product promotion or service or inventory holdings and so on from its agent (i.e., the retailer).

The manufacturer may fix the final price the retailer is to charge the consumers. He may delineate the area of distribution for each retailer, or impose tie-in purchases of other goods. Depending on which price and non-price policies toward its retailers the manufacturer decides to control, the retailers may or may not be induced to put forth optimal sales effort. Consequently, the level and division of profit between the producer and dealers crucially depend on the type of competition-restraining clauses they have agreed upon in their vertical contracts.

In the context of instrument control, along with price and non-price restraints, the distinction that is essential in examining vertical relations is intrabrand versus interbrand competition. We will return to these issues in our discussion of the economics of vertical contracts in section 3 and of the case law experience in section 4.

2.3 Efficiency, Welfare and the Legal Treatment of Vertical Restraints

Some analysts have argued that competition policy should aim to prohibit vertical restraints that reduce efficiency and welfare, whereas efficient and pro-competitive restraints should be allowed. We present the debate under a stylized economic view and a stylized legal view.

- *An economic view*

In the economics literature, vertical restraints raise concerns about the effects that a manufacturer's power over retail-level decision making may have on the overall course of competition.[10] However, a school of thought sometimes associated with the University of Chicago contends that this is not a significant question whenever competition exists among manufacturers of several brands of products.[11] Furthermore, even when one is unsure of the anticompetitive consequences of vertical restraints, this line of argument contends that government intervention would frequently come at a higher cost than is socially efficient. Consequently, proponents of this line of thought would argue against intervention.

[10] Underlying the concerns about vertical restraints is the deeper issue, which is beyond the scope of this Paper, that centralized decision-making is largely distrusted. Competitive markets provide considerable latitude for dispersed decision-making, even though the final outcome may be characterized by one result, such as a market price centred around the mean price. There are social benefits from dispersion of decision-making.

[11] The Chicago School would subject to close scrutiny practices, such as price fixing, that are used to facilitate <u>horizontal</u> collusion at either the manufacturing or retailer level, as they are likely to be anticompetitive.