E.CA COMPACT

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Mixed bundling in merger control

Many Article 102 TFEU cases have shown that the analysis of exclusionary behaviour is tricky - even after the conduct has taken place. The analysis of conglomerate effects such as tying and bundling in merger control is even more challenging: it requires analysing the potential harm from an ex ante perspective. This note considers the question of anti-competitive effects of mixed bundling in a merger of two regional newspapers as an example. It shows a simple technique based on advertising expenditure data that identifies a limited set of potentially harmed competitors.

Mixed bundling (also referred to as multi-product rebates) occurs when two products sold together in fixed proportions are priced at a discount to the sum of the prices of the two products sold separately. This practice can result in anti-competitive foreclosure in one of the concerned markets if the offered rebate is so large that an equally efficient competitor offering one of the bundle components cannot compete against the bundle.[1]

When examining this type of behaviour on an *ex post* basis under Art. 102 TFEU, the Commission would normally only investigate the actual effects if the incremental price for the bundle components offered by the dominant firm was below a certain cost standard.[2] In a conglomerate merger review, this screening device is not available.

Instead, a merger review will have to assess the likelihood of anti-competitive conduct and the associated harm without relying on a comparison between incremental price and costs. The potential effects on foreclosure are investigated by checking whether the merged entity would have the ability and incentive to foreclose and estimating the effect of such foreclosure net of potential efficiencies.

[1] Potential foreclosure effects due to mixed-bundling were a key concern in a recent proposed merger between two regional newspapers in Austria owned by Styria Media Group AG and Moser Holding AG. E.CA acted as economic expert to the Austrian Cartel Court.

[2] In the “Guidance on the Commission’s Enforcement Priorities in Applying Art. 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings” (Official Journal 2009/C 45/7, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:045:0007:0020:EN:PDF) the Commission cites the long-run average incremental costs (LRAIC) as the appropriate cost standard.

Switching potential in advertising markets

In the context of the merger of regional newspapers, a relevant sub-question of interest is: Does the merged entity have an incentive to offer rebates across different regions such that competitors will be marginalised or driven out of the market?

The answer depends – among other things – on the expectations regarding the effectiveness of the rebate to induce the advertising clients of competitors to switch to the merging parties’ publications. Therefore, economic analysis can aim at identifying customers who – given their past regional advertising patterns – could potentially benefit from a rebate across different regions and could thus decide to switch to the merged entity (“switching potential”).

In the example case, involving the merger of the regional newspapers of Styria Media Group AG and Moser Holding AG, such analysis was conducted based on a dataset containing the advertising spending of individual customers across different press titles taking a three-step approach:

- First, identify those customers of a particular press title who exhibited an advertising interest in the past in those regions where each of the two regional papers were present.

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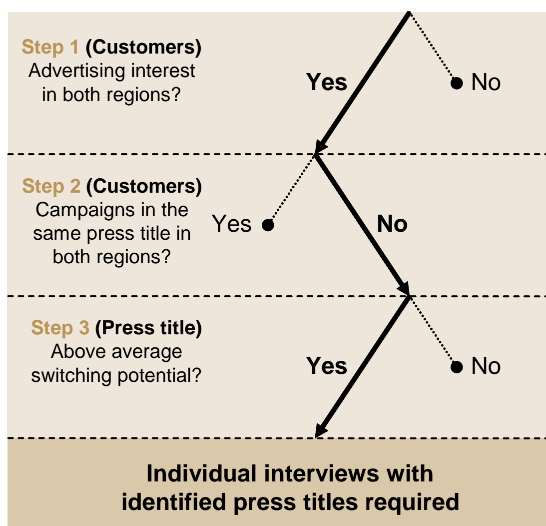
- Second, exclude those customers from the analysis who potentially already benefit from regional rebates as they are advertising in a single media title in both regions. These customers are considered less likely to switch due to regional rebates of the merging parties. The remaining customers can be classified as “potential switchers”.
- Third, identify on this basis press titles which exhibit an above-average switching potential.

This approach first identifies the pool of potential switching customers of rival press titles and then identifies those competitors who may potentially suffer from significant switching.[3] Further qualitative evidence can be gained by conducting structured interviews with these competitors or by applying other techniques. In the case at hand, the interviews clarified that the advertising expenditure data overestimates the percentage of supra regional customers as advertising expenditure of regional customers belonging to a supra regional organisation was attributed to the supra-regional organisation, even though the advertising expenditure was decided on the regional level. Furthermore, the identified customers themselves did not fear exclusion from the market.

Three-step approach



Source: E.CA Economics.

Conclusion

The analysis of tying and bundling strategies in merger control is – given its *ex ante* nature – a complicated undertaking. One sound first step is to analyse which customers of competing companies are unlikely to be affected by the potential anti-competitive behaviour. This analysis identifies press titles which may potentially suffer from significant switching and allows the focus of further analysis to assess how likely actual switching would be for those titles.

[3] Advertising data often contains yearly expenditure per customer and title but no information on campaign level. Therefore, regional campaigns that cover different regions during a year cannot be distinguished from supra regional campaigns and thus cannot be excluded from the switching potential when the described methodology is applied. Thus, the described method is likely conservative in this respect.

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