

When Negotiation Goes Wrong:
Debt Collection
and
Pay for Delay

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Disclaimer

- The FTC (Commission) has expressed its views at length on both these topics
 - Testimony, reports, case filings
 - If you want to know Commission views, you should read those documents
- My economist-to-economist remarks are my interpretations and views

Negotiations in shadow of litigation

- Courts carefully elicit information and evaluate claims
- Assuming they (would) do a good job, can parties avoid (costly) litigation
 - Negotiate with litigation as disagreement outcome
 - Outcome should reflect merits, share the savings
- Two ways in which this can look promising but go badly wrong

First, institutions

- FTC independent agency, wide responsibilities
 - Consumer protection, “unfair and deceptive acts and practices”
 - Many specific enforcement obligations, e.g. COPPA
 - Antitrust
 - Shared with Antitrust Division of DOJ
 - FTC Act intended to be broader, closer to policy versus narrow law enforcement



Bureau of Economics

- 117 FTE, mostly PhD economists
 - Micro, IO
 - Bureau Director typically academic on leave
 - As has been the case at DOJ Antitrust Division, FCC, PTO



What our economists do

- Case evaluation and support
- Policy development
- Advocacy with other government agencies
- Research
 - Wide spectrum
 - Merger Retrospectives a specialty

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Debt Collection

Debt Collection

- Focus here on collection of debt that is
 - Relatively small
 - though a big issue in aggregate
 - Owed by consumers, not businesses
 - Unsecured
 - Not mortgages

Why Debt Collection

- Necessary for credit markets
 - Default on unsecured debt is substantial
 - For credit cards, default rates in ballpark of 10%
- “Stronger” debt collection benefits credit market at the margin too
 - Theory: expected return must cover cost of funds
 - Empirically: multiple studies find price and availability of credit varies with debt collection environment

Why Limits to Debt Collection

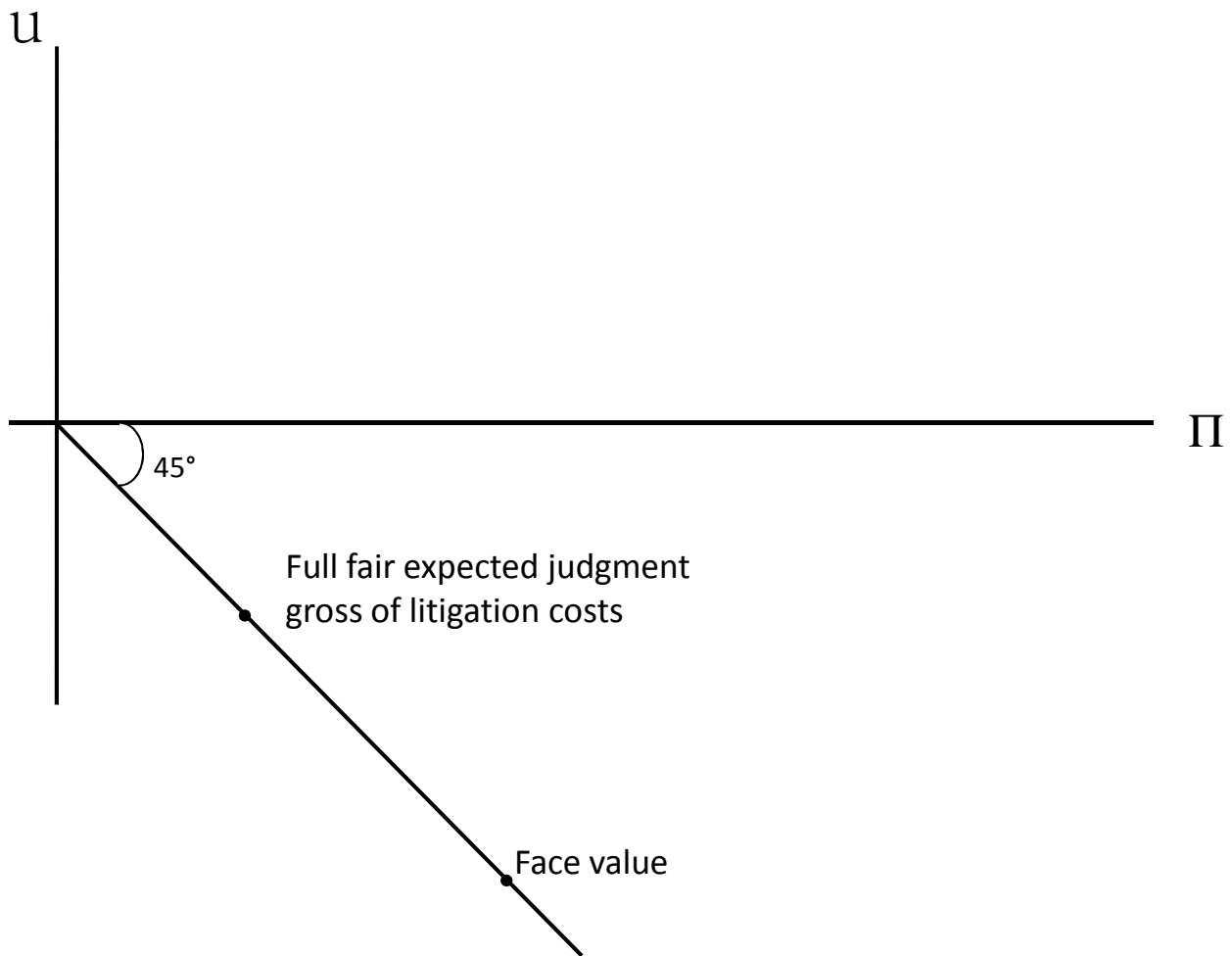
- Disputes about legitimacy
 - Was service actually provided, debt incurred?
 - Poorly disclosed or wrongly calculated late fees, interest, etc.
 - Identity of debtor
- Inability to pay
 - Bankruptcy
 - Severe hardship
 - Common pool problem

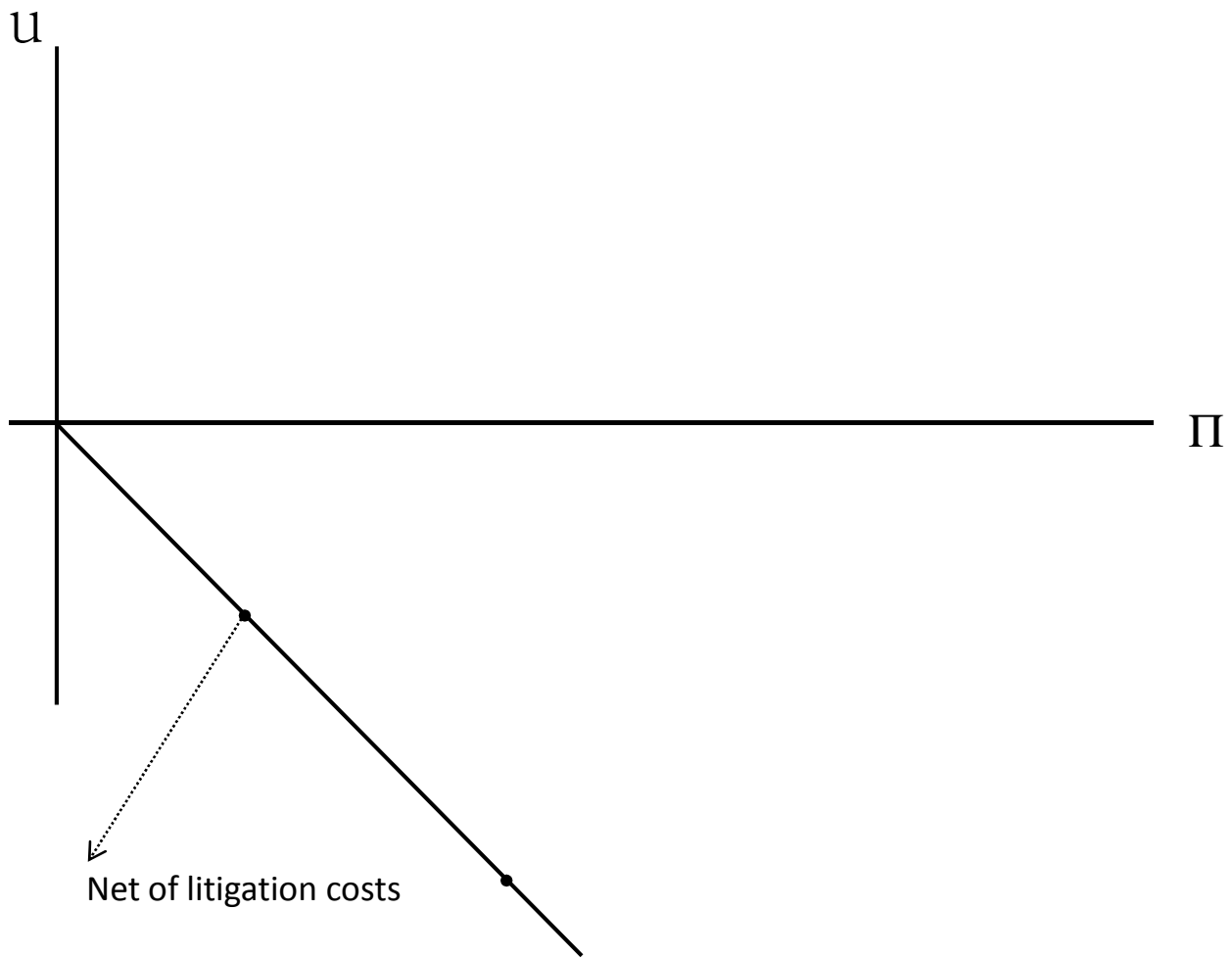
Two Perspectives

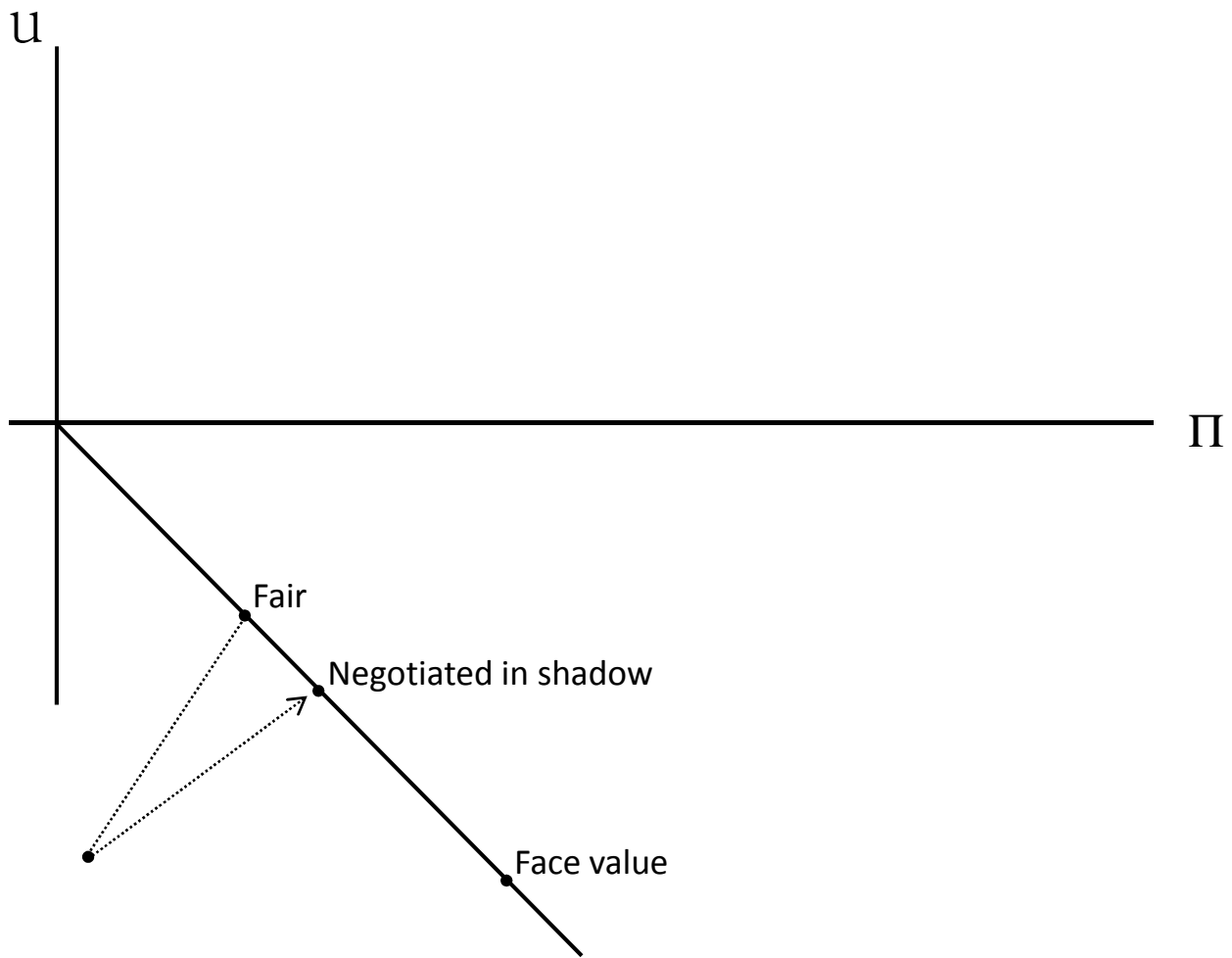
- Signaling perspective:
 - Collectors impose costs so consumers will pay up to make it stop
 - Consumers endure costs to signal that it's especially hard for them to pay
- Negotiation perspective

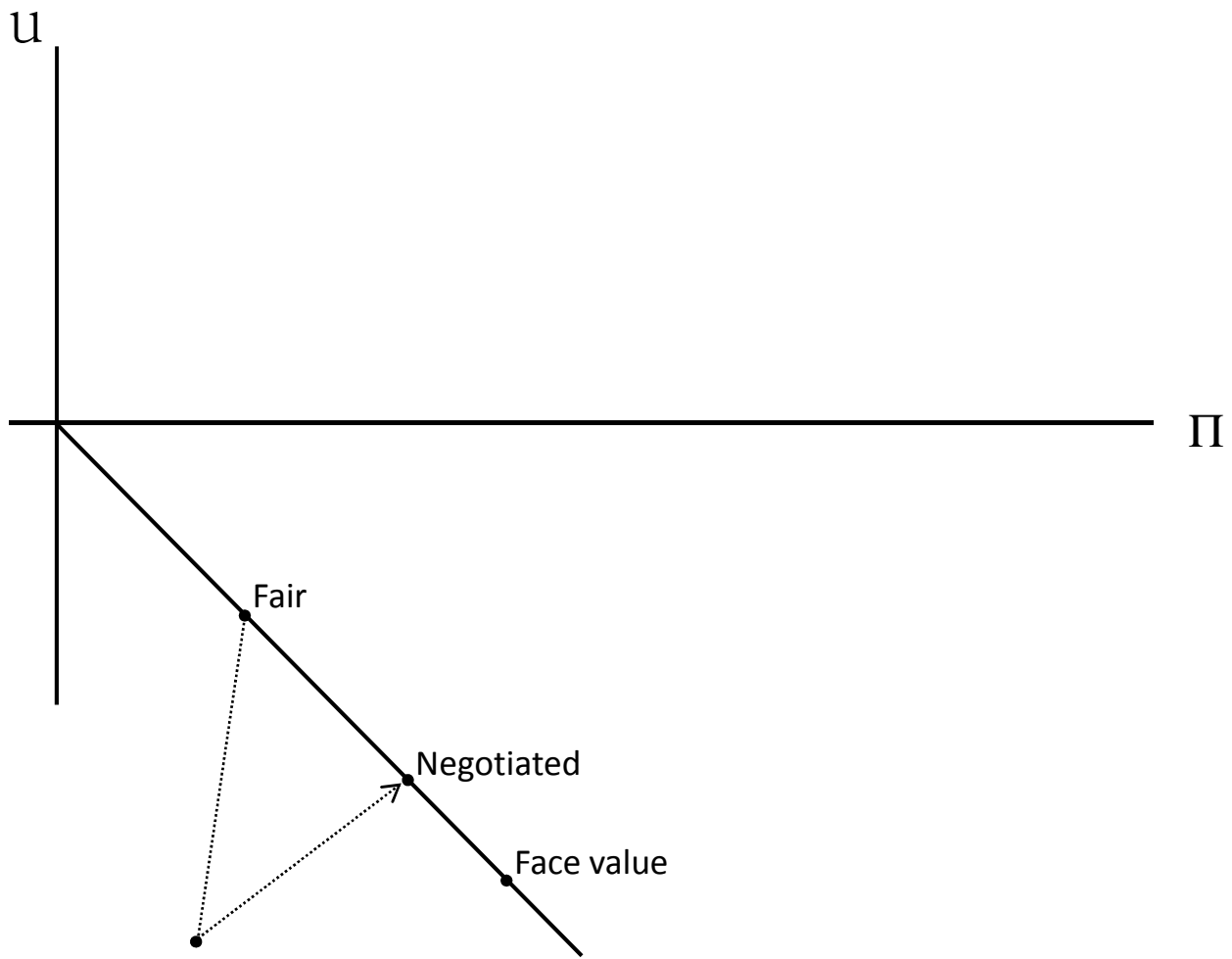
Signaling or Negotiation?

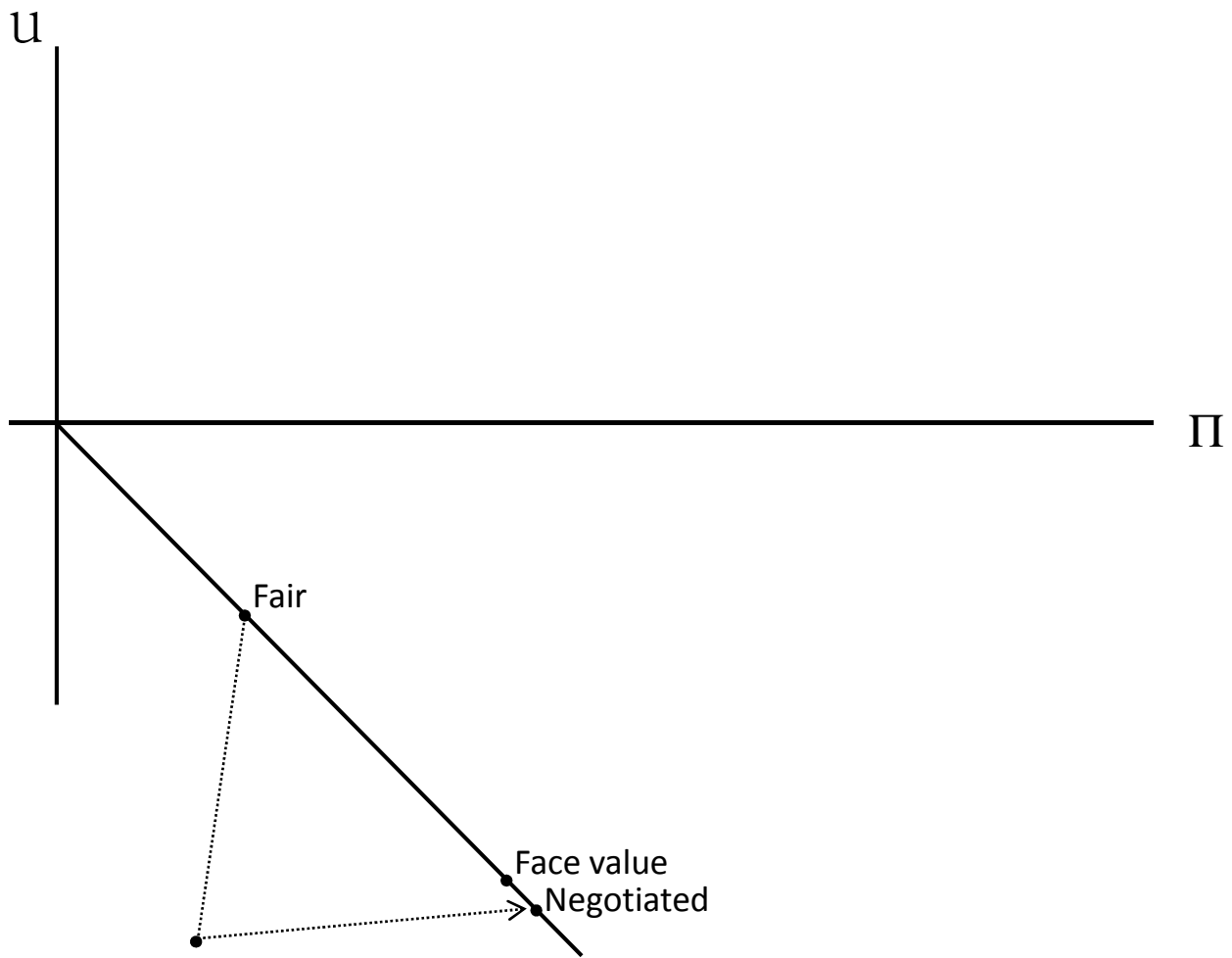
- Fair Debt Collection Practices Act
 - Limits collector conduct that approaches harassment
 - Gives consumer the right to say “stop calling me”
- Not easily reconciled with signaling model
- Focus here on notice and negotiation model











How notice shades into harassment

- Call/write alleged debtor to let him know there's a debt; might sue if can't agree
 - Call at what time?
 - Contact him at work?
 - What does the envelope say?
- Incentives to segue into signaling model...
 - FDCPA
 - Allegations in Rumson last month
- “Sewer service”

Debt settlement

- Debt settlement business
 - Demand exists for reasons such as above
 - Need to convince creditors that debtor won't simply pay up
 - Natural to worry about getting paid
 - Easily and often segues into fraud
 - GAO study April 2010; FTC rulemaking
 - Advance payment ban

Debt Buying

- Dentists don't want to spend their time collecting debts
- Agency model
- Debt buying model—enormous expansion in last 5 years
- Typically 5-10 cents on the dollar
- Limited information, verification

Pay for Delay

Settlement of Patent Litigation in Pharma

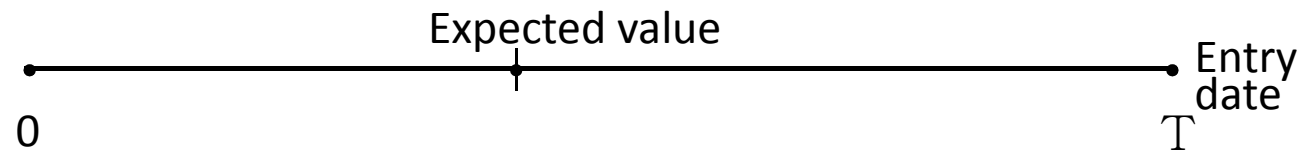
- Hatch-Waxman Act
 - Ease entry of generics once patents expire: ANDA
 - Encourage generics to challenge weak patents
 - Little threat to innovation incentives
 - Free-rider problem: offer 180-day exclusivity “bounty”
 - Technical detail: when does 180 days start?
 - Cork in the bottleneck

Without a settlement

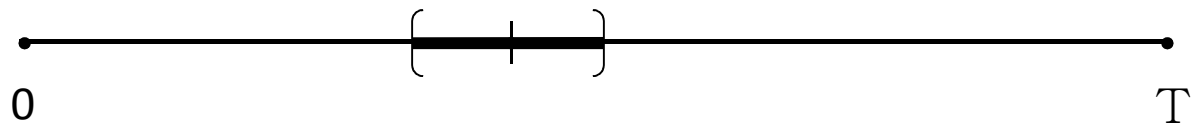
Settlement with date of entry

- Compromise date t reflects G's and B's views of strength of patent, market growth, discounting, etc.
- G negotiates at least roughly as if it were agent of consumers
 - Very big consumer benefit from generic entry, especially for big drugs where multiple entry after 180 days

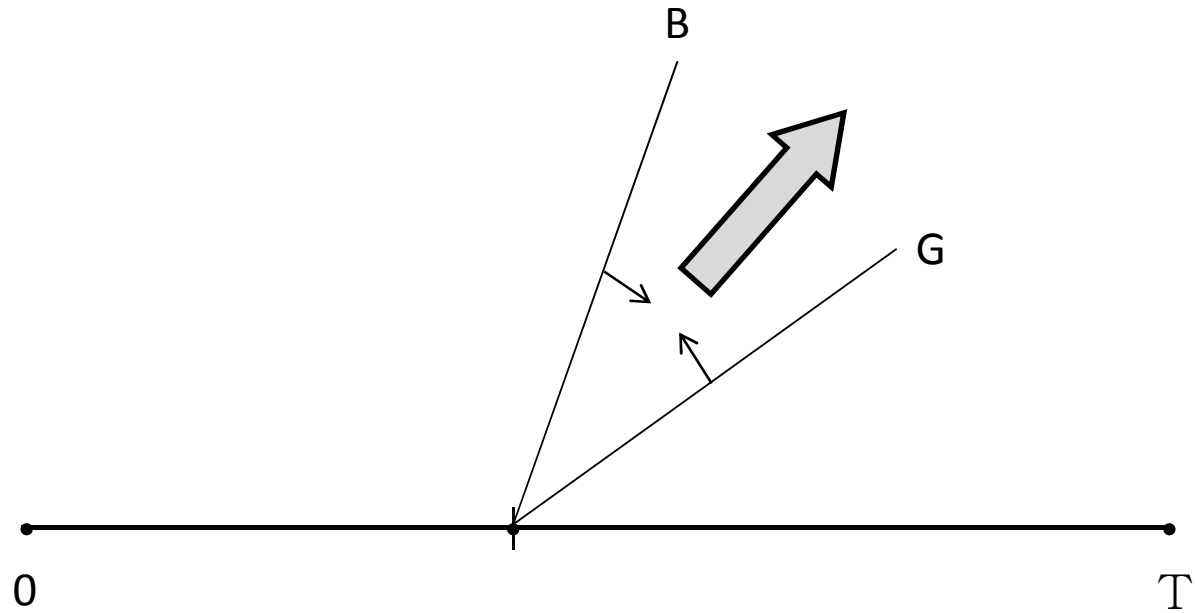
Compromise entry date



Compromise entry date with litigation costs



Settlement entry date with reverse payment



Some Numbers

- Dozens of these deals each year
 - MMA data
 - Grew very strongly from 09 to 10
- Last year BE estimated average incremental delay at 17 months, consumer harm \$3.5B/yr

Some Numbers

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- “Is that a lot of money to you people?”
 - Yes
 - More than 10 times FTC’s entire budget, most of which goes to consumer protection (e.g. debt collection) side