Free riding and resale price maintenance: Insights from marketing research and practice

BY GREGORY T. GUNDLACH,* JOSEPH P. CANNON** AND KENNETH C. MANNING***

Although a topic of considerable interest and debate for nearly 100 years, antitrust understanding of resale price maintenance (RPM) has been informed primarily through theory developed in antitrust economics with limited empirical evidence. Addressing calls for research on RPM and its related practices, the current article draws upon existing academic and practitioner research in marketing to identify relevant insights and findings for understanding the primary justification for RPM—the so-called free rider explanation. Through its examination of research on multi-channel shopping and multi-channel marketing, distribution, retailing, and customer management, the article augments antitrust understanding in important and novel ways.

* Coggin Distinguished Professor of Marketing, University of North Florida, and Senior Research Fellow, American Antitrust Institute. Professor Gundlach served as an expert for PSKS in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S. Ct. 2705 (2007) and related cases.

** Associate Professor of Marketing, Colorado State University.

*** Professor and FirstBank Research Fellow, Colorado State University.

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I. INTRODUCTION

Minimum resale price maintenance (RPM), otherwise known as minimum vertical price fixing, refers to agreements or other practices between marketers at different levels in a distribution system that establish a minimum resale price below which sales of products or services cannot be made. Antitrust understanding of RPM is informed primarily by theoretical insights developed in antitrust economics. As observed by the U.S. Supreme Court in *Leegin*, however, recent "empirical evidence on the topic [is] . . . limited."[1]

Academic and practitioner research from marketing that examines multi-channel shopping,[2] multi-channel marketing,[3] distribu-

[1] Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 127 S. Ct. 2705, 2717 (2007). For empirical research, see THOMAS OVERSTREET, RESALE PRICE MAINTENANCE: ECONOMIC THEORIES AND EMPIRICAL EVIDENCE (FTC Bureau of Economics Staff Report 1983). *See also* Pauline Ippolito, *Resale Price Maintenance: Empirical Evidence from Litigation*, 34 J.L. & ECON. 263 (1991), both cited by the Supreme Court in *Leegin*. For other scholars who have examined RPM employing empirically based methods, see Ward S. Bowman, Jr., *Resale Price Maintenance—A Monopoly Problem*, 25 J. BUS. U. CHI. 141 (1952) (case study of RPM in liquor sales) and Robert L. Steiner, *Manufacturers' Promotional Allowances, Free Riders and Vertical Restraints*, 36 ANTITRUST BULL. 383 (1991) (case study of RPM drawing upon distribution experience as an executive for a major toy manufacturer).

[2] *See* Kim K. P. Johnson et al., *Multi-channel Shopping: Channel Use Among Rural Consumers*, 34 INT'L J. RETAIL & DISTRIB. MGMT. 453, 453 (2006) ("Consumers who make purchases using different distribution channels are referred to as multi-channel shoppers."); V. Kumar & Rajkumar Venkatesan, *Who are the Multichannel Shoppers and How do they Perform?: Correlates of Multichannel Shopping Behavior*, 19 J. INTERACTIVE MARKETING. 44, 45 (2005) ("customers who have made a purchase in more than one channel"); Jie Zhang et al., *Crafting Integrated Multichannel Retailing Strategies* 4 (Harvard Bus. Sch. Working Paper, No. 09-125, 2009), *available at* http://hbswk.hbs.edu/item/6181.html ("In most research, multichannel shoppers are defined as consumers who use multiple channels in the shopping process rather than consumers who buy products and service through multiple channels.").

[3] *See* Avrind Rangaswamy & Gerrit H. Van Bruggen, *Opportunities and Challenges in Multichannel Marketing: An Introduction to the Special Issue*, 19 J. INTERACTIVE MARKETING 5, 5 (2005) ("We refer to . . . marketing strategies to reach [multi-channel shoppers] as multichannel marketing.").

tion,[4] retailing,[5] and customer management[6] provides insights and empirical evidence that augments antitrust understanding of RPM.[7] Among other things, this body of managerial and consumer research investigates how consumers use multiple channels when making shopping and purchase decisions and the multi-channel marketing, distribution, retailing, and customer management strategies employed by firms to market to them. Accordingly, this literature addresses an important phenomenon associated with the primary procompetitive justification for RPM—the free rider explanation.

In the sections that follow, we examine this literature to identify insights and empirical findings that contribute to antitrust understanding of free riding and RPM. We first describe free riding, the

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[4] *See* Gary L. Frazier, *Organizing and Managing Channels of Distribution*, 27 J. ACAD. MARKETING SCI. 226, 232 (1999) (Defining a dual or multiple channel of distribution: "One approach would be to define a multiple channel as when more than one pipeline is used to sell and distribute the same product line. Thus, a multiple channel would be involved when a manufacturer uses a direct channel to sell to large customers and an indirect channel to sell to small to medium-sized customers. The other approach is to define a multiple channel as when more than one primary channel is used to sell the same product line to the same target market. An example of this is General Electric, which uses both electrical distributors and category killers like Home Depot to serve small to medium-sized contractors' needs for electrical products.").

[5] *See* Zhang et al., *supra* note 2, at 1 ("Multichannel retailers are firms that 'sell merchandise or services through more than one channel' ").

[6] *See* Scott A. Neslin & Venkatesh Shankar, *Key Issues in Multichannel Customer Management: Current Knowledge and Future Directions*, 23 J. INTERACTIVE MARKETING 70, 70 (2009) ("Multichannel customer management (MCM) is 'the design, deployment, and evaluation of channels to enhance customer value through effective customer acquisition, retention, and development' ").

[7] For other research that addresses RPM and related practices from a marketing perspective, see Steiner, *supra* note 1. *See also* Robert L. Steiner, *How Manufacturers Deal with the Price-Cutting Retailer: When are Vertical Restraints Efficient?*, 65 ANTITRUST L. J. 407 (1997); Robert L. Steiner, *The Nature of Vertical Restraints*, 30 ANTITRUST BULL. 143 (1990); Robert L. Steiner, *Vertical Restraints and Economic Efficiency* (FTC Working Paper No. 66 May 1982); Robert L. Steiner, *The Inverse Association Between the Margins of Manufacturers and Retailers*, 8 REV. INDUS. ORG. 717 (1993); Robert L. Steiner, *Does Advertising Lower Consumer Prices?*, 37 J. MARKETING 19 (1973).

competitive concerns arising from its occurrence, and antitrust justifications for RPM that rely upon free riding's adverse effects. Relevant research by marketing academics and practitioners that investigates multi-channel shopping and multi-channel marketing, distribution, retailing, and customer management is then used to shed light upon the key consumer and managerial behaviors necessary for free riding to occur. Implications arising from these findings for understanding the occurrence and scope of free riding, its competitive effects, management strategies for addressing free riding (including RPM), and the effects of RPM in practice are then identified and discussed. Our examination reveals that:

- Over time, consumers and manufacturers have increased their use of multiple channels of distribution resulting in conditions favorable to the occurrence of free riding.
- Consumers' use of multiple channels when making purchases is a result of differences across consumers in their demand preferences and variance in individuals' channel preferences across purchase occasions and across stages of their purchase decisions.
- Two different viewpoints inform management philosophy concerning the competitive effects of multiple channels of distribution and therefore manufacturers' thinking toward free riding—channel "cannibalization" and channel "synergism."
- The differing viewpoints toward multiple channels of distribution yield different manufacturer strategies for managing multi-channel systems, including those that discourage free riding behavior as well as those that encourage it.
- Managing multiple channels of distribution through strategies that result in uniform marketing efforts across channels encourages channel cannibalization, suggesting that in practice some RPM programs may have the unintended consequence of increasing rather than decreasing free riding's adverse effects.

Together, these findings present contrary implications for the free rider explanation of RPM. On the one hand, the finding that conditions favoring the occurrence of free riding have increased over time suggests that justifications for RPM based on free riding may be more relevant today than they were in the past. Other findings, however, raise questions as to the applicability of the free rider explanation. For example, findings concerning the heterogeneous nature of demand

extend prior challenges to the empirical relevance of the free rider explanation by describing how the value consumers place on promotional and service efforts induced by RPM may vary not only across consumers, but also across purchase occasions and stages of the purchase-decision process. The discovery that different viewpoints exist as to the competitive effects of multiple channels of distribution and therefore free riding also refutes the accepted view that free riding always poses adverse effects for competition. The notion that managers may not only adopt strategies to discourage free riding but also develop strategies to encourage it, extends prior understanding by revealing alternative strategies to RPM including those that are less restrictive of competition. Finally, the finding that uniform marketing efforts across channels encourages channel cannibalization suggests that manufacturers who rely on RPM to address free riding may at times unintentionally increase (rather than decrease) its adverse effects.

II. FREE RIDING AND ANTITRUST

In general, free riding takes place "when one benefits at no cost from what another has paid for."[8] As applied in antitrust, free riding occurs when "a firm is able to capture the benefits of investments that another firm has made without paying for them."[9] Concerns for free riding are at the center of procompetitive justifications for RPM in antitrust. Accordingly, free riding was the principal procompetitive theory discussed by the Court in *Leegin*, relied upon by Leegin in the case, and asserted by RPM advocates.[10]

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[8] Chi. Prof'l Sports Ltd. P'ship v. NBA, 874 F. Supp. 844, 865 (N.D. Ill. 1995).

[9] Herbert Hovenkamp, *Exclusive Joint Ventures and Antitrust Policy*, 1 COLUM. BUS. L. REV. 1, 11 (1995).

[10] Richard M. Brunell, *Overruling* Dr. Miles*: The Supreme Trade Commission in Action*, 52 ANTITRUST BULL. 475, 502 (2007) ("The principal theory discussed by the [*Leegin*] Court and relied upon by resale price maintenance advocates is the "free rider" theory, under which resale price maintenance can benefit consumers because the higher prices may induce retailers to provide pre-sale services that promote interbrand competition and otherwise would not be provided.").

A. Intrabrand free riding

Antitrust concerns for free riding focus on *intra*brand free riding or that occurring between retailers of the same brand of a product. A number of related scenarios are identified and explained to give rise to antitrust concerns for intrabrand free riding.

1. DISCOUNT V. FULL-SERVICE DEALERS The archetypical scenario involves a discount dealer of a manufactured product free riding on the presale service investments of full-service dealers and then using the savings to lure customers away through lower prices.[11] As Hovenkamp describes,

> the full service computer dealer may have, among other things, an expensive showroom, trained personnel demonstrating computers and assembling optimal packages, seminars for prospective purchasers. The free riding dealer down the street has a cheap warehouse, untrained minimum wage personnel, and stacks of computers in boxes. Customers will go to the full service dealer and obtain the information they need to make a wise choice; then they will go to the free rider to make their purchase at a lower price.[12]

2. NONPRESTIGE V. PRESTIGE RETAILERS Free riding has also been considered to be a concern where, within a product's distribution system, nonprestige retailers free ride on the reputational investments of prestige retailers.[13] Because of its reputation, a prestige (i.e., high-priced) retailer's decision to carry a product can impact and signal (i.e., certify) the product's quality. Where this occurs, nonprestige retailers (i.e., discount stores) may offer the product at lower prices and free ride on the quality signals emitted by the prestige retailer.

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[11] The free riding explanation was first popularized by Lester Telser. *See* Lester Telser, *Why Should Manufacturers Want Fair Trade?*, 3 J. L. & ECON. 86 (1960). The foundational thinking and economic reasoning upon which the concept of free riding resides can be found in the earlier work of T.H. Silcock & F. W. Taussig. *See* T. H. Silcock, *Some Problems of Price Maintenance*, 48 ECON. 42 (1938) and F.W. Taussig, *Price Maintenance*, 6 AM. ECON. REV. PAPERS & PROCEEDINGS 170 (1916).

[12] Hovenkamp, *supra* note 9, at 97–98.

[13] *See* Howard P. Marvel & Stephen McCafferty, *Resale Price Maintenance and Quality Certification*, 15 RAND J. ECON. 346 (1984).

3. INTERNET V. BRICK-AND-MORTAR RETAILERS Free riding concerns have also been extended to settings involving established brick-and-mortar retailers and Internet retailers. Because of their lower overhead costs, Internet retailers have been targeted as free riders based on the contention that they unfairly take advantage of the presale service efforts of established brick-and-mortar retailers to offer products at lower prices.[14] Consumers are believed to visit brick-and-mortar retailers to gather information about a product or view demonstrations of a product and subsequently purchase the item from an Internet retailer offering it at a lower price without providing similar services or bearing their costs.

4. DIRECT V. INDIRECT DISTRIBUTION Free riding may also be a concern in settings involving direct and indirect distribution. Dual distribution occurs when a manufacturer sells to independent retailers (an indirect channel) but also sells directly through its own retail outlets.[15] In terms of direct channels, manufacturers sometimes set up their own retail outlets, sell directly to consumers via Internet channels, or own outlet stores that sell (usually, but not always) at discount prices. Free riding may take place when independent retailers invest in presale demand-building activities and subsequent to benefiting from these activities consumers purchase directly from the manufacturers' retail outlets.

Although intrabrand free riding occurs when one or more retailers benefit at no cost from what another retailer has paid for and thereby capture the benefits of investments that the retailer has made without paying for them, each of the above scenarios that describes

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[14] *See* Joseph Pereira, *Why Some Toys Don't Get Discounted: Manufacturers Set Price Minimums That Retailers Must Follow or Risk Getting Cut Off*, WALL ST. J., Dec. 24, 2008, at A1 ("Many traditional retailers favor minimum-pricing agreements because they help put a stop to what the stores view as unfair competition from online sellers, which can charge less because they have lower overhead costs."). *See also* Joseph Pereira, *Price-Fixing Makes Comeback After Supreme Court Ruling*, WALL ST. J., Aug. 18, 2008, at A1 ("Online retailers say some policies target them specifically.").

[15] PATRICK DUNNE & ROBERT F. LUSCH, RETAILING 192 (1999) ("A manufacturer that sells to independent retailers and also through its own retail outlets is engaged in dual distribution.")

its occurrence also specifies circumstances and behavior on the part of manufacturers and consumers. In particular, each describes a circumstance in which by design or default manufacturers offer and sell products through more than one type of retail channel of distribution. In addition, each describes the behavior of consumers who shop and complete a product purchase using more than one type of retail channel of distribution. Together, these circumstances provide the requisite channel structure (i.e., multi-channel distribution) and consumer behavior (i.e., cross-channel shopping) for free riding to occur.

B. Competition concerns

The antitrust concern where these circumstances and behaviors are present is that one or more retail members of one channel of distribution will free ride on the investments made by retail members of another channel of distribution to the detriment of consumer welfare. That is, one or more retailers will take advantage of their position in the overall channel structure to exploit the cross-channel shopping behavior of consumers and capture the benefits of demand-stimulating investments made by retailers in another channel without paying for them. Consumer cross-channel shopping enables the demand-stimulating investments of retailers in one channel of distribution to stimulate demand for other retailers in a different channel of distribution. Multi-channel distribution by manufacturers provides the requisite channel structure for this cross stimulation of demand to take place and for free riding to occur. Where enough free riding does occur, the antitrust concern is that retail members of one channel of distribution that once found it profitable to carry the product and incur the costs of these investments may no longer find it profitable do so and may ultimately stop, to the detriment of welfare overall.

C. Free riding justifications for RPM

In light of the above, a manufacturer's use of RPM is justified in antitrust based upon RPM's ability to efficiently address free riding in ways that result in increased interbrand competition. Proponents of RPM contend that enhancing interbrand competition is and should be the primary concern of the antitrust laws. Imposing a minimum uni-

form resale price across all channels is theorized to safeguard against free riding by removing the risk that members of one channel of distribution will be under-priced by members of another channel of distribution. At the same time, the guaranteed margin that a minimum fixed price ensures is said to encourage members in each channel to invest and engage in the marketing and promotional efforts sought by manufacturers.

Free riding–based justifications for RPM draw on several assumptions.[16] For example, the occurrence of free riding is assumed to pose challenges for a manufacturer's ability to compete in the marketplace and therefore is to be discouraged. As well, it is assumed that when free riding is addressed through the use of RPM, the costs of the marketing efforts encouraged by RPM are offset by the value that consumers place on them. Stated differently, it is assumed that at least as many consumers value the marketing efforts induced by RPM as not. Despite restricting intrabrand price competition, the use of RPM is also presumed to strengthen a manufacturer's ability to compete against other manufacturers. That is, the use of RPM is presumed to enhance interbrand competition through mitigating the adverse effects of free riding. Finally, alternatives that would resolve free riding problems and have a less restrictive impact on retail price competition other than RPM are assumed to either be unavailable or to have been considered but otherwise found to be inefficient or ineffective.

D. Questions in antitrust

Despite being the principal procompetitive justification for RPM, the free rider explanation is not without controversy. For example, although consensus exists that some free riding takes place, whether this free riding is ultimately harmful to consumer welfare has been questioned. As summarized by Justice Breyer in the dissent in *Leegin*:

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[16] For an in-depth discussion of these economic assumptions and for other vertical restraints, see William S. Comanor, *Vertical Price Fixing, Market Restrictions and the New Antitrust Policy*, 98 HARV. L. REV. 983 (1985); F.M. Scherer, *The Economics of Vertical Restraints*, 52 ANTITRUST L.J. 687 (1983); and F.M. SCHERER & DAVID ROSS, INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE 555–56 (3rd ed. 1990).

> There is a consensus in the literature that "free riding" takes place. . . . The question is how often the "free riding" problem is serious enough significantly to deter dealer investment. . . . All this is to say that the ultimate question is not whether, but how much, "free riding" of this sort takes place.[17]

Experts in *Leegin* disagreed as to the relevance of the free riding explanation to circumstances present in the case.[18] In addition to its competitive effects, scholars have also challenged other aspects of the free riding justification for RPM. For example, whether and to what extent consumers value the marketing efforts encouraged by RPM have been challenged as empirically dependent on the consumers involved.[19] Furthermore, the logic that RPM serves to strengthen a manufacturer's ability to compete against other manufacturers has been challenged on several grounds.[20] Given that RPM restricts intrabrand price competition, where manufacturers can manage the

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[17] Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 127 S. Ct. 2705, 2729–30 (Breyer, J., dissenting).

[18] *See* Report of Plaintiffs' Expert Gregory T. Gundlach, PSKS, Inc. v. Leegin Creative Leather Prods., Inc., No. 2:03-cv-107 (E.D. Tex. Apr. 3, 2009); and Report of Defendants' Expert Kenneth G. Elzinga, PSKS, Inc. v. Leegin Creative Leather Prods., Inc., No. 2:03-cv-107 (E.D. Tex. Jan. 12, 2004).

[19] *See* Roger D. Blair, *The Demise of* Dr. Miles*: Some Troubling Consequences*, 53 ANTITRUST BULL. 133, 145–46 (2008) ("If all consumers value the product-specific services equally . . . RPM is a reasonable restraint because it improves consumer welfare. But it may be not the case that all consumers value the product-specific services equally. For example, a first-time buyer of an iPhone may need far more help than a repeat purchaser . . . . Thus the impact on consumer welfare is ambiguous on a priori grounds. As a result, the effect of RPM on consumer surplus is an empirical matter."); and Luc Peeperkorn, *Resale Price Maintenance and its Alleged Efficiencies*, 4 EUR. COMPETITION J. 201, 209 n.9 (2009) ("it can be questioned whether the extra promotion would be in the overall interest of consumers. Even in the case of a genuine free rider problem, it may be only the marginal (new) consumers which benefit from the extra promotion, but not the possibly larger group of infra-marginal (experienced) consumers which already know what they prefer, which do not benefit from the extra promotion and for which the extra outlays and the RPM only result in a price increase.").

[20] *See* Ittai Paldor, Rethinking RPM: Did the Courts Have it Right All Along? (2007) (unpublished S.J.D. thesis, University of Toronto), *available at* http://ssrn.com/abstract=994750.

adverse effects of free riding in other less restrictive ways, the welfare effects of RPM have also been questioned. The free riding justification for RPM has been challenged on other grounds as well.[21]

III. INSIGHTS FROM MARKETING RESEARCH AND PRACTICE

Focusing on the requisite channel structure (i.e., multi-channel distribution) and consumer behavior (i.e., cross-channel shopping) necessary for free riding to occur, in this section we investigate research on multi-channel shopping and multi-channel marketing, distribution, retailing, and customer management to identify insights and information that contribute to antitrust understanding of free riding and RPM. We also identify and discuss implications arising from these findings for antitrust. We focus on five findings from the literature that we elaborate upon and discuss below.

A. Consumers and manufacturers have increased their use of multiple channels of distribution resulting in conditions favorable to the occurrence of free riding

In the past, consumers mainly relied upon one channel of distribution to meet their product information and purchase needs.[22] According to Zhang et al., "prior to the Internet, customers typically

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[21] For example, the free riding explanation for RPM has been challenged for its empirical relevance through historical evidence that RPM has more often been induced by a manufacturer's incumbent retailers who fear the competitive challenge that more efficient forms of retailing may pose for them through lower prices. For an early discussion of this alternative explanation, see BASIL S. YAMEY, THE ECONOMICS OF RESALE PRICE MAINTENANCE 52–56 (1954). The free riding explanation has also been challenged as underspecifying the phenomenon of interest in that it does not account for the role that manufacturers may play in providing information to consumers nor does it account for differences in market power across channel members that may affect the use of RPM. *See* Steiner, *supra* note 1, and sources cited *supra* note 7.

[22] *See* Paul F. Nunes & Frank V. Cespedes, *The Customer Has Escaped*, HARV. BUS. REV., Nov. 2003, at 96; and Rangaswamy & Van Bruggen, *supra* note 3, at 5 ("[I]n the past [customers] typically obtained all their channel services from a single integrated channel . . . .").

researched and purchased products during a trip to one store because it was too 'costly' to visit multiple stores before making a purchase decision."[23] Nunes and Cespedes found that when shoppers visited a store, "they almost always bought the product right then and there"[24] and "whichever distribution channel they opted for, they stayed with it until the sale was made."[25] They conclude, further, that "customers did, in fact, tend to stay reliably in their boxes. The channel held onto the customers, if not from cradle to grave, then at least from initial consideration to repeat purchase."[26]

Past approaches to the design and management of distribution channels were an outgrowth of the understanding that people typically shopped and purchased products within a single channel. Traditional channel strategy was based upon market segmentation.[27] Using demographics and other information, manufacturers first segmented the market and then designed discrete distribution channels to serve each targeted segment, serving, for example, segment *A* through channel *1* and segment *B* through channel *2*.[28] While manufacturers might serve multiple segments, they did so on a segmented basis. The common assumption was that people sharing similar needs or demographic characteristics tended to shop and buy in the same way.[29]

Although some consumers continue to rely upon one channel of distribution and manufacturers continue to design and manage their distribution channels in traditional ways, significant changes on the part of other consumers and many manufacturers have taken place over time.

1. MULTI-CHANNEL SHOPPING Today, research indicates that consumers behave increasingly as multi-channel shoppers relying on more than one channel of distribution for their purchases. As the Internet has become a dominant force and other channels of

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[23] Zhang et al., *supra* note 2, at 6–7.

[24] *See* Nunes & Cespedes, *supra* note 22, at 96.

[25] *See id.* at 96.

[26] *Id.* at 97.

[27] *See id.* at 97.

[28] *See* Neslin & Shankar, *supra* note 6, at 72.

[29] *See* Nunes & Cespedes, *supra* note 22, at 98.

distribution (e.g., catalog sales and television home shopping) have emerged and gained prominence over time,[30] consumers are reportedly using more than one channel for their purchases. For example, as reported by Johnson et al., one industry trade association found that "[a]mong primarily online shoppers of a retailer, 78 percent made purchases from the same retailer's stores and 45 percent purchased using the same retailer's catalogs. Similarly, among primarily catalog shoppers of a retailer, 36 percent purchased from the retailer's stores and 23 percent purchased from the retailer's web site. Among primarily store shoppers, only 6 percent made purchases using the internet [sic] and 22 percent made purchases using catalogs."[31]

(a) The "research shopper" phenomenon Research further indicates that it is increasingly common for consumers to engage in a specific form of multi-channel shopping—shopping for a particular product in one channel of distribution and subsequently purchasing the item in another channel.[32] Labeled by Verhoef, Neslin and Vroomen as research shopping and the research shopper phenomenon, they describe the increasing "propensity of consumers to research the product in one channel . . . , and then purchase it through another channel."[33]

Research shopping is reportedly widespread, occurring across different channels and in different product categories. As Nunes and Cespedes describe:

> Today, customers "channel surf" with abandon. They routinely avail themselves of the services of high-touch channels, only to buy the prod-

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[30] *See* Zhang et al., *supra* note 2, at 22 ("The past fifteen years has been a period of rapid growth in the practice of multichannel retailing, mirroring the rise of the Internet as a nearly ubiquitous tool that firms use to interact with customers.").

[31] *See* Johnson et al., *supra* note 2, at 453.

[32] *See* Rangaswamy & Van Bruggen, *supra* note 3, at 5 ("It is becoming common for customers to use different channels . . . , for example, using Web sites to obtain information but making purchases offline.").

[33] Peter C. Verhoef, Scott A. Neslin & Bjorn Vroomen, *Multichannel Customer Management: Understanding the Research-Shopper Phenomenon*, 24 INT'L J. RES. MARKETING 129, 129 (2007).

> uct at the end point of another, cheaper channel. Who among us hasn't leafed through a catalog before heading to the mall, or called a travel agent for advice about airfares and then either bought the tickets online or purchased them directly from the airline to get a better price?[34]

The academic and practitioner literatures provide considerable evidence of research shopping by consumers. For example, a study in the vacation industry found 30% of consumers used one channel to search and another channel to make their purchases.[35] A survey of 280 Dutch consumers found that across six product categories, on average, 76% engaged in research shopping.[36] Further demonstrating this trend, a recent study by Deloitte reported that 56% of consumers shopped and purchased a product using multiple channels at least once in the previous year.[37]

(b) Directionality of research shopping Despite many possible pathways there is also substantial evidence that research shoppers more commonly shop on the Internet first and then subsequently purchase from brick-and-mortar stores. Zhang et al., for example, report on a survey of U.S. consumers conducted by IBM that found that "[b]rowsing on the Internet and purchasing merchandise at a store is the most common use of multiple channels during a shopping

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[34] Nunes & Cespedes, *supra* note 22, at 96. *See also* Zhang et al., *supra* note 2, at 19 ("In many categories customers may 'shop' in one channel and buy in another."). *See also* Ruud T. Frambach, Henk C. A. Roest & Trichy V. Krishnan, *The Impact of Consumer Internet Experience on Channel Preference and Usage Intentions across the Different Stages of the Buying Process*, 21 J. INTERACTIVE MARKETING 26, 27 (2007). ("It has been found that, in general, a consumer goes through three stages in his/her buying process, namely, pre-purchase, purchase, and post-purchase. Further, extant research shows that consumers shift between the online and offline channels when they move through these three stages. Such inter-channel movements are more likely to happen in the case of a complex product or service. Apparently, the pre-purchase stage, in which consumers primarily seek information, imposes different requirements on the marketing channel compared to the purchasing stage, where the consumers do the actual buying.").

[35] *See* Verhoef, Neslin & Vroomen *supra* note 33, at 129.

[36] *Id.*

[37] *See* DELOITTE, DELOITTE 2008 ANNUAL HOLIDAY SURVEY: ONLINE AND MULTICHANNEL SHOPPING 1 (2008) (on file with authors).

episode."[38] This pattern was used by over 78% of those consumers surveyed while only 8% used the second most widely used pattern: browsing in a store and making a purchase over the Internet.[39] Research by Doubleclick found similar results.[40] In particular, browsing on the Internet and then purchasing in the store was reported by 43% of shoppers compared to 16% of shoppers who reported they shopped at stores and then purchased on the Internet. A 2007 survey of more than 15,000 consumers found that 92.5% reported "regularly or occasionally research[ing] products online before buying them in a store."[41] Other studies report similar findings.[42]

2. MULTI-CHANNEL DISTRIBUTION At the same time that multi-channel shopping and research shopping on the part of consumers have increased, manufacturers have added channels of distribution and increased their use of multiple channels of distribution. As Court, French and Knudsen describe:

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[38] *See* Zhang et al. *supra* note 2, at 6. *See also* IBM, *Understanding Consumer Patterns and Preferences in Multi-Channel Retailing* 1 (IBM Global Business Services White Paper 2008) ("[T]he top multi-channel combinations are nearly the same for the U.S. and the UK. The vast majority (over 75%) of multi-channel shoppers prefer the combination of 'Online to Store,' followed by 'Store to Online' (7+ percent) and 'Online to Call Center' (3+ percent) for all product categories.")

[39] Zhang et al., *supra* note 2, at 6.

[40] *See* Verhoef, Neslin & Vroomen, *supra* note 33, at 129 ("the results of a Doubleclick study of research shopping . . . shows the most common form of research shopping is Internet → Store.").

[41] *See* News Release, National Retail Federation, RAMA Research Finds Magazines, Television, and Newspapers Prompt Online Product Searches 1 (Mar. 12, 2007).

[42] *See* Sebastian Baal & Christian Dach, *Free Riding and Customer Retention Across Retailers*, 19 J. INTERACTIVE MARKETING 75, 81 (2005) ("Almost one third of the transactions respondents completed in brick-and-mortar stores included multichannel shopping: 30.8% of the respondents collected information on the Internet before making their latest offline purchases . . . . When respondents finalized transactions online, 26.4% of them visited brick-and-mortar stores before they purchased on the Internet."). *See also* Verhoef, Neslin & Vroomen *supra* note 33, at 129 ("[O]ur findings replicate previous studies, in that we find that Internet → store research shopping is the most common form of research shopping.").

> Recent advances in technology, information, communications, and distribution have created an explosion of . . . sales and service channels . . . . The number of distribution touchpoints has increased . . . , including company owned stores, shared and exclusive dealers, telemarketing agents, affinity partners, and the Web.[43]

Other channels include catalog sales, telephone ordering, home shopping networks, kiosks, and box vending machines to name a few. Similarly, retail formats have proliferated to include an abundance of different choices.

Frazier, a long time scholar of channels of distribution, concluded over a decade ago that "the use of multiple channels of distribution is now becoming the rule rather than the exception."[44] Research also shows that "more and more companies [have] become multi-channel operators."[45] The research further shows that the addition of channels by manufacturers and their increasing use of multi-channel distribution span a variety of industries.

3. IMPLICATIONS: OCCURRENCE AND SCOPE OF FREE RIDING Together these research findings and insights provide information helpful for understanding the occurrence and scope of free riding. On the one hand, the research provides evidence that circumstances conducive to free riding have increased over time. As described, for free riding to take place, manufacturers must distribute their products across multiple channels of distribution—either by design or default. Consumers must also shop across channels for a particular purchase. Spurred on by critical changes in technology and other developments that have led to the growth and use of multiple channels of

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[43] David C. Court, Thomas D. French & Trond Rilber Knudsen, *The Proliferation Challenge, in* PROFITING FROM PROLIFERATION 9–10 (Allen P. Webb ed., 2006).

[44] Frazier, *supra* note 4, at 232.

[45] *See* Sonja Gensler, Marnik G. Dekimpe & Bernd Skiera, *Evaluating Channel Performance in Multi-channel Environments*, 14 J. RETAILING & CONSUMER SERVICES 17, 17 (2007).

[46] *See* Kumar & Venkatesan, *supra* note 2, at 44 ("Organizations are moving towards multiple channel integration. This phenomenon is widespread, spanning such industry segments as retail, travel, banking, computer hardware and software, and manufacturing.").

distribution, increasingly and in significant numbers manufacturers and consumers are behaving in this fashion. The use of multiple channels of distribution by manufacturers has become the rule rather than the exception and this trend is widespread, spanning different channels and a number of industries. Consumers are also increasingly engaging in research shopping by frequenting one channel of distribution and subsequently purchasing from another. Thus, the distribution structures and the required consumer shopping and purchase behavior necessary for free riding to occur have increased over time.[47]

Based on the findings, one can also speculate that the occurrence of free riding in the past may have been more limited than once thought. To raise antitrust concerns and justify RPM, free riding must occur with enough frequency to deter retailers in a market from investing in the promotional efforts desired of them by the manufacturer. A number of marketing scholars contend, however, that (1) the costs of visiting multiple stores led consumers in the past typically to rely upon one channel of distribution for their shopping and purchase needs and (2) distribution channels were generally designed and built to reach discrete segments of consumers. Thus, based on these observations, free riding of the sort necessary to justify RPM in antitrust may have been more limited in its occurrence than previously thought.

Finally, the research also provides evidence that extant allegations of free riding against Internet retailers could be overstated. Because of their overhead costs, Internet retailers have been targeted as free riders based on contentions that they unfairly take advantage of the marketing investments of established brick-and-mortar retailers. However, research on multi-channel shopping provides evidence that such assertions are exaggerated. In fact, just the opposite appears to be the case, given that browsing on the Internet and subsequently

[47] However, when consumers depend mainly on manufacturers for the provision of information when making their purchase decisions or when consumers possess experience with a good and therefore do not require retail-based information when making their purchases, their greater use of multiple channels of distribution may not lead to increased free riding behavior on their part. We are thankful to Robert L. Steiner for this important insight.

purchasing from a store has been consistently found to be the most common form of research shopping. To the extent these findings and this form of research shopping reflect free riding—a consumer obtains relevant information about a product from an Internet retailer but subsequently purchases the item from a brick-and-mortar retailer who does not provide the information—it not only counters allegations that Internet retailers are free riding on brick-and-mortar retailers, but indicates the opposite is more accurate. These findings are particularly important in light of the growing significance of the Internet and the adverse effects that false accusations of free riding could have on the development of this important form of retailing.

B. *Consumers' use of multiple channels when making purchases is a result of differences across consumers in their demand preferences and variance in individuals' channel preferences across purchase occasions and across stages of their purchase decisions*

Consumers use different channels to shop for and purchase products for various reasons. It is well known, for example, that consumers' channel needs depend on their specific purchase preferences. As Avery et al. point out "[c]onsumers have heterogeneous purchase preferences which affect their choice of channel."[48] Thus different consumers may prefer different channels when making the same purchase.

1. PURCHASE OCCASION AND DECISION PROCESS Beyond differences across consumers, it is also known that an individual consumer's preferences and therefore channel choice can vary across different purchase occasions and across different stages of the purchase decision process. As Nunes and Cespedes point out, "A customer that behaves one way for one purchase may behave in a very different way the next time."[49] For example, a customer may prefer a store for

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[48] Jill Avery, Thomas Steenburgh, John A. Deighton & Mary Caravella, *Adding Bricks to Clicks: The Contingencies Driving Cannibalization and Complementarity in Multichannel Retailing* 5 (Harvard Business School Working Paper No. 07-043, Feb. 2009), *available at* www.hbs.edu/research/pdf/07-043.pdf.

[49] Nunes & Cespedes, *supra* note 22, at 100. *See also* Avery, Steenburgh, Deighton & Caravella, *supra* note 48, at 5 (consumers also have heterogeneous

some types of purchases and a catalog for others. In addition to these differences, consumers who research shop may also have different channel needs depending on the stage of the shopping cycle they occupy.[50] As Nunes and Cespedes further describe:

> What makes shopping behavior new and profoundly challenging is that customers today are no longer marching through those five stages [awareness, consideration, preference, purchase, post-sale service] in the context of a single channel. Instead, they are using all the available channels, entering different ones to fulfill their needs at different stages.[51]

For example, "consumers may window shop by flipping catalogs, search for product information online, make the purchase in brick-and-mortar stores, and get their postpurchase services through call centers."[52] Thus, in addition to the impact on channel choice due to heterogeneous demand *across* consumers, the choice and use of different channels of distribution may vary *within* consumers based upon their purchase occasion and the specific stage of the purchase decision–process they occupy.

2. IMPLICATIONS: MOTIVATIONS FOR FREE RIDING The findings and insights from the examined research are helpful in understanding the motivations for free riding behavior on the part of consumers (i.e., research shopping). Extended to RPM, the research informs questions regarding the empirical relevance of justifications for RPM based on

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purchase preferences "within a customer but across purchase occasions. . . ."). *See also* Joseph Alba et al., *Interactive Home Shopping: Consumer, Retailer and Manufacturer Incentives to Participate in Electronic Marketplaces*, 61 J. MARKETING 38 (1997).

[50] *See* Rangaswamy & Van Bruggen, *supra* note 3, at 5 ("[C]ustomers . . . use different channels at different stages of their decision-and-shopping cycles, for example, using Web sites to obtain information but making purchases offline . . . ."). *See also* Frambach, Roest & Krishnan, *supra* note 34, at 27 ("It has been found that, in general, a consumer goes through three stages in his/her buying process, namely, pre-purchase, purchase, and post-purchase. Further, extant research shows that consumers shift between the online and offline channels when they move through these three stages."). *See also* Verhoef, Neslin & Vroomen, *supra* note 33.

[51] Nunes & Cespedes, *supra* note 22, at 98. *See also* Verhoef, Neslin & Vroomen, *supra* note 33.

[52] Zhang et al., *supra* note 2, at 13.

free riding. Whether and to what extent consumers value the promotional and service efforts induced through RPM has been challenged as subject to empirical verification, given it is known that consumers vary (i.e., are heterogeneous) in their demand preferences.[53] The knowledge that consumer demand varies not only from consumer to consumer, but also for an individual consumer based on the purchase occasion and stage of their purchase decision–process gives further weight to this challenge.

Importantly, the examined research expands the scope of this challenge as a result of findings that consumers use (and therefore value) different distribution channels depending on the particular purchase occasion involved as well as the specific stage of the decision process or shopping cycle they occupy. These findings broaden the basis upon which justifications for RPM based on free riding may be challenged empirically, as well as the circumstances to be proven to justify its use as welfare enhancing.

C. *Two different viewpoints inform management philosophy concerning the competitive effects of multiple channels of distribution and therefore manufacturers' thinking toward free riding—channel cannibalization and channel synergism*

At least two different viewpoints inform how managers think about competitive interaction among retailers. One view characterizes "competitive interaction and retail structure . . . as 'symbiosis.' Theories from this school hold that retailers have mutually beneficial effects on one another. The second school of thought, 'Darwinism,' suggests that retailers fiercely compete for limited consumer dollars in a survival of the fittest atmosphere. . . . Darwinists take the position that competition is a zero-sum game."[54] These different viewpoints

[53] For a recent discussion from an antitrust perspective, see William S. Comanor, *Antitrust Policy Towards Resale Price Maintenance Following* Leegin, 55 ANTITRUST BULL. 59, 62 (2010) ("On the face of it, . . . some [consumers] will seek out higher service, higher price retailers while others will prefer their lower service, lower price counterparts."). *See also* Comanor, *supra* note 16.

[54] *See* Chip E. Miller, James Reardon & Dennis E. McCorkle, *The Effects of Competition on Retail Structure: An Examination of Intratype, Intertype and Intercategory Competition*, 63 J. MARKETING 107, 109–10 (1999).

result in different perspectives toward the performance of multiple channels of distribution, including the effects of free riding.[55]

1. CHANNEL CANNIBALISM The traditional view is that employing more than one channel of distribution can harm firm performance through different channels cannibalizing one another's sales.[56] Marketplace prognosticators, for example, once envisioned that Internet retailers would eventually replace store-based retailers.[57] As Baal and Dach describe:

> Mainly managers advance the hypothesis that total demand for a specific retailer's goods is rather rigid and not contingent upon the number of the company's channels. If distribution modes compete with one another for an exogenous sales potential, an additional channel would result in increased total distribution costs without adding to overall sales. Moreover, companies adding a channel may even see sales decline as a result of channel conflict and decreased service to customers. Thus, a multichannel firm would be at a disadvantage compared to competitors with fewer channels.[58]

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[55] *See* Frazier, *supra* note 4, at 232 ("While multiple channels potentially increase the firm's penetration level and raise entry barriers, intrabrand competition and intrachannel conflict may become major problems, leading to lowered levels of support in the firm's direct and indirect channels."). Inge Geyskens, Katrijn Gielens & Marnik G. Dekimpe, *The Market Valuation of Internet Channel Additions*, 66 J. MARKETING 102, 103 (2002) ("The addition of an Internet channel poses opportunities as well as threats—it can be performance-enhancing as readily as it can be performance-destroying.").

[56] *See* Avery, Steenburgh, Deighton & Caravella, *supra* note 48, at 2 ("some [managers] have conjectured that new channels tend to cannibalize rather than complement existing ones"). Barbara Deleersnyder, Inge Geyskens, Katrijn Gielens & Marnik G. Dekimpe, *How Cannibalistic is the Internet Channel? A Study of the Newspaper Industry in the United Kingdom and The Netherlands*, 19 INT'L J. RES. MARKETING 337, 338 (2002) ("several researchers have expressed their concern about the cannibalization hazards companies face when they add an Internet channel to their entrenched channels.").

[57] *See* Zhang et al., *supra* note 2, at 2 ("Futurists envisioned consumers abandoning stores and buying most products and services over the Internet. They predicted that store-based retailers would be replaced by Internet-savvy entrepreneurs who could harness this new technology to provide superior offerings to consumers.").

[58] *See* Baal & Dach, *supra* note 42, at 76.

Among the more explicit concerns for cannibalization are fears that free riding will take place across distribution channels.[59] As Coughlan et al. explain in the context of the addition of an Internet channel: "[C]hannel conflicts can and do arise when an on-line channel is created alongside a more traditional channel. . . . Here the problem is the classic free-riding opportunity."[60] Thus where more than one channel of distribution is used, free riding is identified as an important form of cannibalization that can harm firm performance.

2. CHANNEL SYNERGISM An alternate view is that the use of more than one channel of distribution can benefit firm performance through different channels' complementing one another in synergistic ways to increase sales and decrease costs.[61] Baal and Dach also describe this perspective:

> A frequently expressed hypothesis in multichannel management is that the benefits of an additional marketing channel are not limited to sales through this mode. Rather, by not managing their different channels as

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[59] *See* Geyskens, Gielens & Dekimpe, *supra* note 55, at 104 ("existing channels may view the new Internet channel as unwelcome competition. They may fear their sales will be reduced if firms reach out directly to their consumers. In addition, the low physical distribution costs and easily obtainable economies of scale of Internet channels may lead firms to reduce their prices and may put pressure on the existing channels' profit margins. When this happens, interchannel friction becomes likely. The firm's entrenched channels may lose motivation and reduce their support for the firm's products (a passive response), retaliate, or even discontinue their distribution (active responses)").

[60] *See* ANNE T. COUGHLAN, ERIN ANDERSON, LOUIS W. STERN & ADEL I. EL-ANSARY, MARKETING CHANNELS 462–64 (2001).

[61] *See* Neslin & Shankar, *supra* note 6, at 72 ("There are at least three potential visions driving the use of multi-channel strategy: efficiency, segmentation, and customer satisfaction. The efficiency perspective views multichannel efforts as cost reduction. The segmentation approach views multichannel efforts as a device to . . . serve the current customer base or to reach new customers. The customer satisfaction perspective views multichannel as a way to enhance customer satisfaction."); and Avery, Steenburgh, Deighton & Caravella, *supra* note 48, at 2 ("The basic idea driving firms to develop multiple channels is a belief that having many paths to market makes it easier to reach new customers and to serve existing ones.").

silos, retailers can expect that each channel will support and complement the others and thus lead to increased total sales.[62]

Geyskens, Gielens and Dekimpe elaborate on the demand (i.e., sales) and supply (i.e., cost) advantages of multi-channel distribution in the context of adding an Internet channel to an existing channel: "The Internet can increase sales [i.e., demand] in three ways: market expansion, brand switching, and relationship deepening. . . . The Internet can [also] offer supply-side advantages through reduced production and transaction costs."[63] Market expansion results when the added channel enables new segments of customers to be reached. For example, the addition of Clinique.com by Estee Lauder is intended to attract customers who avoid buying at a cosmetics counter because they find the experience intimidating. Brand switching involves winning customers away from competitors. Relationship deepening involves selling more to existing customers. Production costs refer to the costs of completing the physical distribution activity and may be lower in Internet channels as a result of transactional process savings, lower inventory costs due to direct sales, and lower marketing costs as a result of shifting some costs to consumers. Transaction costs are the costs incurred to coordinate and control the entities performing the physical activities and may be lower in direct channels as a result of bypassing intermediaries (thereby reducing commission costs). These advantages can also extend to the addition of other types of distribution channels to an existing channel.

3. IMPLICATIONS: COMPETITIVE EFFECTS OF FREE RIDING Together these research findings and associated insights provide information helpful for understanding the competitive effects of free riding. To date, free riding behavior has been assumed to pose adverse competitive effects on manufacturers' abilities to compete in the marketplace. The examined research challenges this assumption

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[62] Baal & Dach, *supra* note 42, at 76. *See also* Frazier, *supra* note 4, at 232 ("There may be occasions when multiple channels are complimentary [sic] to each other. For example, Victoria's Secret uses two primary channels to sell its lingerie and clothing, retail stores and mail catalogs. The mail catalogs are likely to increase traffic at the retail stores by providing greater exposure to, and identification with, the brand among shoppers.").

[63] Geyskens, Gielens & Dekimpe, *supra* note 55, at 104.

through augmenting antitrust understanding of the competitive effects of manufacturers' use of multiple channels of distribution and consumer research shopping.

On the one hand, the research provides evidence that manufacturers recognize that distributing products across different channels together with consumer research shopping can harm firm performance as a result of channel cannibalization. This traditional view holds that, given research shopping, the use of multiple channels of distribution will result in channel cannibalization and conflict, leading to the erosion of support in one or more channels and lower levels of performance overall. These concerns and their recognition by manufacturers are the source of antitrust justifications for RPM based on free riding.

On the other hand, the research indicates that manufacturers also recognize that distributing products across different channels and research shopping can benefit firm performance as a result of channel synergism. This alternative view suggests that by supporting and complementing each other in various ways, the use of multiple channels together with consumer research shopping can increase sales and reduce costs. Research identifies a number of demand (i.e., sales) and supply (i.e., cost) advantages that can arise for manufacturers (and retailers) as a result of their use of multiple channels of distribution and consumer research shopping.

Recognition of the beneficial effects that may arise from circumstances and behaviors that otherwise promote free riding (i.e., multiple channels of distribution and consumer research shopping) augments antitrust understanding of its competitive effects.

D. *The differing viewpoints toward multiple channels of distribution yield different manufacturer strategies for managing multi-channel systems, including those that discourage free riding as well as those that encourage it*

Depending on the viewpoint adopted toward retail competition and the use of multiple channels of distribution, research shopping is viewed by managers as either consumer behavior that is harmful and therefore to be discouraged or behavior that is beneficial and therefore to be encouraged.

1. DISCOURAGING RESEARCH SHOPPING For reasons including channel cannibalization, some manufacturers adopt various strategies aimed at discouraging research shopping.

At the extreme, one approach is to effectively deny consumers the ability to shop in one channel and purchase in another.[64] Some manufacturers may provide incentives for customers to use a particular channel or give customers no choice but to use a single channel.[65] For example, manufacturers may employ exclusive and selective distribution to make it more difficult or nearly impossible (based on geography) for consumers to frequent different channels of distribution. Manufacturers may also offer branded variants or numerous variations of a branded product to make direct product comparisons across channels more difficult and costly.[66] RPM is itself a variation of this approach focusing on price. Among its other effects, RPM discourages research shopping through restricting the minimum price at which retail members of different distribution channels may offer a product. Its effective use results in uniform prices across channels thereby leaving consumers with few price-oriented reasons to engage in research shopping across channels.

A slightly different but related approach involves "right-channeling"—encouraging or forcing consumers to use certain channels.[67] For example, manufacturers may alter attributes associated with different

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[64] *See* Nunes & Cespedes, *supra* note 22, at 100 ("We've been talking about channel design as an exercise in creating pathways for customers. Some companies may still be able to do this to the extreme, essentially denying the customer any unfettered shopping.").

[65] *See id.* ("By providing strong incentives—or perhaps no choice but—to use a designated pathway, they can hold the customer captive, at least to the extent that the person wants to purchase their products or services.").

[66] *See* Mark Bergen, Shantanu Dutta, & Steven M. Shugan, *Branded Variants: A Retail Perspective*, 33 J. MARKETING RES. 9, 10 (1996) ("Manufacturers frequently offer numerous variations of branded products. We call these variations *brand variants* . . . . [As] branded variants increase, some consumers experience an increase in the cost of shopping across retail stores for a particular product. Thus, fewer consumers choose to shop across retail stores.").

[67] *See* Neslin & Shankar, *supra* note 6, at 75 ("[C]ustomers may not naturally use the channel the firm deems optimal. The question is, should customers be "right-channeled," i.e., encouraged or forced to use certain channels.").

channels in order to guide customers to use certain channels. Customers may also be right-channeled through self-selection and assignment. For example, a consumer may be provided information that enables him or her to choose (or be assigned to) certain channels of distribution for their particular shopping and purchase needs. Zhang et al. explain the logic of right-channeling in the context of a multi-channel system:

> for products with higher picking, packing, shipping or returns costs, it is more appropriate to price them at higher levels in direct channels thereby driving customer traffic to stores. Similarly, for low margin products which require brick-and-mortar stores to carry large assortment, it makes more sense to price them lower in direct channels to drive up the volume in these channels.[68]

Traditional market segmentation–based approaches to channel strategy, wherein discrete channels are designed and managed to serve targeted market segments based on demographic characteristics and other consumer information, are based on right-channeling. Through construction of a discrete channel, consumers occupying a targeted market segment are guided to use a particular channel. Today, however, criteria relied upon for right-channeling has evolved beyond basic demographic characteristics and other consumer information. Researchers have identified numerous criteria for right-channeling consumers, including the firm's most economical channel, the channel providing the highest customer satisfaction and retention,[69] and the channel found most appropriate to a particular stage of the customer life-cycle to name a few.[70] Using customer data, researchers are assisting

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[68] Zhang et al., *supra* note 2, at 17. *See also* Verhoef, Neslin & Vroomen, *supra* note 33, at 145 ("For example, companies wishing to discourage research shopping can attempt to improve the purchase attributes of the Internet, such as perceived risk and privacy.").

[69] *See* Baohong Sun & Shibo Li, *Adaptively Learning about Customers and Dynamic Service Matching—An Empirical Investigation of Service Allocation with Off-Shore Centers* (Carnegie Mellon University Working Paper, 2005). The authors formulate a customer-level dynamic optimization that routes customers to the appropriate call center, taking into account which channel is more economical for the company, as well as the potential impact on individual customer satisfaction and ultimately, retention.

[70] *See* Neslin & Shankar, *supra* note 6, at 74. ("How should a firm utilize channels to manage the customer life-cycle? . . . [D]ifferent channels may be more appropriate for various stages of customer relationships. It seems

managers in allocating their marketing efforts to guide customers to channels that offer manufacturers the highest margin or that best maximize their use of list prices and discounts based on the price sensitivity of consumers and away from channels that result in the highest average product returns (i.e., customers returning products to the store).[71]

2. ENCOURAGING RESEARCH SHOPPING Following upon the concept of channel synergism other manufacturers adopt strategies that effectively encourage research shopping. Manufacturers do this by harnessing the research shopping of consumers. Nunes and Cespedes summarize the logic that informs this different approach to research shopping:

> Traditional go-to-market strategies don't work because they assume customers will stay in the channels that were designed for them . . . . That was a fair assumption until relatively recently. Customers did, in fact stay reliably in their boxes. The channel held onto the customer, if not from cradle to grave, then at least from initial consideration to repeat purchase . . . . The only rational basis for channel design today is aggregate buyer behavior embodied in the entire buying process.[72]

Manufacturers contend that "[o]pportunities to capture value by differentiating prices across proliferating brands, regions, channels and SKUs are too large to ignore, while the costs of neglecting these opportunities . . . are substantial."[73] They argue that conventional

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natural to use different channels for acquisition, development, retention, and decline phases.")

[71] *See* Tarun L. Kushwaha & Venkatesh Shankar, *Optimal Multi Channel Allocation of Marketing Efforts by Customer-Channel Segment* (Texas A&M Univ. Working Paper, 2008) (cited in Neslin & Shankar *supra* note 6, at 73) ("Through an analysis of data from a large apparel and shoes accessories firm, the authors find that the store-only segment offers the highest margin; the Web-only and multichannel segments are more list-price sensitive, whereas the store-only segment is more discount sensitive; and the average returns are highest for the multichannel segment and lowest for the Web-only segment. Using this knowledge, they show that marketing efforts can be more efficiently allocated across the channels.").

[72] Nunes & Cespedes, *supra* note 22, at 96–98.

[73] Kevin Bright, Dieter Kiewell & Andy Kincheloe, *Pricing in a Proliferating World*, *in* PROFITING FROM PROLIFERATION, *supra* note 43, at 82–83. *See also* Zhang et al., *supra* note 2, at 15 ("[It] is beneficial for firms to have different prices for the same product in different channels as long as this pricing mechanism is designed synergistically.").

channel strategies too often try to force buyers into discrete channels rather than create channel pathways that suit their individual preferences.[74] As a result, many are harmonizing the channels of their multi-channel system to the ways in which consumers shop and purchase across them.

The purpose of efforts by manufacturers to harmonize channels within their multi-channel systems is to guide customers through the pathway of different channels available to them with the goal of making it easy for customers to follow a preferred path that "returns more value to [the firm] than [it] invests to support [the] activities along the way."[75] For example, many manufacturers have invested heavily in creating Web sites with extensive product information, many including videos or other animations that facilitate demonstrations of their products. These Web pages can be located on the manufacturers' Web site or, at low cost, transferred to a retailer's site. Manufacturers adopting this approach will often include locators to enable the consumer to find a retailer or distributor at which to complete the purchase.

Harmonizing channels permits manufacturers and retailers to capitalize on cross-channel synergies within their multi-channel systems.[76] For example, the use of mail catalogs is "likely to increase traffic at the retail stores by providing greater exposure to, and identification with, the brand among shoppers."[77] Similar outcomes are likely where the use of the Internet increases traffic in retail stores. The use of mail catalogs and the Internet may also result in customers being more informed when they purchase at retail stores, allowing for reduced costs at the point of sale. Direct sale kiosks placed in retail stores may encourage consumers to purchase when they might not

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[74] *See* Nunes & Cespedes, *supra* note 22, at 105 ("Conventional channel logic too often tries to force buyers into channels rather than create pathways that suit customers' preferences.").

[75] *Id.* at 98. *See also id.* at 100 ("The purpose of your go-to-market strategy, then, must be to guide customers through the pathways you prefer.").

[76] *See* Neslin & Shankar, *supra* note 6, at 74. ("Cross-channel synergy refers to the increased effectiveness of a channel on a customer because the customer has used another channel from the same firm.")

[77] Frazier, *supra* note 4, at 232.

otherwise.[78] In addition, offering "in-store pickup" allows shoppers to research and purchase a product online but obtain it more quickly by picking up the product at a local store. Research has shown that "marketing efforts in one channel can enhance sales through another channel"[79] as well as overall.[80]

Manufacturers that harmonize their channels of distribution to serve the research shopping behavior of consumers also adopt ways to count the contributions of each channel to a customer's purchase and then reward channel members for their respective efforts.[81] In particular, they adopt information systems that allow them to "see" across channels and measure the share of an individual customer's purchase—a metric that can count participation in different channels.[82] They also devise ways to use this information and share credit across channels. For example, when Allstate added online channels of distribution, it risked losing the dedicated services offered by its local agents and a valued source of competitive advantage. So Allstate paid local agents a 2% commission (less than the standard 10% sales commission) to provide service to customers in their geographic area who had purchased online. This also served as a lead for the local agent who might then sell these customers additional products.[83]

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[78] *See* Nunes & Cespedes, *supra* note 22, at 104 ("Dell, constantly cited as the paradigm of the direct business model . . . started placing kiosks in Sears stores. The kiosks are designed to reach into the retail channel and grab shoppers that Dell characterizes as "direct-averse.").

[79] *See* Neslin & Shankar *supra* note 6, at 75.

[80] *See* Koen Pauwels & Scott A. Neslin, *Building with Bricks and Mortar: The Revenue Impact of Opening Physical Stores in a Multichannel Environment* 25 (Marketing Science Inst. Working Paper Series No. 08-101, 2008) ("The net impact of adding the store channel was to increase revenues by 20%.").

[81] *See* Nunes & Cespedes, *supra* note 22, at 103 ("Companies that reorganize to serve unfettered customers . . . rethink the metrics they use to measure and evaluate performance.")

[82] *Id.* at 104 (citing the example of Merrill Lynch in the brokerage business: "Some companies will find it less meaningful to track market share, for example, than to measure share of individual customer purchases—a measure that counts participation in all channels.").

[83] *See* WILLIAM D. PERREAULT, JOSEPH P. CANNON & E. JEROME MCCARTHY, BASIC MARKETING 300 (17th ed. 2009) ("When Allstate decided to sell insurance on the Internet, it worked out an arrangement with its 15,600 local agents. . . .").

Of course, in order to count the contributions of each channel to a customer's purchase and then reward that channel for its efforts, channel participants must be comfortable with sharing credit and manufacturers must be willing to "pay[] twice for the same sale."[84] This requires a holistic perspective and one that enables manufacturers and channel members to gain a clear understanding of the total cost of serving customers across channels and giving channel participants credit for their individual contributions.[85]

Research has identified firms that successfully harmonize their different channels of distribution to consumer research shopping and who reward channel members for their individual contributions. These include Dell Computer, Merrill Lynch, Toyota and Bell South.[86]

3. IMPLICATIONS: MANAGEMENT OF FREE RIDING The examined research provides insights and findings helpful for understanding the management of free riding by manufacturers. First of all, the research provides evidence that manufacturers adopt strategies to limit consumer free riding behavior (i.e., research shopping). This includes RPM and related practices intended to discourage consumers from shopping in one channel and purchasing in another. Thus, RPM is acknowledged indirectly as a strategy for addressing free riding. At the same time, however, the research shows that manufacturers rely upon other strategies to address research shopping. These include additional strategies to discourage research shopping, but also strategies that have the effect of encouraging it. Recognition of these additional strategies and their different approaches is important given that in antitrust analysis, alternatives to RPM that address free riding and that are less restrictive of competition bear upon assessment of RPM's welfare consequences.

The marketing literature identifies various strategies to discourage research shopping other than RPM. These include the use of

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[84] *See* Nunes & Cespedes, *supra* note 22, at 104.

[85] *Id.* at 104 ("Once a company gains a clear understanding of the total cost-to-serve throughout the entire marketing and purchasing cycle, it becomes possible (and vital) to give full credit to multiple channels.").

[86] *Id.*

exclusive and selective distribution to make it difficult or nearly impossible (based on geography) for consumers to frequent different channels of distribution. It also includes the use of branded variants or numerous variations of a branded product to discourage research shopping through making direct product comparisons more difficult.[87] Tactics aimed at right-channeling customers toward a particular channel pathway are also identified and include altering product attributes, self-selection, and assignment. Depending on the circumstances, each alternative may be less restrictive of competition than RPM. Although exclusive and selective forms of distribution are recognized in antitrust, to date the use of branded variants and right-channeling customers have not been the subject of considerable focus in antitrust.

Rather than discouraging research shopping, the research shows that manufacturers also adopt strategies that have the effect of encouraging it through harmonizing channels to the ways in which consumers shop and purchase products across channels and rewarding channel participants for their individual contributions. As an alternative to RPM, channel harmonization represents a very different approach. Harmonizing channels permits manufacturers to capitalize on cross-channel synergies to increase sales and reduce costs. Various approaches for harnessing the cross-channel shopping and purchase behavior of consumers within a multi-channel system are identified. To date, managing free riding through the tactic of harmonizing channels has not been a part of extant understanding in antitrust. However, alternatives that are less restrictive of competition bear upon assessment of RPM's welfare consequences.[88]

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[87] *See* Bergen, Dutta, & Shugan, *supra* note 66.

[88] As suggested by a reviewer, some might contend that where multiple channels yield synergistic effects manufacturers have little motivation to engage in RPM. As a result RPM will not be found where channels are effectively harmonized. However, it is important to observe that RPM may also be motivated and induced through the influence of powerful retailers pursuing their own goals. As a result, RPM may be found even where multiple channels might otherwise be effectively harmonized.

E. Managing multiple channels of distribution through strategies that result in uniform marketing efforts across channels encourages channel cannibalization, suggesting that in practice some RPM programs may have the unintended consequence of increasing rather than decreasing free riding's adverse effects

Finally, there is evidence that discouraging consumer research shopping through strategies that yield similar marketing efforts across channels results in more rather than less channel cannibalization. This suggests that RPM that results in uniform prices and in practice yields similar nonprice strategies across channels may increase rather than decrease free riding's adverse effects in the form of cannibalization. As Avery et al. report in the context of creating a multi-channel system:

> Past work suggests several circumstances that favor cannibalization. First, cannibalization is more likely to occur when channels closely duplicate each other and do not provide adequate product and/or service differentiation. Second, it is more likely to occur when channels target the same consumers.[89]

Research investigating the management of multi-channel retailing provides evidence as to these effects in practice. For example, Deleersnyder et al. report that "when the new channel is positioned as too close a copy (substitute) to its traditional counterpart, cannibalization will more likely take place."[90] Thus, retailers that adopt the same strategy as other retailers are more likely to incur cannibalization.

1. INTRATYPE RETAIL COMPETITION Similar effects are also reported more generally by those researching competitive interactions among retailers of different types (i.e., intertype) selling similar merchandise and among retailers of the same type (i.e., intratype) selling similar merchandise. Studying the competitive interactions of different types of sporting good retailers within a limited geographic area, Miller et al. conclude, for example, "that a symbiotic effect is preeminent in . . . intertype . . . competition."[91] That is, competition among retailers of

[89] Avery, Steenburgh, Deighton & Caravella, *supra* note 48, at 3–4.

[90] Deleersnyder, Geyskens, Gielens & Dekimpe, *supra* note 56, at 346.

[91] Miller, Reardon & McCorkle, *supra* note 54, at 108.

different types resulted in competitive interactions that were "mutually beneficial" to the retailers.[92] Alternately, the authors find "intratype competition tends to exhibit a strong Darwinian effect" on retail competition.[93] That is, competitive interactions among retailers of the same type resulted in outcomes that reflected a "zero-sum game" and lead to the "survival of the fittest" among retailers.[94] Thus, retailers selling similar merchandise but relying upon different strategies were more likely to incur competitive interactions that were mutually beneficial than those selling similar merchandise and relying upon similar strategies.

The authors attribute these findings to generally accepted tenets of competition—less differentiation among businesses leads to lower prices, profits, and sales. They observe in relation to their findings that "this is logical when considering that intratype competitors are more likely to carry directly substitutable products."[95]

2. IMPLICATIONS: EFFECTS OF RPM This research provides insights and findings helpful for understanding the effects of RPM in practice. In particular, it suggests that in some circumstances the use of RPM to curb free riding may have the unintended consequence of increasing channel cannibalization rather than decreasing it. As explained below, this can occur where RPM results in uniform prices and similar nonprice strategies across retailers occupying different channels of distribution.

RPM restricts the minimum price at which members of different channels may offer a product with the result that prices are often the same across retailers. At the same time, although intended to result in nonprice strategies that differentiate retailers across channels, in practice RPM often results in similar nonprice strategies as well. This results from its impact on both the level and form of these nonprice efforts.

First, RPM is argued to encourage higher levels of promotional efforts across channels by guaranteeing a minimum margin to retail-

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[92] *Id.* at 109.

[93] *Id.* at 108.

[94] *Id.* at 110.

[95] *Id.* at 108.

ers. Although members of different channels may use this guaranteed margin to differentiate themselves through the particular nonprice promotional and service efforts offered, the use of RPM is intended to insure levels of promotion and service across channels that are consistently higher than those that would otherwise occur in its absence.

Second, in practice manufacturers that care about the level of promotion and service of their brands often specify through agreement the particular form of promotion and service to be provided by retailers. Specification of the form of promotion and service to be provided can result in similar nonprice strategies across retailers. In *Leegin*, for example, as contained in documents describing its Brighton Heart Store program, Leegin included along with language that retailers pledge or agree to follow its suggested pricing policy, language that retailers also adhere to minimum stocking requirements, specific store merchandising arrangements, particular product display formats, specific procedures for product repairs and exchanges, and certain standards for the in-store treatment of customers among other requirements.[96] Accordingly, in practice RPM can result in promotional and service efforts that are at a higher level and more consistent in form than otherwise would occur in its absence. Where the use of RPM has this effect, cannibalization across channels is more likely to occur. Cannibalization brought about through RPM distorts the dynamics of market processes making them less efficient overall. Where its effects demonstrably favor less efficient forms of retailing, cannibalization can also undermine advancements in retail innovation. Finally, cannibalization can also adversely affect the choice and variety that would otherwise result for consumers. That the use of RPM in practice may have these and other unintended effects has not been extensively described in antitrust.

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[96] *See* Report of Plaintiffs' Expert Gregory T. Gundlach, Hall v. Leegin Creative Leather Prods., Inc., No. 04CV 1668, at ¶¶ 30–34 (Sedgwick Cty, Kan. Aug. 22, 2006). *See also* Report of Plaintiffs' Expert Gregory T. Gundlach, Spahr v. Leegin Creative Leather Prods., Inc., No. 2:07-cv-187, at ¶¶ 30–34 (E.D. Tenn. Dec. 4, 2007). *See generally* Report of Plaintiffs' Expert Gregory T. Gundlach, PSKS, Inc. v. Leegin Creative Leather Prods., Inc., No. 2:03-cv-00107, at ¶ 41 (E.D. Tex. Apr. 3, 2009).

IV. DISCUSSION

A. Overview of findings and implications

Antitrust understanding of RPM is informed primarily by theoretical insights developed in antitrust economics. As found by the Supreme Court, "empirical evidence on the topic [is] . . . limited."[97] Academic and practitioner research in marketing that examines multi-channel shopping, multi-channel marketing, distribution, retailing, and customer management provides insights and empirical evidence helpful to understanding the circumstances and behaviors associated with the primary procompetitive justification for RPM—the free rider explanation.

This research reveals that over time consumers and manufacturers have increased their use of multiple channels of distribution resulting in conditions favorable to the occurrence of free riding. Consumers use multiple channels when making purchases not only because of heterogeneity in their demand preferences, but also because individuals' preference for a channel may vary across purchase occasions and across stages of their purchase-decision process. Two different viewpoints inform management philosophy concerning the competitive effects of multiple channels of distribution and therefore manufacturers' thinking toward free riding—channel cannibalization and channel synergism. These differing viewpoints yield different manufacturer strategies for managing multi-channel systems, including those that discourage free riding behavior as well as those that encourage it. Finally, managing multiple channels of distribution through strategies that result in uniform marketing efforts across channels encourages channel cannibalization, suggesting that in practice some RPM programs may have the unintended consequence of increasing rather than decreasing free riding's adverse effects.

Together, these findings yield implications that augment antitrust understanding of the occurrence and scope of free riding, consumers' motivations to engage in free riding behavior, the competitive effects of free riding, the management of free riding by manufacturers, and the marketplace effects of RPM in practice. These implications are summarized below:

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[97] Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 127 S. Ct. 2705, 2717 (2007).

1. NATURE AND OCCURRENCE OF FREE RIDING For free riding to take place, manufacturers must, either intentionally or unintentionally, distribute their products and consumers must make their purchase decisions using multiple channels of distribution. Research indicates that, although in the past consumers typically relied upon one channel of distribution to shop and complete purchases, spurred on by advances in technology, consumers are increasingly engaging in research shopping—researching a product in one channel and then purchasing it in another. Manufacturers have also increased their use of multiple channels of distribution. Thus, consumers and manufacturers are acting in ways that increase the chances of free riding. The research also indicates that contrary to allegations that Internet retailers are free riding on brick-and-mortar retailers, the most common form of research shopping involves consumers shopping on the Internet and then subsequently purchasing from a brick-and-mortar store. Taken in order, these findings increase the contemporary relevance of explanations for RPM in antitrust that rely on the occurrence of free riding, raise questions as to the extent free riding occurred in the past, and indicate that extant allegations of free riding against Internet retailers are likely overstated.

2. CONSUMERS' MOTIVATIONS TO ENGAGE IN FREE RIDING Research examining consumers' use of multiple channels further reveals that in addition to differences across consumers affecting their channel choice, individual preferences for channels may differ across purchase occasions and stages of the purchase-decision process. Justifications for RPM based on free riding are empirically dependent on whether and to what extent consumers value the promotional efforts of channel members that RPM induces. Acknowledgment that consumers differ in their preferences for a channel at various times both broadens the scope of empirical challenges to justifications for RPM based on free riding as well as the circumstances to be proven to justify its use as welfare enhancing.

3. COMPETITIVE EFFECTS OF FREE RIDING Based on concerns for channel cannibalization, free riding is widely viewed in antitrust as having adverse effects for competition. However, research indicates that in addition to channel cannibalization a second viewpoint—channel synergism—informs management philosophy concerning the

competitive effects of multiple channels of distribution. Channel synergism views the use of multiple channels as capable of benefitting firm performance through different channels' complementing one another in synergistic ways to increase sales and decrease costs. Thus, depending on the philosophy adopted, manufacturers may view the competitive effects of free riding negatively based on concerns for cannibalization or positively based on channel synergism. This potential difference challenges explanations for RPM in antitrust that are justified based upon free riding's adverse effects for competition.

4. MANAGEMENT STRATEGIES TOWARD FREE RIDING In antitrust, manufacturers are deemed to adopt approaches that discourage free riding out of concern for channel cannibalization. These approaches include exclusive or selective distribution and RPM. However, research indicates that manufacturers also discourage free riding in other ways, including the use of branded variants and right-channeling consumers toward certain channels. At the same time, research indicates that as a result of channel synergism, manufacturers may also encourage free riding. That is, manufactures may implement strategies intended to harmonize different channels in a multi-channel system to the ways in which consumers use them, rewarding the contributions of each channel participant for its respective contribution to a purchase. The understanding that free riding may be discouraged in ways not previously acknowledged, as well as the fact that manufacturers may adopt strategies that encourage free riding, augments antitrust understanding of how free riding is managed in practice. This is an especially important insight because alternative approaches to managing free riding that are less restrictive of competition bear upon the antitrust assessment of RPM's welfare consequences. Each of the newly identified strategies, and in particular those that encourage free riding, is less restrictive of competition than RPM. Thus, their identification expands the list of less restrictive alternatives to be considered in antitrust analysis of RPM.

5. EFFECTS OF RPM IN PRACTICE Finally, although debate exists in antitrust as to the ability of RPM to discourage free riding, this discourse has not included the potential that RPM could actually have the opposite effect—encouraging channel cannibalization.

Research provides evidence, however, that managing a multi-channel distribution system through strategies that yield similar marketing efforts across channels results in more channel cannibalization. RPM results in uniform prices across channels for the same product. In practice, RPM can also result in similar efforts at promotion and service across channels. RPM is intended to insure consistently high levels of promotion and service across channels. At the same time, RPM programs often recommend or specify elements of promotion and service to be provided by channel participants. The possibility that RPM may have the unintended consequence of encouraging channel cannibalization challenges justifications for RPM in antitrust that are based upon RPM's ability to discourage free riding.

B. Factors and explanations

Factors apart from those already described help to explain the findings of the examined research. These factors provide further context for understanding the growing presence of multi-channel systems, the increasing use of multiple channels of distribution by consumers, the differing effects for competition that multiple channel systems may have, and the emergence of managerial strategies that encourage cross-channel shopping through harmonizing different channels to the manner in which consumers shop and purchase across them. They are therefore important for further understanding of the implications of the research findings for antitrust.

1. SYSTEMS VIEW OF COMPETITION It is well-accepted logic in marketing and related disciplines that competition today exists between channel systems rather than between companies.[98] Viewing competition at this level insures recognition of the role and importance of distribution channels, but also shifts the focus of management from an individual channel of distribution to the aggregation of distribution channels comprising a multi-channel system. In turn the design, management, and performance of the larger multi-channel system are focused upon. The perspective is that each channel and its members must contribute to the performance of

[98] Nunes & Cespedes, *supra* note 22, at 104.

the entire system.[99] It is under these circumstances that the use of multiple channels of distribution has increased among manufacturers, and strategies for the harmonization of different channels comprising such systems to the ways in which consumers shop and purchase across them has grown.

2. RELATIONAL PERSPECTIVE OF EXCHANGE In addition to adopting a broadened view of competition, managers have increasingly adopted a relational perspective toward exchange. Rather than viewing exchange as a discrete event occurring at a point in time (i.e., a single transaction), a relational perspective adopts a longer-term and more interactive view of exchange. Exchange, and therefore management strategies to encourage and manage its occurrence, emphasizes the establishment and larger context of the firm's relationship with customers. This includes the design and management of distribution channels so as to attract, cultivate, and maintain customer relationships over time. It is in this respect that the use and harmonization of multiple channels of distribution to better reach consumers and fulfill their shopping and purchase needs across time represents an extension of this view to distribution strategy.

3. HETEROGENEITY OF DEMAND Although earlier described, it is worth reiterating that beyond differences across consumers that affect channel choice, individual consumers can differ in their preference for a particular channel (and the services it provides) based on the particular purchase occasion and the specific stage of the purchase-decision process they occupy. Thus, heterogeneity of demand exists based on differences across consumers but also at multiple levels for a given consumer. Recognizing this and, in particular, differences within a given consumer, managers have developed multiple channels of distribution to not only to reach and better serve different consumers but also to better serve the needs of a given consumer as they vary across purchase occasions and across different stages of the purchase-decision process.

4. ADAPTIVE PHILOSOPHY OF MANAGEMENT Finally, it is also well known that consumers generally make decisions and engage in

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[99] *Id.* ("If a channel is underperforming, it's everybody's problem—not just the problem of the player who happens to be bearing the immediate brunt of the value poaching.").

behaviors to suit their needs and preferences. Managers increasingly recognize this and, while exceptions certainly exist, the contemporary philosophy is to develop strategies that accept the behavior of consumers rather than to constrain or otherwise attempt to limit it. Rather than trying to deny the behavior of consumers, managers have learned that a better approach is to adapt their strategies to the behavior of their customers. This philosophical change has been extended to the design and management of distribution channels as well.[100] Thus, it is not coincidental that manufacturers have increasingly developed multi-channel systems and harmonized the different channels in these systems to the ways in which consumers prefer to shop and purchase across them.

C. *Additional findings and insights*

A number of additional findings from the examined research provide insights for understanding free riding and RPM.

1. FREE RIDING AND CONSUMER PURCHASE BEHAVIOR The classical view of free riding suggests a retailer may build a showroom to facilitate displaying manufacturers' wares and then hire and train knowledgeable personnel who educate customers and generate demand. These significant investments are typically made in the expectation of achieving a satisfactory margin and enough unit sales to more than offset costs. Many of these costs are positively correlated with the number of customers visiting the retail location. Free riding customers visit the retail location, consume salespeople's time, and potentially force the retailer to build a larger showroom and add more staff than are needed to serve only customers who make purchases. Therefore, the classical assumption is that each additional free riding customer increases a retailer's marginal costs without providing marginal benefits.

Research suggests, however, that the assumption that free riding leads to higher costs for retailers may not be so straightforward. Research on consumer behavior has shown, for example, that the

[100] *Id.* at 105 ("Conventional channel logic too often tries to force buyers into channels rather than create channel pathways that suit customers' preferences.").

effects of crowding on shopping may be nonlinear. Modest crowds in a retail store increase buyers' hedonic shopping values before extremely crowded stores result in much lower buying.[101] At some point, the marginal cost of additional nonbuying customers offsets such benefits, but the findings suggest modest levels of free riding may benefit a brick-and-mortar retailer by stimulating purchases by other consumers. This prospect further challenges extant views concerning the competitive effects of free riding.

2. INTERNET RETAILERS AND FREE RIDING Internet retailers might also obtain marginal value from free riding—and the benefits may persist even at high levels of free riding. Trends in Internet retailing show that consumers place a high value on customer reviews provided on retail sites.[102] Sometimes customers that do not purchase at online sites such as Amazon.com still provide reviews of products purchased elsewhere. Such customers are actually more likely to be users of online reviews—free riding on Amazon.com—yet still create value for Amazon.com by making the site more useful to other research shoppers. Free riders also surf the site, providing data for the retailer to mine and use to influence other shoppers.

The cost structure for Internet retailing also differs from that of brick-and-mortar stores. The marginal cost for each free riding customer at an Internet site approaches zero. Much of the information provided at online retailers is created by other consumers (e.g., reviews and ratings) or by manufacturers (e.g., sales information, specifications, and videos of the product). Further, research shows

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[101] *See* Sevgin Eroglu, Karen Macheleit & Terri Feldman Barr, *Perceived Retail Crowding and Shopping Satisfaction: The Role of Shopping Values*, 58 J. BUS. RES. 1146, 1151 (2005) ("perceived retail crowding negatively affects shopping values, albeit not strongly")

[102] *See* Vasant Dhar & Elaine A. Chang, *Does Chatter Matter? The Impact of User-Generated Content on Music Sales*, 23 J. INTERACTIVE MARKETING 300, 300 (2009) ("Our findings are that future sales are positively correlated with . . . the volume of blog posts about an album . . . .") and Judith A. Chevalier & Dina Mayzlin, *The Effect of Word-of-Mouth on Sales: Online Book Reviews*, 43 J. MARKETING RES 345, 354 (2005) ("Our regression estimates suggest that the relative sales of a book across the two sites are related to differences across the sites in the number of reviews and in differences across the sites in the average star ranking of the reviews.").

customers acquired from word-of-mouth sources like reviews (as opposed to those who are marketing-induced) generate more long-term value to a firm.[103] While the retailer would have to design the site and upload content, such costs are generally fixed—so there may be almost no marginal cost for an additional free riding customer. The cost structure and benefits provided by free riders at online retailers may help explain how Internet retailing continues to thrive despite the observation that most free riding behavior involves research shopping online and purchases offline. This prospect also challenges extant views concerning the competitive effects of free riding.

V. CONCLUSION

Academic and practitioner research in marketing that examines multi-channel shopping, multi-channel marketing, distribution, retailing, and customer management provides insights and empirical evidence helpful to antitrust understanding of free riding and RPM. As the examined insights and findings illustrate, this research holds the prospect of informing antitrust in important and novel ways. The antitrust community is encouraged to include this and other research from marketing and related business disciplines in its efforts to assess the competitive implications of RPM following *Leegin*.

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[103] *See* Julian Villanueva, Shijin Yoo, & Dominique Hanssens, *The Impact of Marketing-Induced Versus Word-of-Mouth Customer Acquisition on Customer Equity Growth*, 45 J. MARKETING RES. 48, 48 (2008) ("[M]arketing-induced customers add more short-term value, but word-of-mouth customers add nearly twice as much long-term value to the firm.").

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Resale price maintenance and free riding: insights from multi-channel research

Gregory T. Gundlach · Kenneth C. Manning · Joseph P. Cannon

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Abstract Resale price maintenance (RPM), a form of vertical price fixing, involves agreements between marketers at different levels in a distribution system to establish the resale price at which sales of a product or service will occur. The Supreme Court's decision in *Leegin v. PSKS* altered the legal standards applicable to minimum RPM and has resulted in an increase in the use of RPM by marketers. The lack of contemporary research on RPM and its effects on competition has led to initiatives and calls for research on this marketing practice. In the current paper, the authors synthesize findings from extant multi-channel research relevant to understanding the primary procompetitive justification for RPM– the so-called "free rider" thesis. The findings of this research augment antitrust understanding of RPM in important and novel ways.

G. T. Gundlach (✉)
Department of Marketing & Logistics,
University of North Florida,
Jacksonville, FL 32224, USA
e-mail: ggundlac@unf.edu

G. T. Gundlach
American Antitrust Institute,
Washington, DC 20008, USA

K. C. Manning · J. P. Cannon
Department of Marketing, College of Business,
Colorado State University,
Fort Collins, CO 80523, USA

K. C. Manning
e-mail: ken.manning@colostate.edu

J. P. Cannon
e-mail: joe.cannon@colostate.edu

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Resale price maintenance (i.e., RPM) involves agreements between marketers at different levels in a distribution system to establish the resale price at which sales of a product or service will occur. Despite decades of theoretical developments in law and economics intended to explain the competitive effects of RPM, little empirical research informs our understanding of this marketing practice. A recent landmark decision of the Supreme Court reversed nearly 100 years of legal precedent against minimum RPM. Following *Leegin Creative Leather Products, Inc. v. PSKS, Inc*. (2007), RPM agreements are to be judged by the rule of reason—a less restrictive legal standard than in the past. The use of RPM by marketers has since proliferated.

Given the state of theory versus empirical research on RPM, there is now an urgent need for research that investigates the nature and theorized effects of this distribution practice. In search of contemporary insights, competition authorities and public policy officials are taking steps to better understand RPM. The imperative for research is bolstered by the fact that explanations for RPM include both procompetitive and anticompetitive effects on competition. Moreover, RPM is known to restrict retail price competition and has been shown to result in higher prices for consumers (Overstreet 1983). Finally, arguments against its practice include RPM's potential adverse impact

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on retail innovation and choice—including that arising from Internet retailing.

Addressing the need for empirical insights on RPM we describe relevant findings from research on multi-channel shopping and marketing (i.e., multi-channel research) and the implications they pose for RPM's primary economic justification—the so-called "free rider" thesis. While our examination finds partial support for the free rider thesis, other findings challenge its application as a justification for RPM. In addition to describing an area of increasing importance to marketing research and practice, this article illustrates how research from marketing can add to our understanding of a significant public policy issue.

Resale price maintenance

Minimum RPM involves agreements between marketers at different levels in a distribution system to establish the minimum resale price at which sales of a product or service will occur. Examples include contracts to establish a minimum resale price, contingent contracts that condition the receipt of trade allowances or other benefits on such outcomes, agreed upon minimum suggested retail prices (i.e., MSRP arrangements), and circumstances where manufacturers unilaterally announce their recommend prices and cease to do business with those that do not charge the price (i.e., so-called Colgate policies). RPM also includes minimum advertised price policies (i.e., MAP policies) that restrict the minimum price at which a manufacturer's product or service may be advertised.

Supreme Court decision in *Leegin*

Apart from exceptions granted under state "Fair Trade" laws or limitations imposed through decisions of the Supreme Court, minimum RPM agreements have been *per se* (i.e., by themself) unlawful for nearly 100 years. The Supreme Court's 2007 decision in *Leegin* formally reversed its earlier 1911 decision in *Dr. Miles Medicine Co. v. John D. Park & Sons* (1911). Following *Leegin*, henceforth minimum RPM agreements are to be judged under the "rule of reason." Rule of reason is a less restrictive legal standard under which all the circumstances of a particular case must be weighed by a court in deciding whether a restrictive practice like RPM should be prohibited as an unreasonable restraint on competition.

The case in *Leegin* involved allegations of minimum price fixing against Leegin Creative Leather Products by the owner of Kay's Kloset, a women's apparel store operated by PSKS. Leegin was both a manufacturer and retailer of women's accessories (including leather belts) sold under the Brighton brand and distributed through small independent retail boutiques and specialty stores. Leegin stopped selling to PSKS following revelations that Kay's Kloset had been discounting Brighton products in violation of Leegin's pricing policy. PSKS then sued Leegin for a *per se* violation of the antitrust laws through its conduct of entering into agreements with retailers to charge only those prices fixed by Leegin. A Federal lower court agreed with PSKS and awarded it nearly $4 million. The award was upheld by the Court of Appeals. Subsequently, the Supreme Court granted *certiorari* to determine whether vertical minimum RPM agreements should continue to be treated as *per se* lawful.

Dr. Miles and its progeny

The Supreme Court's earlier decision in *Dr. Miles* affirmed the holding of a lower court that a minimum RPM scheme was unreasonable and thus offended the Sherman Antitrust Act. Over time, however, the holding of *Dr. Miles* increasingly became the subject of statutory exceptions and judicial limitations that greatly narrowed its effect.

Following *Dr. Miles*, statutory exceptions arising from State Fair Trade laws authorized under the Miller-Tydings Act (1937) and the McGuire Act (1952) and then later repealed by The Consumer Goods Pricing Act of 1975 allowed manufacturers greater latitude in setting prices during the first half of the 20th century. As many as 45 states passed these laws during this time in the hopes that allowing manufacturers to control prices would help stabilize price levels and markets.

Following *Dr. Miles*, subsequent Supreme Court decisions involving price fixing further narrowed its effect. In *U.S. v. Colgate & Co.* (1919), the Supreme Court recognized the right of a manufacturer to announce in advance the circumstances under which it could refuse to sell to others. In *U.S. v. General Electric* (1926), the Court ruled that the *per se* rule against RPM did not apply to agency relationships or where a good was sold on consignment. Then in *Monsanto Co. v. Spray-Rite Services Corp.* (1984), the Court announced that for a price fixing agreement to be found "there must be evidence that tends to exclude the possibility of independent action by the manufacturer and distributor" and "evidence that reasonably tends to prove … a conscious commitment to a common scheme designed to achieve an unlawful objective" (p. 768). In *Business Electronic Corp. v. Sharp Electronics Corp.* (1988), the Court found further that for an RPM agreement to violate the law required proof that the agreement "almost always tends to restrict competition and reduce output" (p. 727–28). Following upon the increasingly narrow circumstances under which RPM agreements could be found to violate the law, the Supreme Court formally reversed the holding of *Dr. Miles* through its decision in *Leegin.*

State of theory and research on RPM

The Supreme Court's decision in *Leegin* was significant not only for its reversal of a nearly century-old legal precedent against RPM, but also for what it revealed about the current state of theory versus empirical research on this marketing practice.

Theories of RPM's competitive effects

Explanations in law and economics that describe the competitive effects of RPM include both procompetitive and anticompetitive outcomes for competition. Procompetitive explanations describe how despite restricting competition between retailers of the same brand (i.e., intrabrand competition), RPM enhances competition between manufacturers of different brands (i.e., interbrand competition). RPM is explained to increase (or maintain) sales of a manufacturer's brand through encouraging and securing promotional services otherwise jeopardized by various principal-agent problems (i.e., various problems associated with motivating a retailer to act on behalf of a manufacturer in promoting the manufacturer's products).

Anticompetitive explanations describe how in the absence of evidence that RPM promotes interbrand competition the use of RPM merely restricts intrabrand price competition and results in higher prices to consumers. These explanations also clarify how RPM may be adopted to limit competition by facilitating collusion and the exercise of market power among and by manufacturers and retailers. Anticompetitive explanations further describe how RPM can lead to reduced efficiency and innovation in retailing and other anticompetitive effects independent of the original purpose for its adoption.

"Free rider" thesis The primary theory underlying procompetitive explanations for RPM is the "free rider" thesis. As applied in antitrust, free riding takes place when **"**a firm is able to capture the benefits of investments that another firm has made without paying for them" (Hovenkamp 1995, p. 11; see also *Chicago. Professional Sports Ltd. Partnership v. National Basketball Association* 1995, p. 865). Accordingly, free riding- based justifications for RPM were the principle explanations discussed by the Court in *Leegin.*

Competition policy regarding free riding focuses on intrabrand free riding or that occurring between retailers of the same brand of a product. The concern is that one or more members of one channel of distribution will free ride on the presale promotional investments made by members of another channel of distribution to the detriment of consumer welfare. In more specific terms, the concern is that if enough free riding occurs, retailers in one distribution system that once found it profitable to carry and promote the brand may no longer find it profitable to do so, ultimately undermining the ability of the brand's manufacturer to effectively compete against other manufacturers.

Various channel systems are identified to give rise to antitrust concerns for intrabrand free riding. The archetype involves a discount and full-service dealer system where discount retailers free ride on the presale promotional investments of full-service dealers and then use the savings to lure customers away through lower prices. As described by Hovenkamp (1995, pp. 97–98):

> …the full service computer dealer may have, among other things, an expensive showroom, trained personnel demonstrating computers and assembling optimal packages, seminars for prospective purchasers. The free riding dealer down the street has a cheap warehouse, untrained minimum wage personnel, and stacks of computers in boxes. Customers will go to the full service dealer and obtain the information they need to make a wise choice; then they will go to the free rider to make their purchase at a lower price.

Free riding is also cited as a potential concern within prestige and non-prestige retailer systems if non-prestige retailers free ride on the reputational investments of prestige retailers (Marvel and McCafferty 1984). Because of its reputation, a prestige (i.e., high-priced) retailer's decision to carry a product can impact and signal (i.e., certify) the product's quality. Where this occurs, free riding concerns center on the prospect that non-prestige retailers (i.e., discount stores) may offer the product at lower prices and free ride on the quality signals emitted by the prestige retailer**.** Free riding may also be a concern in direct and indirect (i.e., dual or hybrid) distribution systems when independent retailers invest in presale demand-building activities and subsequent to benefiting from these activities consumers purchase directly from the manufacturers' retail outlets at a lower price. Most recently, free riding concerns have been identified for brick-and-mortar retailer and Internet retailer systems (Pereira 2008a, 2008c). Because of their lower overhead costs, Internet retailers have been targeted as free riders based on the contention that they unfairly take advantage of the presale service efforts of established brick-and-mortar retailers to offer products at lower prices.

RPM is justified in law and economics based on the reasoning that despite restricting intrabrand price competition, RPM promotes interbrand competition where it efficiently addresses free riding. Promoting interbrand competition has been identified as the primary concern of the U.S. antitrust laws. Insuring that resellers of the same brand do not sell below a minimum price is explained to

deter free riding by removing the risk that resellers in one channel of distribution will be underpriced by resellers in another channel of distribution. In turn, establishing a price margin sufficient to pay for the costs of desired promotional services encourages resellers to promote a manufacturer's brand given receipt of the margin is tied to sales of the brand.

Research on RPM's competitive effects

Unfortunately, and despite decades of theoretical developments intended to explain the use and competitive effects of RPM including in relation to free riding, little contemporary research has empirically examined these explanations or their underlying features and effects. As concluded by the Supreme Court in *Leegin* (p. 2717), there are "few recent studies documenting the competitive effects of resale price maintenance" with "empirical evidence on the topic . . . limited."

Summarizing the current state of theory versus research on RPM, a Commissioner of the Federal Trade Commission (FTC), (Harbour 2009, p. 10) recently concluded:

> There are economic theories praising RPM and other theories condemning it, but none of the theories (on either side) are supported by any systematic body of empirical evidence. At best, we have strongly held beliefs about the effects of RPM, sometimes bordering almost on religious. But we are missing facts….

Consistent with these conclusions our search of relevant literatures revealed no recent empirical studies examining RPM.[1]

Insights for RPM from marketing

Empirical research from marketing can enhance understanding of RPM in significant ways. Particularly relevant for understanding justifications for RPM based on free riding are findings from multi-channel research. This research examines multi-channel shopping (Johnson et al. 2006; Kumar and Venkatesan 2005; Zhang et al. 2009); multi-channel marketing (Rangaswamy and VanBruggen 2005), distribution (Frazier 1999), retailing (Zhang et al. 2009), and customer management (Neslin and Shankar 2009); as well as multi-channel (retail) competition and competitive interaction (Miller et al. 1999). As a body of thought, multi-channel research investigates the behavior of consumers who utilize different channels of distribution within a single purchase process, the strategies employed by marketers to market, distribute, sell to, and manage such customers, and the competition and competitive interactions that result. Thus, it investigates the requisite consumer behavior, channel structure, and form of competitive rivalry necessary for free riding to occur. Extending previous work (Gundlach et al. 2010), in the following sections, we highlight findings from multi-channel research especially pertinent for understanding the free rider thesis as applied to justify RPM.

Research on multi-channel shopping

Multi-channel shopping occurs when consumers use multiple channels of distribution while completing purchase decisions (Johnson et al. 2006; Kumar and Venkatesan 2005). As detailed in the following section, past investigations provide evidence that multi-channel shopping:

- is increasingly common,
- often involves shopping via the Internet prior to purchasing from a brick and mortar store, and
- is caused by variance in individuals' channel preferences across purchase occasions and across stages of their purchase decisions.

This research provides important insights for understanding justifications for RPM based on free riding through investigating the *consumer behavior* necessary for free riding to occur. Multi-channel shopping research describes the decision making and behavior of consumers who purchase products while using more than one type of retail channel and such use of multiple channels during the purchase process is required for free riding to occur.

Findings and insights

During past decades, consumers typically relied on a single channel of distribution while moving through multiple stages of the purchase process, which typically includes identifying a need, gathering information, evaluating alternatives, transacting a purchase, and seeking follow-up service and support (Nunes and Cespedes 2003; Rangaswamy and VanBruggen 2005). Traditionally, gathering information from multiple retailers prior to completing a purchase decision involved physically moving from store to store—creating high search costs for most customers (Zhang et al. 2009). Thus, there was a tendency for shoppers to stick with a particular retailer or channel from the time of entering the purchase decision to making the final purchase.

Research shopping As the Internet and other channels of distribution (e.g., catalog sales and television home shopping) gained prominence, consumers began using more than one

[1] Prior research includes Grether (1947), Stewart (1953), Lee (1958), Oakes (1957), Hourihan and Markham (1974).

channel for their purchases (Johnson et al. 2006). Consumers increasingly engage in "research shopping," which involves gathering information regarding a product in one channel and then purchasing it through another channel (Verhoef et al. 2007). Research shopping has been found to occur across a variety of product categories. For example, a survey of Dutch consumers found that across several product categories, on average, 76% of respondents engaged in research shopping (Verhoef et al. 2007). In addition, a recent study by Deloitte found that 56% of the consumers they sampled completed at least one purchase decision using multiple channels during a 12 month period (Deloitte 2008).

Causes of research shopping Research shopping is caused, in part, by diversity in consumer preferences for obtaining information, transacting purchases, and receiving service as they move through the decision making process. In other words, consumers needs vary depending on the stage of the decision process they occupy, and different channels vary in terms of their capabilities in satisfying the needs that exist at the different stages of decision making. As Nunes and Cespedes (2003) contend, many consumers no longer gain awareness of a product, consider it relative to other alternatives, form a preference, purchase, and obtain after sales service via a single channel. Rather, the current tendency is to use several channels to meet the needs that exist at each of these stages. Zhang et al. (2009, p. 13) note that "consumers may window shop by flipping catalogs, search for product information online, make the purchase in brick-and-mortar stores, and get their post-purchase services through call centers."

Sequence of research shopping Despite many possible pathways, research shoppers most commonly shop via the Internet and subsequently purchase from a brick-and-mortar retailer (e.g., Verhoef et al. 2007; Zhang et al. 2009). Citing a survey conducted by IBM, Zhang et al. (2009) report that the most common type of shopping episode involving multiple channels starts with consumers browsing the Internet and concludes with a purchase in a brick-and-mortar store. This pattern was used by over 78% of those consumers surveyed while only 8% used the second most widely used pattern: browsing in a store before completing a purchase over the Internet. Showing a similar pattern of results, Doubleclick found that 43% of shoppers browsed on the Internet and then purchased in a store versus only 16% of shoppers who reported shopping at stores and then purchasing on the Internet (Verhoef et al. 2007). As another example, a 2007 survey of over 15,000 consumers found that 92.5% reported regularly or occasionally researching products via the Internet prior to buying them from a store (National Retail Federation 2007).

Implications for RPM

Findings regarding the occurrence, directionality and causes of research shopping provide important insights for understanding the empirical relevance and conceptual validity of the free riding thesis as well as allegations of free riding against Internet retailers.

Empirical relevance of the free rider thesis For free riding to occur consumers must shop across channels for a particular purchase. As the number of channel options available to consumers has increased, so has the number of consumers who are shopping across channels in completing purchases. Thus, the required shopping and purchase behavior necessary for free riding to occur has increased over time.

Conceptual validity of the free rider thesis The premise that free riding takes place and RPM is needed to remedy this problem is based, in part, on the assumption that consumers consistently value the promotional and service efforts induced through RPM. This assumption has been challenged as subject to empirical verification, given it is known that consumers vary (i.e., are heterogeneous) in their demand preferences (Comanor 2010). Evidence that channel preference can vary for an *individual* consumer based on the specific stage of their decision process gives further weight to this challenge.

Allegations that Internet retailers are free riders INTERNET retailers are characterized as having relatively low overhead costs, and as such, have been targeted as free riders based on contentions that they unfairly take advantage of the marketing investments of established brick-and-mortar retailers. While this may be true in particular categories, research shows that the most common form of research shopping begins on the Internet and ends in the store. Accordingly, consumer behavior within multi-channel contexts appears to offer greater opportunities for brick-and-mortar retailers to free ride (off of the informational services provided via Internet retailers) than for Internet retailers to free ride.

Research on multi-channel marketing, distribution, retailing and customer management

Multi-channel research also examines the marketing, distribution, retailing, and customer management strategies employed by manufacturers using multiple channels of distribution. Our review of this research, which is detailed below, provides evidence that:

- at an increasing rate, manufacturers are using multiple channels of distribution,
- the purported competitive effects of multiple channels of distribution can be explained by two philosophical perspectives—channel "cannibalization" and channel "synergism," and
- these two philosophical perspectives lead to distinctly different manufacturer strategies for managing multi-channel systems.

Given that this research describes the decision making and behavior of manufacturers in relation to the management of customers engaging in multi-channel shopping, it also provides insights for understanding justifications for RPM based on free riding. The management of a manufacturer's brand through more than one channel of distribution involves the necessary channel structure for free riding to occur. Multiple channels of distribution enable consumers to cross shop for the manufacturer's brand, and as previously described, for the demand-stimulating investments of retailers in one channel to stimulate demand for retailers in a different channel.

Findings and insights

Occurrence of multi-channel systems Past approaches for developing and managing distribution channels were based on the understanding that people typically shop for and purchase products within a single channel (Nunes and Cespedes 2003; Moriarty and Moran 1990). Using demographics and other customer information, manufacturers traditionally designed unique distribution channels to serve each targeted segment (Neslin and Shankar 2009). Although some manufacturers continue to design and manage their distribution channels in this manner, many are now developing multi-channel systems to serve customer segments. These systems are composed of traditional brick-and-mortar retailers, company owned stores, telemarketing agents, Internet retailers, catalogs, kiosks, box vending machines, home shopping networks, and other options (Court et al. 2006). Frazier (1999, p. 232) concluded over a decade ago that "the use of multiple channels of distribution is now becoming the rule rather than the exception" (e.g., Moriarty and Moran 1990).

Managerial perspectives on multiple channel use Two philosophical perspectives reflect how managers view the use of multiple channels of distribution (Frazier 1999; Geyskens et al. 2002). The first is that multiple channels of distribution harm firm performance as different channels cannibalize each other's sales. As Baal and Dach (2005. p. 76) describe:

> If distribution modes compete with one another for an exogenous sales potential, an additional channel would result in increased total distribution costs without adding to overall sales. Moreover, companies adding a channel may even see sales decline as a result of channel conflict and decreased service to customers. Thus, a multichannel firm would be at a disadvantage compared to competitors with fewer channels. Where multiple channels of distribution are used, free riding has been identified as a form of cannibalization that can negatively impact firm performance (Coughlan et al. 2001; Geyskens et al. 2002).

The second perspective is that using multiple channels of distribution benefits firm performance as different channels synergistically complement each other and thereby increase sales and decrease costs (Avery et al. 2009; Neslin and Shankar 2009). Baal and Dach (2005) note that the benefits of an added channel may not be limited to the sales generated through this channel since multiple channels may complement each other and increase total sales. Geyskens et al. (2002) argue that by adding an Internet channel, for example, manufacturers may be able to increase sales via market expansion (i.e., new customers), brand switching (i.e., attracting competitors' customers), and relationship deepening (i.e., selling more to existing customers). In addition, these authors note the potential for multiple channels to reduce distribution and transaction costs.

Strategies for using multiple channels Depending on which of the two managerial perspectives toward multiple channels of distribution is adopted, research shopping is viewed by managers as either harmful behavior to be discouraged or beneficial behavior to be encouraged. Following the perspective that research shopping is harmful (i.e., cannibalism) managers adopt strategies to deter research shopping. At the extreme, manufacturers attempt to deny consumers the ability to shop in one channel and purchase in another by providing them with incentives to use a particular channel or giving them no choice but to use a single channel (Geyskens et al. 2002). Strategies for this approach include, for example, exclusive distribution to make it difficult (based on geography) for consumers to gather information or purchase the product via other channels of distribution. Manufacturers also employ branded variants to make direct product comparisons across channels more difficult and costly (Bergen et al. 1996). The use of RPM discourages research shopping by reducing price variance across channels and thereby reducing consumers' price related incentives to shop.

Another approach involves "right-channeling"—encouraging or forcing consumers to use certain channels (Neslin and Shankar 2009). Strategies for this approach involve providing consumers with information (regarding their product experience, needs, etc.) and directing them to a specific channel.

Criteria for right-channeling consumers include the firm's most economical channel, the channel providing the highest customer satisfaction and retention, and the channel found most appropriate to a particular stage of the customer life-cycle (Sun and Li 2005). Manufacturers also guide customers to channels that offer them the highest margin or that make best use of discounts based on the price sensitivity of consumers, and away from channels that result in a high rate of returns (i.e., customers returning products to the store) (Kushwaha and Shankar 2008).

Following a strategy of channel synergism, manufacturers adopt tactics to encourage research shopping. These manufacturers take a dim view of conventional channel strategies that force customers into discrete channels and prefer to design different channels that match the desired shopping patterns of consumers. As part of the adoption of a "shopper-centric approach" (Kantar Retail 2010), these manufacturers create channel pathways that suit consumers' individual preferences (Nunes and Cespedes 2003). The result is multi-channel systems that "fit" with consumers' shopping patterns and preferences for purchasing products and obtaining service along their chosen "path to purchase" (Kantar Retail 2010). Ultimately, the goal is to make it easy for customers to follow their preferred path while enhancing firm performance through cross-channel synergies (Nunes and Cespedes 2003).

Multi-channel coordination permits manufacturers and retailers to capitalize on cross-channel synergies (Neslin and Shankar 2009). For example, mail catalogs for particular brands are used to increase retail traffic and brand identification (Frazier 1999). The use of mail catalogs and the Internet also results in customers being more informed when they purchase at retail stores, allowing for reduced costs at the point of sale. In addition, offering "in-store pickup" allows shoppers to research and purchase a product online but obtain it more quickly by picking up the product at a local store. Consistent with the notion of cross-channel synergies, the harmonic addition of channels of distribution can have a positive impact on revenue (Pauwels and Neslin 2008).

To coordinate and realize the performance potential of their multi-channel systems, manufacturers adopt ways to count the contributions of each channel to a customer's purchase and then reward channel members for their respective efforts (Nunes and Cespedes 2003). For example, when Allstate added online channels of distribution, it risked losing the dedicated services offered by its local agents. So, Allstate paid local agents a 2% commission (less than the standard 10% sales commission) to provide service to customers in their geographic area who had purchased online. This also served as a lead for the local agent who might then sell these customers additional products (Perreault et al. 2009). As another example, company-owned Apple stores and Nike's Niketown locations generate interest for the brands and offer consumers a chance to gather information even though customers often purchase in other channels. Other firms that harmonize multi-channel systems and reward channel members for making individual contributions along the path to purchase include Dell Computer, Merrill Lynch, Toyota, and Bell South (Nunes and Cespedes 2003).

Implications for RPM

Findings regarding the occurrence, philosophy toward, and management of multiple channels of distribution provide important insights for understanding the empirical relevance of the free rider thesis, assumptions underlying justifications for RPM based on free riding, and alternatives to RPM that are less restrictive of competition in practice.

Empirical relevance of the free rider thesis As with research on multi-channel shopping, the research indicates that circumstances conducive to free riding have increased over time as more and more manufacturers are distributing their products across multiple channels of distribution. However, the occurrence of free riding in the past was restricted by the design of distribution channels to match discrete consumer segments and relatively high consumer search costs. These findings suggest that free riding of the sort necessary to justify RPM may be on the rise while its past occurrence was likely more limited than previously thought.

Assumptions underlying justifications for RPM based on free riding Underlying the free rider justification for RPM is the assumption that free riding poses adverse consequences for a manufacturers' ability to compete in the marketplace. Following this perspective, some manufacturers believe that distributing products across different channels harms firm performance as a result of channel cannibalization. This perspective holds that, together with research shopping, the use of multiple channels of distribution results in channel cannibalization, leading to the erosion of support in one or more channels and lower levels of overall channel system performance. As described, such concerns provide the primary justification for RPM in law and economics.

On the other hand, a more contemporary view is that multi-channel distribution and associated research shopping can benefit firm performance due to channel synergies. This perspective suggests that by harmonizing channels in complementary ways and then rewarding channel members for their respective contributions, multiple channels (together with research shopping) can increase sales and reduce costs, resulting in higher levels of channel system performance overall. Research identifies a number of revenue-enhancing

and cost-reducing advantages for manufacturers (and retailers) as a result of the use of multiple channels of distribution and associated research shopping. Research also identifies examples of firms that have successfully rewarded channel members for their individual contributions to purchases resulting from research shopping.

Strategies employed by manufacturers to address free riding Manufacturers adopt strategies, such as RPM, to limit free riding. However, RPM is not the only strategy that may be used for this purpose. Other approaches, including the use of exclusive (or selective) distribution and the use of branded variants, have been identified in law and economics as less restrictive of competition than RPM and therefore important for assessing the competitive merits of RPM in practice. A further alternative for discouraging free riding includes right-channeling customers through the use of information to direct customers toward a particular channel. From a competition law perspective, depending on the circumstances, each alternative may be less restrictive of competition than RPM.

Equally or more significant, rather than strategies to discourage research shopping, research shows that many manufacturers are increasingly adopting strategies to encourage research shopping by harmonizing channels to the ways in which consumers shop and purchase products across channels. Harmonizing channels permits manufacturers to capitalize on cross-channel synergies, increase sales, and reduce costs. To date, the management of free riding through channel harmonization based on cross-channel synergies has not been a part of extant understanding in law and economics. However, as an alternative that is less restrictive of competition, such an approach should bear on assessment of RPM's consequences for competition.

Research on multi-channel competition and competitive interaction

Research in marketing also examines the nature and result of retail competition and competitive interactions. This research includes competition and interactions among different types of retailers (i.e., intertype) selling similar merchandise. It thereby addresses competition and competitive interaction within multi-channel systems. This research provides evidence that managing multiple channels of distribution through strategies that result in uniform marketing efforts across channels encourages channel cannibalization.

Given that this research describes the nature and effects of competition and competitive interaction among different types of retailers selling similar merchandise (i.e., intertype competition) it also provides insights for understanding explanations of RPM that involve free riding. Intertype retail competition and competitive interaction provides the necessary *competitive setting* for free riding to occur.

Insights and findings

Multi-channel research suggests that discouraging consumer research shopping through strategies that result in similar marketing approaches across channels increases channel cannibalization. For instance, Avery et al. (2009, p. 3–4) argue that channels are more likely to cannibalize each other when firms fail to provide adequate product and/or service differentiation. Offering a similar perspective, Deleersnyder et al. (2002, p. 346) report that "when the new channel is positioned as too close a copy (substitute) to its traditional counterpart, cannibalization will more likely take place." Related research compares the competitive interactions among different types of retailers selling similar merchandise (i.e., intertype competition) and retailers of the same type selling similar merchandise (i.e., intratype competition). Studying intertype sporting goods retailers within a limited geographic area, Miller et al. (1999, p. 108) conclude that there is a preeminent symbiotic relationship between different types of retailers. That is, competition among different types of retailers selling similar merchandise resulted in competitive interactions that were "mutually beneficial" (Miller et al. 1999, p. 109). Alternately, the authors find "intratype competition tends to exhibit a strong Darwinian effect (p. 117)" with competitive outcomes similar to a "zero-sum game" and a "survival of the fittest (p. 108)" approach. The authors attribute their findings to generally accepted tenets of competition—less differentiation among businesses leads to lower prices, profits, and sales.

Implications for RPM

These research findings suggest that under some circumstances the use of RPM to curb free riding may have the surprisingly opposite result—increasing rather than decreasing free riding's adverse effects in the form of cannibalization. This may occur where RPM leads not only to uniform prices but also similar nonprice strategies across different channels of distribution. RPM restricts the minimum price at which members of different channels may offer a product with the result that uniform prices are present across retailers. At the same time, although theorized to lead to nonprice strategies that differentiate retailers across channels, in practice RPM may actually result in the adoption of the same or similar nonprice strategies across channels. This may occur for several reasons.

First, RPM is theorized to encourage higher levels of promotional efforts across channels by guaranteeing a minimum margin to retailers. Where true, RPM results in levels of promotion and service across channels that are

consistently higher overall. Second, and for similar reasons, higher overall levels of promotion and service also results in less variation in promotion and service across channels. Third, manufacturers who implement RPM often specify the particular form of this promotion and service to be provided by retailers. In *Leegin*, for example, Leegin's documents describing its Brighton Heart Store program included language requiring retailers: a) pledge and agree to follow its suggested pricing policy, b) adhere to specific nonprice strategies (e.g., minimum stocking requirements, c) utilize specific store merchandising arrangements and product display formats, d) follow specific procedures for product repairs and exchanges, and e) adhere to standards for the in-store treatment of customers among other requirements. Where enforced, specification of the form of promotion and service to be provided by retailers results in more consistent nonprice strategies across retailers.

Accordingly, in practice RPM can lead to promotional and service efforts on the part of resellers that are at a higher level, less variant, and more consistent in form. Applying the findings of multi-channel research, where the use of RPM yields less differentiation across channels, cannibalization is more likely to occur. The prospect that in practice RPM may have this opposite and unintended consequence is not currently a part of extant understanding in competition law.

Discussion

The findings of multi-channel research add significantly to current understanding of the primary procompetitive justification for RPM—the free rider thesis. These findings provide important implications for understanding the empirical relevance and conceptual validity of the free riding explanation and for the effects of RPM on competition as developed and applied in competition policy and law. Summarizing key findings and their implications:

- Advances in information technology and in particular the Internet have led to an increase in consumer behavior (i.e., research shopping), channel structures (i.e., multi-channel systems) and competitive settings (i.e., multi-channel competition) conducive to free riding.
- Marketers are increasingly adopting the philosophy that, beyond cannibalistic effects, multiple channels of distribution can provide synergistic effects and enhance firm performance. Thus, rather than invoking strategies like RPM to deter research shopping and therefore free riding, these managers are adopting strategies to harmonize distribution channels and thereby encourage cross-channel shopping.
- Strategies to manage multi-channel systems and cross-channel shopping that result in uniform prices and similar nonprice strategies encourage channel cannibalization. RPM arrangements mandate uniform prices across channels with some also specifying similar nonprice strategies. Under these circumstances, the use of RPM to curb free riding may increase (rather than decrease) free riding's adverse effects in the form of cannibalization.

Explanation and elucidation

An important question regards why law and economics concerning RPM does not better reflect the findings of multi-channel research. In part, this disparity follows from basic differences in the paradigms and theories of exchange that have evolved in marketing as compared to antitrust economics and law. Although contemporary thinking in antitrust law and economics, including justifications for RPM based on free riding, remains wedded to the micro-economic paradigm, the relevance of this paradigm and its perspective for contemporary marketing has been increasingly questioned over time. The fundamental changes that have led to reconsideration of marketing's reliance on the microeconomic paradigm are also important drivers for multi-channel shopping and marketing. Basic changes to the way in which competition and exchange are occurring in the economy include the movement to systems competition and relational exchange.

- *Systems competition*. While Bucklin (1970) first proposed that "vertical market systems" compete against one another, actual practice reflecting this philosophy evolved slowly. Today, the concept is more widely embraced with competition frequently existing between channel systems rather than between individual companies (Nunes and Cespedes 2003). A systems level view of competition shifts the focus of management from an individual channel of distribution to the aggregation of distribution channels comprising a multi-channel system. In turn the design, management, and performance of the larger multi-channel system become the focal points for developing competitive strategies. From such a perspective, each channel and its members must contribute to the performance of the entire system as management strategies are directed toward harmonizing channels to fit consumers' shopping preferences. It is against this backdrop that managerial philosophy toward multi-channel systems has expanded to include synergistic effects for performance.
- *Relational exchange*. In addition, marketing management has increasingly adopted a relational perspective of

exchange (Arndt 1979; Morgan and Hunt 1994). Rather than exchange as a discrete event (i.e., a single transaction), managers take a longer-term and more interactive view of exchange. Marketing strategies increasingly emphasize the establishment and management of a firm's relationship with customers. This includes the design and management of distribution channels so as to attract, cultivate, and maintain customer relationships over time. The use and harmonization of multiple channels of distribution to reach and build relationships with consumers by continually fulfilling their shopping and purchase needs represents an extension of this view of distribution strategy.

As further explanation, it is also worth noting that from a marketing perspective, it is well known that consumers generally make decisions and engage in behaviors they believe best suit their needs and preferences. Managers recognize this and develop strategies that adapt to the behavior of consumers. Rather than trying to deny the behavior of consumers, effective managers understand that to be successful they must constantly learn and adapt their strategies to the needs and preferences of their customers. This philosophy extends to the design and management of distribution channels. Thus, it is not coincidental that manufacturers have increasingly developed multi-channel systems and endeavor to harmonize the different channels in these systems to the ways in which consumers prefer to shop, complete transactions, and receive related services.

Imperative for research

Our review highlights various factors post-*Leegin* that point to the urgent need for research on RPM. In this section we expand on these factors and propose a program of research based on our review.

Factors motivating research First, anecdotal evidence indicates the growing use of RPM by marketers. The *Wall Street Journal* reports, for example, that since *Leegin*, "the practice has surged," (Pereira 2009, p. D1), "retail-pricing norms have . . . changed significantly" (Pereira 2008c, p. A1), and "[i]n the wake of the decision, many manufacturers have instituted pricing minimums for advertising or sales" (Pereira 2008c, p. A1). The *Journal* cites one expert's account that "[t]oday there are an estimated 5,000 companies that have implemented minimum-pricing policies, much of it happening in the wake of the Supreme Court decision" (Pereira 2009, p. D1). RPM policies have been reported for products sold in major retailers and extend across a wide range of product categories.[2] The spike in interest in minimum pricing policies has also spawned new companies like NetEnforcers, which uses Internet search technologies to help manufacturers track the prices retailers are advertising for their products (Pereira 2008a, b). Other reports similarly document the increasing occurrence of RPM post-*Leegin* (Tarr 2008).

Second, prior evidence shows that when past policies have allowed RPM—for example during the Fair Trade era—higher consumer prices and stifled innovation followed. Past studies report that RPM leads to higher prices for consumers (Overstreet 1983). Based on historical data, the Department of Justice has argued that RPM raised prices during the Fair Trade era by 19% to 27% (Clearwaters 1975). During this time 10% of consumer good purchases are reported to have involved manufacturer brands that were distributed with RPM policies (Overstreet 1983). As computed by the dissenting Justices in *Leegin* (2007, p. 19), "that figure in today's economy equals just over $300 billion." Evidence further indicates that RPM has been used in the past by incumbent retailers to suppress competition from more innovative forms of retailing and that it is being employed similarly today (Paldor 2007). Retailers have reportedly conscripted the use of RPM on the part of manufacturers to protect themselves from competitive pressures of retail innovation. In this regard, anecdotal reports suggest that RPM may be supported by retailers relying on incumbent formats to slow retail innovation like that found on the Internet (Pereira 2008a, c).

Lastly, for marketers to develop long-term strategies surrounding their distribution practices, greater certainty is needed in relation to application of the rule of reason following *Leegin*. Considerable uncertainty, however, continues to surround the *Leegin* decision. Historical precedent shows judicial application of the rule of reason has favored defendants in the past (more than 10 to 1 by some estimates) (e.g., Carrier 1999, 2009; Ginsburg 1991). Thus concern is present that *Leegin* may lead to circumstances that unfairly discriminate against plaintiffs' alleging anti-competitive practices. Based on these and other concerns, legislative initiatives to repeal the decision (i.e., "Leegin

[2] RPM policies have been reported for products sold in Wal-Mart (Pereira 2008c, p. A1), Best Buy, Circuit City, and Toys "R" Us (Pereira 2009, p. D1) as well as many different Internet retailers (Pereira 2008a, p. A1), RPM policies have also been reported to extend across a wide range of product categories, including popular brands of video game equipment and video games (Pereira 2008a), bassinets, strollers and baby products (Pereira 2008a, b, c), maternity and baby gear (Pereira 2009), lighting and home improvement products (Pereira 2009), flat-screen TVs, power tools, car parts, photographic equipment, handbags, appliances, and audio equipment (Pereira 2008c).

repealers") are pending at the federal level in both the Senate (Discount Pricing Consumer Protection Act 2009a) and the House of Representatives (Discount Pricing Consumer Protection Act of 2009b), with the state of Maryland recently adopting a state law (Maryland Code Annotated 2009) to this effect against RPM. At the same time, antitrust enforcement agencies are finding it difficult to provide certainty going forward given they face the predicament of enforcing the Court's decision while at the same time attempting to enhance their factual understanding of RPM (Federal Trade Commission 2009).

Proposed research Although future research on RPM may take several paths, we propose a program of research based on our review. Future research should follow on extant understanding of RPM found in law and economics as well as past research in marketing. Studies of RPM should include empirical as well as conceptual efforts directed at understanding the nature, antecedents, and effects of RPM in practice. Empirical research should include synthesis of existing findings (as in the present study) in addition to the conduct of original studies. In light of our review, investigations of RPM in the following areas are especially warranted.

- *RPM practices*. Given the paucity of empirical understanding of RPM, efforts should include descriptive examination of RPM in practice. This includes the nature and form that RPM may take, how it is implemented and maintained by marketers, as well as the scope and frequency of RPM's use before and after *Leegin*.
- *RPM's effects on competition*. Future research should also examine the variety of explanations that have been developed over time in law and economics and related fields to describe the competitive effects of RPM. This research should investigate (and test) the specific elements and features of these explanations, the theoretical foundations from which they were developed, and the underlying assumptions that inform them.
- *Antitrust assessment of RPM*. Research is also required to help inform application of the Supreme Court's decision in *Leegin*. Recognizing that judicial evaluation of RPM under the rule of reason would lead to questions, the Court provided specific guidance through the so-called "*Leegin* factors"—particular considerations to be evaluated in a given case. At the same time the availability of strategies for encouraging and securing retail promotion that are less restrictive of competition than RPM bear upon this assessment. Finally, antitrust economics has spoken over time to the nature of criteria and tests considered useful for assessing the implications of RPM for competition and consumers. As a general matter, each of these elements of assessment is an important topic for future research.
- *Circumstances of special interest involving RPM*. Several circumstances involving the use of RPM are of special interest given debate over how each affects competition. RPM in conjunction with the Internet has created significant debate where RPM is justified based upon the assumption that Internet retailers are free riders who offer lower prices not because of their effectiveness and efficiency in serving customers but because they free ride on the promotional investments of their traditional counterparts. RPM in the context of dual distribution—where a manufacturer sells through both independent retailers as well as manufacturer-owned retail stores—has also generated debate. Given different effects on competition are ascribed depending on whether the source of RPM is a manufacturer or retailer, controversy centers on understanding the competitive effects of RPM in these hybrid arrangements. Finally, RPM in settings involving retailers that carry the brands of multiple manufacturers (i.e., multi-brand retailers) has created debate. Multi-brand retailing is a more pervasive retail format. However, the language relied upon by proponents of RPM to explain its use and effects more frequently describes single-brand retailing. Each of the above circumstances provides an important avenue for context-specific research.

Extensions and related concepts

The findings of multi-channel research for RPM reported here may be extended and pose implications for other practices of interest to antitrust law. As well, multi-channel research may be related to other concepts of importance to both marketing and antitrust law. In this section we expand on this potential and these relationships.

Vertical non-price restraints In addition to vertical (i.e., distribution) price restraints in the form of RPM, the free rider thesis is relied upon in law and economics to justify vertical nonprice restraints. Thus, findings of multi-channel research may also pose implications for non-price distribution practices in antitrust.

Nonprice distribution restraints involve limitations a manufacturer imposes on a reseller that do not directly affect price. These restraints include:

- location clauses that regulate the place from which a reseller may sell,

- territorial or customer restrictions that regulate the geographical area or the class of customers that a reseller may serve,
- exclusive distributorships that assign a particular geographical area or class of customer to one reseller are also nonprice restraints, and
- primary responsibility clauses that assign a specific geographical area or customer class to one reseller, with a required level of sales or services, are also designed to control distribution practices.

Vertical nonprice restraints are also often accompanied by related practices such as profit pass-over clauses that require resellers making sales in another dealer's territory, or to its assigned class of customers, remit part of the profit to the host dealer.

Like RPM, nonprice distribution restraints are judged in antitrust law following the rule of reason. Similar to RPM practices, nonprice distribution restraints are also often justified following a similar logic—their use permits manufacturers to address free riding (and other issues) by inducing retailers to invest in the distribution and promotion of a manufacturer's product or service. Nonprice distribution restraints therefore provide an important area for the extension of insights and findings from multi-channel research.

Shopper marketing Multi-channel shopping and marketing are related to and part of a larger practice known as "shopper marketing" (also called "shopper-centric marketing"). Combining insights on multi-channel marketing, trade promotion, in-store marketing and category management, shopper marketing involves reaching and influencing consumers along their "path to purchase"—"from how they choose the outlet, to how they shop the store and ultimately how they select products" (Kantar Retail 2010, p. 5; Inman et al. 2009; Nielsen 2006; Court et al. 2009; Wilkie 1986).

Shopper marketing has its origins in the decade-plus old initiative known as Efficient Consumer Response (ECR), a joint trade and industry effort begun in the 1990s to make the grocery sector more responsive to consumer demand and reduce costs (Corsten and Kumar 2005; Kotzab 1999). ECR sought greater collaboration across channel members with respect to inventory and transportation as well as consumer and trade promotion. Emerging technology has enabled the greater coordination efforts now reflected in shopper marketing initiatives.

As with multi-channel research, shopper marketing involves a deep understanding of how consumers behave as shoppers in different distribution channels. This understanding is then combined with insights into how consumers shop within a retail format and at the category shelf to discern the shopping needs and preferences of consumers along their path to purchase. The objective is to synchronize marketing efforts along all steps in ways that meet customer needs, desires, and expectations.

Shopper marketing is not limited to in-store activity and may include shopping activity and behavior of customers prior to a store visit. At the same time, the concept is not limited to retail institutions as traditionally conceived but includes the full range of available formats (e.g., brick-and-mortar, Internet, in-home shopping, kiosks, etc.). Shopper marketing provides a common basis from which to integrate marketing activities across channel formats and across all stages of the consumer decision making process. Thus, in addition to being an encompassing concept, shopper marketing is also an important area for future research that likely has implications for understanding free riding and therefore RPM.

Market convergence Multi-channel shopping and marketing also describes consumer and marketer behavior associated with the larger phenomenon of "market convergence"—a term that describes the process and consequences of markets (i.e., buyers and sellers) converging over time (e.g., Pennings and Puranm 2000). Brought about through technology (i.e., the Internet) and assisted by deregulation and socio-economic developments, market boundaries are eroding. In some markets, the boundaries of space and time have been eliminated (Dessien and Santos 2006). Markets previously separated by geography and the effort taken to reach them have converged in "space." In similar fashion markets separated by the challenge and effort taken to process individual transactions have converged in "time."

Multi-channel shopping and marketing are both drivers and manifestations of market convergence. Shopping across multiple channels enables consumers to frequent different markets in the context of a single purchase. Marketing, distributing, and selling products and services across different channels permit marketers to participate in multiple markets. Consumers and marketers are now able to frequent and participate in multiple markets in ways previously not possible.

Market convergence poses significant consequences for marketing and competition and therefore public policy. Levitt (1983) first recognized these consequences over 25 years ago through studying the effects of technology on market globalization. For Levitt, the convergence of markets held enormous potential but also risk for corporations and competition—potential and risk that are being increasingly realized over time. Given these effects, market convergence also poses implications for antitrust—from affecting how markets of competition should be defined, to how the nature and effects of competition (including free riding) should be understood, to how competition policy

and law should address and remedy market failures (including through policy toward RPM). Research that addresses these questions provides important pathways for future study.

Conclusion

Together, the findings and implications of multi-channel research illustrate the important contributions that research from marketing can provide for understanding of RPM in antitrust. The findings yield important implications that support, challenge, and expand understanding that justifies RPM based on free riding. Policymakers and legal practitioners are encouraged to apply these insights to the development of antitrust policy and law toward RPM going forward. Given the importance of antitrust policy and law to marketing and marketing management, scholars in marketing are also encouraged to consider the ways in which their research might also inform RPM as well as other competition-related practices in marketing.

References

Arndt, J. (1979). Toward a concept of domesticated markets. *Journal of Marketing, 43*, 69–75.

Avery, J., Steenburgh, T. J., Deighton, J., & Caravella, M. (2009). *Adding bricks to clicks: The contingencies driving cannibalization and complementarity in multichannel retailing*. Boston: Harvard Business School.

Baal, S., & Dach, C. (2005). Free riding and customer retention across retailers' channels. *Journal of Interactive Marketing, 19*, 75–85.

Bergen, M., Dutta, S., & Shugan, S. M. (1996). Branded variants: a retail perspective. *Journal of Marketing Research, 33*, 9–19.

Bucklin, L. P. (1970). Symposium on vertical markets systems. Northwestern University, 1968. Glenview, IL: Scott Foresman.

Business Electronic Corp. v. Sharp Electronics Corp. (1988). 485 U.S. p. 717.

Carrier, M. A. (1999). The real rule of reason: bridging the disconnect. *Brigham Young University Law Review*, pp. 1265–1268.

Carrier, M. A. (2009). The rule of reason: an empirical update for the 21st century. *George Mason Law Review, 16*, 827–828.

Clearwaters, K. I. (1975). Hearings on H. R. 2384. Washington, DC: Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary.

Comanor, W. S. (2010). Antitrust policy toward resale price maintenance following Leegin. *Antitrust Bulletin, 55*, 59–78.

Consumer Goods Pricing Act of 1975. Pub. L. No. 94–145.

Corsten, D., & Kumar, N. (2005). Do suppliers benefit from collaborative relationships with large retailers? An empirical investigation of efficient consumer response adoption. *Journal of Marketing, 69*, 80–94.

Coughlan, A., Anderson, E., Stern, L. W., & El-Ansary, A. (2001). *Marketing Channels*, 6th ed. Prentice Hall.

Court, D. C, French, T. D., & Knudsen, T. R. (2006). The proliferation challenge. *Profiting From Proliferation*, (Allen P. Webb ed., 2006), pp. 9–10.

Court, D., Elzinga, D., Mulder, S., & Vetvik, O. J. (2009). The consumer decision journey. *McKinsey Quarterly*, June, 1–11.

Deleersnyder, B., Geyskens, I., Gielens, K., & Dekimpe, M. G. (2002). How cannibalistic is the Internet channel? A study of the newspaper industry in the United kingdom and the Netherlands. *International Journal of Research in Marketing, 19*, 337–348.

Deloitte (2008). 2008 annual holiday survey: Online and multichannel shopping.

Dessien, W., & Santos, T. (2006). Adaptive Organizations. *Journal of Political Economy, 114*, 956–995.

Discount Pricing Consumer Protection Act. (2009). S. 148, 111th Congress.

Discount Pricing Consumer Protection Act of 2009. (2009). H.R. 3190, 111th Congress.

Dr. Miles Med. Co. v. John D. Park & Sons. (1911). 220 U.S. 373.

Federal Trade Commission. (2009). Workshops, May 20, 2010. Retrieved August 25, 2010, from Federal Trade Commission: http://www.ftc.gov/opp/workshops/rpm.

Frazier, G. L. (1999). Organizing and managing channels of distribution. *Journal of the Academy of Marketing Science, 27*, 226–232.

Geyskens, I., Gielens, K., & Dekimpe, M. G. (2002). The market valuation of internet channel additions. *Journal of Marketing, 66*, 102–119.

Ginsburg, D. H. (1991). Vertical restraints: de facto legality under the rule of reason. *Antitrust Law Journal, 60*, 67–71.

Grether, E. T. (1947). The Federal Trade Commission versus resale price maintenance. *Journal of Marketing, 12*, 1–13.

Gundlach, G. T., Cannon, J. P., & Manning, K. C. (2010). Free riding and resale price maintenance: insights from marketing research and practice. *Antitrust Bulletin, 55*(2), 381–422.

Harbour, P. J. (2009). Testimony before the subcommittee on courts and competition policy. House of Representatives, Judiciary Committee, Washington, DC., p. 10.

Hourihan, A. P., & Markham, J. W. (1974). The effects of Fair Trade repeal: the case of Rhode Island. *Marketing Sciences Institute*.

Hovenkamp, H. (1995). Exclusive joint venture and antitrust policy. *Columbia Business Law Review, 1*, 61–64.

Inman, J. J., Winer, R. S., & Ferraro, R. (2009). The interplay among category characteristics, customer characteristics, and customer activities on in-store decision making. *Journal of Marketing, 73*, 19–29.

Johnson, K. K., Yoo, J.-J., Rhee, J., Lennon, S., Jasper, C., & Damhorst, M. L. (2006). Multi-channel shopping: channel use among rural consumers. *Journal of Retail and Distribution Management, 34*, 453.

Retail, K. (2010). *Transforming trade promotion: a shopper-centric approach*. Wilton: Kantar Retail.

Kotzab, H. (1999). Improving supply chain performance by efficient consumer response? A critical comparison of existing ECR approaches. *Journal of Business & Industrial Marketing, 14*, 364–377.

Kumar, V., & Venkatesan, R. (2005). Who are the multichannel shoppers and how do they perform? Correlates of multichannel shopping behavior. *Journal of Interactive Marketing, 19*(44), 45.

Kushwaha, T. L., & Shankar, V. (2008). Optimal multi-channel allocation of marketing efforts by customer-channel segment (Texas A&M Univ. Working Paper, 2008)

Lee, S. M. (1958). Problems of resale price maintenance. *Journal of Marketing, 23*, 274–281.

Leegin Creative Leather Products, Inc. v. PSKS, Inc. (2007). 127 S. Ct. 2705.

Levitt, T. (1983). The globalization of markets. *Harvard Business Review, 61*(3), 92–102.

Marvel, H. P., & McCafferty, S. (1984). Resale price maintenance and quality certification. *The Rand Journal of Economics, 15*, 346–359.

Maryland Code Annotated. (2009). Commercial Law § 11-204(a)(1). Retrieved August 27, 2010 http://www.lib.umd.edu/guides/MDAnnCodes.html.

McGuire Act. (1952). 66 Stat. 631.

Miller, C. E., Reardon, J., & McCorkle, D. E. (1999). The effects of competition on retail structure: an examination of intratype, intertype and intercategory competition. *Journal of Marketing, 63*, 107–108.

Miller-Tydings Act. (1937). 50 Stat. 693.

Monsanto Co. v. Spray-Rite Services Corp. (1984). 465 U.S. 752.

Morgan, R. M., & Hunt, S. D. (1994). The commitment-trust theory of relationship marketing. *Journal of Marketing, 58*, 20–38.

Moriarty, R. T., & Moran, U. (1990). Managing hybrid marketing systems. *Harvard Business Review, 68*(6), 146–155.

National Retail Federation. (2007). RAMA research finds magazines, television, and newspapers prompt online product searches. News Release (March 12, 2007), 1.

Neslin, S. A., & Shankar, V. (2009). Key issues in multichannel customer management: current knowledge and future directions. *Journal of Interactive Marketing, 23*, 70–81.

Nielsen. (2006). Understanding the path to purchase, *ESOMAR Automotive Conference*, Switzerland, March.

Nunes, P. F., & Cespedes, F. V. (2003). The customer has escaped. *Harvard Business Review, 81*(11), 106–113.

Oakes, R. H. (1957). Resale price maintenance in Chicago, 1953–55 (A Study of Three Products). *Journal of Business, 30*, 109–132.

Overstreet, J. T. (1983). *Resale price maintenance: Economic theories and empirical evidence*. Washington: Federal Trade Commison.

Paldor, I. (2007). Rethinking RPM: Did the courts have it right all along? Working Paper, Social Science Research Network.

Pauwels, K., & Neslin S. A. (2008). Building with bricks and mortar: the revenue impact of opening physical stores in a multichannel environment. *Marketing Science Institute*, Working Paper Series No. 08–101.

Pennings, J. M., & Puranm, P. (2000). Market convergence & firm strategies: towards a systematic analysis. Retrieved August 27, 2010 from http://faculty.fuqua.duke.edu/oswc/2000/papers/wednesday/JohannesPennings.doc.

Pereira, J. (2008a). Why some toys don't get discounted: manufacturers set price minimums that retailers must follow or risk getting cut off. *Wall Street Journal*, December 24, A1.

Pereira, J. (2008b). Discounters, monitors face battle on minimum pricing. *Wall Street Journal*, December 4, A1.

Pereira, J. (2008c). Price-fixing makes comeback after Supreme Court ruling. *Wall Street Journal*, August 18, A1.

Pereira, J. (2009). State law targets "minimum pricing." *Wall Street Journal*, April 28, D1.

Perreault, W. D., Jr., Cannon, J. P., & McCarthy, E. J. (2009). *Basic Marketing* (17th ed.). Burr Ridge: McGraw Hill.

Professional Sports Ltd. Partnership v. National Basketball Association. (1995), 874 F. Supp. 844, (N. D. Ill. 1995).

Rangaswamy, A., & VanBruggen, G. H. (2005). Opportunities and challanges in multichannel marketing: an introduction to the special issue. *Journal of Interactive Marketing, 19*, 5.

Stewart, C. F. (1953). Mandatory resale price maintenance of distilled spirits in California. *Journal of Marketing, 18*, 370–379.

Sun, B., & Li, S. (2005). Adaptively learning about customers and dynamic service matching—an empirical investigation of service allocation with off-shore centers. Carnegie Mellon University Working Paper.

Tarr, G. (2008). Sony adds new premium-goods sales policy. This Week in Consumer Electronics, May 23, 2010 retrieved from http://www.twice.com/article/print/259090-Sony_Adds_New_Premium_Goods_Sales_Policy.php

U.S. v. Colgate & Co. (1919). 250 U.S. 300.

U.S. v. General Electric Co. (1926). 272 U.S. 476.

Verhoef, P. C., Neslin, S. A., & Vroomen, B. (2007). Multichannel customer management: understanding the research-shopper phenomenon. *International Journal of Research in Marketing, 24*, 129–148.

Wilkie, W. L. (1986). *Consumer behavior* (1st ed.). New York: Wiley.

Zhang, J. E., Farris, P. W., Irvin, J. W., Kushwaha, T., Steenburgh, T. J., & Weitz, B. A. (2009). Crafting Integrated Multichannel Retailing Strategies. Working Paper, 09–125 . Harvard Business School.