

SUPERMARKETS AND COMPETITIVE BOTTLENECKS: COMPETITION AND REGULATORY ISSUES

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WHAT DO THEY HAVE IN COMMON?



COMPETITIVE BOTTLENECK





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.



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



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



AFTERMARKETS: COMPETITIVE BOTTLENECKS?

- 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?




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 (“dominant”) brands are subject to them
- could a retailer apply UTPs regularly if it were not a bottleneck?



ANGELS...



...OR DEMONS?



ACCESS TO THE STORE OF INDEPENDENT BRANDS

UNFAIR ACCESS TERMS

ACCESS FEES

TRANSFER OF RETAIL RISKS

REFUSAL OF ACCESS

ABRUPT ACCESS

TERMINATION

POCKETING OF WHOLESALE
PROMOTIONS

MISUSE OF CONFIDENTIAL
INFORMATION



IN-STORE COMPETITION BETWEEN INDEPENDENT AND SUPERMARKET BRANDS



PRICING UTPs

ARTIFITIAL PRICE GAPS

LOSS LEADING

NON-PRICING UTPs

REFUSAL OF ON-PACKAGE
PROMOTIONS

DEGRADATION OF SERVICES

SWITCH MARKETING

UNFAVOURABLE SHELF-SPACE

COPYCAT

THEORY OF HARM: COMPETITIVE BOTTLENECK + EXCLUSIONARY/COLLUSIVE ACCESS FEES + MONOPOLY RENT PRESERVATION + RAISING RIVAL'S COSTS+ FACILITATION OF COLLUSION (OUTLET, REACTION AND LACK OF COMMITMENT EFFECTS) + BEHAVIOURAL ECONOMICS (SWITCHING SUPERMARKET DOES NOT OCCUR)



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

1. The public policy and consumer welfare goals that protect Internet content providers from ISPs, TV advertisers from TVs, MVNOs from MNOs, airlines from CRSs, merchants from credit card networks, independent garages and car-part manufacturers from car manufacturers should protect independent grocery brands from supermarkets.
2. The public policy and consumer welfare goals that promote intra-brand competition and address parallel restraints (EU Vertical Guidelines) should protect intra-platform competition and address cumulative effects of supermarkets' exclusionary practices.
3. The public policy and consumer welfare goals that address collusive effects of (one-way) supply agreements between competitors (EU Horizontal Guidelines) should address the exclusionary/collusive effects of the supply agreements with vertically integrated supermarkets.
4. The public policy and consumer welfare goals that object to a manufacturer's exclusionary/exploitative practices when it enjoys a 50% market-share (EU Vertical Guidelines and Article 102 TFEU) should object to the parallel exclusionary/exploitative practices of four supermarkets (e.g., C4=80%).
5. If competition law promotes innovation, why not address the generalised misuse of sensitive commercial information, copycatting and non-listing of significant innovations?





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

6. If competition law promotes variety and choice, why not address the retailer-driven transformation of the open distribution network into a closed network (selective distribution)?
7. If competition law promotes price competition why not address the retail overpricing of its competitors' products by a competitor (supermarket) or the prohibition of on-package promotions?
8. If competition law promotes consumer welfare why must every shopper looking for a leading brand first find it and then overcome copycats, unfavourable shelf-placement, shop assistants' switch marketing techniques and higher prices in all supermarkets?
9. If competition law promotes intra-brand competition, why prohibit RPM and let a competitor (supermarket) fix the price of competitor (independent brand)? Will it take 15 years to catch up with the US? (US Leegin 2007-new Vertical Regulation 2022)
10. If empiric evidence of consumer harm is required, unlike other competitive bottlenecks, SPAIN meets the test: (1) non-listing of significant innovations and sustained reduction of new launches (Kantar, LEI); (2) copycatting (Don Edwards&Associates); (3) unfavourable shelf-placement (Universidad Autónoma); (4) higher retail margins on independent brands than on competing supermarket brands (Brattle Group) and (5) higher customer satisfaction with higher variety and choice (Ipsos: eye tracking, heart rate and skin conductance test on real shelves of Mercadona/Carrefour).





COMPETITIVE BOTTLENECKS: REGULATION OR COMPETITION LAW?

- Regulation and competition rules should **complement** each other (e.g., EC Guidelines on car distribution)
- So far, **Member States** either adopt regulations (e.g., UK, Spain) or amend their competition rules (Latvia, Finland, Italy)
- EU can follow the twin approach
 - EU Regulation: focus on fairness and conflict of interest (e.g., CRS Regulation)

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.... 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.”

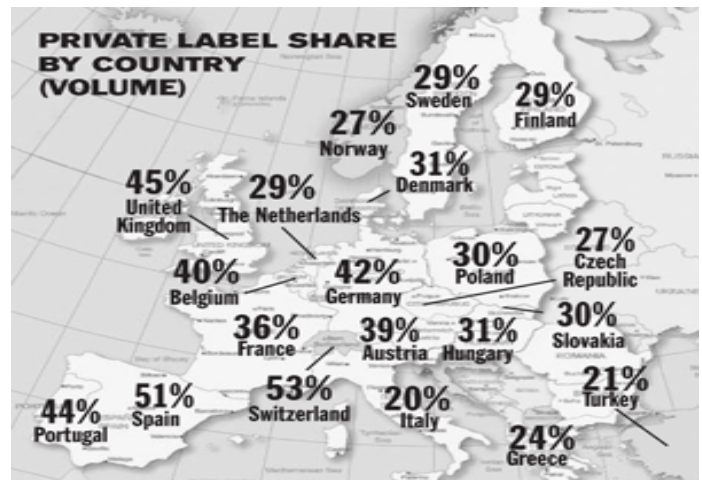
- EU Competition Rules:
 - New Vertical and Horizontal Guidelines
 - Merger control (undertakings, e.g., *Carrefour/Promodès*)
 - Supermarket alliances (e.g., Italy: *Centrale Italiana*)



TIME TO ALIGN SUPERMARKETS WITH OTHER COMPETITIVE BOTTLENECKS?



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More info available at:

www.supermarketpower.eu

"Supermarket Power: Serving Consumers or Harming Competition?"

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