NON CONFIDENTIAL

Panel 3 – Pricing restrictions in the digital world

Pricing restraints: traditional industries versus the digital world?

Presentation for the 15th GCLC Annual conference

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VERTICAL PRICE RESTRAINTS IN BRICK AND MORTAR SECTORS

- Vertical price restraints are typically agreements whereby the retailer agrees to charge a price that is not higher / equal / lower than the price indicated by the manufacturer.

- The economic and antitrust literature has identified several **economic justifications** and **anticompetitive motives** behind vertical restraints.

- Under the EU competition rules,

(True) Non-binding resale price or maximum resale price is covered by the VBER.

Fixed or a minimum sale price is considered a hardcore restriction according to VBER.

Source : https://www.contrast-law.be/en/publications/in-the-picture/pricebreakers/

WHAT'S NEW?

- The digitalisation has impacted both demand and supply fundamentals of markets affecting the way competition works.
  - New business models,
  - Lower distribution costs,
  - Lower search costs,
  - Lower geographical barriers,
  - Lower information asymmetries.

- As a results,
  - Increased price transparency,
  - Increased inter/intra-brand price competition,
  - Increased price monitoring,
  - Increased free-riding (online and offline sales),
  - Increased need to protect the brand image,
  - …

EUROPEAN COMMISSION

Brussels, 10.5.2017
COM(2017) 229 final

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Final report on the E-commerce Sector Inquiry

{SWD(2017) 154 final}

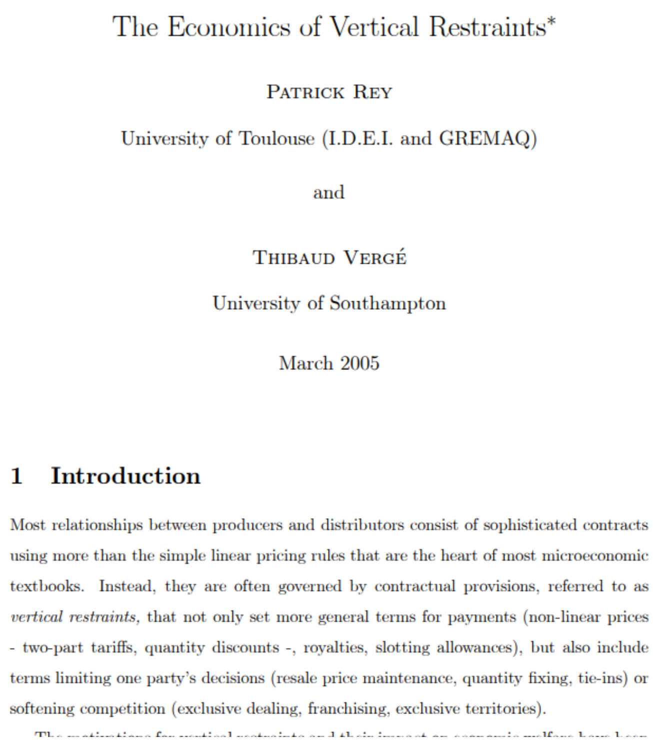
Source : https://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf

DOES DIGITALIZATION MATTER FOR ANALYSIS OF VERTICAL PRICE RESTRAINT?

- As a result of these market trends, there is an increased effort by manufacturers to keep some control over retail price :
  - RPM,
  - Dual pricing,
  - Price parity clauses.

- As a general rule, brick and mortar economics still works :
  - The **efficiency justifications** that have been discussed in the economic literature equally apply to on-line and to off-line businesses,
  - This is also true for the **anticompetitive motives** underlying the adoption of vertical restraints.

- … but balancing exercise more complex (?).


The Economics of Vertical Restraints*

PATRICK REY

University of Toulouse (I.D.E.I. and GREMAQ)

and

THIBAUD VERGÉ

University of Southampton

March 2005

1 Introduction

Most relationships between producers and distributors consist of sophisticated contracts using more than the simple linear pricing rules that are the heart of most microeconomic textbooks. Instead, they are often governed by contractual provisions, referred to as *vertical restraints*, that not only set more general terms for payments (non-linear prices - two-part tariffs, quantity discounts -, royalties, slotting allowances), but also include terms limiting one party's decisions (resale price maintenance, quantity fixing, tie-ins) or softening competition (exclusive dealing, franchising, exclusive territories).

WHAT'S NEW ABOUT RPM?

- Asus, Denons & Marantz, Philips and Pioneer sanctioned in 2018 for online RPM practices.

- What the Decision says :
  - monitoring softwares make RPM more effective,
  - monitoring softwares intensify effects ('umbrella').

- Are thus RPM more problematic in the digital world?
  - Pro-competitive RPM also more effective,
  - Enhanced pro-competitive justifications,
  - Increased inter-brand competition,
  - …

- It is important to consider whether a more lenient approach to RPM is warranted in the digital era.

Press release | 24 July 2018 | Brussels

Antitrust: Commission fines four consumer electronics manufacturers for fixing online resale prices

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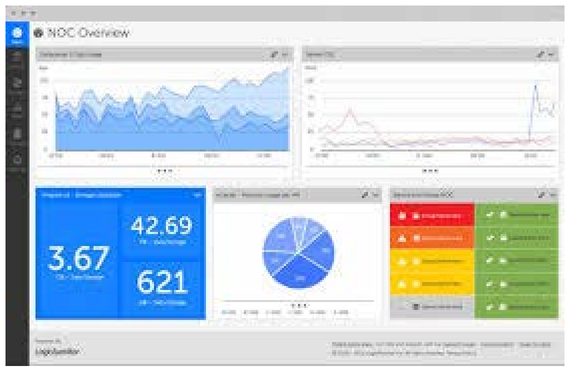
Press contact

The European Commission today fined, in four separate decisions, consumer electronics manufacturers Asus, Denon & Marantz, Philips and Pioneer for imposing fixed or minimum resale prices on their online retailers in breach of EU competition rules.

The fines totalling over €111 million were in all four cases reduced due to the companies' cooperation with the Commission.

Commissioner Margrethe Vestager, in charge of competition policy, said: *"The online commerce market is growing rapidly and is now worth over 500 billion euros in Europe every year. More than half of Europeans now shop online. As a result of the actions taken by these four companies, millions of European consumers faced higher prices for kitchen appliances, hair dryers, notebook computers, headphones and many other products. This is illegal under EU antitrust rules. Our decisions today show that EU competition rules serve to protect consumers where companies stand in the way of more price competition and better choice."*



WHY A RENEWED INTEREST FOR DUAL PRICING?

- Dual pricing : a retailer is granted different purchase prices, depending on whether he intends to sell the product online or offline.
- Dual pricing is considered as a hardcore restriction under VBER.
- However, dual pricing may have objective justifications in the digital world,
  - When the manufacturer faces different costs,
  - When value of the transaction is different in online and offline channels,
  - When physical outlets invest in retail service not provided by online retailers,
  - …
- It is important to consider whether a more lenient approach to dual pricing is warranted in the digital era.

"Pricing restrictions can help to stop physical shops from disappearing. Without them, people might go to a brick-and-mortar shop only to get a feel for a product, but then buy it more cheaply online." Margrethe Vestager (Sept. 15, 2016)

WHAT GUIDANCE FOR PRICE PARITY CLAUSES (AKA MFN CLAUSES)?

- MFNs : the supplier commits to charge on the platform a price that is not higher than the price charged on other platforms / retailers.
- MFN could have potential anti-competitive effects, but also (much like other VRs), so net effect often not clear.
- The legal and economic analysis of the implications and status of retail MFNs is still ongoing.
- Avantika will discuss further what we have learnt from past cases and where we are going with MFNs, both wide and narrow.

A FACTS BASED CONCLUSION

- Spell out the possible economic justifications and the theories of competitive harm,

- Identify observable factual elements to find out whether the **specific restraint** in the **specific market conditions (digital or brick and mortar)** in which it operates, is likely do more harm than good.