

Lecture 4: Vertical competition problems & The EC Microsoft case

EC307 Competition Policy

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Part 1

Vertical competition problems

Competition: Vertical contractual issues

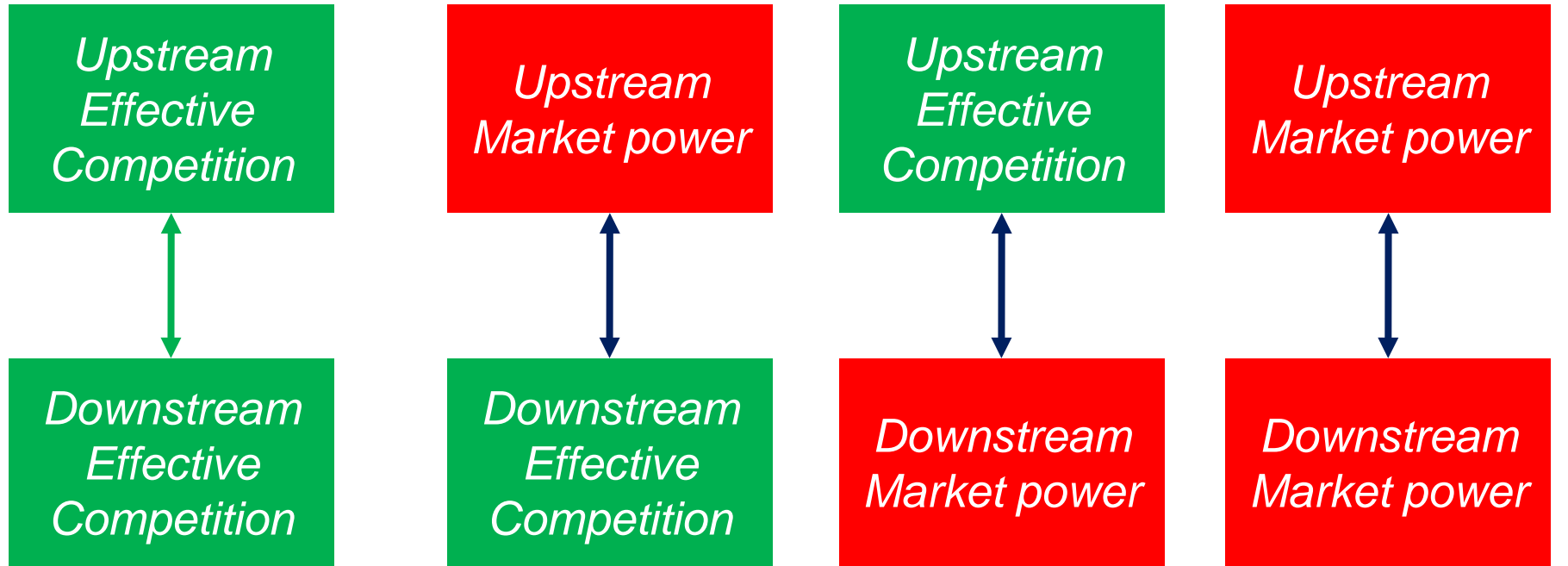
- Contractual relationships between firms operating at different tiers in a vertical value chain e.g. 'upstream' (producers) and 'downstream' (retailers)
- Contracts may feature 'restraints' limiting discretion over pricing (e.g. resale price maintenance), restricting sources of supply (e.g. exclusive distribution contracts), tying products, geographic scope of markets, franchising, etc.
- In most instances vertical contracts aimed at internalising externalities and benefits are shared (e.g. sharing risks, improved coordination)
- In circumstances where market power resides within a vertical chain, distortions may lead to adverse economic effects (e.g. unfair distribution of risk sharing through application of vertical restraints)

Illustrative market structures

EU Car Sector

UK Groceries

UK Brewers & Pubcos



Structure of market warrants possible intervention



Relevant EU laws: art. 101 restrictive practices, 102 abuse of dominance, ECMR 139/2004, various Block Exemption Regulations e.g. 1400/2002 (Car Sector)

Article 101(1) TFEU

The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- a. directly or indirectly fix purchase or selling prices or any other trading conditions;
- b. limit or control production, markets, technical development, or investment;
- c. share markets or sources of supply;
- d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 101(3) TFEU

The provisions of 101(1) may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- a. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- b. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Examples of vertical restraints

- Vertical merger
 - Extreme case of restraint
- Resale price maintenance
 - Supplying upstream firm sets terms for retail price (requires observability)
- Quantity-forcing
- Volume discounts
 - Second degree price discrimination
- Two-part tariffs or more generally non-linear tariffs
- Fidelity rebates
 - Discounts offered for buying either exclusively or buying a minimum quantity from a supplier
- Qualitative criteria used to select distributors (selective distribution)

Vertical restraints: can be good, can be bad

- Vertical agreements can improve economic efficiency within a chain of production or distribution by **facilitating better coordination**; in particular, they can lead to:
 - a reduction in transaction and distribution costs
 - and to an optimisation of sales and investment levels
- The likelihood efficiency-enhancing effects will outweigh any anticompetitive effects depends **on the degree of market power of the parties to an agreement**

Exemptions

The EC has a permissive regime for most vertical agreements for cases where firms do not have a market share above 30% in the relevant market:

“It can be presumed that, where the share of the relevant market accounted for by the supplier and the buyer each does not exceed 30 %, vertical agreements which do not contain certain types of severe restrictions of competition generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits.”

Draft EC Block Exemption Regulation at March 2010

“Above the market share threshold of 30%, there can be no presumption that vertical agreements falling within the scope of Article 101(1) will usually give rise to objective advantages of such a character and size as to compensate for the disadvantages which they create for competition.”

Draft EC Block Exemption Regulation at March 2010

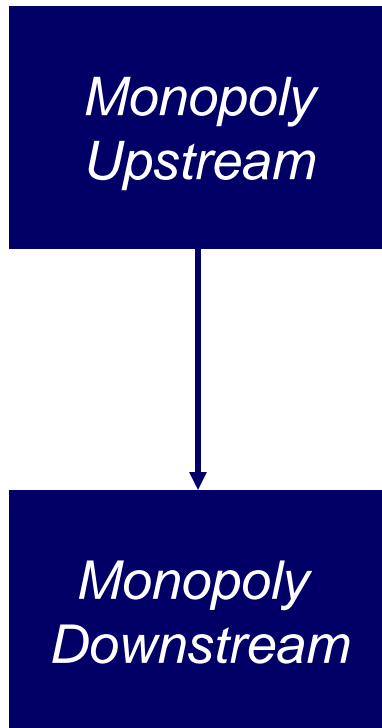
Hardcore restrictions

Vertical agreements shall not be exempt from article 101(1) where they have as their object:

- Restricting the buyer's ability to determine its sale price (e.g. resale price maintenance) [recommendations can be made]
- Restricting the territories a buyer can sell goods (with some exceptions)
- Restricting active or passive sales to end users by members of a selective distribution system
- Restricting cross-supplies between distributors within a selective distribution system
- Restricting the ability of component suppliers to sell components not entrusted by the buyer

Selective distribution system means a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell such goods or services to unauthorised distributors

Vertical restraints: The case of double marginalisation



Result due to Spengler (1950)

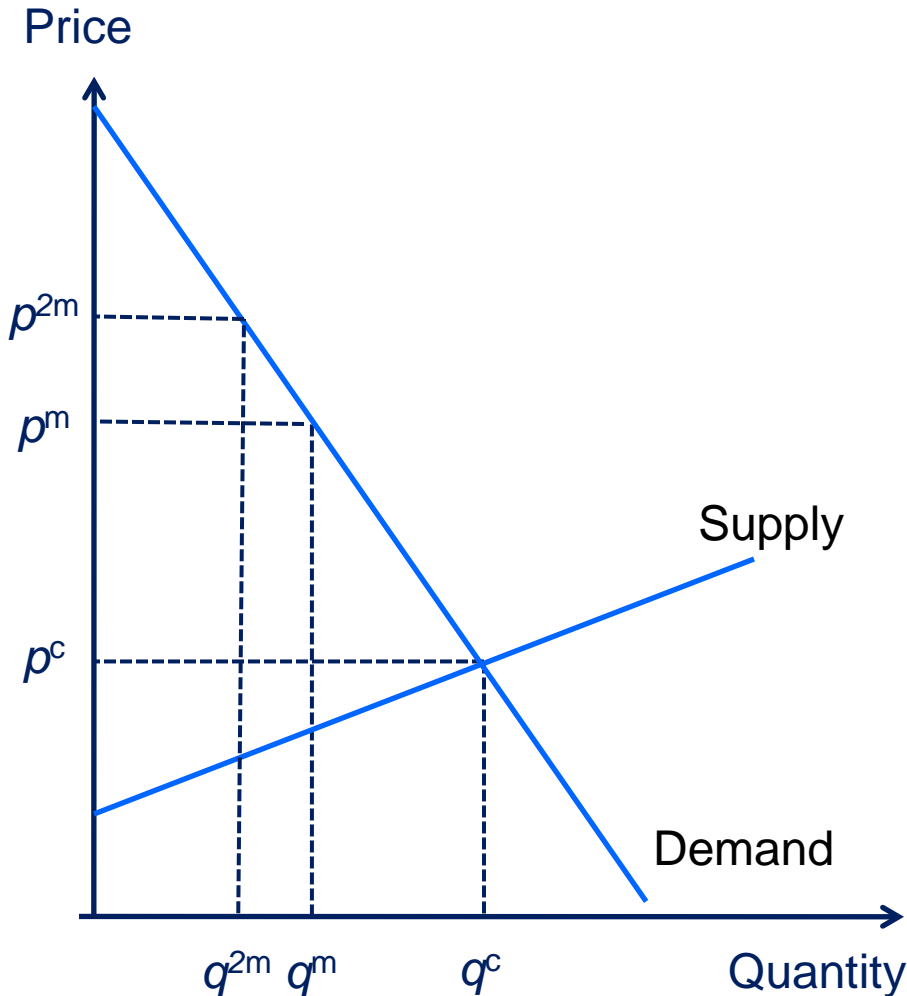
Two monopoly mark-ups:

- The effect results in output below level associated with a single vertically integrated monopolist

Upstream firm chooses ‘wholesale’ price which determines the cost level faced by downstream firm

- The monopoly firm downstream chooses a retail price which marks-up over the wholesale price (which itself is a mark-up over upstream cost)
- Vertical externalities not taken into account
 - Each maximises profit without taking account of its decision on the effect on the other firm’s profit

Double marginalisation



Aggregate profit depends on retail price and costs of producer and distributor:

$$p^m(c, \gamma) = \operatorname{argmax}_p [(p - c - \gamma)D(p)]$$

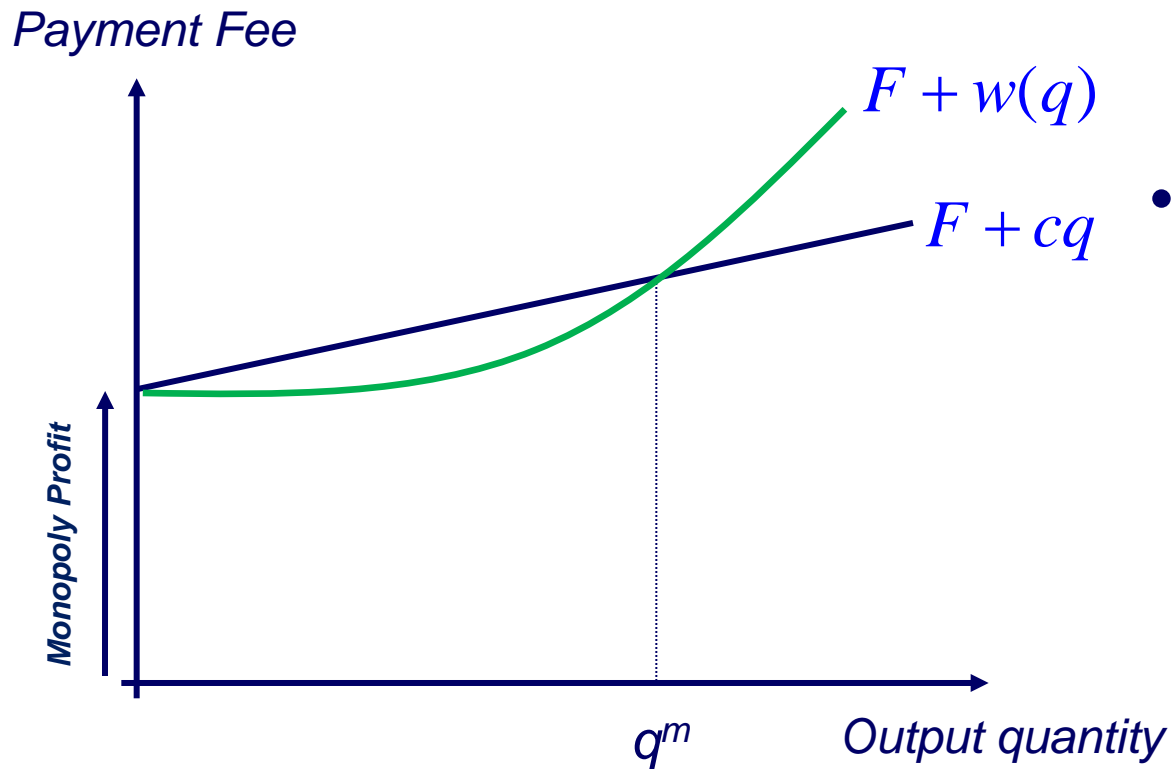
The upstream supplier will set the wholesale price w above cost c so that the retailer sets a price p^{2m} above p^m :

$$p^{2m}(w, \gamma) = \operatorname{argmax}_p [(p - w - \gamma)D(p)]$$

Applying vertical restraints to solve the problem of double marginalisation

- Allow vertical integration
 - Internalises vertical externalities – permits favourable view of vertical mergers
- Resale price maintenance
 - Upstream firm dictates retail price (requires observability) or sets a maximum at p^m
- Quantity-forcing
 - Require that buyer must purchase a minimum order q^m
- Volume discounts
 - Second degree price discrimination
- Set a two-part tariff rather than a linear price
 - Fixed component is the vertically integrated monopoly profit level
 - Marginal price is equal to marginal cost $w=c$

Two-part or non-linear tariff



Two part tariff:

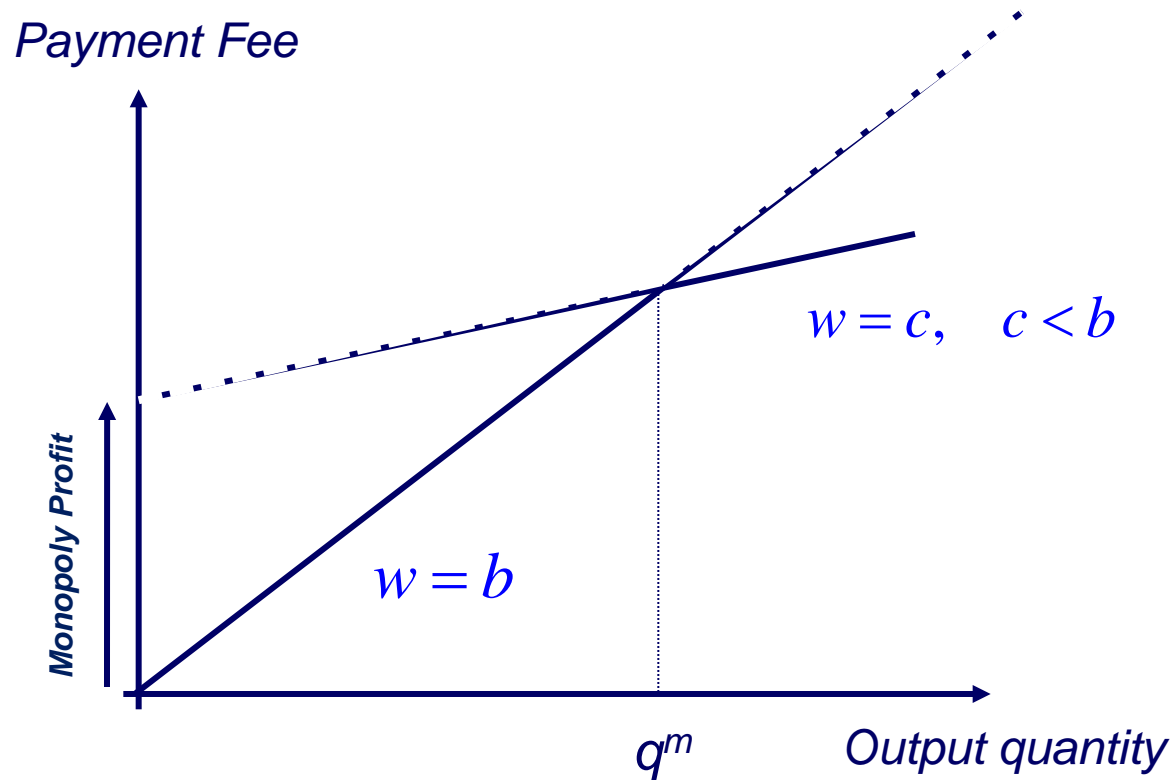
- F is the fixed fee
- c is the variable or marginal price

• Non-linear tariff:

- $w(q)$ is a variable wholesale marginal price where $w'(q) > 0$, $w''(q) > 0$

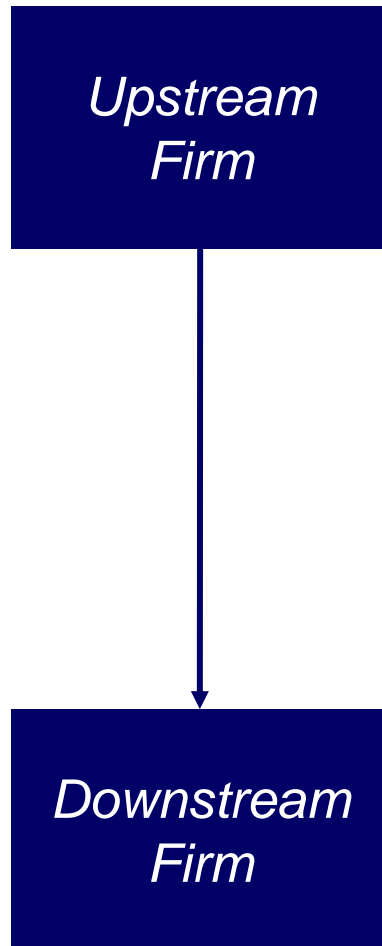
Upstream firm sets F at a level consistent with aggregate monopoly profit and sets w equal to c the marginal cost

Volume discounts: second degree price discrimination



Marginal price falls for purchases at q^m

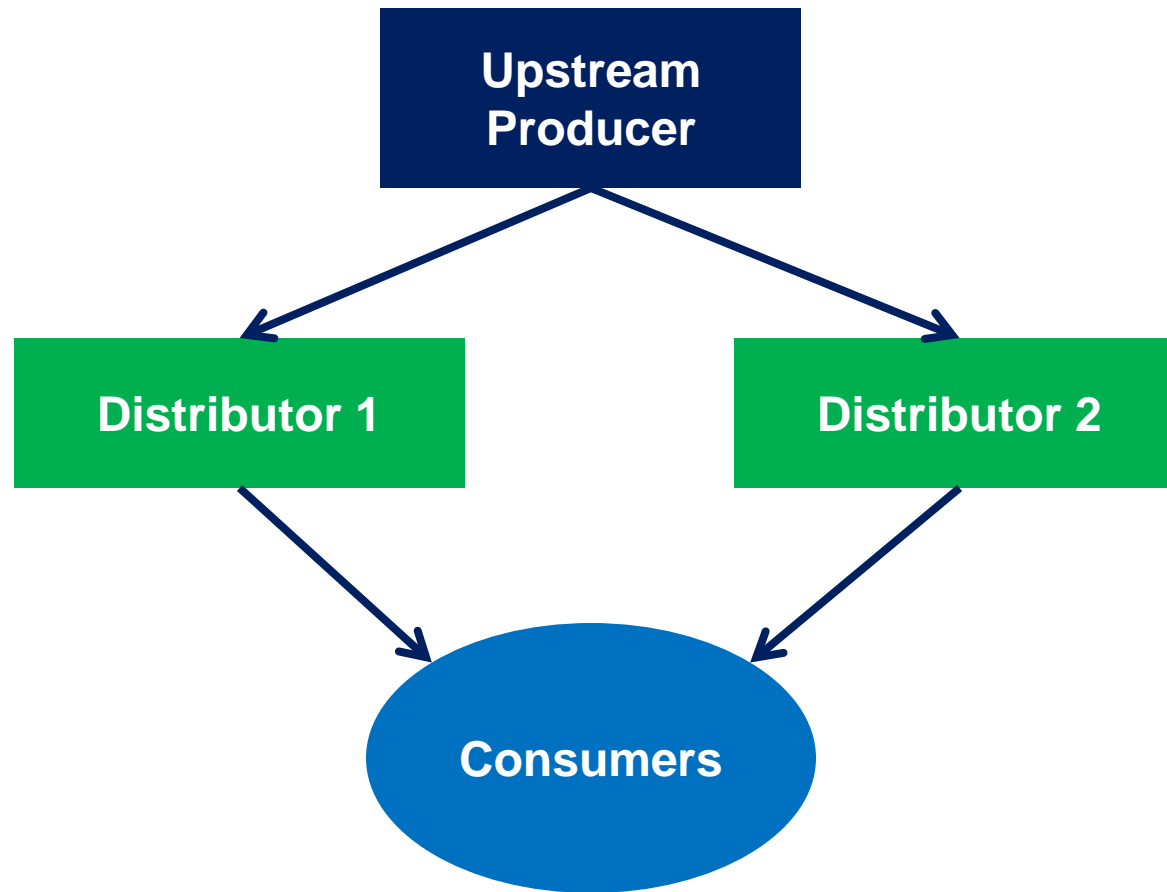
Vertical restraints – exclusivity clauses



These can cover geography, brands, customers, etc.:

- **Exclusive Distribution:** Restrictions on territory, fixed number of retailers permitted in an area selling brand (may limit intra-brand competition)
- **Exclusive Dealing:** Restrictions on dealing preventing sale of competitors brands (may limit inter-brand competition)
- **Selective Distribution:** Restricting sale of brand to certain retailer types (e.g. department stores sell up market perfume rather than supermarkets – why?)

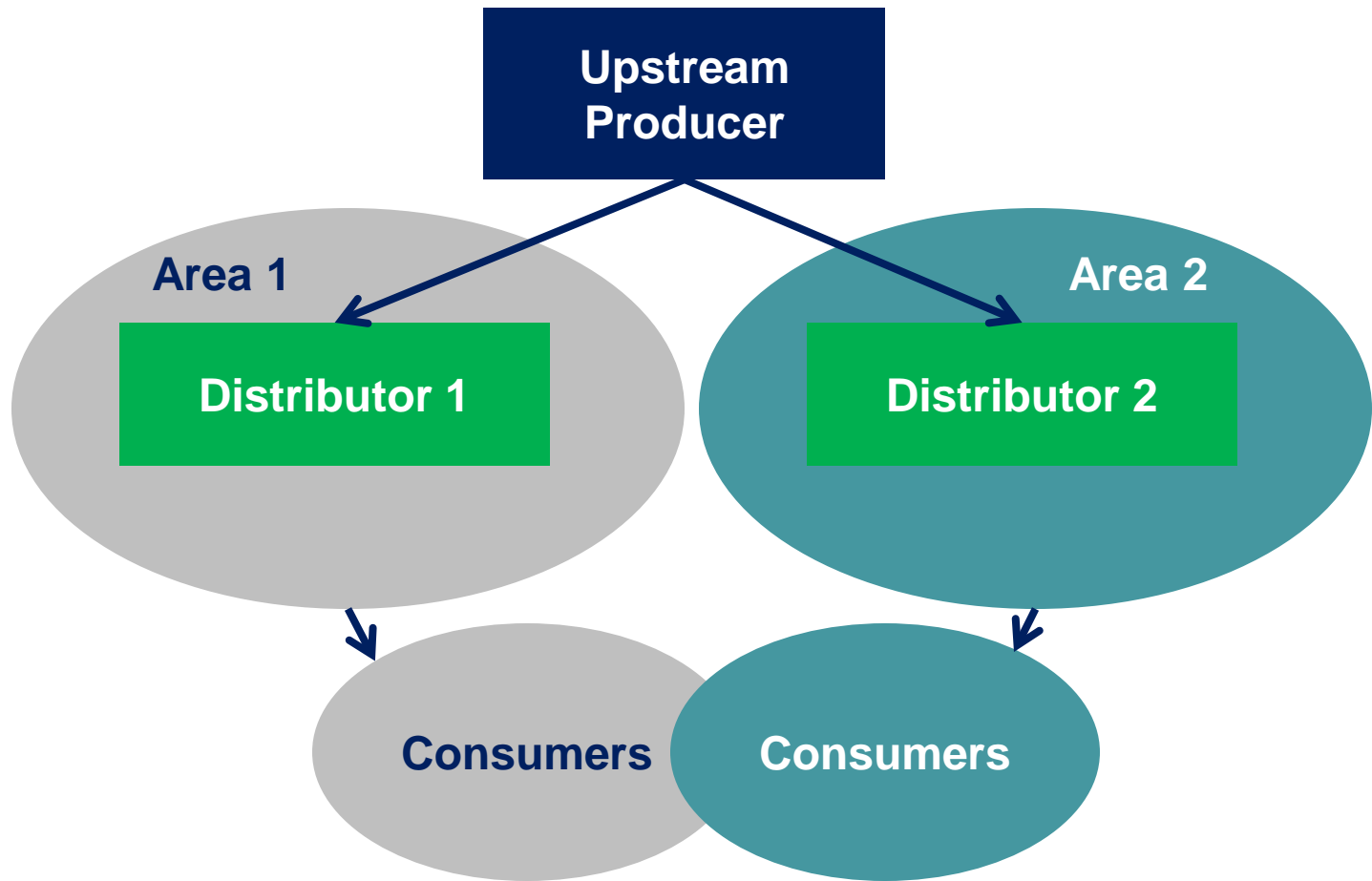
Horizontal externality problem can justify exclusive distribution



Horizontal externality problem can justify exclusive vertical restraints

- Strategies chosen by one distributor (e.g. investments in pre-sales marketing, after-sales servicing, etc.) will benefit the other distributor selling the same brand
- A distributor is likely to under-invest in marketing, assuming other distributors selling the same brand will make such investments
 - The problem of free-riding
- The result will be that too little investment is undertaken relative to the social optimum (welfare maximising level)
 - The effect is similar in spirit to the Prisoner's dilemma
- **Exclusive distribution** may limit the effect of the horizontal externality

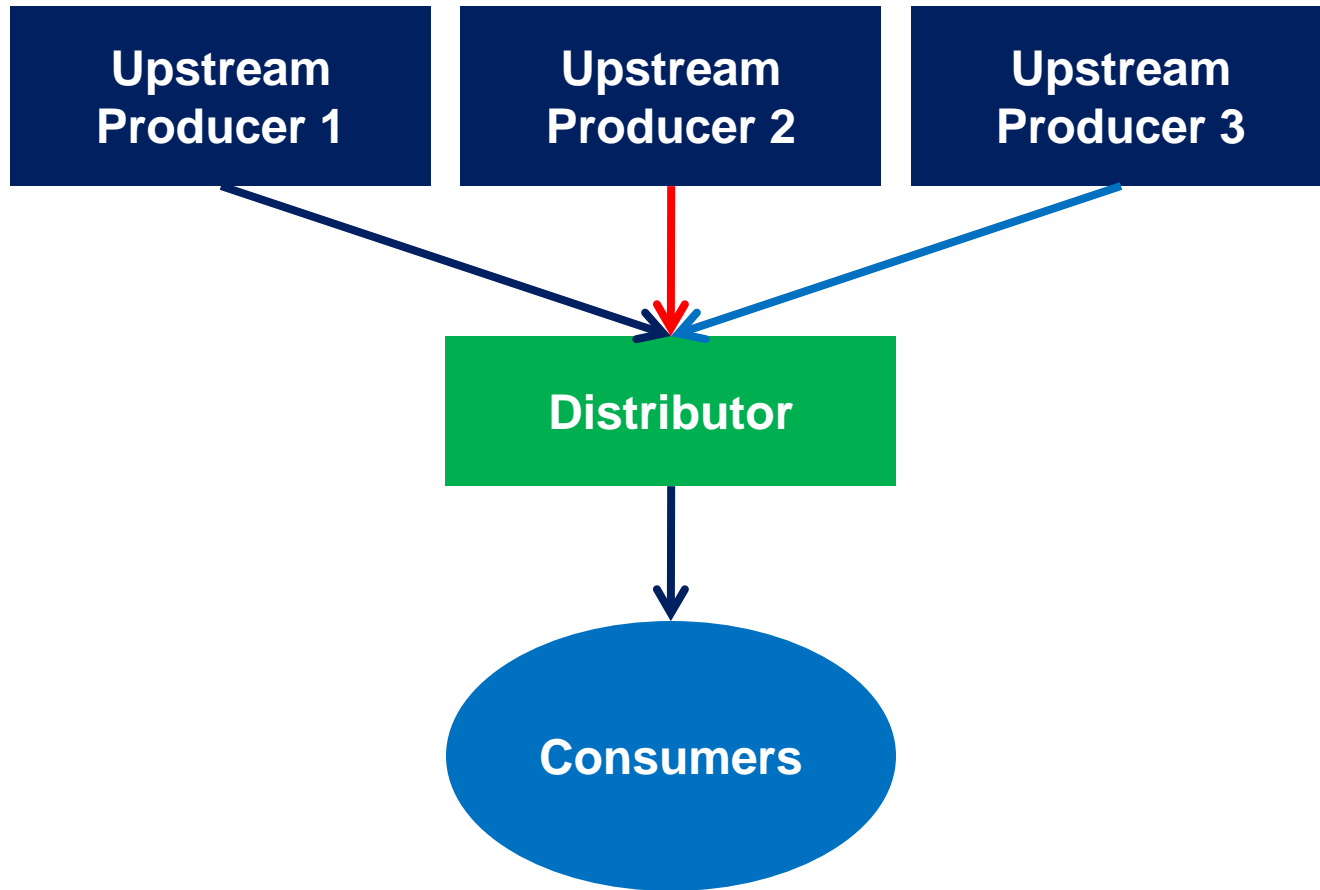
Horizontal externality problem can justify exclusive distribution



Exclusive distribution and strategic delegation

- Rey and Stiglitz (1995 *RAND Jnl of Econ*)
- Where producers set retail prices this will typically result in the final price below the joint-profit maximising price
- If retailers have market power, producers may delegate to retailers pricing decisions
- This could have a softening effect on competition as a result of prices being strategic complements
- Exclusive distribution in the form of exclusive territories could help to generate such an outcome

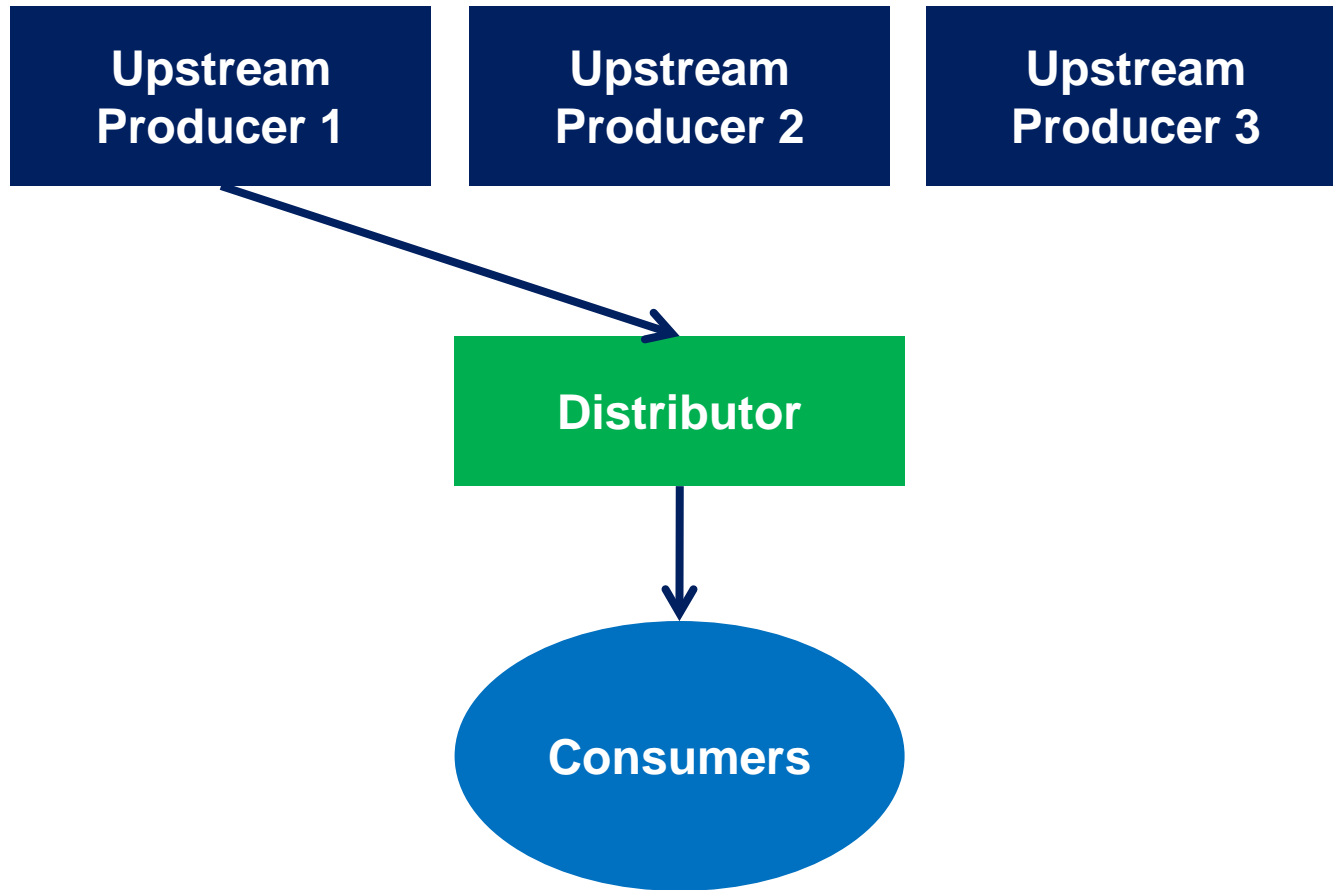
Horizontal externality problem can justify exclusive dealing



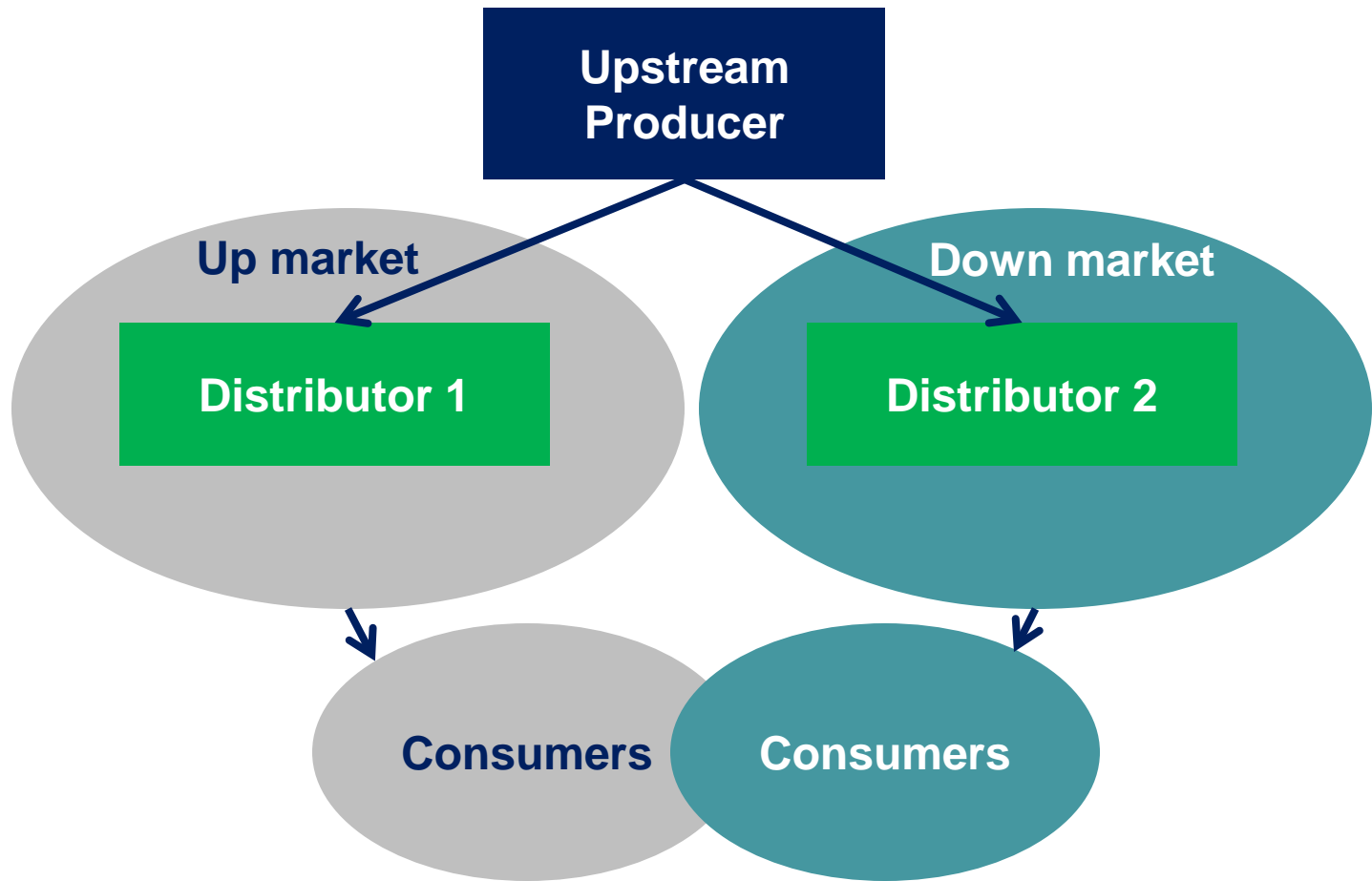
Horizontal externality problem can justify exclusive vertical restraints

- Strategies chosen by one producer in relation to the distributor (e.g. investments in staff training, imparting technical know-how, supporting promotions, extending financing, etc.) will benefit other producers offering competing brands
- A producer is likely to under-invest, assuming other producers making competing brands will make such investments
 - The problem of free-riding
- The result will be that too little investment is undertaken by producers relative to the social optimum (welfare maximising level)
- **Exclusive dealing** may limit the effect of the horizontal externality at the producer level

Horizontal externality problem can justify exclusive dealing



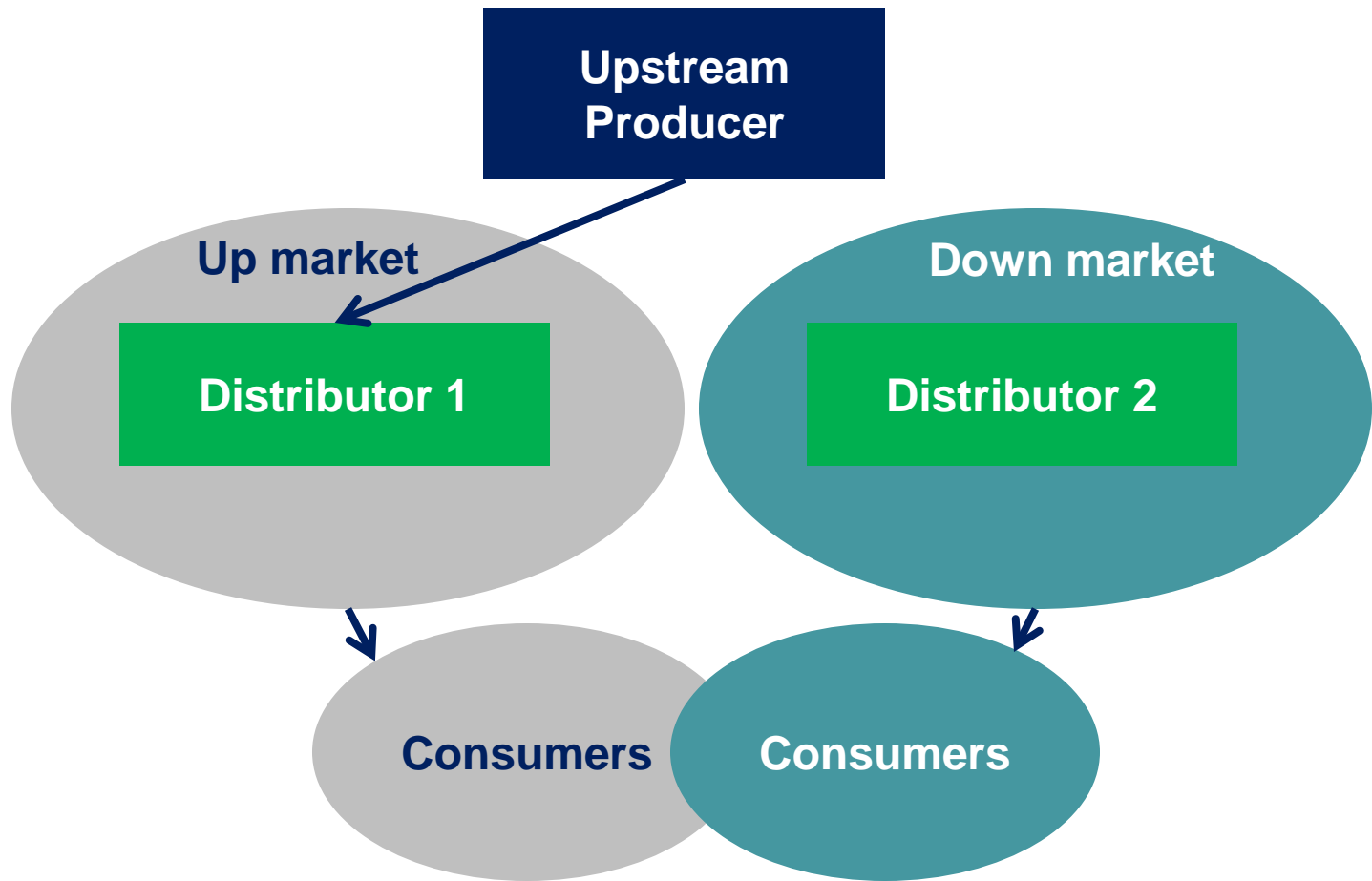
Horizontal externality problem can justify selective distribution



Network externality effect can justify selective distribution

- For certain kinds of goods (e.g. luxury goods) consumer welfare is positively related to exclusivity (snob value); for other goods high levels of technical knowledge are part of the pre- and after-sales experience (e.g. cars)
- If a producer makes its products widely available to distributors (e.g. perfumes to supermarkets; new cars to low value added resellers) this could have a negative network externality effect (in the case of premium brands) or problems affecting brand value (reputation) which may result in overall welfare lying below the social optimum
- Where these externality effects are pronounced this can justify the application of the vertical restraint **selective distribution**

Horizontal externality problem can justify selective distribution



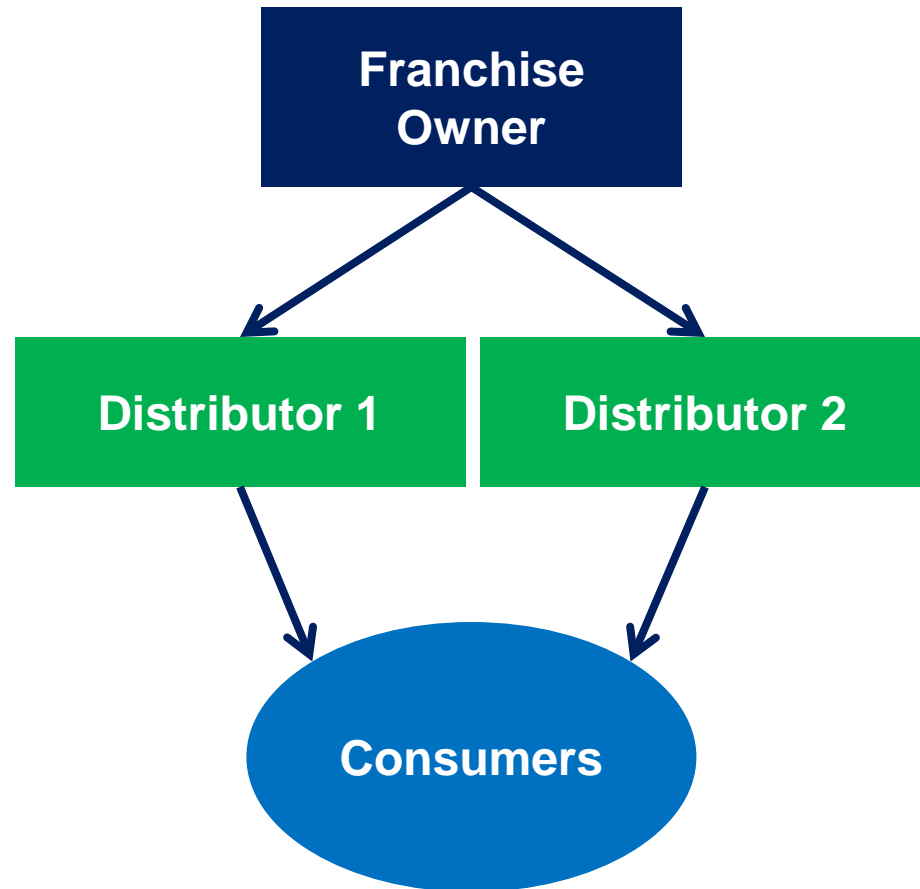
Vertical restraints and franchises: a means of commitment to enable monopoly outcomes

A franchise owner may seek to extract monopoly profits by limiting the number of franchises sold

Ex ante this incentive effect is appealing, but *ex post* the franchise owner will be tempted to sell more franchises

In the absence of a commitment mechanism (of not selling too many franchises), the buyers anticipate the subsequent sale of franchises and may delay purchase – stalling consumer benefits

Vertical restraints that may embody *Most Favoured Nation* (MFN) terms could provide the commitment needed - MFN is a condition in a contract between a buyer and a seller, specifying that the buyer gets the benefit of the lowest price that the seller charges to other buyers



The Chicago School

- In the 1960s and 1970s the Chicago School of economics robustly argued that vertical restraints should be viewed as largely welfare enhancing
- The argument rests on the idea that a buyer agreeing to a contract must by performing such an action reveal that his/her benefit exceeds that available elsewhere
- In addition vertical restraints can serve to mitigate vertical externalities (successive monopolies) and horizontal externalities
- It was argued that policy should not focus on vertical restraints, but on market power that may reside in different parts of a vertical chain
- Rather than adopt remedies aimed at constraining conduct (behavioural remedies or prohibitive *per se* rules), structural remedies were emphasised where acute application of market power was evident

Empirical Findings

Lafontaine and Slade (2008, PB Ch. 10) reviewed the empirical studies on vertical exclusive contracts and concluded:

“The empirical evidence leads one to conclude that consumer well-being tends to be congruent with manufacturer profits. When the government intervenes and forces firms to adopt (or discontinue the use of) vertical restraints, it tends to make consumers worse off... The current rule-of-reason approach, combined with ‘safe harbors’, for manufacturers with low market shares, seem more than justified based on this evidence.”

Detrimental vertical restraints case: UK Groceries

- UK supermarkets were the focus of a competition investigation in 2000
 - Supermarket groceries involve turnover of £70billion per annum (about 3.5% GDP)
- Under section 131 of the Enterprise Act 2002 the OFT can make a market investigation reference to the Competition Commission (CC) if it has reasonable grounds for suspecting that competition is not working effectively in that market
- The Groceries inquiry was referred by the OFT on 9 May 2006 following an initial OFT study into the sector and public consultation
- The CC published its final report on 30 April 2008 and proposed remedies that included the strengthening of the existing Supermarkets Code of Practice and the establishment of an Ombudsman to enforce the new code

UK Groceries: Buyer Power

- If retailers exercise market power over suppliers (buyer power) this could adversely effect suppliers while at the same time benefitting consumers
 - Requires effective competition in downstream retailing
 - Could be an effective form of countervailing buyer power
- The CC stated in its report (para 9.5)
 - *“The exercise of buyer power by grocery retailers may, however, raise concerns in certain limited circumstances if it allows retailers to impose excessive risks and unexpected costs on suppliers, which reduces suppliers’ incentive or ability to invest and innovate. This could lead to reduced capacity, reduced product quality and fewer new product offerings, and ultimately, to a detriment to consumers.”*

UK Groceries: Buyer Power

- Para 9.21 *“We conclude that, based on the size of grocery retailers, wholesalers and buying groups relative to suppliers, together with the evidence on supplier pricing and margins, all large grocery retailers, wholesalers and buying groups have buyer power in relation to at least some of their suppliers. However, we found that the buyer power of even the largest grocery retailers may be offset by the market power possessed by suppliers of the most prominent branded goods.”*
- Supply chain practices and the link to supplier investment and innovation were focussed upon:
- Para 9.41 *“when, in the hope of gaining a competitive advantage, grocery retailers transfer excessive risks or unexpected costs to their suppliers through practices involving retrospective adjustments to supply agreements or giving rise to moral hazard on the part of the grocery retailer, this is likely to lessen suppliers’ incentives to invest in new capacity, products and production processes. If unchecked, these practices, which are essentially a side-effect of competition between grocery retailers with buyer power, will be detrimental to the interests of consumers.”*

UK Groceries: Buyer Power

- Para 9.66

“On balance, we concluded that supply chain practices that transfer excessive risks and unexpected costs to suppliers, including through the use of retrospective payments and other adjustments to supply agreements, are sufficiently prevalent to cause concern.”

UK Groceries: GSCOP remedies

The Competition Commission (CC) found that that large grocery retailers were passing on excessive risks and unexpected costs to their suppliers.

The CC failed to obtain voluntary undertakings from retailers to set up a Groceries Supply Code of Practice (GSCOP) Ombudsman.

On 4 August 2009 the CC recommended that the Department for Business, Innovation and Skills (BIS) take steps to set up an ombudsman that can levy penalties on large grocery retailers for GSCOP non compliance

The GSCOP is based on the existing Supermarkets Code of Practice, but has been amended so that:

- the provisions of the GSCOP are included in every contract between grocery retailers and their suppliers;
- all retailers with groceries turnover in excess of £1 billion per year are included within its scope;
- an overarching fair dealing provision is included;
- retailers are prohibited from making retrospective adjustments to terms and conditions of supply;
- retailers are prohibited from entering into arrangements with suppliers that result in suppliers being held liable for losses due to shrinkage;
- retailers are required to enter into binding arbitration to resolve any dispute with a supplier; and
- retailers are required to keep written records of all agreements with suppliers on terms and conditions of supply.

Vertical Competition Issues: UK groceries



Second, we found that the transfer of excessive risk and unexpected costs by grocery retailers to their suppliers through various supply chain practices if unchecked will have an adverse effect on investment and innovation in the supply chain, and ultimately on consumers.

Competition Commission Groceries Market Investigation Final Report, 30 April 2008

Suppliers

“Consumer minister Kevin Brennan has today [13 January 2010] announced that he has accepted the Competition Commission’s recommendation for a body to enforce the Groceries Supply Code of Practice (GSCOP).”

Department for Business, Innovation and Skills



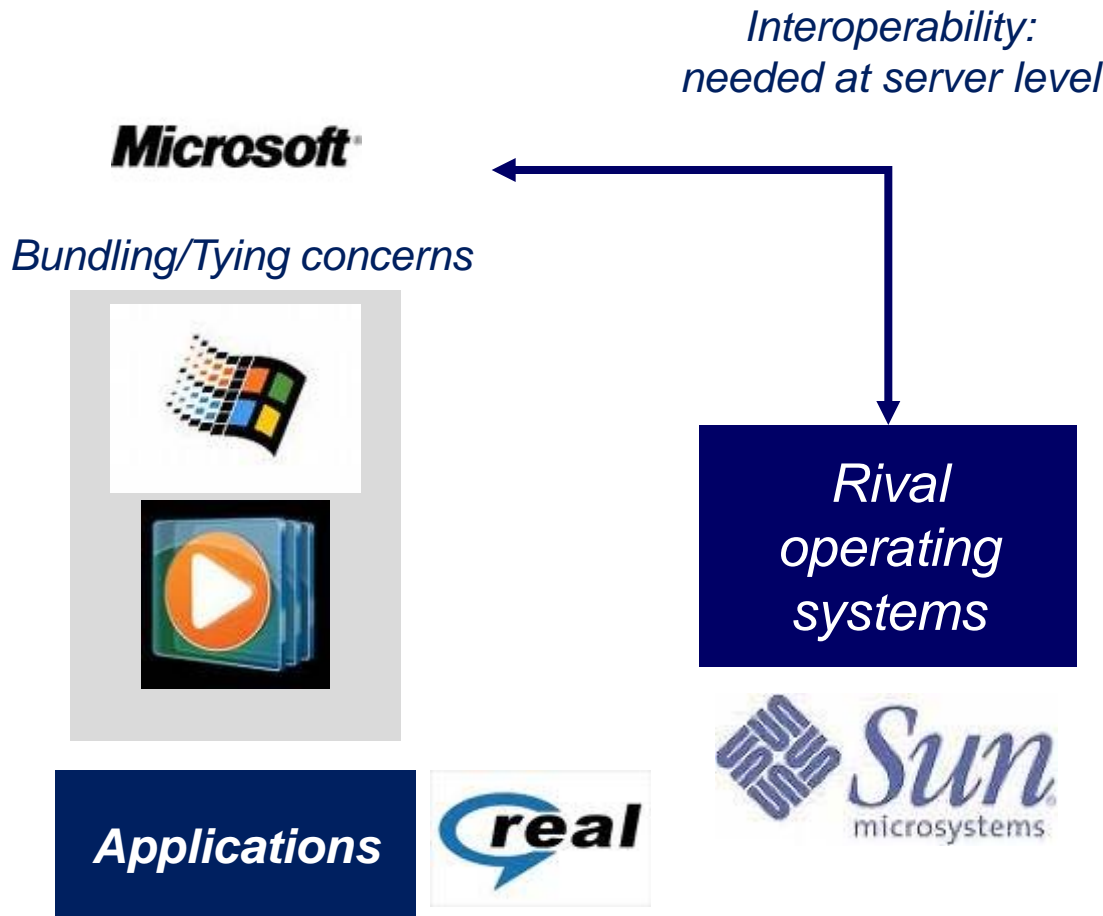
“Our relations with suppliers are not just governed by our principles and policies, but also the Supermarkets’ Code of Practice. In 2004/2005 the Office of Fair Trading audited the Code and found no evidence of any breaches by Tesco. Beyond the price that we pay for their goods, suppliers can also count on the fact that we pay promptly, we repeat business if quality is maintained and we provide the kind of partnerships which help our suppliers to improve their businesses through greater efficiencies and more effective processes.”

<http://www.tesco.com/talkingtesco/suppliers/>

Part 2

EC Microsoft case

Microsoft as a vertical integrated entity



Microsoft seen as vertically integrated: supplies OS (PCs and servers) and applications

OS interoperability critical in server segments – refusal to deal claim

Bundling/tying applications to the Windows OS could disadvantage independent application vendors – leveraging market power from OS into applications alleged

Non-price practices in a vertical context

- Deny access/refuse to deal – alleged by Sun
- Discriminate in terms of quality
- Strategic investments favouring own affiliates/products
 - R&D, advertising, etc., all part and parcel of normal competition but can be anti-competitive
- Tying (complaint about Windows Media Player)
 - Windows OS is tied to Media Player, customer (OEM) wishes to buy OS but has to buy Media Player too
- Incompatibility decisions
 - Operator may choose to make product incompatible with entrant's, or frustrate entrant's attempts to make compatible products (e.g. denying access to operating system source code)
 - Sun Microsystems 1998 complaint

Bundling/tying

- Pure bundling – Operating system (1) and application media player (2) are only available for purchase together
 - This becomes **tying** when (1 – the tying good) can only be purchased with (2 – the tied good), but (2) service is available on its own
- Mixed bundling – goods 1 and 2 can be purchased separately or as one
 - The bundled product is usually available at a discount
- Bundling can be, and often is, welfare enhancing
 - It enables a seller to extract higher profit via price discrimination – effectively diminishing deadweight loss though potentially transferring benefits away from consumers to producers/sellers
- There are cases where it may be detrimental for welfare
 - Competition agencies concerned about the leverage of market power from the tying good to the tied product (e.g. laser cartridges tied to specific printers)

Efficiency reasons for bundling

- Division of labour and scale/scope economies may justify practice
- Informational/technical reasons (e.g. the firm knows what is best for buyers)
- Internalises externalities where bundled goods are complements (i.e. eases coordination decisions for buyers)

Bundling/tying and price discrimination – example 1

- Assume the seller cannot apply 1st or 3rd degree price discrimination and cannot **bundle** services
- Seller could sell A at 7 or 4, and B at 5 or 9
- Profits maximised at A=4 and B=5 giving profits 18
- Consumer surplus = 7
- Welfare = 25

<i>Product</i>	<i>1's willingness to pay</i>	<i>2's willingness to pay</i>
<i>A</i>	7	4
<i>B</i>	5	9
<i>Bundled/Tied</i>	12	13

Bundling/tying and price discrimination – example 1

- Assume the seller cannot apply 1st or 3rd degree price discrimination but can bundle
- Seller could sell bundle at 12
- Profits maximised at 24
- Consumer surplus = 1
- Welfare = 25

<i>Product</i>	<i>1's willingness to pay</i>	<i>2's willingness to pay</i>
<i>A</i>	7	4
<i>B</i>	5	9
<i>Bundled/Tied</i>	12	13

Bundling/tying and price discrimination – example 2

- Assume the seller cannot apply 1st or 3rd degree price discrimination and cannot **bundle** services
- Seller could sell A at 9 or 4, and B at 3 or 9
- Profits maximised at A=9 and B=9 giving profits 18
- Consumer surplus = 0
- Welfare = 18

<i>Product</i>	<i>1's willingness to pay</i>	<i>2's willingness to pay</i>
<i>A</i>	9	4
<i>B</i>	3	9
<i>Bundled/Tied</i>	12	13

Bundling/tying and price discrimination – example 2

- Assume the seller cannot apply 1st or 3rd degree price discrimination but can **bundle** services
- Seller could sell bundle at 12
- Profits maximised at 24
- Consumer surplus = 1
- Welfare = 25

<i>Product</i>	<i>1's willingness to pay</i>	<i>2's willingness to pay</i>
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<i>Bundled/Tied</i>	12	13

Bundling economics

- Bundling enables a seller to apply price discrimination indirectly
 - Which may be attractive when other forms of price discrimination not possible
- If consumer valuations are sufficiently orthogonal in the market, bundling can benefit both sellers and the buyers
- If consumer values are not especially orthogonal, bundling likely to benefit seller and could represent the leveraging of market power

Tying as exclusionary device

- Firm has market power in market A (OS) and commits to tie this to product B (application)
- Commitment (which needs to be credible – Whinston (1990) *AER*)) demonstrates that post-entry competition would be fierce, lowering profits for the incumbent and entrants
- But A and B are complementary products, and if an entrant application were more efficient – then it makes sense to admit the firm as the market for A can be expanded, profits enhanced and welfare would be greater
 - A rationale for bundling and exclusion would be fear that a successful entrant would invest up the vertical value chain and diminish profits in the market where power resides

EU Microsoft case T-201/04

- Case originated in 1998 following complaint received from Sun Microsystems regarding interoperability information
- Following EC investigation the case was broadened in 2000 to include conduct with regard to the Windows Media Player product
- In August 2001 EC issued Microsoft a second Statement of Objections (SO) alleging *“that Microsoft had engaged in anticompetitive tying of its Windows Media Player product with its Windows PC operating system”*
 - Third SO sent in August 2003 on the basis of further evidence

EU Microsoft case T-201/04

- Microsoft responded to each SO
- EC concluded its investigation in March 2004 and produced a Decision
- The Decision found Microsoft had abused its dominant position in the PC operating system market by:
 - *“harming competition through the tying of its separate Windows Media Player (WMP) product with its Windows PC operating system” and “has significantly weakened competition in the media player market”*
- The Decision ordered Microsoft to provide, within 90 days, a version of Windows which did not include Windows Media Player
- In addition Microsoft was fined €497m for committing the abuse in the EU (fine was for both abuses – interoperability and tying)

EU Microsoft case T-201/04

- The EC concluded that the ubiquity afforded to WMP as a result of being tied to the Windows PC OS artificially reduces the incentives
 - *“of music, film and other media companies, as well software developers and content providers to develop their offerings to competing media players”*
- The effect of the tying was interpreted as foreclosing the market to competitors (e.g. Real, iTunes, etc), and reducing consumer choice
- Absent intervention from the EC, the tying would allegedly have “tipped” the market for media applications in Microsoft’s favour and allow it to control related markets in the digital media sector, such as encoding technology, software for broadcasting of music over the Internet and digital rights management etc.

EU Microsoft case T-201/04

- In June 2004 Microsoft served notice of appeal to the Court of First Instance (CFI)
- It wanted an annulment of the Decision and with regard to tying stated:
 - (i) *“it would interfere with Microsoft’s commercial freedom by forcing it to abandon its “basic design concept” for the Windows PC OS and*
 - (ii) *damage Microsoft’s reputation as a “developer of quality software products”*
- CFI upheld the Decision of the CFI in its judgment delivered in October 2007
 - Fine to remain in place
- Microsoft declined to appeal to the ECJ on a point of law – case now concluded

EU Microsoft case T-201/04: CFI Judgment

The CFI upheld the tying arguments presented by the EC. The factors considered by the EC were:

1. Microsoft had a dominant position on the market for the tying product (Client PC OS)
2. The tying product (Client PC OS) and the tied product (WMP) must be two separate products
3. Consumers must not have a choice to obtain the tying product without the tied product
4. The practice must foreclose competition

EU Microsoft case: Factor 1

1. Microsoft had a dominant position on the market for the tying product (Client PC OS)
 - Not disputed
 - Microsoft's market share in 2000 of new client PC operating system licences was 92.1% by shipments and 92.8% by revenue (para. 431 Decision)
 - In 2002 market share risen to 93.8% and 96.1% respectively
 - Ignoring MAC systems gives an even higher share
 - In 1996 share was 76.4%
 - Alternative OS include MAC OS, Linux and others
 - Para 435 states *“very large market shares over 50%, are considered themselves, and but for exceptional circumstances, evidence of the existence of a dominant position. Market shares between 70% and 80% have been held to warrant such a presumption of dominance”* (CFI case Hilti v EC 1991).

EU Microsoft case: Factor 2

2. The tying product (PC OS) and the tied product (WMP) must be two separate products

CFI asked whether by reference to consumer demand these are distinct products

“The Windows OS is system software whereas WMP is application software; that there are independent companies, like Real Networks, who design and supply competing products independently of operating systems; that Microsoft develops and markets WMP for other operating systems; that WMP can be downloaded independently of the Windows OS; and that, in spite of bundling, a not insignificant number of consumers continue to acquire competing media players separately”.

EU Microsoft case: Factor 3

3. Consumers must not have a choice to obtain the tying product without the tied product

CFI “observes that it is beyond dispute that, in consequence of the tying, consumers are unable to acquire the Windows OS without simultaneously acquiring WMP. In that regard, the Court considers that neither the fact that Microsoft does not charge a separate price for WMP, nor the fact that consumers are not obliged to use that media player, is relevant for the purposes of the examination of the factor”.

EU Microsoft case: Factor 4

4. The practice must foreclose competition

CFI “finds that the EC clearly demonstrated in the contested decision that the fact that Microsoft offered OEMs only the version of Windows bundled with WMP had the inevitable consequence of affecting relations on the market between Microsoft, OEMs and suppliers of third party media players by appreciably altering the balance of competition in favour of Microsoft and to the detriment of other operators....providing a disincentive for users to use third-party media players and for OEMs to pre-install such media players on client PCs...the tying would lead to a weakening of competition in such a way that the maintenance of an effective competitive structure would not be ensured in the near future”.

Conclusion

Conclusion

- Vertical restraints can take many different forms
- Restraints can enhance welfare and empirical research supports this position
- Vertical restraints that leverage market power in the form of refusing to deal or tying (Microsoft case) are more likely to have an adverse effect on consumers
- The UK Groceries market investigation concluded 2008 showed that UK supermarkets buyer power had an adverse effect on upstream suppliers and ultimately to the detriment of downstream consumers