# Retail Price Maintenance: A Competitive Assessment

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# Telling the RPM Story

- My goal is to present an overall picture of RPM
- To support key propositions, I scavenge freely and indiscriminately from 100 years of economic literature, case law, business perspectives, and (even) common sense.
- The advantages of this approach – it allows me to question the premises underlying various economic studies and to go where no economic study has yet gone.
- Much (but not all) of this presentation is based on consensus views.

# Why sellers impose RPM

- Brand sellers impose RPM to give retailers an incentive to carry and promote a branded product (it expands sales of the brand)
- There is no other credible and comprehensive explanation for RPM
- RPM is not needed and not desired by many brand sellers (e.g. a low cost producer or a producer with a brand with strong consumer loyalty).

# Less anticompetitive alternatives for increasing brand promotion

- Lower product’s Price
- Increase advertising (or make ads more effective)
- Offer contractual promotion incentives
- Send Manufacturer’s Reps to Stores
- Agree to buy-back unsold inventory
- Non Price Vertical Restraints (exclusive territories and location clauses) that lead to procompetitive vertical integration

# RPM's Primary Anticompetitive Effects

- The loss of Intrabrand retail price competition
- Higher consumer prices – the inevitable result if an efficient retailer is told it cannot pass along efficiencies in form of lower prices.
- RPM stifles efficient and innovative retailing (discount retailing is a potent marketing tool).
- There is a long history of innovative retailing that benefits consumers (dept store, supermarket, specialty store, warehouse store, on-line store).

# Importance of Retail Intrabrand Competition

- The famous *Sylvania* footnote gave intrabrand competition second class status.
- In fact, retail intrabrand competition is of ***great*** importance when producer interbrand competition is lessened by brand selling.
- In many cases, producer interbrand competition and retailer intrabrand competition are inversely proportional.
- Steiner research confirms that retailer intrabrand competition has its greatest disciplining effect on prices when strong brands are being sold.

# RPM as Suppressor of Interbrand Competition

- RPM can lessen pressure on manufacturer to lower its prices to wholesalers and retailers. When RPM is pervasive in category, interbrand competition among producers tends to lessen.
- RPM creates an incentive for retailers to raise the price of non-RPM products (Shaffer).
- RPM, when imposed on multibrand retailers by more than one brand seller, can limit both interbrand and intrabrand competition (Rey & Verge, 2008).

# Cartels?

- RPM can facilitate cartels at either manufacturer or downstream levels.
- The anticompetitive effects of a cartel can be duplicated when there is parallel widespread category use of RPM.
- Cartel theory does not reach most of the harmful effects of RPM

# RPM Increases Incentives and Opportunities for Exploitation of Consumer Information Gaps

- All brand promotion methods can lead to exploitation of consumer information gaps.
- RPM's heightened exploitation comes from moving promotion incentives to the retailer, where misconduct is far more difficult to monitor and control.
- Other methods of moving promotion incentives to retailers (e.g., promotion allowances) are less likely to create disproportionately high margins for a particular brand (and thus create fewer incentives for exploitation).
- The tendency for RPM to create disproportionate incentives for exploitation is one reason to reject the Bork thesis that increased output = increased consumer welfare.

# Policy Recommendations

- There should be a strong presumption that RPM is unlawful when it is employed in an open-ended distribution system.
- Vertical restraints that encourage efficient vertical integration should be widely tolerated.
- RPM used in connection with distribution-narrowing restraints that encourage efficient vertical integration should not be presumptively unlawful

# More Policy Recommendations

- Vertical Restraints Policy should recognize the importance of retail intrabrand competition in disciplining prices of branded goods.
- The free riding defense for RPM should be eliminated.
- The presumption that RPM is anticompetitive should not depend on widespread use of RPM in a category.
- The unilateral conduct (Colgate) defense for vertical restraints should be eliminated.