Monopoly Power Problems

Antitrust
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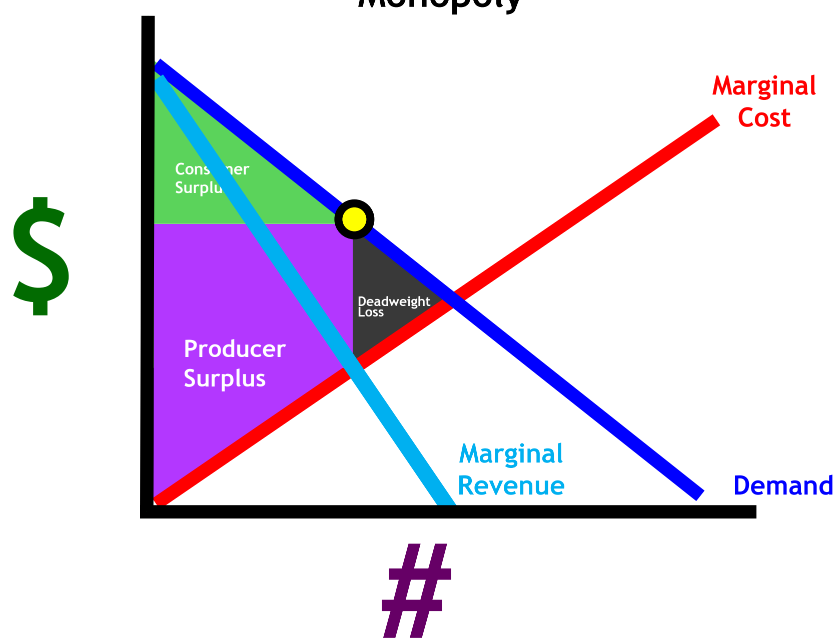
Monopoly

Re-run



Monopolization elements

Re-run

(1) monopoly power in a relevant market

1. What's a relevant market?
   a) product market
   b) geographic market
2. What constitutes monopoly power in that market?

(2) anticompetitive conduct

Product market definition

Re-run

"In considering what is the relevant market for determining the control of price and competition, no more definite rule can be declared than that commodities reasonably interchangeable by consumers for the same purposes make up that 'part of the trade or commerce', monopolization of which may be illegal."

U.S. v. E. I. du Pont de Nemours & Co., 351 U.S. 377, 395 ("The Cellophane Case") (1956)

Substitution Effect

Re-run

- The more prices go up, the more consumers will tend to avoid those goods by purchasing substitutes.
- The closer the substitutes, the greater the tendency for prices to make people jump ship and buy the substitutes instead.

Cross-Price Elasticity of Demand

Re-run

Formula:

CPED = (%Δ Qd of B)/(%Δ P of A)

CPED = cross-price elasticity of demand
%Δ = percent change
Qd = quantity demanded
B = product B
A = product A
P = price

Cross-Price Elasticity of Demand

Re-run

CPED = (%Δ Qd of B)/(%Δ P of A)

If the price of 8-foot redwood 2x4 decking timbers goes up from $10 to $50, then the demand for boxes of decking screws goes down 75%. What is the CPED?

CPED = (-75%)/(400%) = -0.18

A <u>negative</u> CPED means the goods are complementary goods.

Cross-Price Elasticity of Demand

Re-run

CPED = (%Δ Qd of B)/(%Δ P of A)

If the price of a jumbo roll of cellophane goes from $100 to $110, then the quantity demanded of glassine goes up 50%. What is the CPED?

CPED = (50%)/(10%) = 5

A <u>positive</u> CPED means the goods are substitute goods.

Re-run

Cross-Price Elasticity of Demand

The Cellophane Case says high cross-elasticity of demand suggests the two goods are part of the same product market.

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A positive CPED means the goods are substitute goods.

Re-run

Cross-Price Elasticity of Demand

The Cellophane Case says high cross-elasticity of demand suggests the two goods are part of the same pro

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substitute

But what magnitude of CPED is legally significant? It's hard to say …

Re-run

Using cross-price elasticities of demand

- You can’t take anything from high CPED at current price levels, since the defendant may already be at the profit-maximizing monopoly price.
- You can conclude from a high CPED at competitive price levels that there’s a single market.
  - But buyer-substitution rates in a competitive market aren’t observable in a non-competitive market, where market power is already being brought to bear.
- You can conclude from low cross-price elasticities of demand that there are separate markets (whether the current market is competitive or not).

Re-run

Monopoly power

Monopoly power is “the power to control prices or exclude competition.”

United States v. E. I. du Pont De Nemours & Co., 351 U.S. 377, 391 ("*The Cellophane Case*") (1956)

Monopoly-level market share

Re-run

The law doesn't say exactly what market share constitutes monopoly power (MP), but some flags have been planted by various courts:

- 90% is enough for MP (L. Hand, J., in *Alcoa*)
- 87% "leaves no doubt" that MP exists
- 80-95% is enough for Π to survive sum. j'ment on MP
- 75% means MP "may be assumed"
- min. 70-80% is what lower courts "generally require"
- >66% might be MP
- 60-64% is doubtful for MP (L. Hand, J., in *Alcoa*)
- 50% is the bare minimum for MP for many lower courts
- 30% is insufficient even for § 1 market power

(from p.21 of DOJ'08 report; p. 226 of Elhauge, 3d ed.)

Monopoly power

Re-run

It's mostly about market share ...

But also relevant are:

- barriers to entry
- future capacity constraints
- changing consumer demand
- demand elasticity

Barriers to entry

Re-run

Key point: Even if a firm has 100% market share, there will be no monopoly power if there are no barriers to entry – meaning it is very easy for competitors to jump into the market.

Barriers to entry

Re-run

Barriers to entry are things that stop market entrants. If there are no barriers to entry, then it is easy for competitors to spring up.

Examples of barriers to entry:

- huge fixed costs, start-up costs
- government regulations
- patents, other IP rights
- lack of access to needed inputs or essential resources
- network effects

Monopoly power: future capacity constraints, changing consumer demand, demand elasticity

Re-run

future capacity constraints

- If an alleged monopolist won't be able to produce in the future, then it may have no monopoly power, such as a coal company that is out of coal reserves.

changing consumer demand

- If consumers no longer want the alleged monopolist's product going forward, than past dominant market share may not be probative.

demand elasticity

- Even with overwhelming market share, if consumers can very easily do without the product, then an alleged monopolist may not have monopoly power.

Monopolization analysis to-do list

Re-run

(1) monopoly power in a relevant market

1. figure out a relevant product market
2. figure out a relevant geographical market
3. look at the market share
4. consider barriers to entry
5. consider whether future capacity constraints, changing consumer demand, or demand elasticity might let an alleged monopolist off the hook

(2) anticompetitive conduct

[for this analysis, you'll use what we cover next ...]

Hypotheticals …

Landers Lawn Care

Hypo: In Verdant Valley, a town of 50,000 people that is a three-hour drive from any other town, there is only one provider of lawn mowing services: Landers, which has 238 customers. The closest there is to other firms providing such a service are arborists that trim trees. ***Does Landers have monopoly power?***

Landers Lawn Care

Does Landers have monopoly power?

Almost certainly not. Lawn mowing services appears to be a relevant product market by itself. Arborists form a separate market, because tree trimming is not reasonably substitutable for lawn mowing. Verdant Valley is a relevant geographical market on its own because you can't take your lawn out of town to be mowed, and it's implausible that someone is going to drive six hours round-trip to mow your lawn. The market share in this market is 100%. That's more than sufficient for monopoly power just in terms of market share. But there are essentially zero barriers to entry. Anyone can get a lawn mower and start mowing people's lawns. So there's no monopoly power here.

Gundattan Media Group

Hypo: In Grand Gables, Gundattan Media Group, owns 8 of 10 radio stations and 24 of 200 billboards. As measured by ad revenues, GMG has 90% of the radio station market, 10% of billboards, and 46% of radio + billboards. Billboard sites are subject to permits and radio spectrum is allocated by the FCC. Both are maxed out in Grand Gables. GMG says that out-of-town radio/billboards in Baltidelphia (two hours away) are substitutes for Grand Gables radio/billboards. And GMG says billboards and radio are substitutes for one another in Grand Gables. When radio advertising goes up 50% in price in town, demand for billboards goes up by 1%. ***Does Gundattan have monopoly power in a relevant market?***

Does Gundattan have monopoly power in a relevant market?

First, what's the best-case relevant market for plaintiffs? In terms of the geographical market, must Baltidelphia be included? No. Out-of-town advertising isn't reasonably substitutable for reaching local Grand Gables residents. So that's a different ad market. What about billboards being in the same product market as radio? Well ...

$$CPED = (\%\Delta\ Qd \text{ of } B)/(\%\Delta\ P \text{ of } A)$$
$$CPED = 1\%/50\% = 0.02$$

This seems very low, suggesting radio is a relevant market by itself. Both 80% (channels) and 90% (revenue) are monopoly territory market share. Plus barriers to entry seem insurmountable because of government regulation. Thus: **Yes, Gundattan Media Group appears to have monopoly power.**

Crates Ahoy

Hypo: Crates Ahoy provides 85% of corrugated cardboard boxes on the island of San Nicholas. Almost everything on San Nicholas is more expensive, but currently, Crates Ahoy, a family owned business, prices its boxes at 25% less than competitive market prices on the mainland. Qualified economists estimate Crates Ahoy could, however, raise prices 25% above competitive levels and would be able to sustain this price for a number of years. ***Does Crates Ahoy have monopoly power in a relevant market?***

(This is for discussion in class ... There's no pre-prepared answer slide.)