Conglomerate Mergers: Comparison with Vertical Foreclosure

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1 December 2015

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Abstract

This article compares and contracts the approach to merger issues in vertical and conglomerate cases including likely efficiencies, useful data, and the approach to looking at each of ability, incentive, and effect in turn. The paper considers when conglomerate mergers are more likely to mirror vertical cases and result in static price rises. The article considers the relationship between conglomerate foreclosure and predatory pricing to determine whether merger analysis is the most suitable place to intervene and stop short-term benefits that may harm competition in the longer term. Finally, potential amendments to the existing framework are discussed.

Introduction

A vertical merger is one between a firm and one of its suppliers or customers. The merger involves firms that are not in competition with each other, but which are involved in the same supply chain and so the output of each of the firms is combined to form some combination product that includes both elements. A conglomerate merger can be any merger that does not involve competitors (in the same antitrust market) or firms in the same vertical supply chain.[3] Conglomerate mergers often involve firms that supply complementary products (products that increase the value or functionality of the other product such as shavers and razor blades). They can also involve products with a common set of buyers, but since complementary products usually need to be purchased by the same customer in order to generate the increase in value, a conglomerate merger can be considered for convenience as a merger between two suppliers of different products that are often bought by the same customers (i.e. where many customers of one of the products also buy the other product). Competition concerns can sometimes occur in conglomerate mergers where (at least one) of the individual products has pre-merger market power.

Vertical and conglomerate mergers are both non-horizontal and are both usually analysed by considering the potential foreclosure of rivals under a structure of ability, incentive, and effect. There are many similarities between the appropriate analysis in a vertical and a conglomerate merger as well as some key differences to be aware of. This paper will explain the significance of some of the similarities and differences and then explain how the traditional ability, incentive and effect analysis

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[1] This is an early unedited version of an article that has now been published as Proctor, Adrian J. "Conglomerate Mergers: Lessons from Vertical Foreclosure" *World Competition* 38.4 (2015): 571–596.

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[3] Sometimes diagonal mergers (firms at different levels in the supply chains supplying competing products) are also excluded from consideration as conglomerate mergers.

can be updated and clarified as well as more general comments on the important features of conglomerate mergers to be aware of.

Damien Neven wrote one of the most influential summaries of the analysis of conglomerate effects in mergers.[4] For conglomerate effects to apply there needs to be common buyers to link the products. It does not matter whether the products are (weak) substitutes, complements or in independent demand and the EC guidelines accept that conglomerate effects may apply to all of these cases.

Several issues raised as potential conglomerate effects in past cases are not likely to cause harm. If there are (supplier or buyer) economies of scale then there is no harm caused by this improvement (reduction in merged firm costs) unless there is exit. Such exit is unlikely where the merging firms are in neighbouring markets. If there are brand spillovers and concerns that the merged firm can use strong brands to promote weak brands then it is unclear whether the incentive exists for the merged firm to support one brand over another. This would amount to a change in marketing strategy and as with other such changes the overall impact on consumer welfare is unclear. There have been conglomerate cases that have looked at potential competition but this issue is just a different horizontal theory (not conglomerate) that accepts that the market definition is different from the market for competition analysis. Normally for the leveraging product to be must stock or dominant the merged firm must get at least 35% of its revenue from that market.[5] Adverse competition effects are unlikely if a competitor can match the bundled portfolio.

In the Tetra/Sidel packaging machine merger there was a concern about predatory pricing.[6] Most of the analysis in the case was about the existence of a common pool of customers so that a discount could be offered on one product if the customers bought the other product. To do this effectively the firm would have needed to be able to tell which customers wanted both and so should be targeted for the bundle discount. The original decision was more about the static incentives to bundle with less emphasis on competitor exit.

In the GE/Honeywell aviation parts merger both firms had 50% or a leading market position respectively in their segments.[7] The concern was mixed bundling which would be predatory to induce exit of competitors. Alternatively the position of GE capital could be used to favour the parties (another short term costly strategy involving sacrifice) to induce exit.

The model used in the Neven paper has a monopoly product A with the maximum price of the bundle under unit demand being the price of the two products when sold separately. The bundle can be profitable only if the firm commits to this (pure bundle) and exit occurs. If the B product market is (less) differentiated then offering only a pure bundle can increase differentiation between the two

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[4] The analysis of conglomerate effects in EU merger control, Damien Neven, December 2005. Advances in the Economics of Competition Law", MIT Press.

http://ec.europa.eu/dgs/competition/economist/conglomerate.pdf

[5] Retailers have many means to counter bundling and negotiate with suppliers including about shelf space, by sponsoring entry or launching private labels.

[6] Case COMP/M.2416 TETRA LAVAL/ SIDEL 2003.
http://ec.europa.eu/competition/mergers/cases/decisions/m2416_62_en.pdf

[7] Case COMP/M.2220 General Electric/Honeywell 2001.
http://ec.europa.eu/competition/mergers/cases/decisions/m2220_en.pdf

options (that of the merged firm and that of the competitor) and increase profits of both (merged and non-merging) firms by softening competition.[8] However, if the products have multiple units demand with a downward sloping demand curve then the bundle can allow the pre-merger consumer surplus on one of the products to be extracted by increased prices. If there are network effects the incentive to foreclose can be even higher. It can be profitable to exclude the competitor if most of the leveraged product customer base requires both products.[9] The merged firm offering the bundle can also benefit customers especially if there are efficiencies or Cournot effects.

In order to find a conglomerate concern in a merger it requires a near monopoly in one market (a usual dominant position such as 40-50% share is not enough, it may require 80% share). It can be useful to ask; why was it not possible for the tying to happen pre-merger – e.g. through some contractual arrangement? The size of the market of the competitive product must not be too large compared to the market size of the monopoly (leveraging) product to ensure this market can be influenced by that product.

Neven felt that it can be very difficult for a competition authority to tell when competitors are likely to exit so this exit situation can be broadly ignored to focus on the situation where the merged firm has greater ability to reduce prices (e.g. because the products are complements). However, in general when the products are complements there will be less incentive to foreclose because such reduction in competition in the tied product may harm the demand for the monopoly product. So harm from a conglomerate merger may only occur if the competitor is weak (so not providing a good product) or there could be longer term dynamic risks for the merged firm if the competitor is not forced out of the market (i.e. it could be a potential competitor in the monopoly market). Neven did not point out that if the (tied) market is highly competitive it is unlikely that no firm is producing a good standard and nor it is likely that this market is providing a great skill base or profits that would help entry into the monopolised market.

Neven felt that the two main tests for when conglomerate effects should be assessed were; first, the observations that the tied (competitive) good market is highly competitive and that the demand for the tying (monopoly) good is segmented should trigger an investigation into a possible softening of competition. Second, the observation that the tying and tied good are strict complements, that the merged entity has an incentive to exclude (e.g. weak competitor) and the prospect of dynamic consequences from exclusion should trigger an investigation into a possible exclusion.

This article explains why this side-lining of the issue of competitor exit to focus on strict complements or entering highly competitive markets is confusing for the analysis of conglomerate effects. The first section compares the underlying economics of vertical and conglomerate mergers considering the incentives and theory of harm as well as how each deal with efficiencies and use margins. The second section considers whether conglomerate mergers are likely to lead to an exploitative abuse or price rise taking account of the complexities of price discrimination and the possibility of raising rivals costs as well as an example of this analysis in a recent UK merger. The third section looks at the techniques merged firms can engage in for foreclosure applying the ideas of price discrimination and predation.

[8] Neven felt that competition may be softened if there is little differentiation in the competitive market but that it is very rare that this market has high enough barriers to entry to make gaining market power worthwhile yet has low differentiation.
[9] There must be a large (relative to the total demand for the two products) common pool of customers.

The article then reviews the existing ability, incentive, and effect methodology to consider how the analysis should be split and adapted including how aspects considered in some guidelines such as counter strategies and buyer power can be given a greater role. The article finishes with an adapted structure for analysing conglomerate effects and then some conclusions.

Vertical and Conglomerate mergers

At the time a vertical merger occurs (or has just occurred) the two merging parties are normally assumed to be pricing at the profit-maximising level. Consider a firm with market power upstream (for example steel) merging with a customer such as a car firm (and adopting input foreclosure). The upstream firm (steel) pre-merger is considered to be pricing up to the point where the gain from increasing price is matched by the lost margin from losing (car firm) customers. The gain from the increased price on the (car) customers it retains is equal to the margin it would earn on sales of all the units it would fail to sell either because the (car) customer would buy from an alternative upstream (steel) source (or self supply or redesign the product) or those sales the retained (car firm) customers lose after having to pass on the original price increase (to consumers).[10] When the upstream (steel) firm merges with a downstream (car) firm and increases (steel) prices, this price rise is passed on by downstream (car) firms and their end consumers switch providers. The upstream (steel) firm not only benefits if the switching end consumers buy from an (intermediate car) customer that sources from it upstream (in terms of upstream steel margin as it did before). It now also has the opportunity to gain the downstream (car assembly) margin on this switched business as well.

In order for a vertical merger to have a foreclosure effect then the upstream (steel) firm must have some market power to be able to increase the costs of the downstream (car) customers and cause them to raise their prices to end consumers. The Chicago critique suggests that if the upstream (steel) firm is a monopoly then it could already extract all the profit from customers that are dependent on its input. Since there is only one monopoly profit to be earned in the supply chain the firm with the market power that is the essential partner can extract the whole supply chain amount. One counter-argument to this has been suggested that the merger can help the upstream firm overcome the credibility problem (the ex-post incentive to supply too many downstream (car) firms that lowers the willingness of these (car) firms to pay monopoly price for its products). However, it seems unlikely that the firm could not build credibility over time in many repeated periods.[11] Even if the Chicago critique was valid in static markets, conglomerate or vertical mergers could be desirable to remove a potential entrant or increase barriers to entry.[12] Conglomerate mergers may actually be more desirable to the

[10] These leaving customers do not switch to a different (car firm) customer buying from the upstream (steel) firm. If the upstream (steel) price rise causes the downstream (car) prices to rise and downstream (end) consumers merely move to another (car, downstream) firm that buys from the same upstream (steel) supplier then this is not a loss of sales (pre-merger) to the upstream (steel) firm and should be taken into account in its profit maximising prices.

[11] This Chicago critique reasoning suggests there is no incentive to merge with a supplier (customer foreclosure) and no incentive for a conglomerate mergers (where both firms sell directly to the relevant customers pre-merger).

[12] So if a steel supplier was expanding into whole assembled car parts the car firm may merge (customer foreclosure if the car firm is the one with market power) with them to stop them re-creating the whole car. Similarly a dominant steel firm may be concerned that its market power could be weakened if aluminium firms

dominant firm (and the Chicago critique is less likely to apply) because the mere fact that the products are (often) sold to the same customers does not mean that the profitability of the two markets are linked.[13] Thus it is possible for the dominant firm to obtain monopoly rents pre-merger while the other merging market is also profitable and there is an incentive to foreclose.

There are some fundamental differences in how a price rise is implemented in a vertical or a conglomerate merger.

In a vertical merger (input foreclosure) by raising the price of the input to the competing downstream suppliers there is a tendency for those firms to be less competitive and thus to increase the profit of the other merging firm downstream. However, in a conglomerate merger increasing the price of either (individual) merging products post-merger would cause customers to switch away (given that both firms are again pricing at the pre-merger profit maximising level) and be unprofitable. These customers will switch to competitors of the merging firms or leave that market, but without the merged firm creating a new link between the two products provided by the merged firm (e.g. bundling) there is no reason why an increase in the price of one would lead to a rise in demand for the other.[14]

Conglomerate foreclosure theories usually assume that after the merger the price of the product with market power can be increased (when sold on its own) but that this can be obtained for a reduced price if the merging firm's other product is purchased.[15] Apart from the fact that raising the stand-alone price of the leveraging product was loss making pre-merger, this strategy is very unlikely to be profitable because:

1) Customers are likely to react very badly to this pricing strategy (they can see that prices of the market power product have risen and they are being "encouraged" or more likely pressured into choosing a bundle as a means to try to mitigate the price rise.) This is likely to generate a lot of customer resistance.

2) There may be a significant number of customers that only wish to buy the market power leveraged product and do not wish to buy the other. Thus they are unlikely to buy the bundle and will instead leave the market causing a loss to the merged firm without any gain.

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were able to expand and so could try to eliminate competition in that more competitive market to secure its position (via conglomerate foreclosure).

[13] The profits of the firm in the more competitive market could come mainly from customers that do not buy the bundle, especially if these are just about sufficient to sustain a firm in the market on their own. Some outside of the market sales may happen in vertical mergers as well, but if they are only possible due to the fixed costs incurred in the relationship with the monopoly firm these profits could also be captured following the Chicago critique.

[14] The products could be (weak) substitutes, i.e. not in the same antitrust market (such as a steel firm and an aluminium firm when there are several competitors in each of steel and aluminium); complements such as steel and wheels so falls in price of one car input (like steel) may increase car production and lead to more wheels being ordered; or independent such as steel and audit services where the level of audit does not vary with the level of production.

[15] Assuming that the leveraged product where the market power is being exercised is also available on its own as it was before to ensure the merged firm offering is as attractive as possible in this leveraged market.

In this way it seems unlikely that a market wide price rise could be profitable in a conglomerate merger in the same way it is in a vertical merger. However, the picture is not as clear as this because of 1) Price discrimination, 2) Raising rivals costs, and 3) Predation strategy.

Conglomerate and vertical mergers have other similarities. Vertical mergers often bring with them efficiencies such as reduction in double marginalisation (particularly where two-part risk-sharing contracts are not possible and so firms are using linear pricing pre-merger). Conglomerate mergers between complementary products have a similar effect where the merged firm faces incentives to lower prices after the merger. Vertical mergers can bring about cost reductions. Conglomerate mergers can also be used to combine products to more effective bundles (economies of scope) or bring about falls in transaction costs.

In the analysis of vertical (input foreclosure) mergers the upstream product needs to be at least dominant and this is true of the leveraging product in a conglomerate merger. In a vertical merger the margin of the upstream and downstream products is important to understand the incentives to sacrifice sales on one market for sales of the other and this interaction is the same in a conglomerate merger.[16] The relative price of the upstream and downstream products indicates the ease with which downstream (end) consumers are likely to be affected by the upstream price changes in a vertical merger and the same information will indicate how likely it is that customers will accept the bundle instead of the individual products in a conglomerate merger (how valuable is the leveraging product compared to the leveraged one).

Extending the basic economic model to see whether real world conglomerate mergers can lead to a static price rise

1) Price discrimination

Despite some fundamental differences between the effects of price rises in a vertical and a conglomerate setting there are some aspects of conglomerate mergers that may make price rises more likely. The first of these is price discrimination.

In a vertical (input foreclosure) merger there is only one of the merging parties that deals with the (end) customers that the firm is seeking to win from the downstream competitors. This firm gains little insight from the merger on how to win these customers from its competitors (for instance on how much they value the dominant firm's upstream input). The merged firm may not know whether large or small customers are more likely to be attracted from competitors by the firm's price or product advantage. This is different to a conglomerate merger. In a conglomerate merger both merging parties have pre-merger been dealing with customers and potential customers. Although the firms may not know which of their customers are more likely to move to competitors pre-merger they do know the relative importance of the two products to each of their (potential) customers. A customer that has a large annual spend on the dominant leveraging product (and a much smaller annual purchase of the leveraging product, even if that is from a competitor) would be far more likely to want to maintain its

[16] It can be important to consider the static incentive to sacrifice sales in the leveraging product for sales in the leveraged product.

purchases with the merged firm. This applies even if it means also buying its (smaller) requirements from them in the form of a bundle.

In a vertical merger the upstream and downstream products are normally combined into a bundle in fixed proportions and it is possible to say for the whole customer base what proportion of the combined purchase is accounted for by the upstream product. In most instances where conglomerate effects are raised the customer base is relatively concentrated and often some element of individual price negotiation occurs. In conglomerate mergers it is usually possible for the merged firm to look at its customer base and split it into three groups.

1) Customers that are not actual or potential customers of one of the products. If possible these customers will continue to be offered individual prices without any bundle offering.
2) Customers that already buy all their requirements in both products from the merging parties – these customers do not need any complicated bundled pricing to win their business and may be offered the pre-merger prices.
3) Customers that buy both products but purchase at least some from a competitor. If the merging parties are to foreclose competitors, these are the customers that they will be focussing on.

Thus if a merged firm could split its customer base like this then it would know that prices could not be raised to the first group (they do not find the merged firm's product any more attractive after the merger and its pricing power has not increased). The merged firm would be unlikely to raise prices to the third group. The merged firm may want to improve its offer to them to encourage them to switch more purchases to the bundle especially if competition increases in the market as competitors react. Even if for some of these customers the threat of not being able to get one of the products separately is enough to push them to the bundle, for many the adverse reaction to being coerced will be too strong to make this a successful strategy. Thus if a conglomerate merger were ever to cause a static immediate price rise it is likely that it would only affect those customers in group 2 that pre-merger were loyal to both merging parties. Price discrimination and an inability to re-sell the product (a precondition for price discrimination) would mean that the effects would be unlikely to affect other customers.

If the members of group 2 are a relatively small proportion of the market then the reputational effects of the merged firm being seen to take advantage of this group that could spread out to discourage other customers using the merged firm would make a price rise strategy very unlikely. This is particularly true if the merged firm is also pursuing a foreclosure strategy. If the firm gains a reputation for abusing (group 2) customers with high prices then it will be less likely to persuade (group 3) customers to switch to their products. The points above about the resistance that the market would give to such a (bundle) strategy still applies although if a customer is used to buying both products it may be easier to integrate the products in the offering to them and to ensure that they work well together. Thus even if the customer could just switch one product it would not want to because of the lost synergies. This could increase the transitional or management costs of any switch by making it a much more difficult task. It is still unlikely that a conglomerate merger will result in (static) higher costs but it is necessary to consider the aspect of whether rivals costs or performance will be affected by any bundling.

2) Raise rivals costs

The ability to increase the costs of your rivals makes a static price rise more likely.

In a vertical (input foreclosure) merger the merged firm may reduce its own prices or costs (for instance by reducing double marginalisation) while increasing them for competitors (by refusing to supply and raising their input costs). The same can happen to some extent in a conglomerate merger. The two products can be integrated and developed post merger to become more efficient. At the same time the competitors may have become used to having the products sold separately, seen the importance of the dominant leveraging product, and decided to integrate, adapt or configure their products to interact and work well with that product. If the merged firm decides to pursue a bundling strategy to foreclosure competitors (targeting group 3) or to increase prices statically (targeting group 2), then it may prevent customers using its dominant leveraging product with products of competitors and thus stop those customers using the part of those competitors' products that had been so adapted. This can increase the costs of the competitors to replicate this function with other products or can lead to the rivals products being less valuable to customers. Thus rivals costs increase and they are partially weakened.

Will prices rise (immediately) after a conglomerate merger?

The third complexity of conglomerate mergers mentioned above (predation) relates to a delayed harmful effect on prices. Before turning to that, this section will consider whether conglomerate mergers are likely to lead to an exploitative abuse.

So if there are many customers in a market that buy from both merging parties pre-merger, and the prices to these customers of the bundled offering can be raised without affecting the prices and sales to customers that do not buy both products from the merging parties, will the merged firm increase its prices? In particular will it be likely to do this where competitors have become less competitive and valuable when they are unable to integrate their product with the dominant leveraging product (their costs have been raised).[17] In general this is unlikely. First, for the reasons above about reputation and that other customers may hear about price rises and be discouraged. The merged firm may also find some efficiencies and so its optimum (profit maximising) price could fall. The main reason is that an anti-competitive firm is more likely to pursue a foreclosure (lower price) strategy initially.

If the competitor is weak then a lower price strategy that convinces as many customers to switch as quickly as possible and limits the time to react and the period that the low prices need to be offered can be profitable for the merged firm.[18] If there is an attempt to foreclose the competitor then it may compete more aggressively in the short-term which would make a price rise to some customers harder. Even if the firm is not forced to exit it may be weakened for the medium to long term (especially if the two merging firms are already very strong which is likely if many customers in the market are loyal to both of them pre-merger).

However, if the competitor(s) are not weak this suggests they have a good product and it may be the case that they are able to develop an offering that is attractive to the customers that were previously loyal to the merged party. Trying to take advantage of these customers may leave the merged firm vulnerable to them sponsoring entry or other techniques (there are often large customers with some

[17] Alternatively the increased differentiation in the market could soften competition but often the market for the leveraged product is already differentiated (and profitable).

[18] Better than trying to charge high prices to some customers immediately

buyer power in conglomerate markets with negotiated or discriminatory prices). A third possibility is that the loyal customers already purchased most of their combined merged firm purchases from just one of the merging parties pre-merger and so the increased market power that the merged firm has with these customers is not large.

Static price rise considered in a conglomerate UK merger case

Although a static price rise is the usual theory of harm in a merger, and even in a conglomerate merger the standard ability, incentive, effect analysis tends to suggest that static price rises are the focus, this is often much less important than a type of predation strategy.[19] In vertical mergers a static assessment is often done to consider whether the net effect of higher competitor prices and lower merged firm prices will harm (end) customers. In a conglomerate merger the main concern is usually whether competitors will be weakened or exit and that prices will rise after this event.

One recent case where a static price rise was actively considered in a conglomerate merger was the merger between IRI and Aztec.[20] These two firms both provided electronic point of sale "ePoS" data to brand owners (i.e. data provided by the retailers to tell the brand owners how their products were performing). The only other significant competitor in the UK was Nielsen. Aztec mainly provided information on convenience retailers and IRI and Nielsen mainly provided data on the large grocery retailers. Some customers sold mainly impulse products and could not afford the grocery data (so only bought convenience data). Some customers just bought the grocery data, and some bought both. The demand for these two products was approximately independent, but some customers had adapted their systems to the two types of data and they were partially integrated so that some features would not work if one type of data was not available (there was an element of raising rivals costs if bundling prevented access to some data). Aztec had (some) market power in the (much smaller) convenience data market and the investigation considered whether this could be leveraged to affect customer choices in the grocery data market.

In this case there were relatively few customers that bought from both IRI and Aztec pre-merger (compared to those that were in group 3) and amongst those customers it would be very difficult to discover through the merger (anything more about) which customers placed the highest value on the bundle and could be exploited with a static price rise.[21] Indeed most third parties concerned about this issue thought that if Aztec had pre-merger market power it was already exercising this to charge a monopoly price. Prices were unlikely to rise further.[22] The decision called this "a reduction in choice for some customers" (i.e. those that are only offered a bundle) and focussed on whether there would be harm to all the customers that had a demand for both the products of IRI and Aztec whether or not they were pre-merger buying form the merging parties (group 2) or partly from Aztec and partly from Nielsen (group 3). This case was relatively simple because the majority of these were pre-merger

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[19] Rey and Tirole in the Handbook of Industrial Organisation stated that horizontal foreclosure is normally predation which reduces both the predators profit and the profit of others to induce their exit. http://www.sciencedirect.com/science/article/pii/S1573448X06030330

[20] https://www.gov.uk/cma-cases/information-resources-inc-aztec-group

[21] The merged firms need to compete strongly for customers that were not already buying both products from them.

[22] The competitor was more popular amongst firms that wanted both products than the merging party and it was the competitor that was the main outside option in the leveraging market as well as the main outside option in the leveraged market.

buying from Nielsen who was constraining both merging parties and so to be harmed had to face a price rise from Nielsen and the merged firm. This was unlikely because Nielsen was disadvantaged by the merger and had to increase its competitiveness to maintain its market position. The high margins and fixed costs with some technological changes and investment in the industry made a strategy of accommodating lost market share less likely. As the decision states, the fact that conglomerate mergers can lead to static (immediate) increases in prices is not really the focus in the merger guidelines.

Although the merger guidelines have the same structure for conglomerate and vertical mergers (both are about raising prices or limiting access of competitors so their products are less competitive) conglomerate mergers are normally about dynamic effects rather than the static initial price changes. Further details of how this static price rise analysis was done can be found in the decision.[23] It is extremely rare to find any conglomerate merger where an immediate exploitative abuse is considered plausible.

Anti-competitive foreclosure

Given that static price rises (exploitative abuse) are very unlikely to occur in conglomerate mergers the remainder of this article focuses on analysing strategies designed to harm competitors such as predation (exclusionary abuse).

Given that the merged firm is not trying to exploit its customers (at least initially), you can consider the pricing strategies that are likely.

For a regulator to determine if the merged firm can succeed when facing a foreclosure bundling strategy (the effects) it is usually best to focus on total foreclosure. Total foreclosure means that if a targeted customer wants to buy the leveraging product they will have to buy the leveraged product and there is no option of buying individually. If a customer cannot be induced to switch their purchases of one product to the merging parties when faced with getting no access at all to the leveraging product, then they should not be persuaded by any partial foreclosure. Total foreclosure can also be easier for a regulator to explain to end customers in terms of the options they should consider in complex hypothetical scenarios.

Partial foreclosure (offering the leveraging product in two packages so that it costs more to buy without the leveraged product) is relevant. In particular it can be useful for overcoming buyer power/resistance. If third parties think total foreclosure is unrealistic because a firm would never treat its customers in that way then partial foreclosure may be a way of making the same incentives (to single source the bundle from the parties) just as desirable to customers while not making the choice feel so forced. The attractiveness of the bundled price in overcoming resistance to manipulation is particularly strong if there are efficiencies from the merger where the pre-merger individual prices remains constant and the harm to competitors merely comes from incentivising customers to switch to a cheaper (or more valuable) bundle.

[23] See paragraph 237-265.

Price discrimination (first/second degree[24])

Although the reputational risks of using strong price discrimination to exploit customers make this unlikely. Price discrimination can have more significance for attempts to exclude.

A merged firm that offers bundled pricing to encourage firms in group 3 to switch some of their purchases from competitors to its products does not need to offer the same price to all customers. In most of these situations the target customers will be purchasing the dominant leveraging product from the merged firm already and the bundle will be to encourage the customer to also buy the leveraged product. Although the firm may not know the precise annual spend on competitors' products it is likely to know from its negotiations in the past the quantity (and annual purchases) of the dominant product and the desired quantity of the leveraged product. A firm that mostly purchases the dominant product and has a relatively small annual spend on the leveraged product can be easily persuaded to switch to the merged firm and requires only a limited bundle discount on the pre-merger individual prices.[25] Some customers may not need a discount from the individual prices to switch because of the efficiencies and raising rivals costs effects.[26] Although these customers are the easiest to persuade to switch they will also have (individually) a relatively limited effect on the targeted competitors due to their low leveraged product purchases.

Due to the leveraged firm's market knowledge they are likely to know which are the most important customers to their competitors and these can be offered much larger discounts to encourage switching. Even if customers are benefiting in the short term the merged firm may wish to disguise what it is doing (i.e. pricing the competitor out of the market). By only offering the most favourable prices to a few firms the merged firm makes the strategy less obvious and less costly. In many markets where conglomerate effects are considered many customers will be offered individual prices tailored to their use of the two products and how easy the merged firm believes they will be to persuade to switch.

Predation strategy

Using the techniques of mixed bundling and customer based price discrimination predation and exclusion can be a powerful strategy in a conglomerate merger.

In most conglomerate mergers prices will not rise immediately after the merger, even if the merging firms have market power and the merger could potentially harm competition. Thus the most likely outcome in these mergers is that any harm will come from the merging parties actually reducing prices. Although this action may be unhelpful for competition, even if it leads to exit or weakening of major

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[24] It will not be full first degree in that there will still be uncertainty, but the combination of taking account of quantity demanded (second degree) in both products at the same time (and other available information about that customer) with produce a price that may be unique to that customer at least for the most important customers in the market.

[25] As noted above, even if it is possible to coerce them into switching purely with aggressive bundled pricing this is unlikely to happen as it will damage relations with customers in general.

[26] It is possible that it is easier for the firm to raise rivals costs without this appearing to be coercion, particularly if being compatible with the competitors' products has some cost to the dominant product. Alternatively it could just be that the firm develops the product to work particularly well with its own product and relative to this compatibility with others is harmed.

competitors it is not certain that it will qualify as actual predation on its own. Even if it would be considered predation it may be hard to detect or prove predation.

For pricing to be predatory (in the legal definition of an abuse) it must be below cost and in order to establish an efficient cost benchmark the cost of the dominant firm is usually used.[27] However, just because the pricing causes the (main) competitor to exit and could weaken competition, it does not mean it is always predatory according to this legal definition. For instance, the merging firm could gain efficiencies from the merger and the competitor may face a rise in their costs, leading to the dominant firm having a lower cost than all potential competitors and being able to exclude and force exit of competitors without making a loss. Markets where conglomerate effects are most problematic often have high economies of scale (high fixed costs of entry or product development) so that the dominant firm can reduce price to a few customers without pricing below the marginal costs of supplying those customers. The dominant firm may have a much larger customer base to recover market fixed costs compared to the competitor. Thus the dominant firm may continue to be profitable (on a variable or total cost basis) and may only be pricing aggressively on a small part of the market (targeting some key customers for the competitor) while the competitor becomes loss making. Although the dominant merged firm strategy may have a predatory intent (i.e. charging low prices now to reduce competition and recoup costs of foregone profit with higher prices later), the strict condition of pricing below cost may not be met. Even without pricing below cost market power could be increased (via weakening), in a way that is sustained when prices rise.

This predation strategy could still harm customers because of reduced choice (potentially a monopoly provider). Although the merged firm's costs may fall due to efficiencies, prices will not necessarily fall due to the reduced competition. Even if a conglomerate merger allowed illegal predatory pricing it may be harder for an authority to detect because this involves bundling two products whose individual component prices and costs are unclear. The pricing involves individual customer pricing and so it can be very time consuming to discover which prices and offers are problematic.

Motta and Vasconcelos found that a regulator speculating that the merged firm's delayed efficiency gains will make rival firms exit the industry is trading off a (relatively) certain welfare gain with a future (and more uncertain) welfare loss (if the firms leave)[28]. If efficiency gains from the merger are strong enough, the final outcome would be positive even if it leads to exit of rivals. The future welfare losses,

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[27] Following the jurisprudence of the European Court under s.60, predatory conduct is to be regarded as predatory where prices are (above average variable cost, (AVC) but) below average total cost (ATC), where it can be established that the purpose of the conduct was to eliminate a competitor (i.e. there must be an element of intent). Prices below AVC or average avoidable cost (AAC), that only consider the costs caused to be incurred by the additional sales made at the low price, indicate that an equally efficient competitor could not compete in the market. This assumes that these prices are expected to be maintained for some time and are not just a transitory phenomenon. See for example the EC Akzo case, Case C-62/86 *AKZO Chemie BV v Commission* [1991] ECR I-3359 or international guidelines on predation. http://www.internationalcompetitionnetwork.org/uploads/library/doc828.pdf. The ICN report states that from an economic perspective prices that weaken or harm competitors can be predatory for the purposes of recoupment, but in competition literature the term is usually reserved for illegal conduct.

[28] Efficiency gains and myopic antitrust authority in a dynamic merger game, Massimo Motta and, Helder Vasconcelos , October 2005. http://www.fep.up.pt/docentes/pcosme/S-E-1/art-h-vasconcelos.pdf

if any, are rendered even more uncertain by the presence of possible counter-strategies by the outsiders.

Making this (trade-off) assessment is difficult, but the next section looks at how this is done.

Ability, Incentive, and Effect

Having considered what the most likely theories of harm and complexities in a conglomerate merger, this section considers whether the usual analytical framework could be improved. First the position in vertical mergers is considered as well as potential issues that have been raised in existing guidelines.

A competition authority first determines that a merger may lead to a conglomerate bundling or foreclosure strategy involving lower prices (or better products) initially followed by adverse effects once competition is weakened. Then it applies an analytical structure. Often in the merger non-horizontal guidelines this is the ability, incentive, and effect structure. With vertical input foreclosure applying this structure can be relatively straightforward. The authority considers the ability of the upstream firm to raise the costs of the downstream competitors. This is two steps, first considering costs in the input market and then translating these into a likely percentage rise in costs on the final end product sold by the downstream firms.[29] For incentive, first the upstream loss of sales and margin is estimated and then an even more uncertain estimate of the likely rise in downstream sales and the additional (downstream, static) margin. If the incentive condition is satisfied (which is not necessarily the case) then there will be some weakening of competition (because the downstream competitors are likely to face higher input costs and have to charge higher prices). To determine effect of this strategy the aggregate impact of the lower merged firm prices is compared with the higher prices charged by competitors in the rest of the market. Any dynamic impacts were not considered until the end. The ability analysis focuses on the upstream input market and how downstream firms and upstream input suppliers would react to the foreclosure. This includes the customer reactions to any price rise including the amount of pass through and the impact on their sale prices. The incentive analysis focuses on end customers and how they would react to the changed downstream prices, particularly those customers that would move from competitors to the merged firm. The effect section considers all the end customers and how they may interact with other groups like potential entrants.

Clarifying the question and the analysis at each step

In conglomerate mergers the classification of the evidence into ability, incentive and effect has not always been that easy. The UK merger guidelines explicitly accept that these three questions may not be entirely separate and the three questions can overlap.[30] However, too much overlap can make the

[29] One complexity is that if the integrated vertical firm is able to reduce price in the end customer market. This also needs to be calculated so that an approximate worst-case relative price advantage for the merged firm in the end customer market can be calculated.

30 In practice, the analysis of these questions may overlap and many of the factors may affect more than one question. Therefore, the Authorities' analysis of ability, incentive and effect may not be in distinct chronological stages but rather as overlapping analyses. So as to reach an SLC finding, all three questions must be answered in the affirmative." 5.6.7, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284449/OFT1254.pdf

analysis of conglomerate effects confusing. Too many different strands of evidence and reasoning need to be combined 'in the round' at a late stage while other questions become almost tautological. The UK guidelines suggest that the questions should be split to consider "Would the merged firm have the ability to harm rivals, for example through raising prices or refusing to supply them?"[31] This has often been interpreted broadly, for instance in the consideration of the merger of IRI and Aztec this was (in the first (pre-appeal) decision) considered the "Ability of the merging parties to undertake such strategies"[32]. The post appeal decision expressed the question as the "ability of the merged entity to foreclose competitors" which means "Nielsen would either be substantially competitively weakened or would exit altogether"[33]. Given that in the market Nielsen was the only material competitor pre-merger the effect on Nielsen was effectively an effect on the market and in parts it appeared that this condition would only be met where the merged firm had the ability to bring about an anti-competitive outcome.

The European Commission guidelines can also be confusing as the section is headed "Ability to Foreclose" and the description says "ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices" where leveraging only requires that sales can be increased in the tied market via this bundle[34]. This condition appears either very easy (ability to raise sales in one product by bundling) which would often happen if the other product was turned into a free gift. Alternatively it could be very difficult (ability to foreclose) which could be interpreted as the ability to carry out the full anticompetitive theory of harm.[35]

To ensure more consistency in the analysis of conglomerate mergers with the approach in vertical mergers the ability question is perhaps best framed as the ability to draw substantial customers from competitors. The analysis should clearly be limited to considering the incentives of customers that currently buy the leveraging product from the merged party and the leveraged product from competitors (group 3) to switch to the parties and whether the merged firm can ever incentivise such a switch (total foreclosure). For the incentive analysis consider all customers buying the leveraging product to consider how the profits of the merged firm may be affected by the required strategy. The static impacts may still be important to know where any lost customers would divert to (and whether they would support the targeted competitors). The incentive question may also help to establish whether the required behaviour is likely to involve strictly illegal behaviour (pricing below the merged firms own costs and so loss making) or merely profit sacrifice. However, the authority may want to be

[31] 5.6.6. The examples given in this quote do not normally apply to conglomerate mergers where the merging parties do not have contracts directly with (downstream) competitors. 5.6.13 does explain that the main theory of harm in a conglomerate merger involves incentivising customers to buy products jointly and putting competitors that find it difficult to offer that bundle at a disadvantage.

[32] The phrase (would the merged firm have the ability to harm rivals?) was quoted after this statement http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_oft/mergers_ea02/2013/Information_Resources.pdf, paragraph 96. The ability section is concluded (in paragraph 113) by saying that "there is a moderate number of [grocery ePoS] customers for whom convenience ePOS data is likely to be important. These customers appear to account for a disproportionate fraction of revenue and are therefore valuable customers."

[33] https://assets.digital.cabinet-office.gov.uk/media/54944b9be5274a42900002fa/IRI_Aztec_Full_text_decision.pdf. Paragraph 132.

[34] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC1018(03)&from=EN Paragraph 91.

[35] Paragraph 29 actually describes foreclosure merely as "where actual or potential rivals' access to supplies or markets is hampered" and thus their ability and incentive to compete is reduced.

wary of even behaviour that does involve static losses (and so would traditionally fail the incentive test) if it considers that the anti-trust deterrence to such predatory strategy behaviour is not complete. The effect section then looks more closely at the position of the targeted competitors, their cost base and viability considering their whole customer base (including those not buying the leveraging product) and whether they can remain in the market. This would shift how conglomerate cases are normally considered because some basic details considered early on for whether concerns are likely may not be considered until effects. This would include the proportion of the customer base of the two (bundled) products that is common to both products.

Potentially Illegal strategy required

Both UK and EC merger guidelines explain that the theory of harm in a conglomerate merger may involve conduct that could itself be illegal under competition law. The UK guidelines consider whether ”foreclosure may involve behaviour that is unlawful under competition law”, the likelihood of detection and the deterrence effect of any punishment.[36] In the EC guidelines, the possibility of the conduct being unlawful will affect the incentives of the merged firm to engage in it[37] These guidelines do not discuss the precise differences between illegal behaviour (e.g. loss-making) and other seemingly predatory strategies relying on short-term sacrifice of profits followed by later recoupment.

Dynamic effects and counter strategies

The EC guidelines consider “whether there are effective and timely counter-strategies that the rival firms may deploy. One such example is when a strategy of bundling would be defeated by single-product companies combining their offers so as to make them more attractive to customers”. The vertical section suggests counter strategies could include “changing their production process so as to be less reliant on the input concerned or sponsoring the entry of new suppliers upstream”. All these strategies appear to be considered at the end of the analysis. Actually all these counterstrategies are most relevant to the ability analysis since they consider whether (given the market power that the merged firm has in the leveraging product) the competitor can circumvent that by obtaining it elsewhere (a rival bundle or sponsoring entry) or enable its customers to manage without it (by a redesign). Counter strategies could also be relevant to incentive and effect. In incentive when observing the customer reactions to bundled offers the competitors may be able to make rival offers and reduce prices to customers believed to be at risk of switching. Competitors may agree long-term contracts to support the business and encourage customers to be concerned about the long-term industry impact. In effect the basic counter strategy for competitors is to win customers to replace those lost from the bundling strategy. These customers are most likely to be those that do not require a bundle and only want the leveraged product. There could also be other counter strategies to expand or to reduce or recover fixed costs to prevent the firm leaving the market.

Price discrimination impact on the Incentive condition

The possibility of price discrimination in the market also has an important impact on the Incentive condition when considering anticompetitive conglomerate foreclosure. The merged firm can often

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[36] 5.6.14

[37] “When the adoption of a specific conduct by the merged entity is an essential step in foreclosure, the Commission examines both the incentives to adopt such conduct and the factors liable to reduce, or even eliminate, those incentives, including the possibility that the conduct is unlawful” paragraph 110.

offer the customers that it wants to target an individual price. The markets where conglomerate issues are considered often have few opportunities for customers to re-sell the products and competitors can be dependent on relatively few large customers that receive tailored prices. If the only customers being offered (and pressured into) the bundled contract are those the merged firm believes it can win and only to the extent necessary to get them to accept the offer, it should always be in the merged firm's interest to make such bundled prices available. These offers always win at least some customers and will not cause any customers to leave (because these customers are not offered bundles). Thus it is often the case in conglomerate mergers with price discrimination that the incentive condition is almost trivially met even without considering the dynamic sacrifice strategy of weakening a competitor. The competitors may try to counter this incentive by reducing prices and competing strongly for the customers (expected to be) targeted but they will always know less about these customers than the merging parties that supply both the products of interest. Competitors may also try to damage the merged firm's reputation in relation showing its willingness to bundle or pressure some customers to buy the bundle due to fear of losing pre-merger freedom to mix and match providers. Often these issues will be more theoretical arguments and it is difficult to place weight on them ex-ante. Thus the incentive condition will normally be met in any conglomerate merger (at least if there is enough concern to warrant a thorough review).

Strength of buyers and competitors

Given the importance of a few large buyers to the success of the targeted competitors, buyer power may be more important in a conglomerate merger than in many other mergers. In most mergers where price discrimination is possible the presence of large buyers does not protect smaller ones. However, in a conglomerate merger it is not the price offered to the smaller buyers by the competitor that is important as much as the mere presence of the competitor and competition in the market. Thus if the large buyers have enough foresight to support the higher cost competitors even if it may be in their short-term interest to accept a tempting bundle from the merged firm, then competition in the market can be protected. Considering how the key buyers are likely to react to any bundled pricing is thus a key exercise in any merger and can be very time consuming because each buyer will have different incentives to accept the bundle and different views on whether this is in their interest. It may even be that some buyers instead use foresight to share in the profits of the merged firm by securing a good value long-term deal with the merged firm that they realise their competitors will not be able to achieve once competition in the conglomerate market is reduced. Thus important buyers may see this as a way of securing a competitive advantage in the downstream market and the market is not protected.

Conglomerate effects will only be a concern where the competitor that is being harmed by the behaviour is at serious risk. This will usually mean that there is only one or very few (effective) competitors in that market because if several firms can operate effectively it is likely that there are few economies of scale and it will be very difficult for the merged firm to substantially eliminate competition. If the merged firm is only able to eliminate some of the effective competitors then it may be that although some competitors are harmed, competition is not harmed. If smaller firms are effective competitors then they are likely to be able to find some customers who are less affected by the bundling strategy and survive in the market.

A proposed means of analysis in conglomerate mergers

Combining the principle of getting each of ability, incentive and effect to look at different (mutually exclusive) evidence and adapting at each stage to consider the dynamic effects, one way to analyse conglomerate effects could be as follows.

First consider the merged firm's ability to draw customers away from the leveraged product competitors with a tying/bundling strategy. The leveraged product firm obtains via the merger a product (the leveraging one) of value that competitors cannot obtain (difficult to replicate). How persistent would this ability be if competitors did not react (e.g. does it depend on expiring patents). Counter-strategies should be considered that reduce the ability to draw customers away including the ability of competitors to replicate the leveraging product offering or adapt their product to manage without the leveraging product. Factors to consider include how distinctive the leveraging product offering is, do the same customers buy both products, and is the value they place on the leveraged product relatively small compared to the leveraging product value. There may also be efficiencies that make the bundle even more attractive at drawing customers from competitors (increase ability).

Then consider the incentive to offer bundled products. Usually where there exists the ability to draw substantial customers away from competitors by the bundling strategy and price discrimination is possible via individual negotiations, then the incentive condition will be passed. If it is not possible to price discriminate then the incentives of all the customers that buy both products or all the customers that buy the leveraging product may have to be considered together. The analysis can consider how easy it is to identify the customers' willingness to pay for the bundle, what pricing (in terms of new restrictions on buying products separately or price reducing discounts) would be used, and how likely these are to have reputational or other (e.g. contractual) effects. Counter-strategies to make the offering of discounts less attractive may include using price discrimination to increase competition for customers targeted by the merged firm, or whether competitors could raise awareness of the potential harm caused by a bundling strategy amongst influential customers. There may be cases where even if it is not in the short-term interest of the merged firm to engage in bundling then it may be in their interest if they feel they can cause a weakening of competition.

Despite establishing that the merged firm can harm competitors by drawing their customers away and that it has the incentive (is likely) to do this, it is not clear that the behaviour will harm consumers. Thus in the effect section there is a need to consider all the customers using the leveraged product and the impact on the competitors of losing the customers likely to switch to the bundle. This analysis should consider the profitability and whether the offering of the competitors is likely to be weakened (in the eyes of customers to reduce the level of competition) prior to any actual exit. The competitors' internal documents may illustrate how likely they are to exit the market (e.g. what wider strategic value operating in this segment has for the rest of their operations and what would need to happen for them to exit). If they lost customers in one market would this reduce the revenue the firms earn in other markets and lead to further incentive to stay in the market. Is there any history of the competitor exiting other markets in similar situations that may make an exit more likely this time. The counter strategies allow competitors to maintain service despite fewer customers. These include ways for the competitors to win customers that do not require the leveraging product, develop new products, or cut costs (particularly fixed costs) so that they can continue to operate competitively with a smaller customer base.

Conclusion

When considering mergers, competition authorities are normally worried about rising prices (or reductions in non-price aspects of the product or service offering). This is the case in unilateral or coordinated effects. In vertical mergers although the merged firm integrated end customer price may fall, any harm comes from price rises or foreclosure of competitors. This article argued that there is very rarely any likelihood of prices rising when a conglomerate merger occurs. In the rare cases where such issues have been investigated they normally involve a market where most customers (pre-merger) are loyal to the products of both merging parties and the merging parties are not concerned about adverse reputational impacts causing rival products to be developed.

Thus in the rare cases where a conglomerate merger is harmful it is because the merged firm is expected to improve its product so much (by efficiency or price cut). It will then leverage this benefit to target a competitor's customers, so the competitor exits (or is weakened), and then prices can rise to a level that recoups the lost profit and results in prices being higher than they would be pre-merger. Thus it is a kind of predatory strategy that relies on the sacrifice and recoupment of profit. Some authorities will argue that such behaviour should be prevented by ex-post enforcement. If a predatory (below cost) price is offered react then, not at the time of the merger. However, it may be difficult to detect and prosecute such a pricing strategy particularly when it involves bundled pricing and (some) merger efficiencies or new products. Also it is not clear that the same intervention threshold should apply to mergers as to competition enforcement.

In competition enforcement regulators are understandably reluctant to discourage innovation, firms entering new markets and developing new products or new efficiencies. Thus they are careful before punishing firms for competing and offering more attractive products to customers (which authorities normally support). In a merger regulators are also reluctant to block or remedy mergers that bring efficiencies and increased competition and will always be understandably reluctant to accept unsubstantiated claims by competitors that want less competition in their markets, but it is still the case that the costs of intervention are lower in a merger than in an enforcement case and the legal standards of proof are often lower.[38] Remedying a prospective merger does not involve any fine for the parties and does not involve as much cost (especially if integration has not started) so that even with the more uncertainty of a prospective ex-ante assessment there may be cases where it is better to deal with the issues in the merger analysis than try to recreate competition later.

Some potential harms caused by leveraging a dominant position are not possible to prevent via enforcement (they would not be considered or proved to be illegal), but can be guarded against in a merger case.[39] Just because the merged firm does not charge a loss making price on any product does not mean that consumers benefit from the low prices. Sometimes consumers would benefit from higher prices or lower efficiencies that gave competitors more chance to survive and develop their products (and competition). A notable example where an offering that was potentially an efficiency was stopped is the European Commission investigation of Microsoft's pricing of its web browser

[38] The EC guidelines also confirm that "Tying and bundling as such are common practices that often have no anticompetitive consequences. Companies engage in tying and bundling in order to provide their customers with better products or offerings in cost-effective ways." Para 93.

[39] It may also be possible to deal with these aspects in more general competition tools such as market investigations in the UK, but these take a lot of additional resource.

Internet Explorer.[40] Internet Explorer was potentially sold below cost (it was given away for free with Windows operating system) but this was not the bundle aspect that was remedied.[41] The fact that users obtained Internet Explorer pre-loaded on PCs (arguably an efficiency that did not make it any harder to load rival products) was remedied to make the PC set up process slightly longer and require an active choice of web browser. If all browsers had been offered for free and then a merger between Windows and Internet Explorer had given the possibility of efficiently pre-loading would a competition authority have the foresight to remedy this aspect of the transaction (prospectively) before the supposed efficiency (pre-loading) could be implemented given the potential anti-business message of preventing efficiencies?

Even without bundled pricing, a conglomerate merger that merely introduces a strong efficiency that makes the leveraged product of the merged firm much more valuable when consumed alongside the leveraging product (and thus induces switching) can be harmful to the market in the long term (but only rarely).

Thus it is very important to be careful when considering conglomerate effects and in trying to determine which cases really deserve a closer look it is always worth considering the risk of making the wrong decision. If the full force of the bundle is applied how convincing is the competitor exit (or very substantial weakening). In the Internet Explorer case there were network externalities that meant that a smaller market share would lead to lower demand and possibly reduced development support or product improvements. In other markets it is necessary for the competition agency to be very sceptical of any story of exit. In fact conglomerate effects may only result in remedies where the potentially targeted competitors have been loss-making or actively considered exit in the pre-merger competitive conditions (but were still a strong option for customers). Authorities should also consider situations where rival's costs could be raised significantly or where a serious weakening of the competitive offering of the only remaining competitor (or even an exit from a market segment) appears likely. While it is also important to consider aspects such as the relative size of overlapping customers and the relative size of the two markets, these competitor sense checks can be an important early warning system or screen without the authority having to understand the incentives of all the many individual customers in the market that may switch in response to hypothetical bundled pricing offers.

[40] http://europa.eu/rapid/press-release_MEMO-09-352_en.htm. Pre-installing free applications when licensing software is also a potential concern in the European Commission investigation into Google's agreement concerning Android. http://europa.eu/rapid/press-release_MEMO-15-4782_en.htm.

[41] Some guidelines say conglomerate mergers are less of a concern where the products are not complements. In this case it is not clear that the two bundled products were strong economic complements.