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

Pros and Cons of Vertical Restraints
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Disclaimer: Personal views
Main Conclusions

- 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

- 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

- 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?

- 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?

- 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)
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

- 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

- 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