Screening for Good Patent Pools Through Price Caps on Individual Licenses, A. Bountin

Comments

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Summary & Results

- Paper investigates the role of independent licensing in preventing formation of welfare-reducing patent pools
- Extends Lerner and Tirole (2004), who show that independent licensing eliminates welfare-reducing pools when there are 2 firms
- Here: more than 2 firms. Independent licensing alone not sufficient to rule out welfare-reducing patent pools
  - Continuum of equilibria where pool members set high individual royalties, inducing consumers to buy from pool
- Proposed remedy: destabilise pools by preventing members from setting “high” individual royalties. Cap them at share of pool’s royalty
- Model allows for asymmetry in patent values and complementarities, and arbitrary profit sharing rules (which may be modified in response to cap)
Summary & Results (Cont’d)

Main results:
- Cap destabilises any (strongly) welfare-reducing pool, even when members can adjust the profit sharing rule in response
- Cap never destabilises (strongly) welfare-increasing pools when sharing rule is adjustable

Policy Relevance:
- Cap avoids ex-post assessment of whether independent royalties are “excessive”
- Cap provides information-free screening device for regulator
- Safe harbour treatment for pools implementing cap on individual licenses gives firms legal certainty to form welfare-increasing pools
Comment - Structure of Patent Pools

- Independent licensing is competitive constraint on pool’s behaviour. Alone it is not sufficient to destabilise harmful pools, therefore strengthen it via the cap on individual royalty levels.
- Assumed that all innovators are part of the pool.
- What if there were some patent-holders outside the pool:
  - These do not face incentive to raise independent royalties.
  - Can presence of outside innovators serve to destabilise pool?
  - Role of complementarities between patents held by insiders/outsiders.
- Then, what are incentives of these outsiders to join pool / form rival pool. I.e., is this mechanism feasible?
- Relates, more generally, to incentives of innovators to join patent pools (e.g. Langinier (2011) and related literature).
Comment - Innovation Effects

- Set of patent-holding firms held constant
- Implicitly treat firms as “high-tech”: none are choosing to innovate *conditional* on being able to form a welfare-reducing pool
- If some firms were “low-tech”, more stringent regulatory approach via cap on individual royalties may deter innovation

Welfare Implications
- To the extent patents are complements: fewer beneficial innovations to share (-)
- To the extent patents are substitutes: (1) less duplication of effort (+) (2) less potential for welfare-reducing pools to form (+)

Profits of innovating firms may matter, even if we care about welfare of license purchasers

Some empirical evidence that patent pools discourage innovation by both insiders and outsiders (Lampe and Moser (2009))
References
