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Round Table on:

"Enforcement of competition policy in the food retail sector "

Contribution

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The views expressed are those of the author(s) and do not necessarily reflect the views of UNCTAD

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SUPERMARKETS AND COMPETITIVE BOTTLENECKS: COMPETITION AND REGULATORY ISSUES

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XV Session - IGE on Competition Law and Policy

Round Table on Enforcement of competition policy in the food retail sector: buyer power and consumer welfare

***Geneva,* 20.10.2016**

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DISTRIBUTION PLATFORMS: WHAT DO THEY HAVE IN COMMON?

COMPETITIVE BOTTLENECK

XXI CENTURY: THE AGE OF DISTRIBUTION PLATFORMS

1. Power shifts from producers to intermediaries/distributors
2. Access to (control of) consumers is the key
3. Consumer loyalty towards a single distribution platform (one-stop shop): efficiency and habit

1. Economies of scale are virtually unlimited
2. Large distribution platform with captive consumers = gatekeeper, **competitive bottleneck**
3. Producers/distributors: love-trouble-divorce
   - Producers first welcome and support distribution platforms
   - Then complaint that access terms are abusive (vertical exploitation)
   - Lastly, complaints of access foreclosure (horizontal exclusion)

ECONOMICS OF 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**.

ECONOMICS OF COMPETITIVE BOTTLENECKS

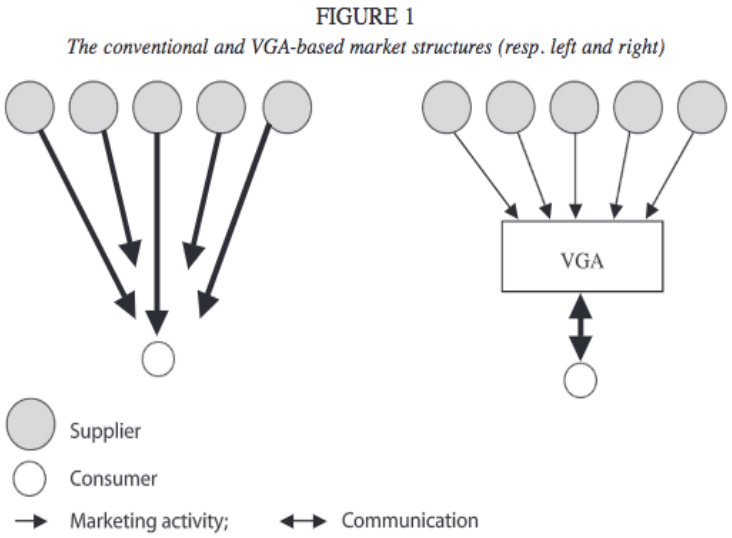
Mark Armstrong, "Competition in two-sided markets", RAND (2006)

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.**

SOCIAL SCIENCE AND COMPETITIVE BOTTLENECKS

Theo B. C. POIESZ, The Free Market Illusion: Psychological Limitations of Consumer Choice", Tijdschrift voor Economie en Management Vol. XLIX, 2, 2004

Virtual Guardian Angels (VGA)



notions like consumer choice, competition, and the notion of the free market should be placed at a more aggregate level. Consumers do not choose anymore between different brands or different products, but different multi-product systems. Consumer disciplining of markets can only take place at this level, but is seriously limited by long term relationships. In this sense, competition at the consumer level is strongly reduced. Competition will continue to exist between manufacturers supplying the VGAs.

- **The government may play a rule in setting rules for such VGAs to perform. It is very unlikely that the available anti-trust rules apply in the expected new market situation.** The government is advised to monitor market changes closely and to be ready for new VGA-like structures and processes in markets to develop.

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COMPETITIVE BOTTLENECKS: COMPETITION AND REGULATION

- *European Commission, "*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."**

1. **Google**: ongoing competition proceedings (abuse of dominance)
2. **VISA/MASTERCARD** (credit card networks): competition decisions and regulation
3. **Amadeus/Sabre** (Computer Reservation Systems): EU regulation
4. **Internet Service Providers**: Internet neutrality regulations
5. **ITV (TV networks**): merger remedies and regulation (protection of advertisers)
6. **Amazon?** *"We looked at 250 frequently purchased products over several weeks to see which ones were selected for the most prominent placement on Amazon's virtual shelves — the so-called "buy box" that pops up first as a suggested purchase. About three-quarters of the time, Amazon placed its own products and those of companies that pay for its services in that position even when there were substantially cheaper offers available from others. That turns out to be an important edge. Most Amazon shoppers end up clicking "add to cart" for the offer highlighted in the buy box. "It's the most valuable small button on the Internet today." ProPublica, 20.09.2016.*

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SUPERMARKETS: COMPETITIVE BOTTLENECKS

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

SUPERMARKETS: REGULATION AND/OR COMPETITION LAW?

- Regulation and competition rules should **complement** each other (e.g., EC Guidelines on car distribution)
- So far specific regulations (e.g., UK, Spain) or "unconventional" competition rules (Latvia, Finland, Italy)
- The most dangerous practice is unregulated: HORIZONTAL FORECLOSURE
- EU could follow the twin approach
  - EU Regulation: focus on fairness, conflict of interest/discrimination (e.g., CRS Regulation)
  - EU Competition Rules:
    - Article 101 TFUE (implicit agreement? Cumulative effect?)
    - Article 102 TFUE (local/regional markets?)
    - Merger control (e.g., Rewe/Meinl: 20% market share)
    - Supermarket alliances (e.g., Italy*: Centrale Italiana* banned)

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I IME TO REGULATE SUPERMARKETS ALONGSIDE OTHER COMPETITIVE BOTTLENECKS?

Google

Das Auto.

VISA

itv

amadeus

O2

More info:

"Supermarket Power: Serving Consumers or Harming Competition?

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