

In general, creativity and flexibility in the production and retailing processes should count for more in future. This may call for more vertical coordination and joint ventures among manufacturers and dealers. Policy makers need to know which of these vertical arrangements are efficiency and competition enhancing. One thing is clear. A presumption that all the new vertical restraints will be *per se* competition lessening is not a practical hypothesis. Forward-looking trade and competition policies will have to facilitate those vertical restraints that foster these creative and flexible features in the economy.

This Paper is organized as follows. In section 2, the issue of vertical restraints is developed and some of the related concepts elaborated upon. In section 3, theoretical reasons for why manufacturers and dealers agree to vertical restraints are discussed. An economic and legal analysis of five major vertical restraints in several major markets is presented in section 4. Section 5 contains the summary of the law on vertical restraints and exemptions accorded to vertical practices in Canada, the U.S. and Japan. A discussion of the policy implications is found in section 6.

## **2. Manufacturer-Dealer Transactions**

### **2.1 Concepts and Definitions**

The following are the definitions of some frequently encountered vertical contractual practices.

#### ***Resale Price Maintenance***

Resale price maintenance (RPM) refers to a vertical price agreement in which a manufacturer-supplier attempts to remove all or part of the re-seller's independent pricing discretion. Retailers charging a lower price than the manufacturer posted price floor may have to reckon with the loss of distribution privileges. RPM may also take the form of a maximum or a fixed price. In general, the term RPM is used only for those transactions in which one perceives that the agreement is being used to remove the pricing decision from competitive market forces.<sup>6</sup> On an intuitive basis, some analysts have viewed specifying the minimum price with grave concern.

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<sup>6</sup> For a discussion of case law on this point, see Alan H. Silberman, "Antitrust and the Distribution Process", Sonnenschein Nath & Rosenthal, Chicago, Illinois, mimeo., June 1994: 35-40.