



Explainer

A research series that summarizes key socio-techno-legal concepts underlying the technologies we use daily

Tying and Bundling



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What is 'Tying and Bundling'?



Say, a company "XYZ Inc." sells its consumers two different products or services...

'Tying' occurs when XYZ ensures that one of its products (called the 'tying product') can only be bought together with another one of its products (called the tied product)

'Bundling' occurs when XYZ creates a situation where two or more of its products can only be bought together (or as a bundle) and not separately



Is it an anti-competitive practice?

Tying or bundling is not necessarily anti-competitive. Take, for example, smartphones, which bundle together products like a browser, a camera, and a calculator, among others. This practice not only reduces overall costs but also greatly improves consumer experience!

However...

...in certain cases, tying and bundling can lead to anti-competitive conduct.

Consider a scenario where XYZ Inc. is a big player in one of its product markets. If it can tie or bundle this popular product with another unpopular one, it can become a dominant player in both.

This can allow it to raise prices substantially and foreclose any legitimate competition that threatens its dominance.





What counts as ‘anti-competitive’ tying or bundling?

Although there is no “one-size-fits-all” criterion to identify anti-competitive tying and bundling, a four-part test is often considered useful.

Distinct markets | The products being tied or bundled together must belong to different markets

Market dominance | The firm must be dominant in the market of the tied product or one of the bundled products

Coercive behaviour | The firm must use its dominance to coerce consumers in buying the products together

Foreclosure of competition | This coercion must lead to a significant reduction in the sales of existing competitors



Is anti-competitive tying and bundling a new phenomenon?

Not at all! As early as in the 90s, the US government had accused Microsoft of tying two of its products - the Windows PC operating system and the Internet Explorer web browser - to stifle competition in the latter's market.

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| Revelations | Microsoft used restrictive contractual practices with PC manufacturers to 'kill' Netscape Navigator - a competitive web browser developed by AOL |
| Outcome | Microsoft paid Netscape \$750 million and the two agreed to partner on digital media initiatives to thwart piracy |

Does it occur only in digital markets?



Nope. Take the case of Hilti - a major company in the markets of nailguns and nailgun cartridges.

In 1987, Eurofix and Bauco, Hilti's competitors in the market of nails, alleged that Hilti was tying the sale of its nailgun cartridges with the sale of its nails, a product whose market it did not dominate.

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| Revelations | Through legal and contractual threats, Hilti not only forced its buyers to buy its nails over others, but also created a situation where consumer choice was limited |
| Outcome | Hilti was fined six million ECU and was asked to halt its anti-competitive conduct |

Are digital markets extra prone to anti-competitive tying and bundling?

Yes...in a way. There are a few traits inherent to how digital markets work that make anti-competitive tying and bundling more likely.

- Heightened direct and indirect network effects make it easier for first-movers to gain a dominant position in or expand into a digital market
- Information asymmetry and targeted pricing techniques can further make it difficult for consumers to discover reliable competitors
- Even if competitors exist, lack of interoperability between them can make it difficult for consumers to switch from one to the other

Do we have any India-specific examples?

Yes!

In 2018, the Competition Commission of India (CCI) accused Google of trying to stifle legitimate competition, by bundling many of its products under the Android 'Google Mobile Services' (GMS) package.

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| Revelations | Using contractual agreements, Google mandated Android phone manufacturers to install the entire GMS package if they wished to use Google's version of Android |
| Outcome | CCI fined Google a total of ₹1337 crore and the order was upheld by NCLAT on appeal; it is currently pending with the Supreme Court. |

Before you go, here's a brief recap!



1

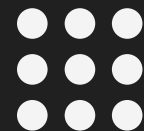
'Tying' and 'bundling' are not inherently anti-competitive practices and usually need to qualify a four-step test to be deemed so.

So while Microsoft's act of tying in the 90s was anti-competitive, Netflix's bundles of movies - since they qualify as the same product - are probably not!

2

Anticompetitive tying and bundling is not a new phenomenon and it is not limited to digital markets only!

The case of Hilti, and many others like it, are prominent examples of anti-competitive tying and bundling from before the advent of digital platforms.



3

However, certain traits make digital markets extra prone to anti-competitive tying and bundling.

By leveraging network effects, dominant 'gatekeeper' firms can enter and capture new digital markets rapidly, thereby increasing the risk of coercion and foreclosure of competition.

References and additional readings

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