



Discussion on *Current Ideas on RPM*

Pros & Cons of Vertical Restraints

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*All the views expressed are my own and
do not represent the view of the European Commission*

Short summary

First paper "*Resale price maintenance with secret contracts and retail service externalities*"

- Bilateral price constraints are neutral (no anticompetitive effects nor efficiency purposes like inducing retail sales efforts)
- Industry wide minimum RPM decreases consumer welfare (and do not help solving the issues of spillovers in retail service efforts)

Second paper "*Resale price maintenance in two-sided markets*"

- Platforms impose optimally (minimum or maximum) RPM with the result of eliminating competition among them.
- More generally, intuitions on RPM in one-sided markets do not carry over to two-sided markets.

Main learning

The finding of these papers support the current treatment of minimum RPM as a hardcore restriction and a more lenient approach towards maximum RPM.

"On a general level, we have shown that the opportunistic problem arising from contract unobservability in vertical relations may be significantly harder to solve than it has been recognized in the literature previously."

Evidence from cases

By studying NCAs cases we are analysing whether in practice RPM was/is used to create efficiencies (and not responding to the question whether in theory RPM could be used for that purpose).

- In the vertical cases investigated by NCAs in the period 2013-2018, out of the 79 cases that fell within the scope of the VBER (that were identified), 51 cases concerned (also) RPM.
- While there have been many RPM cases, to my knowledge, the parties rarely provide efficiencies justifications (under evaluation).

Empirical results

Overall empirical evidence on RPM is quite thin.

Empirical studies seem to suggest negative effects of RPM (under evaluation):

- Gilligan (1986); analysis of stock returns in many industries
- Ippolito & Overstreet (1996); consumption and stock returns on glassware
- Bonnet & Dubois (2007, 2008); micro-level data about the French market for bottled water during the 1998–2000
- Bailey & Leonard (2010) video game prices in Maryland
- Biscourp, Boutin & Verge (2013); micro-store level data with grocery markets data, analyzing the effects of the Loi Gallan effectively allowing to impose minimum prices on large retailer
- MacKay and Smith (2014); stimulated by the US Supreme Court judgement in the Leegin case in 2007, comparing RPM lenient versus RPM strict states in the US, found overall negative effects of RPM.

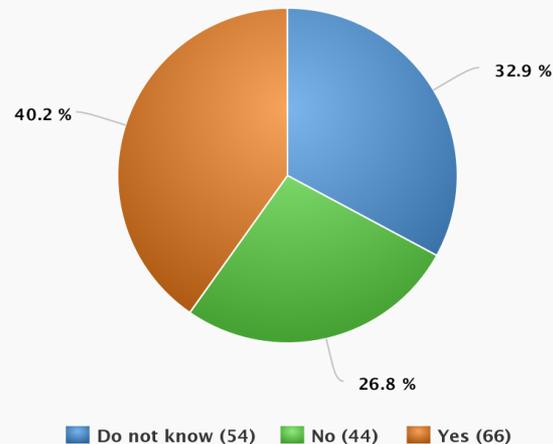
The current evaluation

1. Evaluation phase (from 10/2018 to Q2/2020):
 - Evaluation roadmap from 8/11/2018 to 6/12/2018
 - **Public consultation** from 4/2/2019 to 27/5/2019
 - **Evaluation support study** launched in August 2019
 - **Stakeholder workshop** to take place mid-Nov'2019
 - Ongoing **discussions with NCAs** (ECN Verticals WG)
 - Staff Working Document planned for end of Q2/2020
2. Impact assessment phase:
 - From Q3/2020 until the expiry of the VBER in 5/2022

The current evaluation

The current list of hardcore restrictions is **considered to include vertical restraints that can be assumed to be efficiency-enhancing** (e.g. online sales restrictions, RPM, territorial or customer restrictions, restrictions of active or passive sales, restrictions of cross-supplies in SDS)

Are there any types of vertical restrictions that the VBER considers as hardcore (Article 4 VBER), but for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty?



Highcharts.com



The current evaluation

For further information see:

SG's Better Regulation Portal

https://ec.europa.eu/competition/consultations/2018_vber/index_en.html

DG COMP's dedicated VBER webpage

https://ec.europa.eu/competition/consultations/2018_vber/index_en.html