



Plenary Session #2:
Presentation of the UCWG vertical restraints project

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Online distribution restraints – Competition concerns



Foreclosure

- *foreclosing competition from online retailers*
- *foreclosure of suppliers' access to customers*
- *foreclosure of competing platforms/direct supply*



Softening competition

- *between retailers (intra-brand competition)*
- *between suppliers (inter-brand competition)*
- *between platforms*



Facilitating collusion

- *between retailers*
- *between suppliers*
- *between platforms*

ICN 2015 Report - Conclusions

Analytical framework used to assess offline vertical restraints seems applicable to online vertical restraints

- Balance efficiency/market failure issues v competition concerns

Legal frameworks applicable to online vertical restraints in most ICN jurisdictions involve a competition test

- But greater disparity for RPM

Level of concern for all four Vertical Restraints in the member survey

Less concern about international Geographic Price Discrimination

Online RPM most common subject of investigations

Across Platform Parity Agreements (APPAs) are a new form of vertical restraint in the online world

- Several significant cases

Generally members consider existing legal and analytical frameworks and investigative techniques sufficient

Greatest need for ICN assistance identified in relation to online RPM (which could bring in iMAPS etc) and APPAs

Online distribution restraints – Agency’s concerns

	Is one of our top priorities	Is of concern	Is not yet prevalent enough to be of concern but is increasing in prevalence	Is not a concern	Is not a competition issue	Total
Online sales bans & limitations	2	23	12	9	1	47
Geographic price discrimination	2	13	11	18	2	46
Resale Price Maintenance	2	23	16	5	1	47
RPM facilitating conduct	2	19	17	8	1	47
Across platform parity & most favoured customer obligations	2	20	18	5	2	47

Vertical restraints project

Purpose and Objectives

- Promote greater understanding about assessment of vertical restraints
- Consider the treatment of vertical restraints by ICN members in order to:
 - promote increased understanding of differences in standards that exist; and
 - where possible, explore the possibility of greater convergence.
- Do this by developing a series of ‘hypothetical’ papers examining the effect on competition and any associated efficiencies of certain conduct
 - Expose common shared as well as divergent approaches used by agencies in the assessment of the vertical restraints.

Vertical restraints project

The hypotheticals

- An Online Travel Agent scenario considering the impact of cross platform parity agreements
- An offline vertical restraint in the grocery retail market
- An online selective distribution case
- Further information – UCWG-ACCC@acc.gov.au

Vertical restraints project – Progress update

Timing	Task	Progress
June/July 2017	Identification of focus topics for hypotheticals and preparation of outlines for each	Completed
August 2017	Draft project plan and agree between co-chairs	Completed
August/Nov 2017	Prepare detailed hypotheticals for use in UCWG workshop sessions based on agreed outlines	Completed
Nov 2017	Consideration at UCWG workshop of hypothetical scenario and common/divergent approaches used in the assessment of the vertical restraints scenarios in various jurisdictions	Workshop in progress
Dec 2017/Feb 2018	Compare and contrast the assessment of the vertical restraint scenarios in different jurisdictions and document this in the materials	Ongoing
March 2018	Present finalised hypotheticals at 2018 Annual Meeting	Ongoing pending the outcomes from the November 2017 workshop
April 2018	Share finalised material with members (on ICN website) for their future use	TBC