THE GRADUATE INSTITUTE GENEVA

INSTITUT DE HAUTES ÉTUDES INTERNATIONALES ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES

Rebates - what can be learned from the literature since the guidance paper ?

Damien Neven

16th ANNUAL CONFERENCE OF THE GCLC – February 12, 2021

Ex post assessment of European competition enforcement - Rebate Cases

Naked exclusion ?

- The paper endorses a theory of harm based on an analogy with exclusive dealing and in particular naked exclusion
- Analogy between a fixed payment for exclusivity and the benefit of rebates that is lost if a customer switches to a competitor
- This analogy is however potentially misleading (Ide et al., AER) Exclusive dealing (in terms of modelling) involves a fixed remuneration for exclusivity before the entrant can make an offer.
- This is to say that the customer is committed to the exclusive contract.
- Consider for instance the framework with discriminatory offers (that may fit with Intel according to the paper).
- With exclusive dealing, if the customers reject the exclusive dealing contract, the incumbent can offer a very attractive contract to one customer (that beats the contract from the entrant) and nothing to other
- The incumbent can then induce the favoured customer to sign an exclusive deal by offering marginally more than what he would get if he does not sign

Naked exclusion

- The other customer can be induced to sign an exclusive deal by a marginal inducement (as there is no hope of attracting the entrant)
- However, with rebates the matter is different.
- Since the customer with a rough deal is not committed, the entrant can offer him a marginally better offer.
- Obtain (approximately) the monopoly rent from that customer to attract the other one.
- There is no contract that the incumbent can offer to the favoured customer that beats this offer and guarantees a profit.
- The fundamental problem of exclusivity (namely that competition is more valuable for a customer than a supplier) reappears.
- As observed by the paper, the AECT in the guidance paper can be understood in the context of naked exclusion (is the incumbent offering too high an inducement to the favoured customer ?)
- How important is this critique ? Is it reasonable to assume that customer can commit to exclusivity ?
- What does imply of the justification for the AECT ?
- Note that Abito and Wright (another INTEL ToH) has the same issue

THE GRADUATE INSTITUTE GENEVA

INSTITUT DE HAUTES ÉTUDES INTERNATIONALES ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES

Leverage theories ?

- The paper suggests that the mechanisms put forward in Fu and Tan (2019) Chao et al (2018) and Salinger (2017) may fit some of the focus cases.
- The leverage comes for the fact that the incumbent is a monopolist for the non contestable segment.
- The theories of harm in these paper are based on the idea that the incumbent will offer an arbitrarily high undiscounted price (for the non contestable segment) if the buyer does not respect the conditionality (could be exclusivity, market share, target quantities).
- Calzolari and Denicolo (2020) assume that the entrant is capacity constrained but the mechanism is very similar (the incumbent leverages the fact he can sell more).
- This is also the same as in bundled rebates (Greenlee, De Graba). Indeed, no difference between two products and two segments when one is non contestable.
- These theories of harm do not require a commitment. However they assume that the incumbent commits to this arbitrarily high price. If the buyer does not accept the contingent offer, one would expect renegotiation.

Leverage theories ?

- With renegotiation, customers tend to be harmed much less frequently (Xavier) ?
- With these theories, the AECT test involves significant type II errors (situation in which the test is passed but customers are hurt) – see Fu and Tan (2019).
- This is not surprising : the entrant can easily match the offer the incumbent as in this case part of the customer requirement is purchased at a very high price.
- How significant is the concern about renegotiation ?
- Should the Commission give less significance to the test ?
- This framework applies to target rebates but not to standardized rebate schemes.

THE GRADUATE INSTITUTE GENEVA

INSTITUT DE HAUTES ÉTUDES INTERNATIONALES ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE OF INTERNATIONAL AND DEVELOPMENT STUDIES

Softening of competition ?

- Wickelgren and Elhauge (2015) assume buyer commitment in exchange for a rebate on a price that is set at later stage.
- In this framework, the rebate contingent on exclusivity is used to soften competition.
- The incumbent reduces his incentives to compete hard for buyers that have not signed the exclusivity contract.
- Competition softening also occurs in Fu and Tan (2019) and Salinger (2017) – at least relative to some counterfactuals.
- Relative to incremental rebates, retroactive rebates relaxes competition as the entrant is better off
- Relative to linear prices, retroactive rebates harm the entrant but not necessarily the customers.
- See also Farell (2016); share of need rebates are a tax on entrants (unlike quantity rebates) that can be expected to soften competition
- How significant is this ?