

Is Patent Holdup really holdup? And is it an antitrust issue?

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(These slides are based on joint work with Stephen Haber on “The Fallacies of Patent Holdup Theory”)

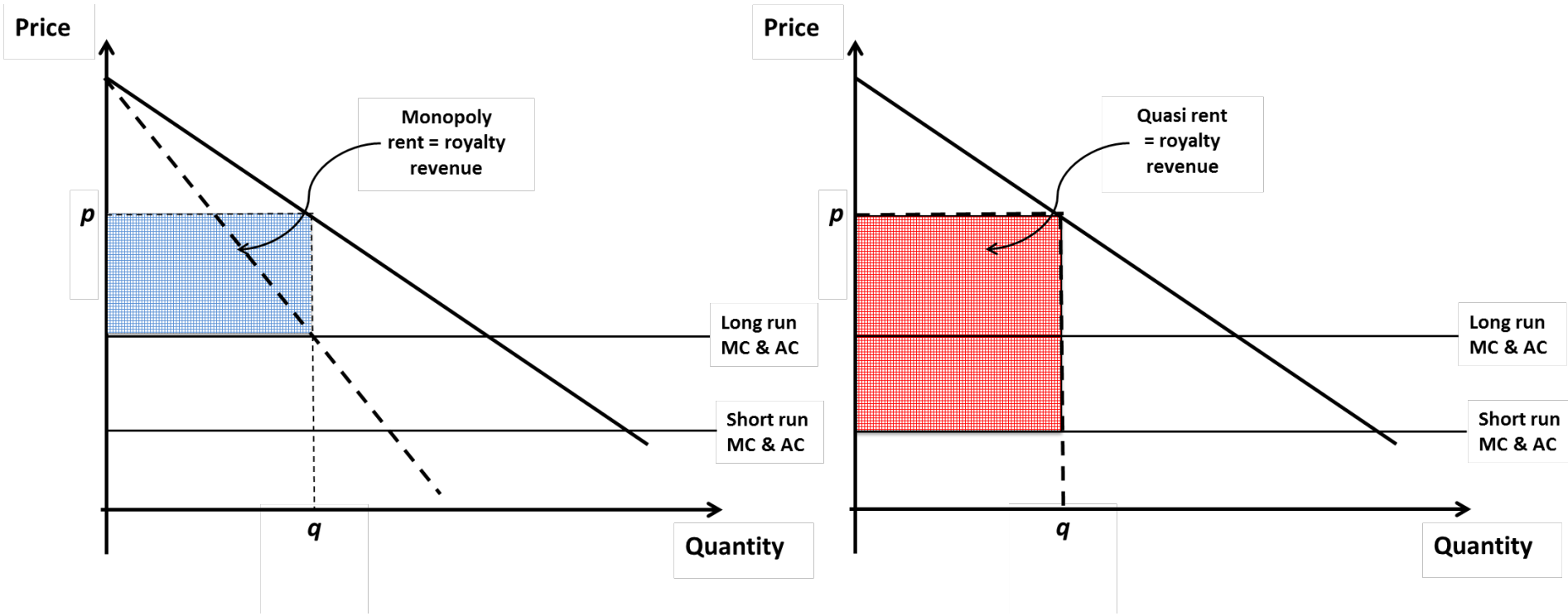
What is holdup?

- Holdup is about the extraction of quasi rents through opportunistic surprise
- A quasi rent is the difference between total revenue and short-run costs
- If a patent holder extracts the manufacturer's quasi rent, the manufacturer does not obtain a return on its capital investments (does not cover its long-run cost)

Transactions Cost Holdup vs. Patent Holdup

<p>Transactions-Cost Holdup</p>	<p>Standard-Setting Holdup</p>	<p>Inadvertent trespases</p>
<p>A sunk, relation-specific investment</p>	<p>Yes, a standard-specific investment</p>	<p>Yes, investment is specific to the infringed patent</p>
<p>An incomplete contract</p>	<p>Yes</p>	<p>No contract</p>
<p>Opportunistic surprise</p>	<p>No (manufacturers participated in setting the standard) Game begins with holdup.</p>	<p>Yes (“patent holder demands royalties”) Game begins with holdup.</p>
<p>Prediction: Structural or contractual adaptation anticipates holdup, prevents it and sustains investment & trade</p>	<p>Prediction: No reinvestment or no investment; market failure</p>	<p>Prediction: No reinvestment or no investment; market failure</p>

Market power is not holdup; they are mutually exclusive economic mechanisms



Is patent holdup an anti trust issue?

- Holdup is not the exercise of market power
- It cannot be a long run equilibrium
- Transactions Cost Holdup theory suggests that parties will adapt and prevent holdup
- A thriving industry is evidence of either the irrelevance of holdup as a systematic phenomenon or successful adaptation that prevented holdup