

# The Consumer in Vertical Restraints

## Discussion

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## Thomas Cheng: The Consumer in Vertical Restraints

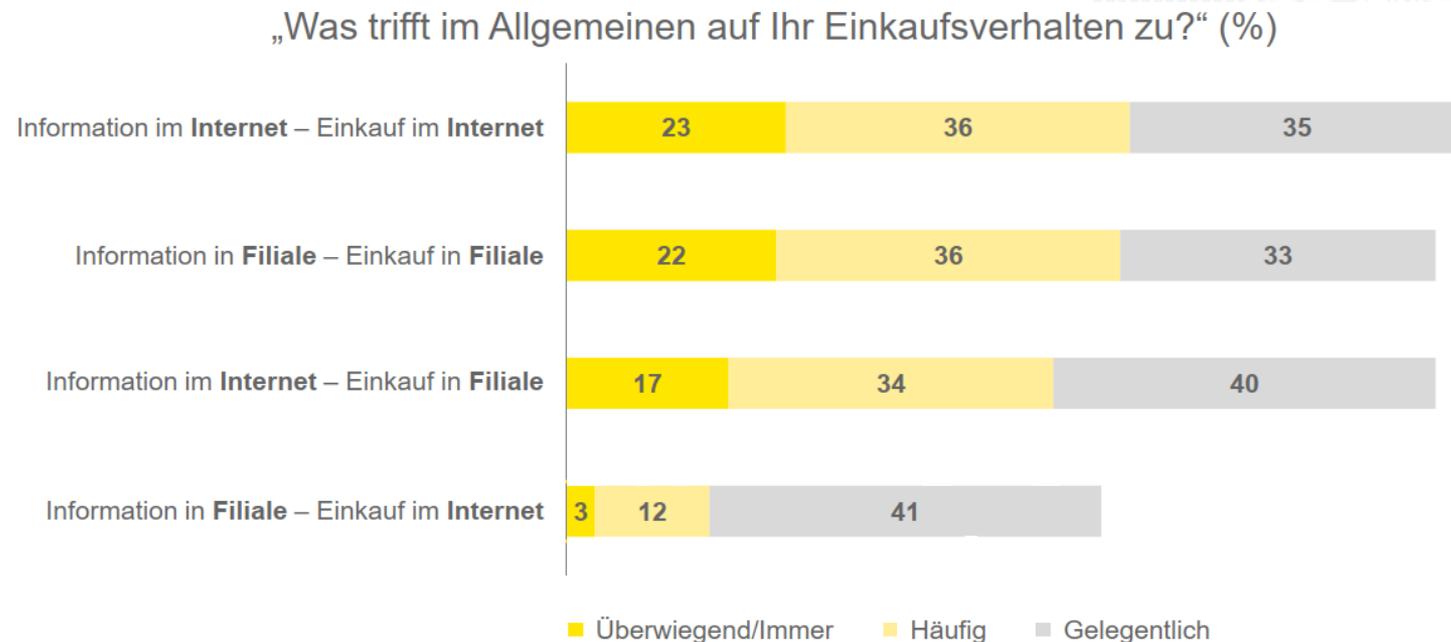
- Main takeaways
  - Consumer types can inform us about the likelihood of free-rider problems
  - Free-riding less widespread than often assumed
  - Pro-competitive effects of RPM often unlikely

## EC Guidelines on Vertical Restraints

- Paragraph 107
  - “For there to be a problem, there needs to be a real free-rider issue. Free-riding between buyers can only occur on pre-sales services and other promotional activities, but not on after-sales services for which the distributor can charge its customers individually. The product will usually need to be relatively new or technically complex or the reputation of the product must be a major determinant of its demand, as the customer may otherwise very well know what he or she wants, based on past purchases. And the product must be of a reasonably high value as it is otherwise not attractive for a customer to go to one shop for information and to another to buy. Lastly, it must not be practical for the supplier to impose on all buyers, by contract, effective promotion or service requirements.”

## What do we know about free-riding?

- Retail Barometer Austria 2018 (Austrian Retail Association)



## Assessing free-riding in case work

1. Does free-riding take place?
2. How important is it quantitatively?
3. Are consumers harmed?
4. Would RPM solve the problem?



## Consumer Harm and RPM

- Are consumers harmed?
  - Underprovision of retail services from upstream point of view
  - Existing vs new consumers
- Would RPM solve the problem?
  - Quality competition vs price competition
  - Incentives to free-ride persist

## Identifying Free-Riding

- Usually reliable data not available
  - Microdata
- Missing observations
  - Do I know which websites/stores the customer visited before?
  - Do I know which websites/stores the customer visits afterwards?
  - Customers might not tell
  - Customers might not know

## Consumer Types

- Consumer types correlated with horizontal externalities?
- Interbrand consumers
  - Free-Riding: probably yes
- Inter-retailer consumers
  - Free-Riding: probably no
- Impulse purchase consumers
  - Free-Riding: no
- Distribution of consumer types for given retailer could inform us about the strength of free-riding

## Consumer Types

- Consumer type identification faces some similar problems to general free-riding identification
- Consumer types are not stable
- Consumer types are also difficult to identify for retailer (but maybe easier than free-riding behavior directly)
  - Ask customers when they leave the store
  - Online?
- Consumer types relation to the horizontal externality might not be clearcut
  - Preferable to identify the externality directly, however, see above.

## Free-Riding: Austrian Case Law

- REWE/Spar/Mpreis/Sutterlüty/Pfeiffer/AFS (2013-2016)
  - food retailers
  - RPM retailer-driven; producers ensure identical/similar price increases for competitors;
  - REWE and Spar >30% each (fines of >60 Mio EUR in total, others <1 Mio)
  - inter-retailer primacy model? importance of sales promotions
- Food suppliers (2012-2016)
  - dairy, beer, flour, non-alcoholic beverages
  - fines imposed against 20 suppliers
  - mostly medium sized national/local manufacturers with low bargaining power

## Free-Riding: Austrian Case Law

- 19 cases connected to e-commerce/consumer electronics (2013-2019)
  - RPM supplier-driven;
  - small online retailers as source of downward pricing pressure; price-comparison websites (Geizhals.at) for attracting consumers and monitoring deviations
  - often strong brand reputation; interbrand consumers and inter-retailer consumers;
  - e.g. Specialized/Bose/Makita/Hewlett-Packard/KTM/Samsung/Nikon/Grundig/Pioneer/Philips (2013-2019)
  - settlements
  - Media-Saturn (2014): RPM retailer-driven; high market share in consumer electronics segment

## Free-Riding: Austrian Case Law

- Anker/A1 (2018-2019)
  - franchise system (bakery products, gas stations); RPM via electronic cash register;
  - impulse purchase model

## Consumer Types, Free-Riding and Case Work

- Consumer types and vertical restraint policy
  - Free-riding often used to justify a lenient approach towards vertical restraints
  - Insights from consumer behavioral approach => (soft) law
- Consumer types and vertical restraint case work
  - Useful if convincing data

Thank you for  
your attention!

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