University