

Analysis of the jurisprudence related to vertical restraints is also affected by exemptions provided for in law. However, an assessment of exemptions for vertical arrangements in any one country is best done by considering all other significant competition-related practices that are also exempt from competition law. The annex to this Paper provides an inventory of such U.S., Japanese and Canadian exemptions.

In both Canada and the U.S., there is a defence available for activities that run afoul of competition laws but flow from compliance with government-imposed regulations. In both the U.S. and Japan, exemptions from the application of competition law are sometimes accorded to entire sectors. In contrast, such sectoral exemptions exist for only three situations in Canada. In Canada, exceptions are provided more usually for specified activities and appear to be based on preserving efficiency and competition enhancing considerations rather than outright carveouts. A comparison with the exemptions in the U.S. and Japan is striking. Exemptions in the U.S. are numerous, if not more numerous than in Japan.

In sum, after reviewing the economics and jurisprudence of vertical restraints, this Paper recommends that countries should adopt the rule of reason treatment for all vertical manufacturer-retailer practices, including resale price maintenance agreements and tied sales, and *without any sectoral or other exemptions*. This would require some adjustments in the approach taken by the three countries reviewed in this Paper, especially the U.S. and Japan.

In this context, it should be noted that the deregulation process (i.e., the elimination of exemptions to competition) does not imply that one or a few foreign firms should be accorded some numerical share of the domestic (regulated) market. A major thrust of this Paper is that vertical business arrangements should develop among firms as a natural process as determined in a competitive marketplace. If the power of a foreign government is used to dictate that domestic firms have to do their distribution business with specific foreign corporations, the process of deregulation is pushed back and competitive markets recede further on the horizon. This point is particularly relevant in light of the on-going bilateral discussions between the U.S. and Japan, including in the area of deregulation and the Japanese distribution system.

Moreover, suggesting that all countries take an exemption-free, rule of reason legal approach to both price and non-price vertical restraints requires further thinking in a number of important directions. These include:

- How to develop a common set of rules or guidelines based on international consensus by which the rule of reason approach will be implemented. Several guidelines are tentatively identified in section 6 to encourage further discussion.