

## 17.2 REGULATING ANTICOMPETITIVE BEHAVIOR

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### LEARNING OBJECTIVES

By the end of this section, you will be able to:

- Analyze restrictive practices
- Explain tying sales, bundling, and predatory pricing
- Evaluate a real-world situation of possible anticompetitive and restrictive practices

The U.S. antitrust laws reach beyond blocking mergers that would reduce competition to include a wide array of anticompetitive practices. For example, it is illegal for competitors to form a cartel to collude to make pricing and output decisions, as if they were a monopoly firm. The Federal Trade Commission and the U.S. Department of Justice prohibit firms from agreeing to fix prices or output, rigging bids, or sharing or dividing markets by allocating customers, suppliers, territories, or lines of commerce.

In the late 1990s, for example, the antitrust regulators prosecuted an international cartel of vitamin manufacturers, including the Swiss firm Hoffman-La Roche, the German firm BASF, and the French firm Rhone-Poulenc. These firms reached agreements on how much to produce, how much to charge, and which firm would sell to which customers. The high-priced vitamins were then bought by firms like General Mills, Kellogg, Purina-Mills, and Proctor and Gamble, which pushed up the prices more. Hoffman-La Roche pleaded guilty in May 1999 and agreed both to pay a fine of \$500 million and to have at least one top executive serve four months of jail time.

Under U.S. antitrust laws, monopoly itself is not illegal. If a firm has a monopoly because of a newly patented invention, for example, the law explicitly allows a firm to earn higher-than-normal profits for a time as a reward for innovation. If a firm achieves a large share of the market by producing a better product at a lower price, such behavior is not prohibited by antitrust law.

### RESTRICTIVE PRACTICES

Antitrust law includes rules against **restrictive practices**—practices that do not involve outright agreements to raise price or to reduce the quantity produced, but that might have the effect of reducing competition. Antitrust cases involving restrictive practices are often controversial, because they delve into specific contracts or agreements between firms that are allowed in some cases but not in others.

For example, if a product manufacturer is selling to a group of dealers who then sell to the general public it is illegal for the manufacturer to demand a **minimum resale price maintenance agreement**, which would require the dealers to sell for at least a certain minimum price. A minimum price contract is illegal because it would restrict competition among dealers. However, the manufacturer is legally allowed to “suggest” minimum prices and to stop selling to dealers who regularly undercut the suggested price. If you think this rule sounds like a fairly subtle distinction, you are right.

An **exclusive dealing** agreement between a manufacturer and a dealer can be legal or illegal. It is legal if the purpose of the contract is to encourage competition between dealers. For example, it is legal for the Ford Motor Company to sell its cars to only Ford dealers, for General Motors to sell to only GM dealers, and so on. However, exclusive deals may also limit competition. If one large retailer obtained the exclusive rights to be the sole distributor of televisions, computers, and audio equipment made by a number of companies, then this exclusive contract would have an anticompetitive effect on other retailers.

**Tying sales** happen when a customer is required to buy one product only if the customer also buys a second product. Tying sales are controversial because they force consumers to purchase a product that they may not actually want or need. Further, the additional, required products are not necessarily advantageous to the customer. Suppose that to purchase a popular DVD, the store required that you also purchase a portable TV of a certain model. These products are only loosely related, thus there is no reason to make the purchase of one contingent on the other. Even if a customer was interested in a portable TV, the tying to a particular model prevents the customer from having the option of selecting one from the numerous types available in the market. A related, but not identical, concept is called **bundling**, where two or more products are sold as one. Bundling typically offers an advantage for the consumer by allowing them to acquire multiple products or services for a better price. For example, several cable companies allow customers to buy products like cable, internet, and a phone line through a special price available through bundling. Customers are also welcome to purchase these products separately, but the price of bundling is usually more appealing.

In some cases, tying sales and bundling can be viewed as anticompetitive. However, in other cases they may be legal and even common. It is common for people to purchase season tickets to a sports team or a set of concerts so that they can be guaranteed tickets to the few contests or shows that are most popular and likely to sell out. Computer software manufacturers may often bundle together a number of different programs, even when the buyer wants only a few of the programs. Think about the software that is included in a new computer purchase, for example.

Recall from the chapter on Monopoly that **predatory pricing** occurs when the existing firm (or firms) reacts to a new firm by dropping prices very low, until the new firm is driven out of the market, at which point the existing firm raises prices again. This pattern of pricing is aimed at deterring the entry of new firms into the market. But in practice, it can be hard to figure out when pricing should be considered predatory. Say that American Airlines is flying between two cities, and a new airline starts flying between the same two cities, at a lower price. If American Airlines cuts its price to match the new entrant, is this predatory pricing? Or is it just market competition at work? A commonly proposed rule is that if a firm is selling for less than its average variable cost—that is, at a price where it should be shutting down—then there is evidence for predatory pricing. But calculating in the real world what costs are variable and what costs are fixed is often not obvious, either.

The Microsoft antitrust case embodies many of these gray areas in restrictive practices, as the next Clear it Up shows.

#### DID MICROSOFT® ENGAGE IN ANTICOMPETITIVE AND RESTRICTIVE PRACTICES?

The most famous restrictive practices case of recent years was a series of lawsuits by the U.S. government against Microsoft—lawsuits that were encouraged by some of Microsoft’s competitors. All sides admitted that Microsoft’s Windows program had a near-monopoly position in the market for the software used in general computer operating systems. All sides agreed that the software had many satisfied customers. All sides agreed that the capabilities of computer software that was compatible with Windows—both software produced by Microsoft and that produced by other companies—had expanded dramatically in the 1990s. Having a **monopoly** or a near-monopoly is not necessarily illegal in and of itself, but in cases where one company controls a great deal of the market, antitrust regulators look at any allegations of restrictive practices with special care.

The antitrust regulators argued that Microsoft had gone beyond profiting from its software innovations and its dominant position in the software market for operating systems, and had tried to use its market power in operating systems software to take over other parts of the software industry. For example, the government argued that Microsoft had engaged in an anticompetitive form of exclusive dealing by threatening computer makers that, if they did not leave another firm’s software off their machines (specifically, Netscape’s Internet browser), then Microsoft would not sell them its operating system software. Microsoft was accused by the government antitrust regulators of tying together its Windows operating system software, where it had a monopoly, with its Internet Explorer browser software, where it did not have a monopoly, and thus using this bundling as an anticompetitive tool. Microsoft was also accused of a form of predatory pricing; namely, giving away certain additional software products for free as part of Windows, as a way of driving out the competition from other makers of software.

In April 2000, a federal court held that Microsoft’s behavior had crossed the line into unfair competition, and recommended that the company be broken into two competing firms. However, that penalty was overturned on appeal, and in November 2002 Microsoft reached a settlement with the government that it would end its restrictive practices.

The concept of restrictive practices is continually evolving, as firms seek new ways to earn profits and government regulators define what is permissible and what is not. A situation where the law is evolving and changing is always somewhat troublesome, since laws are most useful and fair when firms know what they are in advance. In addition, since the law is open to interpretation, competitors who are losing out in the market can accuse successful firms of anticompetitive restrictive practices, and try to win through government regulation what they have failed to accomplish in the market. Officials at the Federal Trade Commission and the Department of Justice are, of course, aware of these issues, but there is no easy way to resolve them.

#### KEY CONCEPTS AND SUMMARY

Firms are blocked by antitrust authorities from openly colluding to form a cartel that will reduce output and raise prices. Companies sometimes attempt to find other ways around these restrictions and, consequently, many antitrust cases involve restrictive practices that can reduce competition in certain circumstances, like tie-in sales, bundling, and predatory pricing.

## SELF-CHECK QUESTIONS

Why would a firm choose to use one or more of the anticompetitive practices described in Regulating Anticompetitive Behavior?

## REVIEW QUESTIONS

1. What is a minimum resale price maintenance agreement? How might it reduce competition and when might it be acceptable?
2. What is exclusive dealing? How might it reduce competition and when might it be acceptable?
3. What is a tie-in sale? How might it reduce competition and when might it be acceptable?
4. What is predatory pricing? How might it reduce competition, and why might it be difficult to tell when it should be illegal?

## CRITICAL THINKING QUESTIONS

1. Can you think of any examples of successful predatory pricing in the real world?
2. If you were developing a product (like a web browser) for a market with significant barriers to entry, how would you try to get your product into the market successfully?

## GLOSSARY

**bundling** a situation in which multiple products are sold as one

**exclusive dealing** an agreement that a dealer will sell only products from one manufacturer

**minimum resale price maintenance agreement** an agreement that requires a dealer who buys from a manufacturer to sell for at least a certain minimum price

**restrictive practices** practices that reduce competition but that do not involve outright agreements between firms to raise prices or to reduce the quantity produced

**tying sales** a situation where a customer is allowed to buy one product only if the customer also buys another product

## SOLUTIONS

**Answers to Self-Check Questions**

Because outright collusion to raise profits is illegal and because existing regulations include gray areas which firms may be able to exploit.

## 17.3 REGULATING NATURAL MONOPOLIES

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### LEARNING OBJECTIVES

By the end of this section, you will be able to:

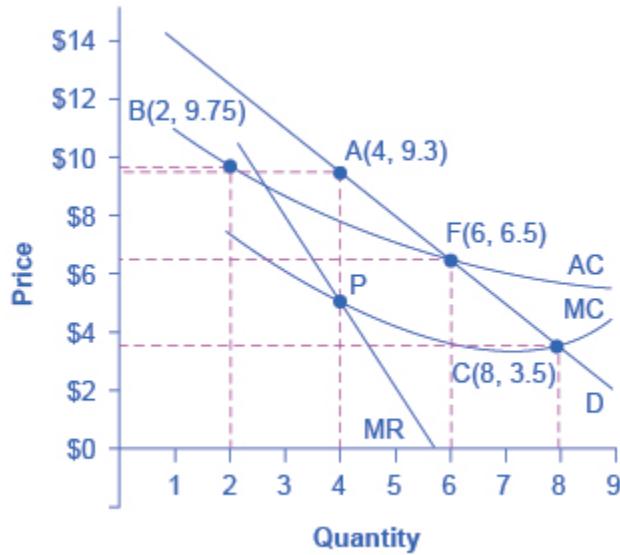
- Evaluate the appropriate competition policy for a natural monopoly
- Interpret a graph of regulatory choices
- Contrast cost-plus and price cap regulation

**M**ost true monopolies today in the U.S. are regulated, natural monopolies. A natural monopoly poses a difficult challenge for competition policy, because the structure of costs and demand seems to make competition unlikely or costly. A **natural monopoly** arises when average costs are declining over the range of production that satisfies market demand. This typically happens when fixed costs are large relative to variable costs. As a result, one firm is able to supply the total quantity demanded in the market at lower cost than two or more firms—so splitting up the natural monopoly would raise the average cost of production and force customers to pay more.

Public utilities, the companies that have traditionally provided water and electrical service across much of the United States, are leading examples of natural monopoly. It would make little sense to argue that a local water company should be broken up into several competing companies, each with its own separate set of pipes and water supplies. Installing four or five identical sets of pipes under a city, one for each water company, so that each household could choose its own water provider, would be terribly costly. The same argument applies to the idea of having many competing companies for delivering electricity to homes, each with its own set of wires. Before the advent of wireless phones, the argument also applied to the idea of many different phone companies, each with its own set of phone wires running through the neighborhood.

### THE CHOICES IN REGULATING A NATURAL MONOPOLY

So what then is the appropriate competition policy for a natural monopoly? Figure 1 illustrates the case of natural monopoly, with a market demand curve that cuts through the downward-sloping portion of the **average cost curve**. Points A, B, C, and F illustrate four of the main choices for regulation. Table 5 outlines the regulatory choices for dealing with a natural monopoly.



**Figure 1.** Regulatory Choices in Dealing with Natural Monopoly. A natural monopoly will maximize profits by producing at the quantity where marginal revenue (MR) equals marginal costs (MC) and by then looking to the market demand curve to see what price to charge for this quantity. This monopoly will produce at point A, with a quantity of 4 and a price of 9.3. If antitrust regulators split this company exactly in half, then each half would produce at point B, with average costs of 9.75 and output of 2. The regulators might require the firm to produce where marginal cost crosses the market demand curve at point C. However, if the firm is required to produce at a quantity of 8 and sell at a price of 3.5, the firm will suffer from losses. The most likely choice is point F, where the firm is required to produce a quantity of 6 and charge a price of 6.5.

Quantity	Price	Total Revenue*	Marginal Revenue	Total Cost	Marginal Cost	Average Cost
1	14.7	14.7	–	11.0	–	11.00
2	12.4	24.7	10.0	19.5	8.5	9.75
3	10.6	31.7	7.0	25.5	6.0	8.50
4	9.3	37.2	5.5	31.0	5.5	7.75
5	8.0	40.0	2.8	35.0	4.0	7.00
6	6.5	39.0	-1.0	39.0	4.0	6.50
7	5.0	35.0	-4.0	42.0	3.0	6.00
8	3.5	28.0	-7.0	45.5	3.5	5.70
9	2.0	18.0	-10.0	49.5	4.0	5.5

**Table 5.** Regulatory Choices in Dealing with Natural Monopoly. (\*Total Revenue is given by multiplying price and quantity. However, some of the price values in this table have been rounded for ease of presentation.)

The first possibility is to leave the natural monopoly alone. In this case, the monopoly will follow its

normal approach to maximizing profits. It determines the quantity where  $MR = MC$ , which happens at point P at a quantity of 4. The firm then looks to point A on the demand curve to find that it can charge a price of 9.3 for that profit-maximizing quantity. Since the price is above the average cost curve, the natural monopoly would earn economic profits.

A second outcome arises if antitrust authorities decide to divide the company, so that the new firms can compete. As a simple example, imagine that the company is cut in half. Thus, instead of one large firm producing a quantity of 4, two half-size firms each produce a quantity of 2. Because of the declining average cost curve (AC), the average cost of production for each of the half-size companies each producing 2, as shown at point B, would be 9.75, while the average cost of production for a larger firm producing 4 would only be 7.75. Thus, the economy would become less productively efficient, since the good is being produced at a higher average cost. In a situation with a downward-sloping average cost curve, two smaller firms will always have higher average costs of production than one larger firm for any quantity of total output. In addition, the antitrust authorities must worry that splitting the natural monopoly into pieces may be only the start of their problems. If one of the two firms grows larger than the other, it will have lower average costs and may be able to drive its competitor out of the market. Alternatively, two firms in a market may discover subtle ways of coordinating their behavior and keeping prices high. Either way, the result will not be the greater competition that was desired.

A third alternative is that regulators may decide to set prices and quantities produced for this industry. The regulators will try to choose a point along the market demand curve that benefits both consumers and the broader social interest. Point C illustrates one tempting choice: the regulator requires that the firm produce the quantity of output where marginal cost crosses the demand curve at an output of 8, and charge the price of 3.5, which is equal to **marginal cost** at that point. This rule is appealing because it requires price to be set equal to marginal cost, which is what would occur in a perfectly competitive market, and it would assure consumers a higher quantity and lower price than at the monopoly choice A. In fact, efficient allocation of resources would occur at point C, since the value to the consumers of the last unit bought and sold in this market is equal to the marginal cost of producing it.

Attempting to bring about point C through force of regulation, however, runs into a severe difficulty. At point C, with an output of 8, a price of 3.5 is below the average cost of production, which is 5.7, and so if the firm charges a price of 3.5, it will be suffering losses. Unless the regulators or the government offer the firm an ongoing public subsidy (and there are numerous political problems with that option), the firm will lose money and go out of business.

Perhaps the most plausible option for the regulator is point F; that is, to set the price where AC crosses the demand curve at an output of 6 and a price of 6.5. This plan makes some sense at an intuitive level: let the natural monopoly charge enough to cover its average costs and earn a normal rate of profit, so that it can continue operating, but prevent the firm from raising prices and earning abnormally high monopoly profits, as it would at the monopoly choice A. Of course, determining this level of output and price with the political pressures, time constraints, and limited information of the real world is much harder than identifying the point on a graph. For more on the problems that can arise from a centrally determined price, see the discussion of price floors and price ceilings in Demand and Supply.

## COST-PLUS VERSUS PRICE CAP REGULATION

Indeed, regulators of public utilities for many decades followed the general approach of attempting to choose a point like F in Figure 1. They calculated the average cost of production for the water or electricity companies, added in an amount for the normal rate of profit the firm should expect to earn, and set the price for consumers accordingly. This method was known as **cost-plus regulation**.

Cost-plus regulation raises difficulties of its own. If producers are reimbursed for their costs, plus a bit more, then at a minimum, producers have less reason to be concerned with high costs—because they can just pass them along in higher prices. Worse, firms under cost-plus regulation even have an incentive to generate high costs by building huge factories or employing lots of staff, because what they can charge is linked to the costs they incur.

Thus, in the 1980s and 1990s, some regulators of public utilities began to use **price cap regulation**, where the regulator sets a price that the firm can charge over the next few years. A common pattern was to require a price that declined slightly over time. If the firm can find ways of reducing its costs more quickly than the price caps, it can make a high level of profits. However, if the firm cannot keep up with the price caps or suffers bad luck in the market, it may suffer losses. A few years down the road, the regulators will then set a new series of price caps based on the firm's performance.

Price cap regulation requires delicacy. It will not work if the price regulators set the price cap unrealistically low. It may not work if the market changes dramatically so that the firm is doomed to incurring losses no matter what it does—say, if energy prices rise dramatically on world markets, then the company selling natural gas or heating oil to homes may not be able to meet price caps that seemed reasonable a year or two ago. But if the regulators compare the prices with producers of the same good in other areas, they can, in effect, pressure a natural monopoly in one area to compete with the prices being charged in other areas. Moreover, the possibility of earning greater profits or experiencing losses—instead of having an average rate of profit locked in every year by cost-plus regulation—can provide the natural monopoly with incentives for efficiency and innovation.

With natural monopoly, market competition is unlikely to take root, so if consumers are not to suffer the high prices and restricted output of an unrestricted monopoly, government regulation will need to play a role. In attempting to design a system of price cap regulation with flexibility and incentive, government regulators do not have an easy task.

## KEY CONCEPTS AND SUMMARY

In the case of a natural monopoly, market competition will not work well and so, rather than allowing an unregulated monopoly to raise price and reduce output, the government may wish to regulate price and/or output. Common examples of regulation are public utilities, the regulated firms that often provide electricity and water service.

Cost-plus regulation refers to government regulation of a firm which sets the price that a firm can charge over a period of time by looking at the firm's accounting costs and then adding a normal rate of profit. Price cap regulation refers to government regulation of a firm where the government sets a price level several years in advance. In this case, the firm can either make high profits if it manages to produce at lower costs or sell a higher quantity than expected or suffer low profits or losses if costs are high or it sells less than expected.

## SELF-CHECK QUESTIONS

1. Urban transit systems, especially those with rail systems, typically experience significant economies of scale in operation. Consider the transit system whose data is given in the Table 6. Note that the quantity is in millions of riders.

Demand:	Quantity	1	2	3	4	5	6	7	8	9	10
Price		10	9	8	7	6	5	4	3	2	1
Marginal Revenue		10	8	6	4	2	0	-2	-4	-6	-8
Costs:	Marginal Cost	9	6	5	3	2	3	4	5	7	10
Average Cost		9	7.5	6.7	5.8	5	4.7	4.6	4.6	4.9	5.4

Table 6.

Draw the demand, marginal revenue, marginal cost, and average cost curves. Do they have the normal shapes?

2. From the graph you drew to answer Self-Check Question 1, would you say this transit system is a natural monopoly? Justify.

## REVIEW QUESTIONS

- If public utilities are a natural monopoly, what would be the danger in deregulating them?
- If public utilities are a natural monopoly, what would be the danger in splitting them up into a number of separate competing firms?
- What is cost-plus regulation?
- What is price cap regulation?

## CRITICAL THINKING QUESTIONS

- In the middle of the twentieth century, major U.S. cities had multiple competing city bus companies. Today, there is usually only one and it runs as a subsidized, regulated monopoly. What do you suppose caused the change?
- Why are urban areas willing to subsidize urban transit systems? Does the argument for subsidies make sense to you?

## PROBLEM

Use Table 6 to answer the following questions.

1. If the transit system was allowed to operate as an unregulated monopoly, what output would it supply and what price would it charge?
2. If the transit system was regulated to operate with no subsidy (i.e., at zero economic profit), what approximate output would it supply and what approximate price would it charge?
3. If the transit system was regulated to provide the most allocatively efficient quantity of output, what output would it supply and what price would it charge? What subsidy would be necessary to insure this efficient provision of transit services?

## GLOSSARY

**cost-plus regulation** when regulators permit a regulated firm to cover its costs and to make a normal level of profit

**price cap regulation** when the regulator sets a price that a firm cannot exceed over the next few years

## SOLUTIONS

### Answers to Self-Check Questions

1. Yes, all curves have normal shapes.

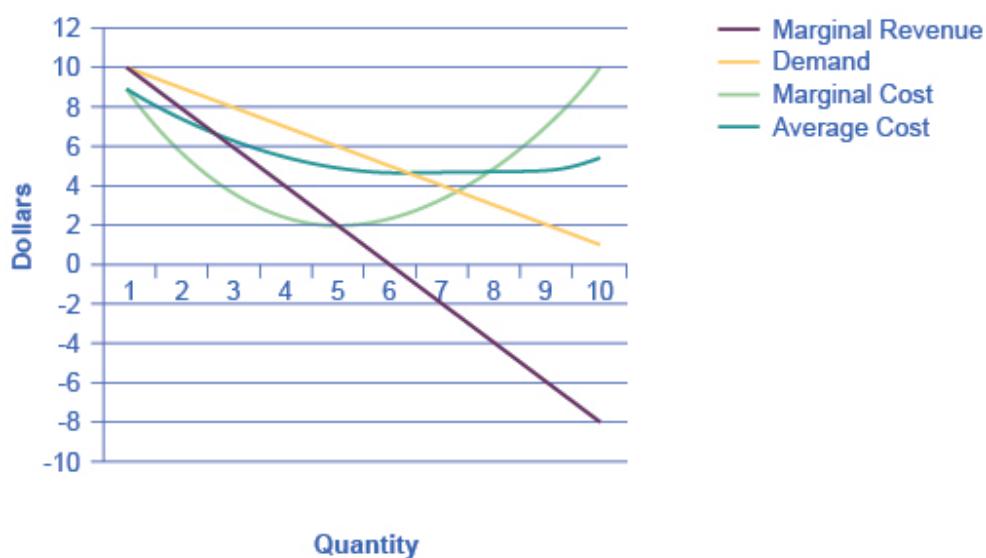


Figure 2.

2. Yes it is a natural monopoly because average costs decline over the range that satisfies the market demand. For example, at the point where the demand curve and the average cost curve meet, there are economies of scale.