

this result in a framework which ignores the effect of RPM on the provision of better product quality and information by the retailer, and the effect on the number of retailers.³⁸ On balance, however, RPM is more appropriately viewed as a means of reducing information-related externality that occurs where product differentiation, style and/or complexity create a demand for consumer service and information. Such conclusions are not affected by the Rey and Tirole arguments. A case that RPM practices are *per se* objectionable cannot be sustained.

In many countries, RPM is *per se* illegal with few exceptions or exempted products. However, many economists now advocate adopting a less stringent approach in competition law towards RPM and other vertical restraints. Even ardent proponents of the Harvard school, such as Scherer and Ross, would find it hard to leave intact the existing presumption of *per se* illegality of RPM:

On the one hand, some resale price maintenance arrangements facilitate new entry or the provision of desirable services, and except when RPM spreads to cover the bulk of an industry's output, depriving consumers of a meaningful choice between high-service and low-price outlets, most are probably innocuous. On the other hand, Chicagoans' claims that strictly vertical RPM cannot impair economic efficiency are plainly wrong, and their estimates of the benefits from RPM are correspondingly exaggerated. The overall balance between benefits and costs is probably close.³⁹

Under the law of the United States and Canada, however, RPM is *per se* illegal, while in Japan it appears to be subject to an assessment of market power.

4.1.1 RPM in Canada

In 1951 Canada became the first country in the world to statutorily proscribe RPM, although other jurisdictions, particularly the US, had applicable common law prohibitions. The 1951 legislation prohibited manufacturers or suppliers of articles and commodities from requiring or inducing, or attempting to do so, any other person to resell at or above a specific price or discount, or refusing to supply another person because of that person's refusal to observe the specified resale or discount price. It was the substantial changes which were

See Jean Tirole, *op. cit.*, 1988.

³⁸ The authors conclude that, in an environment of uncertainty about market conditions, consumers would be better off under competition than under RPM or exclusive territories. Rey and Jean Tirole, *op. cit.*, 1986.

³⁹ Fredrick M. Scherer and David Ross, *Industrial Market Structure and Economic Performance*, 3rd edition, Boston: Houghton Mifflin, 1990, p. 558.