Collusive Vertical Restraints

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Very Limited Time to Speak

- I will post at least an outline, and I hope a draft paper, on the workshop website
  - In addition to these slides

Elevator Version

- Bilateral vertical restraints can profitably harm competition in ways more like collusion than exclusion
  - (collusion in economic terms, in industry without a monopoly layer)
- Contracts raise distributors' marginal costs, consumer prices, and total industry profits
  - Excess profits can be shared to induce participation
  - Contracts must reference rivals to do this (in short run)
- Such a scheme faces real challenges
  - less so than horizontal collusion, which sometimes works

Contracts raise distributors' marginal costs

- How can a contract between M and D raise D's marginal cost above R's supply price?
- Contract must constrain or charge for purchases from R
- Then, M can set its own marginal price

Examples

- Limit quantity or share bought from R
  - Exclusive dealing as extreme case, but no need for exclusion or RRC
- Pay M for units bought from R
  - Per-processor pricing
  - Access charge or damages based on ED contract
  - Market-share pricing
- Constrain D’s relative sales by constraining its pricing or promotion downstream

Challenges can be met

Exclusion-focused tests

- Exclusion-focused tests/thinking don’t diagnose those potential harms well
    - Price/cost
    - As-efficient competitor
    - Exit/denial of scale/divide-

Conclusion

- Bilateral vertical restraints that reference rivals can raise distributors' MC and…
- Challenges, but not insuperable
  - Close parallel in horizontal collusion
- More robust and tempting than classic collusion?
- Not an exclusionary theory, so even a good test for exclusion would be inapt