

Online Vertical Restraints – an International Competition Network Special Project Report

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Motivated by significant growth and development in online commerce over recent years, the International Competition Network (ICN) recently decided to undertake a special project focussed on the internet economy and practical issues regarding the application and interpretation of competition laws to e-commerce. It was decided that the topic would be most appropriately dealt with as a multi-year project limited to online vertical restraints, which were considered to be the issues of highest practical relevance for member agencies.

In conjunction with hosting the ICN 2015 Annual Meeting, the Australian Competition and Consumer Commission (ACCC) undertook the stocktaking aspects of the project.

Following a review of the economic framework and a survey of ICN members, the ACCC prepared a report which examines the differences and similarities of the legal frameworks in ICN jurisdictions in relation to online vertical restraints; the prevalence of online vertical restraint conduct within ICN member states; the degree to which the ICN members consider this issue to be a priority; and the degree to which ICN members are able to address online vertical restraints—or would be able to if they chose to do so—using existing legal and analytical frameworks and investigative tools.

The project focusses on the following types of online vertical restraint conduct: resale price maintenance; resale price maintenance facilitating conduct including minimum advertised price agreements and dual pricing restrictions; across platform parity agreements; and online sales bans or limitations. The project also considers geographic price discrimination.

The project builds on previous international work undertaken in this area and reaffirms the findings of previous studies, which indicate that vertical restraints in online markets can generally be assessed using the frameworks that apply to vertical restraints in offline markets.

The report shows that there is a degree of concern about online vertical restraints across ICN members, although the extent of concern varies between types of online vertical restraint. Online resale price maintenance and online sales bans/limitations are of relatively greatest concern; in contrast, geographic price discrimination is of less concern to ICN members.

Although survey respondents were generally confident that existing tools are sufficient to deal with competition issues associated with the use of vertical restraints in online markets, some issues were identified that may warrant further consideration by the ICN. Further details on these issues, together with more detailed analysis can be found in the full report at

<http://www.icn2015.com.au/download/ICN2015-special-project-online-vertical-restraints.pdf>.