

SUPERMARKETS AND COMPETITIVE BOTTLENECKS: COMPETITION ISSUES AND REMEDIES

javier berasategi

Autoridade da Concorrência, Lisboa

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WHAT DO THEY HAVE IN COMMON?



Das Auto.

Google



COMPETITIVE BOTTLENECK



amadeus





WHAT IS WRONG WITH COMPETITIVE BOTTLENECKS?

Mark Armstrong, “Competition in two-sided markets”, RAND (2006)

Many markets involve two groups of agents who interact via “platforms”, where one group’s benefit from joining the platform depends on the size of the other group that joins the platform. In present three models of such markets: a monopoly platform, a model of competing platforms where agents join a single platform and a model of “competitive bottlenecks” where one group joins all platforms. [In the last model], while group 1 continues to deal with a single platform (to single-home), group 2 wishes to deal with each platform (to multi-home). In this sense, there is no competition between platforms to attract group-2 customers.

European Commission note for the “Roundtable on two-sided markets”, OECD Competition Committee, DAF/COMP/WD(2009)69

“Armstrong points out that even if the platforms do not make excessive profits overall, the multi-homing side faces too high a charge from the point of view of social welfare. Bolt and Tieman (2006) in a comparatively simple two-sided platform model, obtain a similar result. They show that in the social optimum, platform pricing leads to an inherent cost recovery problem... It follows that even adequate competition policy enforcement alone may not always lead to best outcomes. This suggests, at least in some instances regulation may be pertinent.”



SEARCH ENGINES

- Dominance?



YAHOO!

- Internet user: free service



- Content provider: search & display bias



- Remedies: Article 102 TFEU... but settlement = ex-ante regulation?



CREDIT CARD NETWORKS

- Dominance?



- Card user: free/reduced fee service





- Retailer: high fees and Unfair Trading Practices



- Remedies: Article 101 TFEU (not AmEx)...but EU regulation expected



COMPUTER RESERVATION SYSTEMS

- Dominance?  **AMADEUS** *Travelport*  **Sabre**.
- Travel agencies: booking fees but signing bonuses and incentive payments 🤗
- Airlines: fear of access and display bias 🛑😡
- Remedies: EU Regulations 2299/89 and 80/2009



INTERNET CONNECTIVITY

- Dominance?



- Web visitors: Internet access fee 🙄

- Content providers: fear of increased fees and discrimination 🛑

- Remedies: Internet Neutrality rules, EU “Connected Continent” legislative proposal



CAR MANUFACTURERS

- Dominance?



- Car drivers: wide price/quality choice 🤗
- Independent spare part manufacturers, garages and dealers: discriminated against car manufacturers' network of dealers/garages 🛑
- Remedies: Article 101 TFEU but Regulations 1475/1995, 1400/2002, 461/2010 = ex-ante regulation?



MEDIA PLATFORMS


- Dominance?



- TV viewers: happy without ads! 🤗
- Advertisers: increased fees and unfair trading practices 🛑
- Remedies: Merger Control (ITV, Telecinco/Cuatro, Antena3/La Sexta) or Regulation (UK Adjudicator)



MOBILE NETWORKS


- Dominance? 
- Customers: +100% penetration...but customer service/lock-in complaints 🤔
- Smaller or non-mobile competitors: mobile access & termination promotes competition 🛑
- Remedies: EU + National Regulations (call termination and MVNOs)...but based on 102 TFEU




ARE SUPERMARKETS COMPETITIVE BOTTLENECKS?



- Dominance? **CONTINENTE**  **Auchan Portugal**

- Shoppers: happy overall and loyal to their preferred supermarket (lock-in?) 

- Brands (suppliers): unfair trading practices and discrimination (supermarket brands) 

- Remedies? well, we are looking into it...



ARE SUPERMARKETS COMPETITIVE BOTTLENECKS?

- **WHAT DOES ECONOMIC THEORY SAY?**

Mark Armstrong, *“Competition in two-sided markets”*, RAND (2006)



There are several examples of markets where this framework seems a stylized representation (competing mobile telecommunications networks, newspaper advertising, **supermarkets**, computerized airline reservation systems). (...). A commonly held view about the supermarket sector is that, provided competition for consumers is vigorous, consumers are treated well by supermarkets but supermarkets deal too aggressively with their suppliers. As with all the competitive bottleneck models, in equilibrium the joint surplus of supermarkets and consumers is maximized and the interests of the the suppliers are ignored. The low level of compensation will exclude some relatively high-cost suppliers whose presence in the supermarkets is nevertheless efficient. In other words, payments to suppliers are too low from a social point of view and there are too few products on the shelves. How well consumers are treated depends on competitive conditions on their side.

- **WHAT DOES COMMON SENSE SAY?**



- “generalised and simultaneous UTPs” (CNMC market study 2011)
- even small retailers apply them and even leading brands are subject to them
- could a retailer apply UTPs regularly if it were not a bottleneck?



SO, SUPERMARKETS ARE A PERFECT EXAMPLE OF A COMPETITIVE BOTTLENECK!

SUPERMARKETS: ANGELS...

...OR DEMONS?



ACCESS TO THE STORE OF INDEPENDENT BRANDS

IN-STORE COMPETITION BETWEEN INDEPENDENT AND SUPERMARKET BRANDS

UNFAIR ACCESS TERMS

ACCESS FEES

TRANSFER OF RETAIL RISKS

REFUSAL OF ACCESS

ABRUPT ACCESS

TERMINATION



PRICING UTPs

POCKETING OF WHOLESALE PROMOTIONS

ARTIFITIAL PRICE GAPS

LOSS LEADING

NON-PRICING UTPs

MISUSE OF CONFIDENTIAL INFORMATION

REFUSAL OF ON-PACKAGE PROMOTIONS

DEGRADATION OF SERVICES

SWITCH MARKETING

PREFERENTIAL SPACE

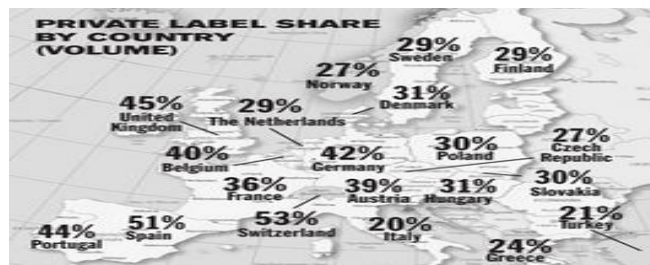
COPYCAT



THIS IS NOT A COMPETITION (CONSUMER WELFARE) ISSUE, IS IT?


- **We care about innovation, quality, variety and price (EC Guidelines)?**
 - *Exclusionary practices distort all of them:* misuse of sensitive confidential information, copycat, umbrella-pricing, discriminatory margins, pocketing of wholesale promotions, refusal of on-package promotions, preferential space, switch marketing, service degradation...
 - *Even seemingly exploitative UTPs are exclusionary (Raise Rivals' Costs):* access fees, unfair access terms, transfer of retail risks
- **We care about the competitive process (EC Guidelines)?**
- **We care about consumer choice/sovereignty (Lande, Averitt, Leary)?**
- **We adapt the rules to market realities and new economic theories and not otherwise (retailer/buyer, supplier/seller, retailer=consumer)?**

SO, COMPETITIVE BOTTLENECKS AND THEIR UNFAIR & EXCLUSIONARY PRACTICES ARE A COMPETITION/CONSUMER WELFARE ISSUE!



COMPETITIVE BOTTLENECKS: REGULATION OR COMPETITION LAW?



- Regulation/Self-regulation and competition rules should **complement** each other.
- So far, **Member States** either adopt regulations (e.g., UK, Spain) or amend their competition rules (Latvia, Finland, Italy) 
- **Law 19/2012** may address access & in-store UTPs:
 - Article 36 et seqq.: merger control remedies (see COMP/M. 1684 - *Carrefour/Promodès* undertakings regarding UTPs)
 - Article 9: supermarket alliances (see Italian proceedings against *Centrale Italiana*)
 - Article 12: guidelines on abuse of economic dependence by leading retailers (see Guidelines of Latvian Authority)
 - Promotion of co/self-regulation (see EC Guidelines on car distribution: “Adhering to a Code of Conduct is one means of achieving greater transparency in commercial relationships between parties...If a supplier incorporates such a Code of Conduct into its agreements with distributors and repairers, makes it publicly available, and complies with its provisions, this will be regarded as a relevant factor for assessing the supplier's conduct in individual cases”).



TIME TO ALIGN SUPERMARKETS WITH OTHER COMPETITIVE BOTTLENECKS?



Das Auto.

Google



amadeus





More info available at:

www.supermarketpower.eu

“Supermarket Power: Serving Consumers or Harming Competition?”

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401723