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THE ECONOMICS AND PUBLIC POLICY OF RESALE PRICE MAINTENANCE

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This paper reviews the current economic theories and the available empirical evidence concerning vertical price restraints. In light of this review, the antitrust ramifications of RPM are drawn and the appropriateness of the current legal treatment of the practice is assessed. The current policy of prohibiting RPM as per se illegal while allowing certain exceptions to the general rule appears to be unnecessarily costly when evaluated in terms of economic efficiency. Failure to make express allowances for the informational role of distribution systems is doubtlessly what leads to public policy error in this area. The uncritical extension of competitive reasoning from horizontal restraint of trade to vertical price control should be abandoned and the efficiency gains from RPM should be acknowledged by the law.

I. INTRODUCTION

Resale price maintenance (RPM) or fair trade is the practice by which manufacturers attempt to control the prices at which their products are resold by dealers and distributors. Popular as the practice has been among manufacturers of various consumer goods, our antitrust law proscribes it as an inherently unreasonable restraint of trade except for a very limited range of products. The purpose of this paper is to assess the appropriateness of the current legal treatment of RPM in terms of economic efficiency. What should become clear from the review of various economic theories and available empirical evidence is that the current antitrust doctrine concerning RPM is grounded on defective economic reasoning. Also the exceptions or exemptions to the general rule of per se illegality are at odds with the implications of the economic theories. The lack of any theory of why manufacturers might prefer to suppress price competition among distributors is responsible for mistaken public policy in this area. This suggests the appropriateness of adopting a policy which recognizes explicitly the efficiency attributes of RPM.

Section II examines the efficiency incentives for, and potential anticompetitive

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effects of, vertical price restrictions on distribution. The analysis further identifies circumstances under which RPM is likely to be efficiency-enhancing or anticompetitive. Section III discusses the current legal status of RPM and the rationale for the rule against RPM. Section IV offers a critique of the antitrust doctrine pertaining to RPM. It also discusses the hazards of neglecting the efficiency attributes of RPM particularly in the context of, and derives some standards capable of moving the RPM policy closer to the goal of maximizing economic efficiency. The last section presents some general remarks on the economics and public policy of vertical restraints.

II. THEORIES OF RESALE PRICE MAINTENANCE

One of the puzzling questions to economists for a long time has been the apparent concern of some manufacturers with the price at which their products are resold by distributors. Since a manufacturer who prescribes a minimum resale price is in effect setting limits on sales, manufacturers' willingness to impose and enforce RPM agreements seems not to be in their best interest. Ordinarily, a manufacturer appears to benefit most when its distribution system is so competitively organized as to deliver its product to consumers at the lowest price.[1] What then, can explain certain manufacturers' strong preference for suppressing price competition among dealers?

1. Anticompetitive Uses of RPM

The most clear-cut of the uses of RPM generally conceded to be anticompetitive involves the dealer cartel with the manufacturer as cat's paw of cartelizing dealers, Traditional retailers, wishing to protect themselves against discounters and to find a way to prevent destabilizing cheating from within their own group, are hypothesized to combine to coerce manufacturers into the establishment of an RPM program. The manufacturers are forced to adopt RPM by the threat of dealers' boycotts. Retailers who deviate from the maintained price can then be detected, either by the manufacturer or the colluding distributors, and subjected to some form of discipline from the manufacturer. Thus, a detection and punishment mechanism, which it is hoped will deter price cutters, is set in place that uses the manufacturer to police the RPM arrangement and stabilize the retailers' horizon-

[1]The essential element of the puzzle has been clearly and unequivocally stated by Taussig. "In all this price-fixing system, the price received by the manufacturer himself is in no way restricted or even directly affected. His own price to the trade remains no less and no more. It is only the resale price that is sought to be controlled. Now, the manufacturer's immediate interest, and indeed his only interest, would seem to be in his own receipts. So long as he settles the price which comes to him, why should he concern himself with the terms of further sale by jobber or retailer? Nay, his interests would seem to be that these middlemen, and especially the retailers, should sell as cheaply as possible, and advertise as much as possible their cheap seles," F.W. Taussig (1916), p. 171.

tal collusion.

Alternatively there might be a manufacturer cartel in which the producers facilitate their coordination by eliminating one destablizing element—pressure on the wholesale price structure by dealers facing price competition. This troublesome possibility that vertical price fixing can be used to support manufacturer cartels hinges on the proposition that RPM eliminates a source of destabilizing market share variation. A crucial operating concern of a manufacturers' cartel is to devise signals whereby adherence to the cartel policy can be inferred with confidence. In the absence of RPM, even if all manufacturers maintain the collusive prices, retailers are free to determine and vary their markups as local market conditions dictate. If some manufacturers also cheat and some portion of their price reductions are passed through to consumers by retailers, detecting such cheating could be complicated. Variable resale prices and the associated gains or losses of sales for the manufacturers could be the result of dealers independently varying their margins, cheating by some collusive manufacturers, or both. RPM can eliminate part of this problem by fixing resale prices. With RPM, if a manufacturer cheats, retailers will be unable to pass the discounts through to their customers without deviating from the maintenance prices. Because the dealers cannot pass the discounts to their customers without revealing the cheater to the other manufacturers, the gains to a manufacturer from discounting are limited by the RPM.[2] RPM is expected to increase the likelihood that cheating will be detected and traced to the source, thereby reducing the incentive to cheat in the first place.

Under the dealer cartel theory, the manufacturer is coerced into instituting a resale-pricing scheme that yields retailers a higher margin than otherwise would be the case. The fact that retailers must coerce the manufacturer into imposing RPM suggests that the retailers must have the necessary market power to impose their will upon the manufacturer. Moreover it is not enough for the cartelizing dealers to coerce only a single manufacturer in their scheme. They must also enlist all (or at least most) of his competitors. Otherwise the only effect of the cartel may be to induce consumers to substitute other non-RPM manufacturers' brands of the product in question. Even when dealers possess considerable power over manufacturers, there is the question of how retailers could be expected to retain any monopoly rents generated by price fixing, given the apparent ease of entry. The manufacturer support for fair trade without overt dealer pressure, combined with the ease of entry into retailing and concomitant inability of dealers to secure monopoly rents raises serious doubt as to the prevalence of this variety of RPM.

For the manufacturer cartel argument to be plausible, it is essential that the

[2]Even with RPM prices enforced, however, manufacturers' incentives to cheat are not totally eliminated. Since manufacturers' discounts will allow larger resale margins even at the maintained resale prices, retailers would still have incentive to substitute in favor of the discounter. The presence of exclusive dealing could therefore be an additional feature of a cartel's attempt to remove incentives to cheat. See Telser (1960) for a discussion of the numerous complications involved in cartel maintenance.

RPM policy be adopted pervasively by competing suppliers responsible for a large share of the industry output in structurally noncompetitive markets. Were this not the case, of course, coordination via RPM would not be feasible. The available evidence, however, reveals the general lack of pervasiveness of RPM in most lines of trade. Rather RPM has often been utilized by many small firms and by new entrants to apparently competitive industries, where the concerns with effective supplier collusion seem unwarranted.[3]

2. Efficient Uses of RPM

In many markets, buyers cannot costlessly learn of the quality and characteristics of prospective purchases. When consumers choose among competing brands on the basis of signals and incomplete information, they may rely on their distributors for auxiliary information. Since distributors are in direct contact with consumers, they are presumably in a better position than manufacturers to inform consumers of the product. In such markets, many important variables that may influence consumers' perception of product quality and therefore the demand for the product are within the retailer's control. To a considerable extent, the manufacturer's expected profit will depend on decisions taken by distributors as to the provision of product information and services, and their cooperation in this regard will be indispensible for establishing the manufacturer's brand name and thus upgrading quality reputation among potential consumers.

Unfortunately, however, the level of informational services the profit-maximizing retailer chooses to offer often diverges from that the manufacturer would wish to obtain. This lack of coordination arises when retailers' activities create rents that are not fully appropriated by those incurring costs due to various forms of free-riding in a competitive retail market. So long as the product is branded or otherwise easily identified by consumers, opportunistic dealers may attempt to free ride on the information provided elsewhere by cutting price so low as to attract consumers. The rational retailer would underprovide services that are essential to the efficient distribution of the product and consequently, the provision of information in the distribution channel will be jeopardized. This implies that the transmission of information to prospective consumers cannot occur efficiently unless property rights to such information are created, enabling those who bear the costs of information provision to benefit from their customer-generating investments. The manufacturer can respond to this potential market failure by adopting RPM. It serves to implement efficient forms of distribution by protecting the information flow from erosion through free-riding.

The classical cases of the free-rider problem is the provision of presale services to prospective consumers a la Telser (1960). The presale demonstration of a pro-

[3]Among 50 RPM cases during the period from 1961 to 1988, 10 were in apparel & shoes, 9 in food products, 8 in office machinery, 6 in household appliances, 5 in cosmetics, and 5 in furniture.

duct or the tailoring of information to a customer's needs would be an example of special dealer services that will shift out the demand schedule. A retailer who elects to offer such special services will ask for a higher price than does a no-service outlet if it is to recover its higher costs. Customers, however, may have an incentive to avoid paying higher prices by patronizing the nearest no-frills, low-price outlets once they obtain information from the service-providing retailers. As a result, retailers cannot profitably provide services which the manufacturer believes to be necessary to promote its product effectively. As suggested by Telser, one method of averting this free-rider problem is for the manufacturer to impose vertical price restraints on its distributors. By foreclosing discount stores, RPM serves to prevent informational free-riding and support retail margins to enhance retailers' incentive to provide the requisite special services.

The example of tangible presale services, however, may understate the generality of this problem. As Marvel and McCafferty (1984) pointed out, if consumers perceive some retailers as having superior abilities to evaluate the quality or stylishness of products, these reputable distributors are able to signal product quality to consumers simply by carrying only those selected items whose quality levels seem to be consonant with their overall reputation. Availability in outlets that have invested in and cultivated reputations for trading in high-quality merchandise is viewed by consumers as a guarantee that the product is indeed of high quality, because consumers do not believe that the store would let its reputation be harmed by offering the public shaddy merchandise. But if the product is branded, and if branding ensures consistent quality of the product across dealers, this signaling activity of high quality retailers is also amenable to erosion through free-riding. Without margin protection via RPM, manufacturers are not likely to obtain quality certification of their products from reputable dealers who can contribute to upgrading consumers' perceived quality of the product.

When the quality of a product is jointly produced by the manufacturer and individual retailers, final demand will be influenced by the quality reputation of both the manufacturer and retailers. However, if consumers cannot identify the exact source of lower quality than anticipated, there may exist incentive disparity between the manufacturer and its dealers. That is, due to the possibility of free-riding on the manufacturer's reputation, retailers' incentive to produce high quality would be less than optimal from the manufacturer's viewpoint. By supporting high retail margin through RPM, the manufacturer may be able to increase retailers' incentive for high quality retail services.

Manufacturers of a wide variety of products have traditionally argued that they need RPM to avoid having their products carried as "loss leaders." On the face of it, the prospect of having one's product prominently featured by a number of retailers and offered for sale at margins below some definition of cost does not seem threatening. The manufacturer's interest would seem to lie with vigorous competition among retailers serving to force down retail prices of its goods. But loss-leader status would force the return on the featured product below the opportunity cost of the shelf space of retailers not adopting the loss-leader tactics. This would lead a number of retailers to drop the product, and the loss-leader product would eventually lose its status as a well-known brand. Loss leading may arise when the value of a well-known product line to a new entrant store is greater than to an established retail firm. A new entrant may feature an branded product in order to permit comparison of prices with those of established rivals. As long as the existing dealer can serve the needs of its clientele with substitute brands, it will drop the promoted product rather than cut margins.

The concept of a free-rider problem as a justification for the imposition of vertical price restrictions is not limited to the case of transmitting product information to consumers. In addition to disseminating product information to consumers, distributors can provide manufacturers with market information and RPM can be used to compensate distributors for market testing services. The role of distributors in obtaining information about consumer tastes and local demand conditions will be particularly important when the manufacturer attempts to introduce a line of differentiated products with uncertain prospects.[4] To find out the relative market acceptability of each of the variants, the manufacturer must first make sure that the product line is displayed in its entirety by ensuring an ex ante competitive return on the whole line. Since full-line retailers incur costs on failed products, the requirement of an ex ante competitive return implies that losses from unsuccessful variants must be recouped through ex post supracompetitive returns on popular items. However, this compensation scheme will be defeated by opportunistic retailers who carry only successful products once such information is revealed. Accordingly, the provision of market information will be jeopardized as pioneering distributors who have provided exposure for the entire line cannot capture any rents on successes. Vertical restraints such as RPM of full-line forcing can be adopted by manufacturers to compensate full-line distributors for their market research either by simply precluding the delaying tactics of retailers or by preventing price competition.

It is instructive to note the characteristics common to the aforementioned dealer activities which manufacturers wish to obtain by protecting margins on their products. An outstanding feature of these dealer activities is that some products cannot be marketed effectively without dealer services and the information provided by dealers cannot be provided efficiently by manufacturers through alternative methods of transferring product information, such as advertising. Retailers in direct contact with consumers are plainly superior to manufacturers in providing point-of-sale information that must be tailored to the particular needs of customers. Certifications could be obtained through alternate means such as advertising, but

[4]For example, manufacturers of such products as books, toys, and records usually make available a number of various of their products simultaneously on the market.

for some products such means are inferior in the eyes of consumers to dealer certification, since the quality signals provided by stores offering the products represent an independent quality judgement. If customers for a product can be generated by a manufacturer through advertising and other promotional and brand-enhancement efforts most efficiently carried out at the manufacturer, rather than dealer level, margin protection via RPM would be unnecessary. The manufacturer in this position would prefer vigorous competition among retailers to minimize consumers' total costs.

Another important aspect of these dealer activities is that it is inefficient or impractical to charge separately for such services. Imagine the complications when retailers would charge customers a fee for demonstrating the product to them. This implies that costly dealer services such as display in the elaborate showroom, point-of-sale demonstrations, and the provision of technical advice by knowledgeable salespersons can be consumed for free in one store while the product can be purchased at a lower price in another store. Some retailers have good reason not to provide these services and offer to sell the product at lower prices. Without some form of price restaint the opportunity to free ride must cause the underprovision of the services the manufacturer thinks necessary to sell his product. RPM is an effective way for a manufacturer to remunerate its dealers for these special services and ensure that they will be forthcoming.[5]

For what types of products would this free-rider hypothesis seem to be most plausible? The most important element of the special service argument is that the product in question needs to be offered for sale jointly with services that are most efficiently provided by the retailers. One such circumstances is in the case of new products with which consumers are unfamiliar or complex products which need point-of-sale services. Manufacturers of electrical appliances often impose RPM on the distributors to induce them to offer special services. Old products bought infrequently by relatively few people may also be logical candidates for RPM agreements. Such products are in a sense new to the mass of consumers and may never gain wide acceptance. Sporting goods are a case in point. Another circumstance is where products require proper handling by retailer to ensure safety or preserve the product's quality attributes. The central feature of the quality certification variation of the free-rider hypothesis is that product quality cannot be evaluated easily—hence the need to rely upon signals. This implies that products whose quality can be readily evaluated prior to purchases, frequently purchased items for which experience can be relied upon as a guide to expected quality, or highly differentiated products which have been on the market for a substantial amount of time—implying in all cases a diminished need for a signal of quality—

[5]Direct payments by the manufacturer to retailers who provide special services is equivalent to selling the services separately to the consumers. The manufacturer could charge retailers different prices according as they do or do not provide the special services. That also suffers from the same objections one makes to direct payment to retailers.

are unlikely candidates for application of this hypothesis. Dealer certification will be relatively more efficacious for goods for which the reputation effects of advertising are small. In cases where a style or quality element enters importantly into the consumer's buying decisions, manufacturer's advertising alone is not sufficient to induce purchases. Instead the manufacturer must rely on retailer inputs of services to resolve the consumer's decision problem in favor of its brand, either because purchases are infrequent or a typical consumer cannot easily ascertain the quality or stylishness of the product. Fine china and apparel items seem to be plausible candidates.

III. THE CURRENT ANTITRUST APPROACH TO RPM

RPM has the distinction of having been singled out from other restrictive business practices for special treatment under the Monopoly Regulation and Fair Trade Act of 1980. Article 20 of that statute expressly forbids RPM, but allows certain exceptions to the general rule. RPM can lawfully be applied for copyrighted articles (such as books, and motion pictures) and for products which are specifically entitled for the practice by the Minister of the Economic Planning Board. Three prerequisites are stipulated to narrow the availability of the second exemption. The first is that the good in question should be easily recognized as having identical quality. The second requirement is that the good should be an item that is regularly used by an average consumer. The primary function of the first condition is reasonably to confine the availability of RPM to goods bearing a trademark or a brand name. The second is intended to limit the use of RPM to well-known branded goods which readily lend themselves to loss-leader and cut-rate merchandising, and taken together these two requirements seem to reflect a judgment that RPM can be a useful device for safeguarding brand reputation and business goodwill from impairment through "loss-leader" selling. Finally, the good must be in free competition with commodities of the same general class. The reason given to this prerequisite is that in the face of intensive interbrand price competition, the RPM manufacturer would be unable to obtain unjustified profits and pass on to consumers extravagent advertising expenditures by maintaining unreasonably high prices.

Two product groups—drugs and cosmetics—were presumed to have these characteristics, and for years RPM had been allowed for a number of brands in these products lines. A quick look at the list of drug and cosmetic products once covered by RPM agreements reveals that they are low-priced, well-known brands that are quite familiar to consumers. It is suggested that books, cosmetics and drugs should be treated differently from other products because the positive effects of RPM more than offset any harmful consequences. In particular, support for broad inventories is advanced as a reason for protecting the margins of booksellers. RPM of drugs was justified as a means of economizing consumers' search costs.

The rule against resale price fixing rests on the popular though unsubstantiated view that the practice is identical in effect to horizontal price fixing, and as such, as objectionable as horizontal collusion. RPM is held anticompetitive on the ground that it eliminates interbrand price competition and encourages nonprice competition among dealers, thereby exerting an upward pressure on prices. The practice is also condemned as an unreasonable restraint on the right of distributors freely to determine prices in accordance with their own judgment. It is also argued that RPM may extend the life of existing distribution channels, even when those channels are less efficient than newer rivals.

IV. PUBLIC POLICY ASSESSMENT

The principal problem with the current antitrust policy of RPM is that it relies little on economic analysis. The practice is simply viewed as an anticompetitive behavior without any theory as to why manufacturers should want fair trade.The lack of a deeper appreciation of the economic benefits of the purportedly anticompetitive practice has been manifested in the argument that dealer services, if indispensible for making sales, will be provided regardless of whether or not the product in question is protected by RPM agreements.[6]

No reason has ever been suggested why RPM is destructive of competition other than the bare assertion that vertical price fixing is bad because it unfairly oppresses dealers and deprives the general public of the benefits of free competition in the resale of merchandise. This rationale for the rule against RPM makes sense only if competition is equated with the compete freedom of trade on the part of dealers who own what they sell. But that is a definition of competition not keyed to economic efficiency and consumer welfare. Indeed, the definition's only criterion—the retailer's freedom to sell as he might wish—would make every transaction that eliminates some competition illegal regardless of its efficiency consequences. The manufacturer's control of resale prices of his distributors is merely one instance of the coordination of economic activities which is uniquitous in the economic world, and there is nothing sinister or unusual about "restraint" in that sense. The important point is that such vertical control never creates "restraint" in that other common meaning, restriction of output. RPM differs importantly from horizontal price fixing agreements in this respect.

The current legal treatment of RPM is unnecessarily costly when availuated in terms of economic efficiency. While it is true that industrywide RPM might facilitate cartelizing (not even mentioned by the antitrust agency), it is hardly an adequate basis for the general prohibition of RPM. Cases in which dealers collude to eliminate competition among themselves and bring in the manufacturer

[6]See *White Paper on Fair Trade*, Economic Planning Board, p. 469.

to enfore their cartel, or in which manufacturers facilitate their collusion by RPM, can be dealt with under the conventional rules applicable to horizontal price fixing conspiracies. Even under the strict standard of per se illegality, if the exemptions to the general rule were inconformity with the implications of the economic theories, the current policy might yield the efficiency benefits of a rule-of-reason while also preserving the benefits of reduced resources requirements to forestall anticompetitive uses of RPM. But the standards for permitting RPM bear little resemblance to what economic analyses suggest. One of the prerequisites for the legal use of RPM is that the good in question should be an item that is regularly purchased by an average consumer. Hence the RPM privilege had once been made available for a number of low-priced and well-known brands of cosmetics and drugs. This requirement is completely inadequate. RPM is most likely to enhance distrubitonal efficiency when it is imposed on new products, and those that are not regularly purchased. RPM may be an effective way to ensure adequate distribution or to obtain dealer services for products that have not established a strong consumer acceptance. However, once a product has obtained a wide consumer acceptance of its own, it may no logner be in the manufacturer's or the consumer's best interest to continue protecting retailers' margin with RPM to induce them to "sell" the product.

The preceding analysis of theory and evidence suggests that RPM should be allowed when adopted willingly and unilaterally by a manufacturer. If a manufacturer wishes to impose RPM, his motive cannot be the restriction of output and, therefore, can only be the creation of distributive efficiency. That motive should be respected by the law. Specifically the antitrust agency should presume that firms with small market share are motivated to impose RPM by efficiency considerations. Further, if the manufacturer's horizontal product market is not concentrated, then regardless of the market share or rank of the firm using RPM, it is unliely that the effects will be adverse. Without evidence that there is little diversity in manufacturers' distributional strategies, from which some inference of supplier collusion seems reasonable, the firm's use of RPM should be viewed as being motivated by efficiency considerations. The use of RPM by new firms (entrants), and by firms introducing new products or attempting to expand new market areas should also be presumed to be motivated by an attempt to expand sales and enhance competition. The case for new products and entrants should be taken seriously especially for a relatively small, developing economy where the small market size contributes to high concentration at the manufacturing level. This inference is no doubt easier to support the more complex is the new product, or the more firmly established are the existing competitors' distributional systems, implying in both instances that entrants may want to use RPM to "purchase" either shelf space, retailer selling efforts or quality certification.

If the free-rider explanation seems compelling, and there is no evidence of dealer collusion, or other important market failures, intervention proscribing RPM may produce unintended harmful effects. The abolition of RPM would inevitably lead to erosion of the competitive position of speciality dealers. This, together with a diminution in the amount of sales and service effort by all retailers, would make the introduction of complex consumer goods more difficult than under fair trade. Since a new entrant or an old manufacturer offering a new product can no longer use powerful market penetrating tools to achieve a position in the market, the cost of introducing new products will rise and less diverses offerings will be provided than when fair trade were permitted. Also the competitive viability of manufacturers of specialty goods could be adversely affected since the services which enhanced the demand for the product will no longer be obtained by RPM. Once RPM is outlawed, the manufacturer may seek an alternative way to produce dealer services which is less offensive legally—servicing the same purpose in a less restrictive way—but which may also be less efficient, requiring more resources. The alternatives include not only nonprice vertical restraints but also advertising, private branding, and vertical integration.[7] Such consequences are undesirable, and their possibility should be given consideration in the decision making process of where to allow RPM.

For these reasons, while it may be true that some consumers can benefit from retailer price competition in the short-run, outlawing RPM across the board tends to raise the costs of introducing new products and selling sophisticated goods and its net impact in the long-run will be detrimental to consumers and to the economy.[8] Indeed, as the product composition of our economy moves from relatively simple, low-priced consumer goods toward complex consumer durables and highly differentiated products which are relatively new to most consumers, the efficiency costs of prohibiting vertical price restraints will become increasingly prominent.

V. CONCLUSIONS

Contrary to the simple, price-mediated exchange of the spot market usually portrayed in the conventional economy theory, there often exist complicated contractual limitations placed on distributors' pricing, output, and location decision. However, economists traditionally have paid little attention to this area, regarding distributors as little more than simple warehousing-collection facilities for manufacturers. When the role of distributors is viewed as narrowly confined to the basic warehousing function, a number of sophisticated contractual relations between manufacturers and distributors cannot be properly understood.

The present antitrust policy of RPM is based on the premise that distribution

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[7]A formal analysis of private branding as a substitute for RPM can be found in Shin (1989).

[8]It is in the interest not only of the manufacturers, but of those dealers who employ resources that are specialized to the provision of services, the overcome the free-rider problem by RPM. It is only no-frills, large discounting outlets that benefit from the ban on vertical price restraint.

systems serve to facilitate the physical flow of goods from manufacturers to consumers. Recent literature on vertical restraints, however, strongly suggests that economists and antitrust practitioners would be well-advised to abandon the current treatment of distribution systems as simple conduits of goods between producers and consumers and to instead consider more carefully the role that distribution systems play in collecting, processing, and disseminating information. Beyond the basic function of making goods available to consumers in convenient surroundings, distribution systems perform the function of collecting and transferring information in both directions between manufacturers and consumers in the exchange process. This information transmission cannot occur efficiently unless property rights to the information are created, permitting those who incur the expense of transferring that information to profit from their efforts. RPM, by providing for that property rights creation, serves to make distribution both more complex and more efficient than it would otherwise be. It is improper for the law to forbid the creation of distributive efficiency by outlawing vertical price fixing.

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