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Comments on:  
Buyer-Driven Vertical Restraints,  
Paul W. Dobson

Pros and Cons of Vertical Restraints  
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Disclaimer: Personal views

## Main Conclusions

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- Buyer-led vertical restraints (BLVR) may be harmful, we should pay more attention
- Efficiencies => Rule-of-reason approach
- Need to find workable rules and guidance
  - e.g. in the revision of the EC block exemption regulation

# Danish Experience with BLVR

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- Few cases in Denmark. Why?
  - Some concerns expressed in some markets, e.g., insurance companies' purchases of auto repairs
- Answer: No (single) dominance found (Art. 82).
- One Art. 81 case in 1998: A (dominant) buyer refused to let a supplier sell to competitors.

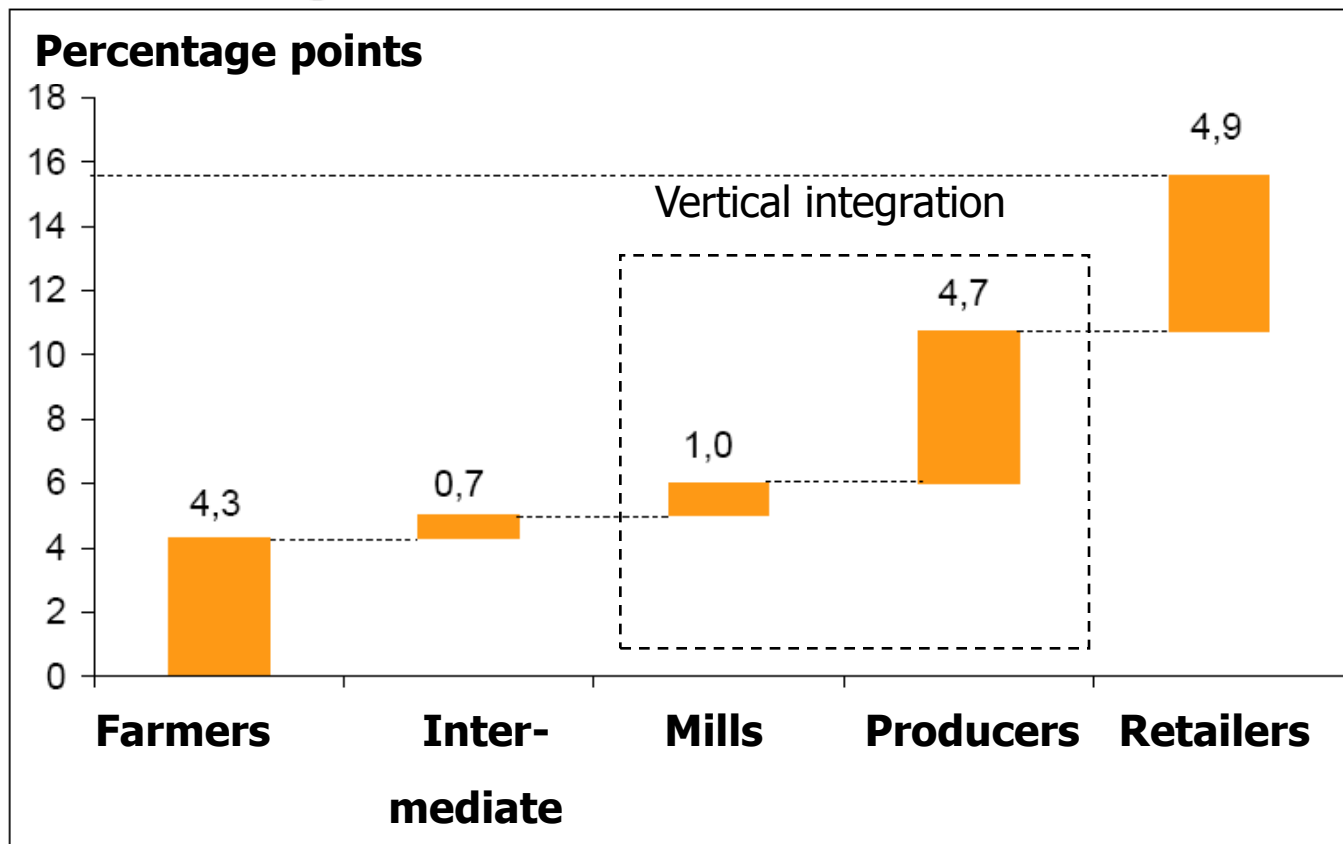
# Danish Retail Sector

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- Reasonable level of competition among Danish grocery retailers
  - High density of stores (e.g., 62 stores within 5 km)
- Are there harmful buyer-led vertical restraints?

## Increases in Prices for Flour and Bread through the supply chain

- Is there a clear problem of concentration?



## When is There a Harm?

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- Most commonly associated with some buyer power (not necessarily dominance)
  - - although not a prerequisite (mutual consent, custom and practice arrangement, facilitating a suppliers' cartel)
- When significant buyer power exists, suppliers cannot shift supply to other retailers – locked to the retailer

# At what market share is there a harm?

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- EC block exemption: 30 per cent; Toys"R"Us appr. 30 per cent of large toys companies' total output. Should we follow block exemp., or apply a lower threshold?
- Paper: may be as low as 8 per cent (UK Comp. Comm.)
- On the other hand: If suppliers are small relatively to retailers that do not have dominance, then why should they not be able to shift supply to a competitor?
  - Economies of scale.
  - Widespread practice -> the market is locked. But, then might not be a case against a single firm but many firms – difficult?
- In Denmark, large retailers' market share appr. 35 per cent. Entry by smaller milk producer difficult, but due to supplier power (Arla Foods)

## When to intervene?

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- Often the most pronounced effect of BLVR is on upstream competition without immediate impact on consumers (but possible over longer term)
  - -> makes building a case difficult
- But buyer power often goes together with seller power reinforcing each other
- If there is no substantial market power downstreams, is there then a point for observation?
  - What do we exactly mean by “power” (market share)
  - Is it a single-firm problem, or an effect of wide spread practice?

# Efficiencies

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- Restraints may entail efficiencies
  - Are there other means to obtain these efficiencies (Central to one argument against rule-of-reason for RPM); if affirmative => may be more harsh on these restraints.
  - In what circumstances do they increase consumer welfare?

# Conclusions

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- Insightful paper, raises important questions
- Questions:
  - What market share threshold? Enforcement priorities may lead to higher threshold than theory
  - Single-firm problem or widespread practice?
- Rule-of-reason approach seems appropriate