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Qualcomm/NXP

Comments on the role of economic analysis and the Commission's Remedies

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An overview of the case

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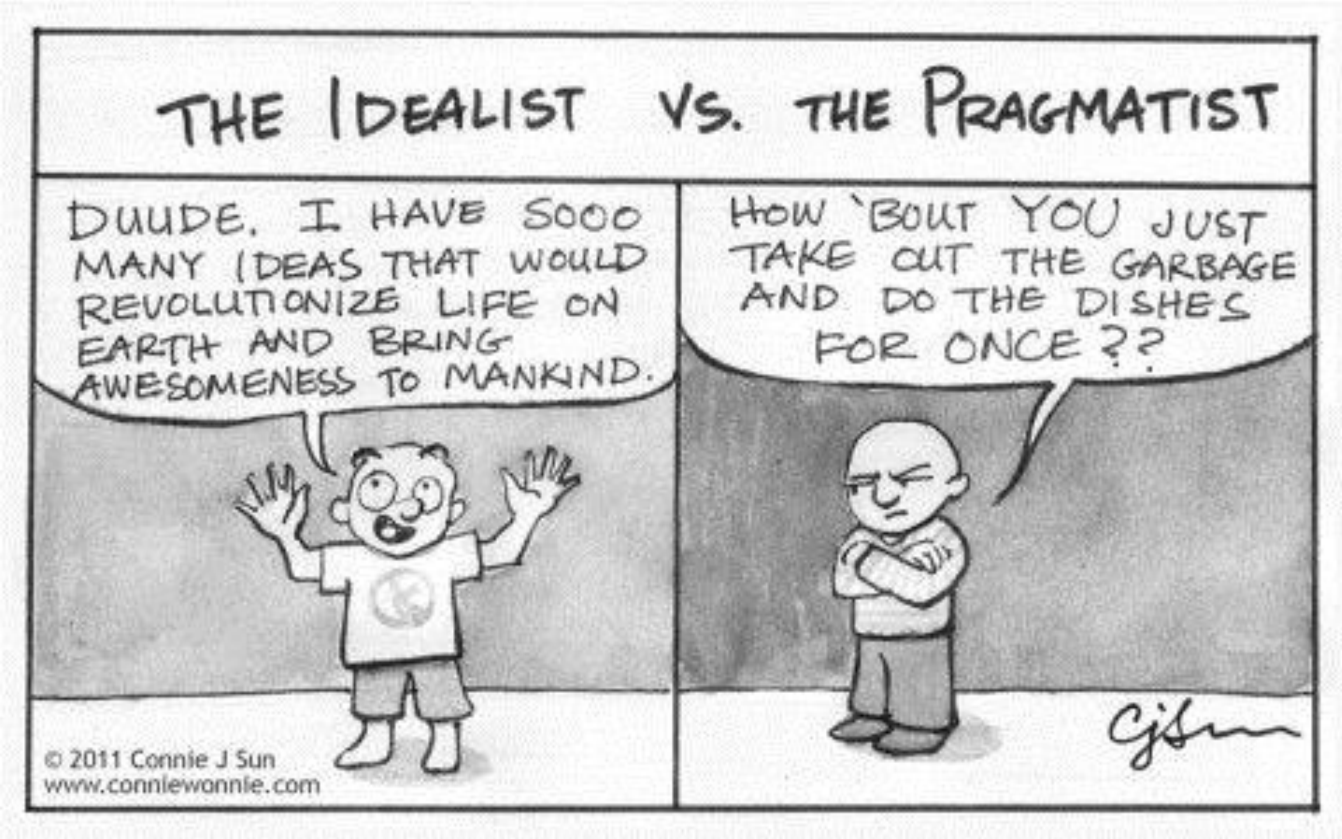

Mixed bundling + raising royalty rates

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- The Decision acknowledges that economic predictions of incentives are “***inconclusive***” (i.e. royalty rates may increase or decrease based parameter values chosen)

  increase royalty rates to increase sales of bundle vs reduce royalty rates to promote competing complementary bundles.

- **Not a basis for a remedy so how did the cited evidence fill these gaps?**

gemalto security to be free

SAMSUNG

infineon

Are third parties really able to address complex questions of incentives? Do they know something that theoretical economists don’t?

Documents specifying post-merger intentions may be of greater value. But is one email (relating to continuation of pre-merger conduct) really enough (see ¶631)?

=> **Economists 0: Lawyers 1 [but with a low cost remedy]**

Pure bundling [+raising royalty rates]

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- Two core economic models submitted to support a pure bundling based theory of harm robustly dismissed in Decision:
  - **Choi + Stefanadis [pure bundling]:** model did not match features of the industry (*¶746)*
  - **Bargaining model [pure bundling + input foreclosure]:** results driven by a "*non-standard assumption*" without "*a strong justification or empirical support*" (*fn587)*

- Economic evidence given partial weight in the analysis:
  - **Incentive** analysis focusses on internal documents and "informal economics" (analysis of past conduct)
  - Economic evidence of customer purchasing preferences and past conduct also used to conclude that pure bundling would not have an effect on competition

=> Economists 0.5: Lawyers 1.5

Interoperability degradation

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OEM Conduct (self-supply, preference for mix and match; dual sourcing etc)

+

Evidence of no foreclosure effects in past transactions (BC + WiFi)

=

No effect of pure bundling (even if ability/incentive exists)

- A strategy of degrading interoperability (a weak form of pure bundling) cannot have greater effect on customers or the market than pure bundling (A *only* sold with B).
- Customer options cannot be reduced more by interoperability degradation than pure bundling
- Economic factors/evidence used to rebut concerns of third parties regarding pure bundling not even discussed in relation to a degradation of interoperability!

=> **Economists 0.5: Lawyers 2.5 [but with a low cost remedy]**

IP based conglomerate effects

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- **A theory of harm missing the classic elements of an SIEC finding:**
  - No loss of competition between rivals
  - No issues regarding coordination
  - No claims of foreclosure/harm to competitors (i.e. no RRC story)
  - How does recourse to the legal system equate to an impediment to competition?

- **Key factual issue with theory of "*disproportionate increase in bargaining power*": NXP (and Qualcomm) *were* credible litigators pre-merger**

BLACKBERRY | POLICY & LAW | MOBILE

Chipmaker NXP sues RIM, accusing BlackBerry devices of patent infringement

RIM faces allegations in the US that it infringes six patents owned by Dutch tech company.

By Matt Macari | Apr 5, 2012, 12:15am EDT

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