

exploit its dominant position. Most damaging is the combination of vertical distribution cartelization by producers of similar goods, which have also formed a horizontal cartel. Second, even if a country has competition laws that aim to promote efficiency and competition in the economy, lax enforcement of those laws may encourage existing companies not only to foreclose the production but also the retailing of goods and services.

With regard to efficiency reducing vertical cartel practices, legal and economic analysis in this Paper is unmistakably clear: they should be struck down by the courts. A rule of reason approach would be consistent with the view that the national market should be cleared of inefficient vertical or horizontal cartel arrangements that block new entry to the market. For instance, if it can be ascertained that cartel-like arrangements prevail in some national markets, then these arrangements will have to be eliminated in order to accommodate open access to the respective national distribution systems and markets.

The enforcement of existing competition laws in all jurisdictions is important for maintaining open access to national markets. In countries where the breaking of competition laws goes unchallenged or is mute due to ineffective monitoring, or if the penalty for violating the laws only amounts to a minor inconvenience, enforcement would have to be beefed up and fines set high enough to discourage companies from breaking the law again. In this area, in order to identify the dimensions of the role played by enforcement as well as those criteria by which its practical effectiveness can be assessed, further research and analysis is required.

Finally, the theory of vertical arrangements, discussed in section 3, teaches us that firms have recourse to a number of vertical restraints to achieve a given objective. In evaluating vertical arrangements in a distribution system, it is essential that we consider the entire package of vertical practices. If you analyze one vertical practice, such as tying, firms will move out of tying through the front door and enter, equally through the front door, into other vertical practices, such as exclusive dealing. Opening doors to all the vertical practices under the rule of reason standard, without any exemptions, would help encourage nondiscriminatory access to national markets.

6.5 International Markets, Exemptions and the Policy Debate

This Paper has emphasized the importance of fully analyzing activities and sectors that are exempt from the application of national competition law. Exemptions from competition laws on a sectoral basis rather than on economic efficiency grounds are bound to be captured by interest groups. Over time, these lobbies become entrenched and are hard to dislodge. Carveouts, such as the exemptions listed in Annex I below, can become bones of contention