

Question 1: Key Missing Issues

Issues and Points: 32 point baseline (33 max)

32

<p>1. Failure to address (“FTA”) the question of whether we should think of the street lamps as a natural monopoly type asset (wireless networks are, as compared to networks of wires, naturally less monopolistic; we saw this point in <i>Gulf Power</i>; so while the street lamps seem like a great entry path for Google given how many of them there are and their widespread distribution, we might think that there are other entry paths as well, such as the telephone and electricity poles again seen in <i>Gulf Power</i>): -3</p>	
<p>2. FTA standard piggybacking pattern of Google entry (the easiest way to enter a network industry is through a preexisting network-like infrastructure): -1</p>	
<p>3. FTA position of municipalities in creating exclusive access system to municipal asset (we didn’t encounter this directly; the spectrum materials suggest that gov’t actors have broad authority in conferring access to assets in their control): -2</p>	
<p>4. FTA terms of municipality deal with Google (municipalities need to determine what they are seeking to accomplish in creating access to street lamps; they could have auctioned off the street lamps to the highest bidder and sought to maximize the revenues associated with that or could have done that even if the municipality imposed conditions on access (like the conditions imposed on the C block auction by the FCC); alternatively, towns could have sought to improve local welfare without focus on revenues; appear to have gone more in that direction in doing the in-kind LED deals with Google; this is in-kind trade as an approach to financing public assets): -4</p>	
<p>5. FTA ability of municipalities to give other firms access to the street lamp grid to install their own sensor networks (we know that governments frequently change course in regulation; we saw that strongly in the price cap and electricity materials and again with regard to our discussion of ex ante vs. ex post regulation in our look at the FCC’s data roaming order; that said, this would seem like a more direct violation of the exclusivity deal cut with Google): -2</p>	
<p>6. FTA question of what it would take to treat Google as a common carrier for the purpose of GAP or SWMS (as we saw starting with <i>The Express Cases</i>, common carrier status requires some basis, either established in a constitution or a statute, but doesn’t just arise through practice and of course there is no practice of sharing here anyhow): -2</p>	
<p>7. FTA ability of municipalities to impose just and reasonable price regulation on Google assets (GAP and the SWMS) (these are differently situated; we are told that GAP is tied to a Google patent; the standard essential patent situations that we saw were cases in which firms had voluntarily embraced RAND or FRAND type obligations, not where they had been imposed directly by the gov’t; as to the SWMS, the trend has been towards input price regulation of the sort we saw in the 1996 telcom act and this would parallel that): -3</p>	
<p>Total Deductions</p>	

Question 1: Additional Points

<p>√ 1:</p>	
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Question 1: Final Score

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Question 2: Key Missing Issues

Issues and Points: 32 point baseline (33 max)

32

<p>1. FTA question of how many battery platforms seem possible (gasoline stations are perhaps most natural match with the battery replacement stations; gasoline stations have often had 3-5 fuels in place (2 or 3 octane levels of unleaded gasoline; diesel; and perhaps a gasoline mixed with ethanol); hard to know for sure what that tells us about how many different battery types might be supported by a single station but perhaps a few; and different station brands might do different battery types; that suggests the possibility of a fair amount of diversity in the marketplace assuming the grand coalition deal doesn't kill that off): -3</p>	
<p>2. FTA structure of economics at work here (battery platform operates at center of two-sided market between consumers and car makers/battery producers): -2</p>	
<p>3. FTA collective action issues associated with standard setting (coordination issues can be tricky in general; consumers may sit on the sidelines and that will make it harder to transition to any new standard) : -2</p>	
<p>4. FTA investment and cost allocation issues associated with major infrastructure investments (creating battery sharing infrastructure will undoubtedly be expensive and subject to potential failure; any regulatory efforts creating mandatory access regime need to take into account fact that firms won't seek to join failing standards): -2</p>	
<p>5. FTA issues re process for forming standard (as we saw in the EU materials on SSOs, gov't actors often concerned with openness of standard setting; not given a great deal of info here but suggestion is that some industry participants weren't given an opportunity to participate in establishing the standard): -2</p>	
<p>6. FTA extent to which we allow private firms to establish particular standards through agreement (the best matches here are what we saw in the DVD business review letters, though those letters addressed the patent pool issues and left open the standards question, and what we saw on digital TV (FCC embraced grand coalition result on DTV standard)): -3</p>	
<p>7. FTA question of possible mandatory access regime to grand coalition program (we of course saw access and interconnection regimes at various points through the course, both directly in statutes like the 1996 telcom act and then via the courts in cases like <i>Terminal Railroad</i>): -4</p>	
<p>X1:</p>	
<p>Total Deductions</p>	

Question 2: Additional Points

<p>√1:</p>	
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Question 2: Final Score

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Question 3: Key Missing Issues

Issues and Points: 32 point baseline (33 max)

32

<p>1. FTA Google’s implementation of noninterconnection regime (private parties will frequently seek to maintain strong control over interconnection to their systems as we saw with the Twitter terms of service; those access incentives will shape the nature of innovation that can occur on a platform): -3</p>	
<p>2. FTA efforts to bar competition in add-on applications (again, firms will often seek to limit competition in particular aspects of their businesses; if multiple platforms possible, shouldn’t be concerned about that, but with limited number of platforms, private incentives and social incentives for competition will differ): -3</p>	
<p>3. FTA question of whether we should think of GAP protocol as natural monopoly and consequences of that (core regulatory approach of modern network industries is to create access regime to natural monopoly components to facilitate competition in other components; as to natural monopoly status, cost-side considerations wouldn’t obviously lead to single system but demand-side considerations may move in that direction): -4</p>	
<p>4. FTA relevance of network neutrality debate to Google TOS (Google’s TOS is highly non-neutral, both with regard to the access rules and on the prioritization decision; again, net neutrality is premised on the notion of platform scarcity; key point in net neutrality debate is that ownership identity is the most troubling basis for access rule; not necessarily opposed to prioritization more generally): -4</p>	
<p>5. FTA role of patents in considering possible regulatory regime for GAP (given that GAP is said to be based on patents, access regime will raise issues about private vs. public control over patents; our examples in the class involved situations with voluntary commitments being backed by public authorities as opposed to involuntary commitments imposed by regulators; but hard to see why IP assets should be treated differently from physical assets where access obligations have been imposed frequently): -3</p>	
<p>X1:</p>	
<p>Total Deductions</p>	

Question 3: Additional Points

<p>√ 1:</p>	
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Question 3: Final Score

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