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**HOW INTERACTIONS BETWEEN VERTICAL AND HORIZONTAL COMPETITION
DETERMINE WELFARE OUTCOMES IN CONSUMER GOODS INDUSTRIES**

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1 - THE DENIAL OF THE EXISTENCE OF VERTICAL COMPETITION – In economic theory and antitrust analysis, especially in the U.S., competition takes place solely among firms at the same horizontal stage. The word competition is not used to describe the relationship between firms at successive stages. Either they are considered to have a complementary relationship, or if it is an adversarial one, it is examined by bargaining theory.¹ Here is a sampling of this paradigm:

Robert Bork explained in an influential article that a manufacturer and a retailer “perform different and specialized functions in getting a final product to the ultimate consumer. Although vertical their relationship in economic reality is the same as partners”². Two Justice Department economists in its Antitrust Division observed that “...firms in a vertical relationship engage in complementary rather than competing activities...”³ Even Supreme Court Justice Stevens in an otherwise brilliant 1988 dissenting opinion wrote “All anticompetitive effects are by definition horizontal effects”⁴

* I thank William Comanor, Michael Lynch and Morris Morkre -3 former colleagues at the FTC Bureau of Economics for their most helpful comments on earlier drafts.

¹ I am indebted to William Comanor for this insight.

² Bork, *The Rule of Reason...*, Yale L.J. at (1966) at 404

³ Schwartz and Eisenstadt, *Vertical Restraints*, Antitrust Division working paper (1982) at 4,5.

⁴ *Business Electronics Corp. v. Sharp Electronics corp.*. 485 U.S. 717 (1988) at 11 n.4.

In 2005, Timothy Muris, a widely respected former Chairman of the Federal Trade Commission, stated “*Market Power, of course, exists only at the horizontal level. Only actual and potential rivals can constrain those who seek to exercise market power.*”⁵ This conclusion will greatly surprise manufacturers who as suppliers to Wal-Mart, Tesco and other “power buyers” are in a vertical relationship with them. But, as will be demonstrated shortly the relationships are far more complex. Both competition and cooperation prevail among firms at the same stage and at successive stages.

In real world consumer goods markets manufacturers bargain with suppliers to lower their invoice costs and with their retailers to obtain a larger share of their brands’ consumer price. *This bargaining is in fact the vertical form of competition.* Terming the process vertical competition rather than bargaining is not a case of semantic hair-splitting. For it enables us to combine the effects of horizontal and vertical relationships into a common analysis far more readily than the dichotomous structure which examines the two adversarial relationships using different methodologies and vocabularies. In particular, this new framework better illuminates the process by which consumer goods manufacturers, their suppliers and retailers obtain and retain market power.

If, per the reigning paradigm, all competition were horizontal, *there would be no competition after a merger to monopoly, since there is no remaining horizontal market share to capture. But a new monopolist manufacturer can still increase his market power vertically at the expense of his suppliers and retailers, thereby erecting further barriers to entry.*

RPM as the vertical form of monopoly - Monopoly is the absence of horizontal competition. It is long accepted that it typically diminishes social welfare by reducing allocative efficiency. *(RPM) Resale Price Maintenance (and certain vertical non-price restrictions) is the absence of vertical competition and thus the vertical counterpart of horizontal monopoly.* In RPM a vertical deal between a manufacturer and his retailers has been struck which eliminated competition between them. The retailers are guaranteed a minimum resale price and a comfortable, protected margin and the manufacturer gets to select the factory price of his choosing. By first eliminating vertical competition, RPM then eliminates horizontal price competition among retailers.

2 - THE WELFARE CHALLENGE – While granting that there is bargaining between firms in a vertical relationship, 2 economists advised me that they were reluctant to incorporate vertical competition into their analytical tool kit unless it can be shown that, like horizontal competition, its absence can negatively affect consumer or total surplus.

I prefer total surplus as the metric for social welfare because it better captures changes in productive and distributive efficiencies. Total surplus in a consumer goods industry is the sum of producer, distributor and consumer surplus. (Not just the sum of producer and consumer surplus) In the Lecture’s final section I will show that there are two situations in which the adoption of RPM and certain vertical distribution restraints has diminished social welfare and their elimination increased it and also that in certain circumstances the adoption of restraints that eliminate vertical competition will raise total surplus.

⁵ *More than Law Enforcement : The FTC’s many tools-A conversation with Tim Muris and Bob Pitofsky* 72 Antitrust Law Journal (2005) at 773.

3 – MARKET POWER EFFECTS FROM THE INTERTWINING OF HORIZONTAL AND VERTICAL COMPETITION.

– In the typical consumer goods industry, brands are differentiated and some form of imperfect competition prevails at all stages, as does vertical competition between firms at successive stages.

Firms have both horizontal and vertical market shares (VMS). In a triple-stage world a consumer goods manufacturer has a downstream VMS of 1- its retailers' % gross margins (RGM) and an upstream market share of 1-its suppliers' % gross margins.⁶

In vertical upstream competition, a consumer goods manufacturer strives to drive down the margins of its suppliers to obtain a lower invoice cost and other valuable concessions at its suppliers' expense and in vertical downstream competition to beat down the margins of its retailers to obtain a larger share of its brand's consumer price at its retailers' expense. *The manufacturer that is a more successful vertical upstream and downstream competitor than its horizontal rivals will buy cheaper and sell dearer than they can. It will have more market power than rival producers with similar and moderately higher horizontal market shares and HHIs and will shortly be taking horizontal market share from them, for the 2 forms of competition reinforce each other.*

To increase its horizontal market share a consumer goods manufacturer normally endeavors to introduce appealing new brands backed with effective advertising and promotion. Should these efforts succeed in creating a "must have" item, the brand's downstream VMS will be raised because horizontal intrabrand competition among retailers, the primary force that drives down RGMs, is fiercest on famous brands. At identical factory prices the famous brand will now have a lower retail price and sell in larger quantities than its smaller horizontal rivals, or at the same factory price will have a higher margin than they do, or some of each.

The manufacturer that is a more successful horizontal competitor will also have a higher vertical upstream market share than its smaller and less capable horizontal rivals. Its larger size increases its vertical upstream bargaining clout and secures lower invoice costs and other benefits from its suppliers. Lower invoice costs mean that at any factory selling price the manufacturer will enjoy a higher margin than its less successful horizontal and vertical competitors; or at the same margin will have a lower factory and retail price and greater sales, or some of each..

A manufacturer's total market power is a function of its standing as a horizontal and vertical competitor and the competence of its management and staff and is not simply the result of its horizontal market share as often assumed in the economics and antitrust literature.

The rivalry between firms in a vertical relationship is not confined to their attempts to beat down each other's margins. The contest is also waged horizontally after firms have integrated upstream or downstream. Retailers also become horizontal competitors to manufacturers with whom they

⁶ Robert L. Steiner, *Vertical Competition, Horizontal Competition and Market Power*, 53 Antitrust Bulletin, No.2, (Summer 2008).

are in a vertical relationship by introducing store brands that broadly imitate the manufacturers' own brands.⁷

4 – SOME WELFARE IMPLICATIONS OF THE INVERSE ASSOCIATION BETWEEN THE MARGINS OF MANUFACTURERS AND RETAILERS - *Economics has ignored the retail stage by the assumption that it is perfectly competitive, or at least “analytically neutral” per the economist R.B. Hefflebower. This has led to the false conclusion that changes in the retail prices consumers pay, vary to the same extent and in the same direction as changes in factory prices*⁸ Over 90 years ago, Alfred Marshall, the father of neo-classical economics, had observed that the inverse relationship between margins at the 2 stages was characteristic of both famous advertised brands and little known brands.⁹ Today, virtually all participants in consumer goods industries are aware of this relationship, although it is still unfamiliar to most economists.

A -Famous Brands - Consumers recognize that famous Brand X is the same item on sale at different stores. Retailers do not want to be caught with a higher price on what they know consumers will recognize as the same thing. On such brands consumers will switch stores within brand should a retailer fail to stock Brand X or to price it competitively. This behavior drives down retailers' margins by intensifying horizontal intrabrand competition among them. Simultaneously, it reduces their vertical upstream bargaining clout and lowers their elasticities of substitution in bargaining *with* famous Brand X's manufacturer, thereby boosting the latter's margin. These dynamics give rise to the pervasive inverse association between margins at the 2 stages for leading brands and mean that *should a manufacturer's brand gain substantial market power, its retail price will rise by less than its factory price. Should the fall in the brand's \$RGM exceed the \$ rise in its factory price, its retail price will actually decline, and horizontal interbrand competition will then depress the retail prices of less well known, rival brands.*

A famous brand with its above-category-average downstream VMS has a lower RGM than the makers of weaker brands which forces them to adopt a lower factory price to obtain the same retail price as the leading brand's. Reinforcing this effect, the famous brand's superior reputation mandates that its weaker competitors must sell at a discount from its retail price, further depressing the relative factory prices of weaker manufacturers' brands and imitative private labels. These horizontal and vertical forces combine to erect longer term mobility and entry barriers that buffer the leading brand's competitive position and enhance its market power.

B-Weak Brands In categories where brands do not command strong consumer loyalties, there is again an inverse association between margins at the two stages, except that the margin relationships are reversed. In this scenario consumers will readily switch brands within store. If the retailer doesn't stock little known Brand A, rather than walking out of the store, they will buy

⁷ Robert L. Steiner, *The Nature and Benefits of National Brand/Private Label Competition*. The Review of Industrial Organization, Vol. 24 (March 2004).

⁸ R.B. Hefflebower, *Internal Trade*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 49 (1968). The omission of distributor surplus from the standard welfare definitions and diagrams is another example of the “analytically neutral” assumption. For diagrams that include all 3 of the surpluses see Robert L. Steiner, *The Nature of Vertical Restraints*, 30 THE ANTITRUST BULLETIN, (1985), pp 149,150.

⁹ Alfred Marshall, *INDUSTRY AND TRADE*, pp 301-302, MacMillan, 3rd edition (1920)

Brand B with similar attributes. A retailer can offer many different combinations of brands with various price points and the expected category attributes without much affecting its profits. In the trade lingo a little-known brand is “blind” – consumers cannot readily find or recognize such a brand across stores. Hence, intrabrand competition is lax and retailers make wide margins. And their vertical ability to play off one weak maker against the next in search of a lower price drives down manufacturers’ margins and factory prices.

In earlier articles I have presented the empirical evidence for the inverse association between the margins of manufacturers and retailers. Michael Lynch has provided major theoretical validation for the inverse association and has also developed a model that quite accurately has predicted the price of an imitative private label given the price of the national brand.¹⁰

C – When margins at the 2 stages are positively related. This occurs when manufacturers and retailers each have a modest degree of market power and are insecure and “mutually dependent.” Ward Bowman showed how that gives rise to a deal that eliminates vertical competition and produces RPM. Margins at both stages rise and so are positively related.¹¹

5 - SOME TROUBLESOME AMERICAN DOCTRINES

A- Denying the Existence of Vertical Competition. In U.S. antitrust doctrine competition is a process that occurs exclusively among firms at the same horizontal stage. The 2004 EU Horizontal Guidelines acknowledged the existence of vertical competition, and the concept is becoming more accepted than in the U.S., thanks in part to the work of Ionnis Lionas and Ariel Ezrachi.¹²

¹⁰ Robert L. Steiner, *The Inverse Association between the Margins of Manufacturers and Retailers*, Review of Industrial Organization, vol.8 # 6 (1993) and Steiner, *The Leegin Factors-A Mixed Bag*, 55, Antitrust Bulletin, No.1 (Spring 2010) Sections 111 and 1V provide further theoretical explanation and extensive empirical evidence of the inverse association between the margins of manufacturers and retailers.

See The Lynch Model pp 90- 98 in Robert L. Steiner, *Market Power in Consumer Goods Industries*, Chapter 4 in Ariel Ezrachi and Ulf Bernitz, Eds. PRIVATE LABELS, BRANDS AND COMPETITION POLICY, Oxford Univ. Press (2009).

¹¹ Ward Bowman, *Resale Price Maintenance – A Monopoly Problem*.25 Journal of Business, pp 141-155 (1952). Here, the manufacturer and its retailers are “Mutually dependent... partial monopolists” where the profit of each depends on that of the other. I provide a recurring example of Bowman’s scenario that leads to RPM in *The Nature of Vertical Restraints*, supra n. 8 at 164,165.

¹² *Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentration between Undertakings (2004) OJ C31/5, s. V. ‘Countervailing Buyer Power’.*

Ionnis Lionas, *The Vertical/Horizontal Dichotomy in Competition Law: Some Reflections with regard to dual distribution and private labels* Chapter 8 in Ariel Ezrachi and Ulf Bernitz, Editors PRIVATE LABELS, BRANDS AND COMPETITION POLICY, Oxford University Press (2009).

Ariel Ezrachi, *Unchallenged Market Power? The Tale of Supermarkets, Private Labels and Competition Law*, World Competition 33 #2 (2010) Kluwer Law International.

The new, 2010 EU Regulations on vertical agreements provide that agreements between parties with less than a 30% market share are presumed to be efficient and beneficial. Excluded from this block exemption are agreements that include RPM and certain territorial restrictions.¹³

B- The new 2010 U.S. Horizontal Merger Guidelines.¹⁴ The Guidelines were adopted after lengthy public hearings and are on balance an improvement over their predecessors. But unfortunately sometimes they are unaware of real-world relationships due principally to their unstated premise that the retailing sector is perfectly competitive or, at least “analytically neutral”, and can therefore be ignored. In this environment retailers are price-takers as buyers and resellers, and changes in factory prices are a reliable proxy for changes in retail prices.

The most significant change in the new Guidelines is the emphasis on Unilateral Effects and the Pricing of Differentiated Products, including the key role of Upward Pricing Pressure (UPP) in Section 6.1. A merger between 2 competing manufacturers whose brands are very close substitutes might substantially raise the market power of the merged firm by internalizing the pre-merger diversion of sales and margins that would have occurred had one of the firms raised its price. The Guidelines’ discussion shows no recognition that consumers pay retail and not factory prices and tacitly assumes that the retailing sector is analytically neutral. Thus, they fail to recognize that if a merger generates powerful UPP due to the merged firm’s greatly enhanced market power, retail prices will rise by less than factory prices and may even fall.

6 - COMPETITION AND COMPLEMENTARITY. - In 1947 the Austrian Economist, Frederick Hayek, complained that the accepted theory of competition was so far removed from real world competition among firms as to be almost useless in formulating policy. He suggested we adopt the definition he attributed to Dr. Samuel Johnson that firms were competitors when they endeavor “to gain what another endeavors to gain at the same time.”¹⁵ I am indebted to Michael Lynch for calling my attention to this sensible definition.

If two or more firms have a competitive relationship the actions of each can injure the other(s). If they have a complementary relationship the actions of each will benefit the other(s). It is obvious that there is an adversarial as well as a complementary relationship between firms in a vertical relationship. The same is true of horizontal relationships. Among adversaries, there are also some welfare-enhancing complementary relationships that arise because firms at the same horizontal stage face far more common problems than do firms at successive stages.

Competing consumer goods makers in the same industry face common problems with tariffs and other import restrictions, product sourcing, misleading advertising claims, illegal vertical and horizontal activities, etc. They also share the same problems of the credit worthiness of their wholesaler and retailer customers. and how to deal with powerful upstream suppliers. Information sharing, among horizontal rivals, often at industry trade association meetings, can benefit all of them and lead to increased efficiencies for the industry.

¹³ Commission Regulation (EU) No. 330.2010 of 20 April 2010 on the application of Article 101.3 of the Treaty on the functioning of the European Union to categories of vertical agreements and concerted practices. Para. # 8&10.

¹⁴ U.S. DOJ and FTC *Horizontal Merger Guidelines*, August 19, 2010

¹⁵ F.A. Hayek, *INDIVIDUALISM AND ECONOMIC ORDER* (1957) at 96.

To illustrate, in preparation for the annual meetings of the Toy Manufacturers of America, I would identify some information we badly needed and some information we were willing to share with our competitors to obtain it. We might be seeking the names of new toy outlets in the Mountain West where our distribution was weak by sharing the name of a new Portuguese producer from whom we had recently purchased high quality injection molds at low prices.

The real-world combinations of complementary and competitive relationships are far more extensive and complex. Brandenburger and Nalebuff¹⁶ show that two airlines are horizontal competitors in vying for the limited number of airport slots but have a complementary vertical relationship in negotiating with a manufacturer preparing to introduce a new aircraft. By pooling their orders and agreeing on specifications, the 2 rival airlines will enable the aircraft manufacturer to enjoy scale economies and to set a lower price than either could obtain negotiating independently.

Of course, in some cases manufacturers need not communicate nor even be in the same relevant product market to enjoy the benefits of complementarities.. For example, mustard makers' sales would boom following a large rise in hot dog consumption.

7 - WELFARE LOSSES (AND SOME GAINS) FROM RPM AND NON-PRICE VERTICAL RESTRAINTS – Welfare losses have occurred with RPM alone and when exclusive dealing and other non-price restraints were also present.

Losses from voluntarily adopted vertical restraints have arisen from 2 causes. Cause 1 – When manufacturers have embraced the restraints due to pressures from high cost, incumbent dealers attempting to halt the growth of an emerging new and more efficient retailing format. Cause 2 - When RPM and certain non-price vertical restraints have been adopted by brands with a powerful consumer franchise.

RPM has also arisen from Bowman's "Mutual Dependence" scenario. But since both the manufacturer and the retailers are "insecure" and lack market power, it does not appear that the resulting RPM is harmful nor that, in contrast to Causes 1 and 2, that antitrust intervention can have much effect. I focus on losses, since the challenge from the 2 economists is to show that, like horizontal restraints, vertical restraints can be anticompetitive. But in certain circumstances vertical restraints have also produced welfare-increasing outcomes.

RPM can be less anti-competitive than non-price vertical restraints because it encourages stores to stock numerous competing brands, where consumers can make informed side-by-side comparisons of product quality and attributes. By contrast, exclusive dealing or highly restrictive distribution forces consumers to engage in extensive interstore search where interbrand comparisons of similar accuracy are vastly more difficult to make. Although new technologies enable consumers to find comparative quality and performance attribute comparisons online, such interbrand comparisons often still require visiting terrestrial stores .On the other hand,

¹⁶ Adam Brandenburger and Barry Nalebuff, Co-opetition. Doubleday, (1996).

vertical distribution restraints to stimulate “missionary work” for new product concepts and tiny market share brands has probably generated more welfare-increasing outcomes than RPM.¹⁷

Legal cases in the U.S where RPM on powerful brands produced anticompetitive results include *Sealy*, *General Electric*, *Pioneer Electronics*, *Corning* and *Levi Strauss*. In some of these cases more efficient retailing formats also played a role. At times, the welfare losses occurred in categories in which there was both RPM and exclusive dealing - Light Bulbs, *Salton* (George Foreman contact grills) or a combination of RPM and horizontal restraints *Toys-R-US*, *Leegin*.¹⁸

A – Cause 1 History - For the economist Joseph Schumpeter the process of “Creative Destruction” involved competition from “the new type organization...competition which commands a decisive cost or quality advantage” that strikes terror into the hearts of existing firms.¹⁹ Creative Destruction was not confined to manufacturing. In the “retail trade, the competition that matters arises not from additional shops of the same type, but from the department store, the chain store, the mail order house and the supermarket.”²⁰ Had he lived longer, Schumpeter would have added Kmart style discount department stores, Wal-Mart type superstores, Cosco type warehouse clubs and Amazon style internet retailers. Schumpeter would have been delighted at a U.S. District Court’s 2009 Decision that Babies-“R” Us had illegally coerced manufacturers into adopting RPM to prevent price cutting by internet retailers, the most recent new, more efficient breed of retailer.²¹

Joseph Palamountain, Jr., another scholar in this tradition, stressed the importance of “intertype competition” – the rivalry between different types of retail outlets. He showed that the passage of Fair Trade Laws and anti-chain store taxes resulted from pressures by high margin dealers threatened by the entry of more efficient types of retailers.²² Yamey and Pickering trace these

¹⁷ Examples are: “missionary work” on behalf of Polaroid Cameras and Cuisinart food processors and on behalf of struggling Sylvania TV Sets. Further, vertical distribution restraints, but not RPM, can prevent “reputation free-riding” by restricting distribution of higher-price, honorific goods to prestigious upscale stores.

A pro-competitive use of RPM is to expand distribution across a wide array of stores with different cost structures. See T.H. Silcock’s “Outlet” explanation for RPM in his *Some Problems of retail Price Maintenance*, 48 *Econ. J.* 42 (1936).

However, RPM is seldom a cure for Lester Telser’s “special services” free rider scenario in *Why Should Manufacturers Want Fair Trade?* 3 *Journal of Law and Economics*, 86 (1960). For a manufacturer can more successfully handle this problem by a program of promotional allowances that pay retailers on proof of performance of desired services. See Robert L. Steiner, *Manufacturers’ Promotional Allowances, Free Riders and Vertical Restraints*, 36 *Antitrust Bulletin* #2 (1991).

¹⁸ In *The Nature of Vertical Restraints*, *supra* note 8 See n. 91 for *Pioneer and Corning*: p.170 for *G.E.* For Light Bulbs see pp 184 -187. See *The Leegin Factors* *supra* note 10. For *Salton* see Robert L. Steiner, *Exclusive Dealing + Resale Price Maintenance: A Powerful Anticompetitive Combination*, 33 *Southwestern Univ. Law Rev.* #4 (2004). For the FTC’s case against Toys-R-Us, See Robert L. Steiner, *How Manufacturers Deal with the Price-Cutting Retailer: When are Vertical Restraints Efficient?* *Antitrust Law Journal* vol.65 #2 (winter 1997) pp.432-435. For *Sealey* and the mattress business See Robert L. Steiner, *Intrabrand Competition – Stepchild of Antitrust*, *Antitrust Bulletin*, vol. 36 #1 (Spring 1991) pp 188-191)

¹⁹ Joseph A. Schumpeter, *CAPITALISM, SOCIALISM AND DEMOCRACY*, 82-85 2nd, Edit, (1947).

²⁰ *Id* at 85.

²¹ Carol McDonough et al V. Toys “R” US, INC. et al. Civil Action NO. 06-0242 U.S. District Court for the Eastern District of Pennsylvania July 15, 2009. William Comanor was an effective expert for the plaintiff.

²² Joseph Palamountain, jr. *THE POLITICS OF DISTRIBUTION*, 1968.

same developments in the U.K. Yamey's survey of European experience found that Fair Trade agreements prevented the emergence of supermarkets and other efficient retailing formats.²³

B - Cause 2- *Levi Strauss*. – I was a consultant to the FTC in this interesting case in which the industry's leading brand finally dropped its RPM in January, 1977 due to the FTC's action against it. The subsequent price cutting initiated by the jeans chains, a new, more efficient retail format with far higher sales per square foot and stock turns than Levi's other retailers, spread across the industry to the great benefit of jeans consumers. Levi's largest customers had been department stores, western wear shops and other conventional retailers. When it had been a small market share brand RPM probably benefited Levi by enabling it to gain and retain distribution, in prestigious department stores. It had refused to deal with discount stores but did supply the emerging Gap and County Seat jeans chains who had originally abided by Levi's minimum resale prices.

But by 1976, Levi had become the dominant brand in men's jeans, by far the largest industry segment. It had the highest retail price and a \$ market share in retail prices of 34.4%, more than the combined market shares of its 5 largest rivals. In June, 1977 during the height of the "jeans craze" the price cutting was kicked off by Country Seat in large space newspaper ads across the country. The low prices were swiftly met by The Gap and then spread to major department stores and to most of Levi's other customers. Retailers testified that when the price of the leading brand had been cut, they had no option but to slice the price of competing brands. Thus, the reductions spread across the country – except in New England. There the minimum retail prices were maintained because the jeans chains had only just begun to enter the area.

In effect Levi's RPM had held an umbrella over its far smaller competitors enabling them to maintain a higher horizontal market share than their true market power warranted - and over its retailers by permitting them to obtain a higher vertical market share than warranted by their true vertical market power. *Hence, from 1976 (the last RPM year) to 1980 Levi Strauss' earnings rose from \$2.36 to \$5.36 per share and its stock advanced by about 400%. Market research data I was able to obtain revealed that from 1976-1978 in men's Jeans there was an increase of over \$138 million in consumer surplus of which \$12.7 million was a gain in total surplus.*²⁴

Levi Strauss illustrates how social welfare can be increased when RPM is abandoned, freeing up first vertical competition and then horizontal competition.

8 – TAKEAWAY

I have presented a picture of the consumer goods economy with its many complex relationships and outcomes. So it is important to identify and keep in mind the dominant ones.

1 – Vertical competition always plays a vital role. A firm's market power is a function of its standing as a horizontal and vertical competitor and the skills of its management and staff.

²³ *The Nature of Vertical Restraints, supra n.8* at 165-167,174 describes the findings of Yamey and Pickering.

²⁴ See Robert L. Steiner, *Jeans, Vertical Restraints and Efficiency*, in *INDUSTRY STUDIES* 182 (Larry L. Duetsch ed. (1993). For a time I served as a consultant to the FTC's San Francisco Office which was handling its complaint against the jeans maker.

- 2 – Understand why there is an inverse relationship between the margins of manufacturers and retailers and its consequences when brands are either powerful or weak.
- 3 – Be on the alert for the unstated assumption and its consequences in economists' models and in antitrust analysis that the retailing sector can be ignored because it is analytically neutral.