

The Antitrust Treatment of Vertical Restraints

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Bayesian Decision Theory

- Prior belief based on empirical literature
 - Bayesian updating based on evidence
 - Decision minimizing loss function

 - French laws regulating retailing sector
⇒ minimum RPM
 - Empirical studies on French data show prices have increased and become more uniform in retailing sector.
- Support for a negative presumption.

Empirical Literature on French Data

- Specificity of French regulation:
 - “General terms of sales” are observable;
 - Discrimination is prohibited;
 - Ban on below-cost pricing
 - Below-cost threshold = invoiced price; Only rebates obtained at actual delivery can be subtracted from initial invoice
 - Planning regulations
- Retailers bargaining power
- High concentration in many catchment areas

Effects of Regulation on Prices

- Biscourp, Boutin, Vergé (2008)
 - Large data set (CPI) – Many items, many stores
 - Correlation between market concentration and price level almost *disappeared* after introduction of regulation.
 - Prices have increased, especially in stores where they were initially lower.

Structural model of vertical relationships

- Bonnet, Dubois (2008)
 - Data on bottled water, 1998-2000
 - 7 retailers (70% market)
 - 8 brands (71% of purchases)
 - Test between 12 alternative models
 - Best fit: Two-part tariffs with RPM
 - Retailers variable margin = 0
 - Fixed transfers from M to R (“Backward margins”)
 - Two-part tariffs without RPM would have increased consumer surplus by 0.8%.

School calculators

(03-D-45, Sept. 25, 2003)

- Theory of harm: Manufacturers' cartel
- 2 Manufacturers (TI, Casio), many retailers
- Calculators for junior & senior high school students
- Teachers are prescribers
- RPM:
 - mails with resale prices
 - Price monitoring: Suppliers called deviating retailers to order
 - Evidence of significant application; Uniformity of prices across retailers.

School Calculators (cont'd)

- Information exchange between the two suppliers

Defendants did not provide evidence/arguments in favor of RPM (services, inventory,...)

Two facilitating practices: RPM, information exchange

Vertical price fixing agreements + horizontal manufacturers agreement

Observed effects: prices of calculators increased, while prices of other electronic devices (PDAs) decreased.

Toys

(07-D-50, Dec. 20, 2007)

- Network of vertical agreements
- “Regulation-induced” RPM:
 - All but one manufacturers set high wholesale prices
 - Retailers set retail price = below-cost threshold
 - No retail variable margins but fixed transfers from manufacturers to retailers
 - Below-cost threshold: credible commitment to high wholesale price, no upstream market power needed
 - One manufacturer did leave retail margins; Less success in sustaining high prices

Toys (cont'd)

- Underlying theory of harm: Strategic manipulation of regulation; Antitrust liability?
- Enforcement of agreement:
 - Retailers' active monitoring; Price-beating guarantees;
 - Retailers informed manufacturers about price deviations and demanded appropriate action;
- Manufacturers as common agents: no market power but commitment power thanks to regulation;
- Retailers have effective and credible threat: they can delist products for which undercutting occurred.

Leegin “Screening Factors”

- Share of industry’s output covered by RPM
- Source of the restraint
 - Greater suspicion if imposed by retailers

Monitoring activity is easier to observe; Maybe more relevant?

- Entities with market power

Bargaining power may be more relevant?