incumbent could find it profitable to use bundling of two inputs as a "strategic foreclosure" of entry. The ability to bundle may give the incumbent a credible threat to use against a potential entrant.[28]

- *Strategic Restraining of Upstream Competition:*

The second argument related to upstream competition is one of market discipline. It has been argued that RPM can help competing manufacturers sustain collusion by reducing the efficacy of secret wholesale price cuts.[29] It is also possible that restraints that reduce downstream competition (such as exclusive territories) may soften upstream competition. Thus, the manufacturers may also adopt vertical restraints for strategic purposes directed at the upstream level.[30]

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In short, the survey of the economics literature in this section shows that more than one type of vertical restraint can be used in private manufacturer-dealer contracts to deal with a particular problem of vertical arrangements. Which vertical restraints may be used to deal with the problems faced by a manufacturer-retailer/supplier vertical structure will depend on the particular circumstances of the situation. Most vertical arrangements involve restraints that aim to maximize private profit. However, not all of them will increase economic efficiency. The conclusion one ultimately reaches regarding the overall acceptability of a given vertical restraint will depend on the facts of each specific case. This argues for a rule of reason approach rather than outright prohibition (the *per se* illegality approach) when judging vertical restraints under competition policy.

In both intrabrand and interbrand competition, the two-part tariff (such as a wholesale price plus a franchise fee) and RPM are frequently used price restraint instruments; while exclusive territories, exclusive dealing and requirement contracts would top the list of non-price vertical restraints.

Economic analysis points out that the producer should not be automatically viewed as the only party calling competition restraining shots with retailers and suppliers. In some

[28] M.L. Katz, *op. cit.*, 1989, p. 709.

[29] L. Telser, "Why Should Manufacturers Want Fair Trade?", *Journal of Law and Economics*, (3) 1960: 86-105.

[30] Jean Tirole, *op. cit.*, 1988, p.186.