

# Assessing the Antitrust Liability of Vertical Restraints

**Anthony Dukes**

University of Southern California

**Aishwarya Joshi**

University of Michigan

**Daniel Sokol**

University of Southern California

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# Assessing the Antitrust Liability of Vertical Restraints

## **Abstract**

This research assesses the antitrust liability for marketing managers employing vertical restraints in channels of distribution. We consider five vertical restraints: Min RPM, Max RPM, Primary-Line and Secondary-Line Price Discrimination (Robinson-Patman), and Territorial Restraints. Using data from cases decided in U.S. Federal courts since 1980, we empirically demonstrate that over time, two of the restraints have become significantly less likely to be subject to litigation. For the other three restraints, our analysis indicates a more judicious interpretation by the courts. Using the theory of case selection, we posit that five landmark rulings over the past 40 years have established a legal regime that gives marketers more flexibility in implementing efficient, pro-consumer practices yet still protects the market against anticompetitive conduct. We draw lessons for marketers who operate in marketing channels in the U.S. and E.U. through a detailed analysis of individual cases. For managers assessing the legal risk associated with vertical restraints, we conclude that they be guided by the principle of customer value creation.

**Subject Areas:** *Business-to-Business Marketing, Channels, Public Policy, Retailing*

**Track:** Retailing & Omni-Channel Management