Vertical restraints in e-commerce/digital markets: Information Restraints

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The results of the sector inquiry show that the increased price transparency online is the feature that most affects the behaviour of customers and retailers. It lowers search costs for customers who are able to instantaneously obtain and compare product and price information online and switch swiftly from one channel to another (online/offline). Manufacturers and retailers are also able to easily monitor prices.

Proportion of retailers with contractual restrictions, per type of restriction

- Pricing limitations/recommendations: 42%
- Limitation to sell on marketplaces: 18%
- Limitation to sell cross-border: 11%
- Limitations to sell on own website: 11%
- Limitation to use price comparison tools: 9%
- Limitations to advertise online: 8%
- Other limitations: 4%
Vertical Restraints and Information

- Direct Action to consumers (even without a direct retail channel)
  - RRPs
  - Manufacturer advertising
- Contractual restraints on retailers
  - Advertised price restrictions
  - Limits to supply information to price comparison tools
  - Limits on presence in marketplaces
Information affects consumer search

• RRP\textsuperscript{s} could increase or decrease consumers desire to search
  – Lubensky (2017)
  – De Los Santos, Kim and Lubensky (2016) find “average prices increased by 2.1 percent as a result of the MSRP ban and decreased by 3.8 percent when the ban was lifted.”

• Advertising restraints, restrictions to provide information to price aggregators, marketplace restrictions can increase search costs
  – Harder to easily observe/come across actual prices charged
An example: Minimum Advertised Price Restriction

Minimum Advertised Price ("MAP") Policy
Enerpac is a recognized global leader in industrial high-pressure tools and equipment. It maintains a significant investment in a consistent brand image emphasizing quality, safety and productivity. In keeping with that image, Enerpac believes that Enerpac branded products ("Enerpac Products") should be advertised at prices that reflect and protect the value of its brand.

For this reason, Enerpac has unilaterally established this Minimum Advertised Price ("MAP") Policy for all Enerpac Products.

Enerpac will provide distributors and retailers with suggested resale (list) prices for Enerpac Products which are applicable in the United States and Canada ("Price Lists"). Distributors and retailers may not advertise Enerpac Products at prices that are more than 15% below the current Enerpac resale (list).

This MAP Policy applies to all forms of and mediums for advertising, including without limitation, print, television, radio, internet, flyers, posters, catalogs, mailers, and magazines.

This MAP Policy applies only to advertised prices. Distributors and retailers are free to sell Enerpac Products at whatever prices they choose. Enerpac does not seek, nor will it discuss or accept, any agreement or assurance from any distributor or retailer concerning the prices at which the distributor or retailer decides to sell Enerpac Products.

Pricing listed on an internet site is considered an “advertised price” and must adhere to this MAP Policy. Once the pricing is associated with an actual purchase (an internet order), the price becomes the selling price and is not bound by this MAP Policy.

Examples of advertisements that comply with this MAP Program:
* “price too low to print” * “lowest prices in town on Enerpac – call for quote” * “we will match any price” * “call for price”

Examples of advertisements that do not comply with this MAP Policy:
* “Bundling” or the inclusion of free or discounted products (whether made by Enerpac or another manufacturer) with an Enerpac Product if it has the effect of discounting the advertised price of the Enerpac product below the MAP Pricing.

* Offering a cash rebate on the purchase of an Enerpac Product, if the net price falls outside the MAP Pricing for such Enerpac Product.
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Examples of advertisements that do not comply with this MAP Policy:
* “Bundling” Enerpac Product if it has a lower price elsewhere
* Offering a lower price on the internet than the advertised list price

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Regulatory Approach

CMA open letter to suppliers and retailers (June 2016)

“The CMA found that suppliers had illegally engaged in online resale price maintenance (RPM) with some of their retailers, specifying the minimum prices that the retailers could advertise for sales of the suppliers’ products over the internet…

Policies that set a minimum advertised price for online sales can equate to RPM and are usually illegal”

See Hughes (2017) “Bright line or barbed wire? The classification of supplier influence over resale prices under EU competition law” European Competition Law Review 38 (6), 272-287 who notes older EU Commission and more recent CMA decisions that seemingly equate restrictions relating to advertised prices (including MAP) with RPM
Some Theory


- Compare MAP and RPM
  - If RPM is like price fixing, MAP is like market division

- MAP particularly helpful in settings where dealing with heterogeneity requires giving flexibility to retailers.

- Three settings show that MAP can:
  1. Enable industry level consumer price discrimination
  2. Encourage service provision from heterogeneous retailers
  3. Facilitate upstream collusion in the presence of private local retailer information

- This can be pro- or anti- competitive relative to no restrictions or RPM
Information restraints allow flexibility in the presence of heterogeneous consumers: Example

If consumers are fully informed about prices available then law of one price prevails

– RPM affects the level but not the emergence of one retail price

With no knowledge of prices on the market, and costs to visiting firms it is possible for retailers to engage in price discrimination

– If a manufacturer can charge a two-part tariff then it gains through such behaviour

– Welfare consequences are ambiguous as this may lead to more consumers served while other consumers face higher prices
Summarizing

- Prevalence of “new” (less well studied) restrictions in ecommerce
- Information restraints can accommodate heterogeneity and lead to greater dispersion in prices
  - With ambiguous welfare consequences
  - In a way that RPM (which encourages a single price) can not
- Regulatory practice that treats RPM and MAP as identical may be inappropriate