



18th EU-China Competition Week

Beijing, 21 March 2019

RPM and e-commerce **Recent Commission decisions**

How can pricing algorithms affect the assessment of RPM?

Gunnar Wolf,

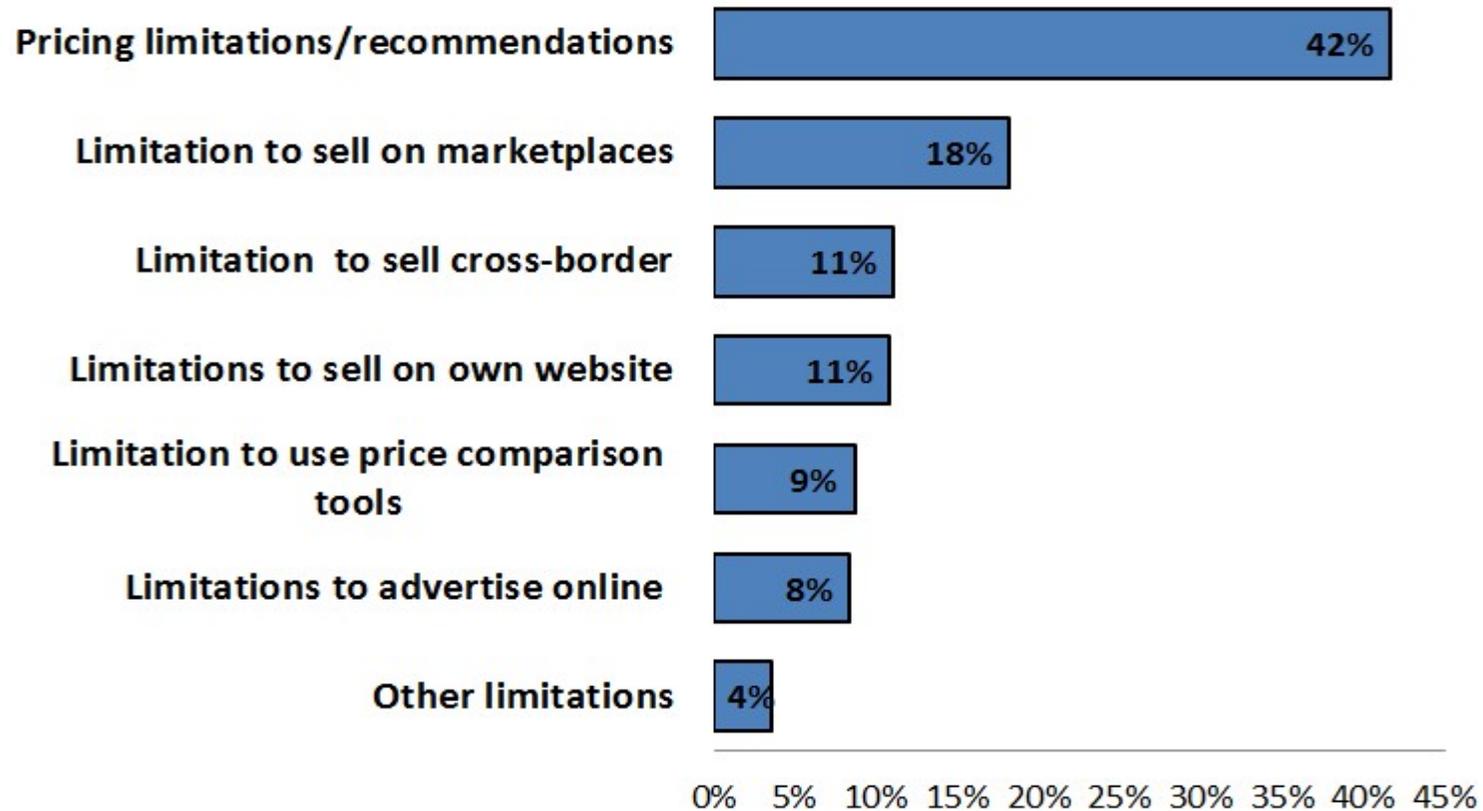
DG Competition, European Commission

(speaking in a personal capacity - the views expressed are not necessarily those of the European Commission)

Competition



E-commerce Sector Inquiry (May 2017) - Contractual Restrictions



B. 35: Proportion of retailers having contractual restrictions, per type of restriction



E-commerce Sector Inquiry (May 2017)

- 53 % of **retailers** *track* online prices of competitors
- 67 % of those (also) use *automatic software* for that purpose.
- 78 % of those that use software to track prices *adjust* their own prices to those of their competitors.
- ~ 30% of **manufacturers** track systematically online retail prices of their products sold by independent distributors



European Commission - Press release

Antitrust: Commission fines four consumer electronics manufacturers for fixing online resale prices

Brussels, 24 July 2018

The European Commission today fined, in four separate decisions, consumer electronics manufacturers **Asus, Denon & Marantz, Philips and **Pioneer** for imposing fixed or minimum resale prices on their online retailers in breach of EU competition rules.**

The fines totalling over €111 million were in all four cases reduced due to the companies' cooperation with the Commission.

Commissioner Margrethe Vestager, in charge of competition policy, said: *"The online commerce market is growing rapidly and is now worth over 500 billion euros in Europe every year. More than half of Europeans now shop online. As a result of the actions taken by these four companies, millions of European consumers faced higher prices for kitchen appliances, hair dryers, notebook computers, headphones and many other products. This is illegal under EU antitrust rules. Our decisions today show that EU competition rules serve to protect consumers where companies stand in the way of more price competition and better choice."*

Asus, Denon & Marantz, Philips and **Pioneer** engaged in so called "fixed or minimum resale price maintenance (RPM)" by restricting the ability of their online retailers to set their own retail prices for widely used consumer electronics products such as kitchen appliances, notebooks and hi-fi products.

The four manufacturers intervened particularly with online retailers, who offered their products at low prices. If those retailers did not follow the prices requested by manufacturers, they faced threats or sanctions such as blocking of supplies. Many, including the biggest online retailers, use pricing algorithms which automatically adapt retail prices to those of competitors. In this way, the pricing restrictions imposed on low pricing online retailers typically had a broader impact on overall online prices for the respective consumer electronics products.

Moreover, the use of sophisticated monitoring tools allowed the manufacturers to effectively track resale price setting in the distribution network and to intervene swiftly in case of price decreases.



What's new?

Article 101 (1) TFEU

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

(a) directly or indirectly fix purchase or selling prices or any other trading conditions"

Article 4(a) Vertical Block Exemption Regulation

The [Block] exemption does not apply to vertical agreements which, directly or indirectly in isolation or in combination with other factors under the control of the parties, have as their object:

the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;

=> Hardcore restriction

Article 101(3) TFEU

Efficiencies to be evaluated on the basis of the specific circumstances of the case

What's new?





Strategy

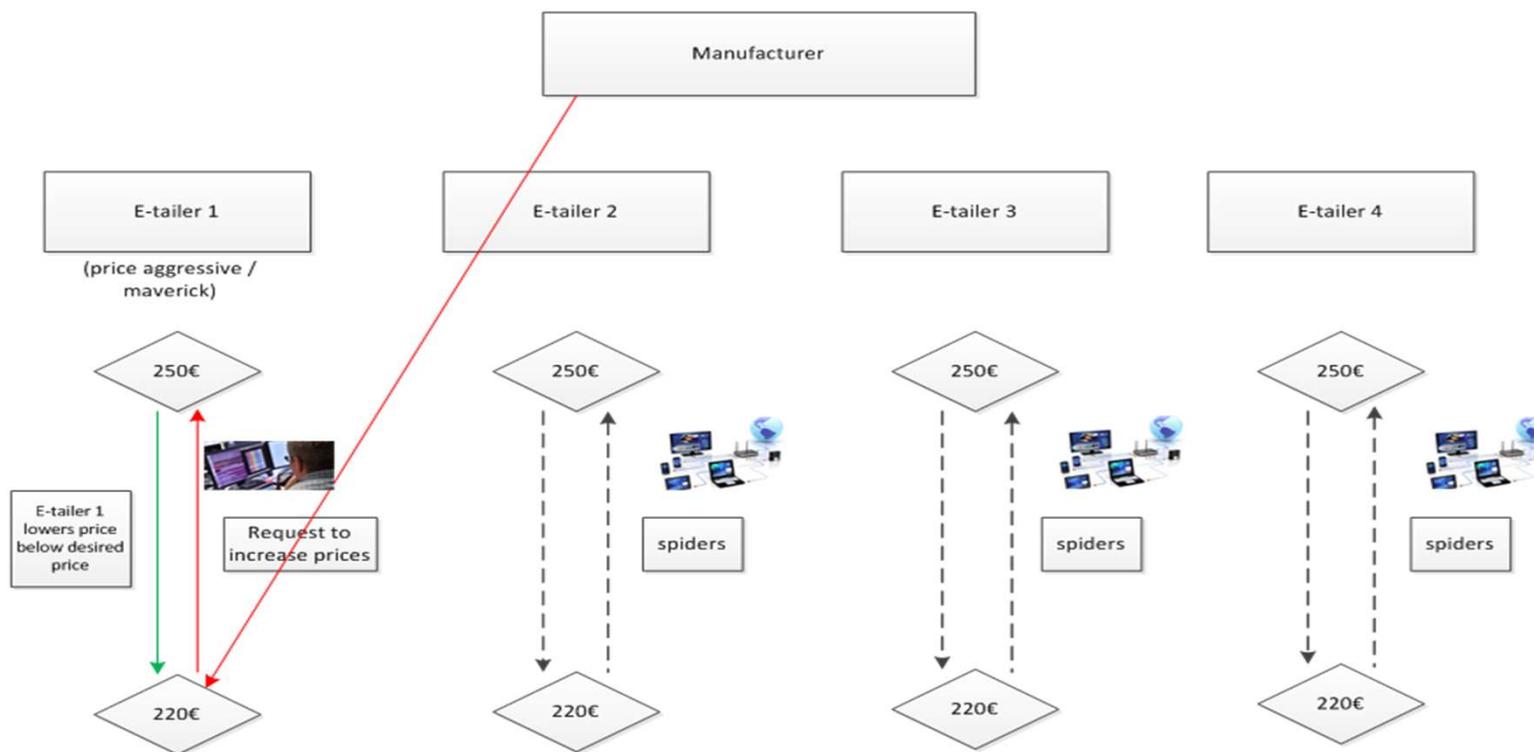
- **Retail price monitoring system**, with overviews regularly circulated
- **management** regularly **coordinating** price fixing /acting directly with bigger players
- **serial number tracking system**, regularly applied to identify the origin of low-priced products, followed up by intervention (either only RPM or RPM + parallel trade restrictions)
- **colour codes applied to retailers** according to their "distance" (-5% / -10%) from recommended retail price, and coloured lists of retailers circulated internally on a daily/weekly basis, for "action" and for retaliation
- evidence of **bonus systems / partnership programs** (better purchase prices to certain retailers) excluding "non-cooperating" retailers / "red card" retailers etc.

Retaliation

=> at least **credible threat** of retaliation:

- (threatening with) termination of contractual relationship
- (threatening with) suspending deliveries of certain products to retailer
- financial incentives and sanctions: (threatening with) no bonus, no partnership program

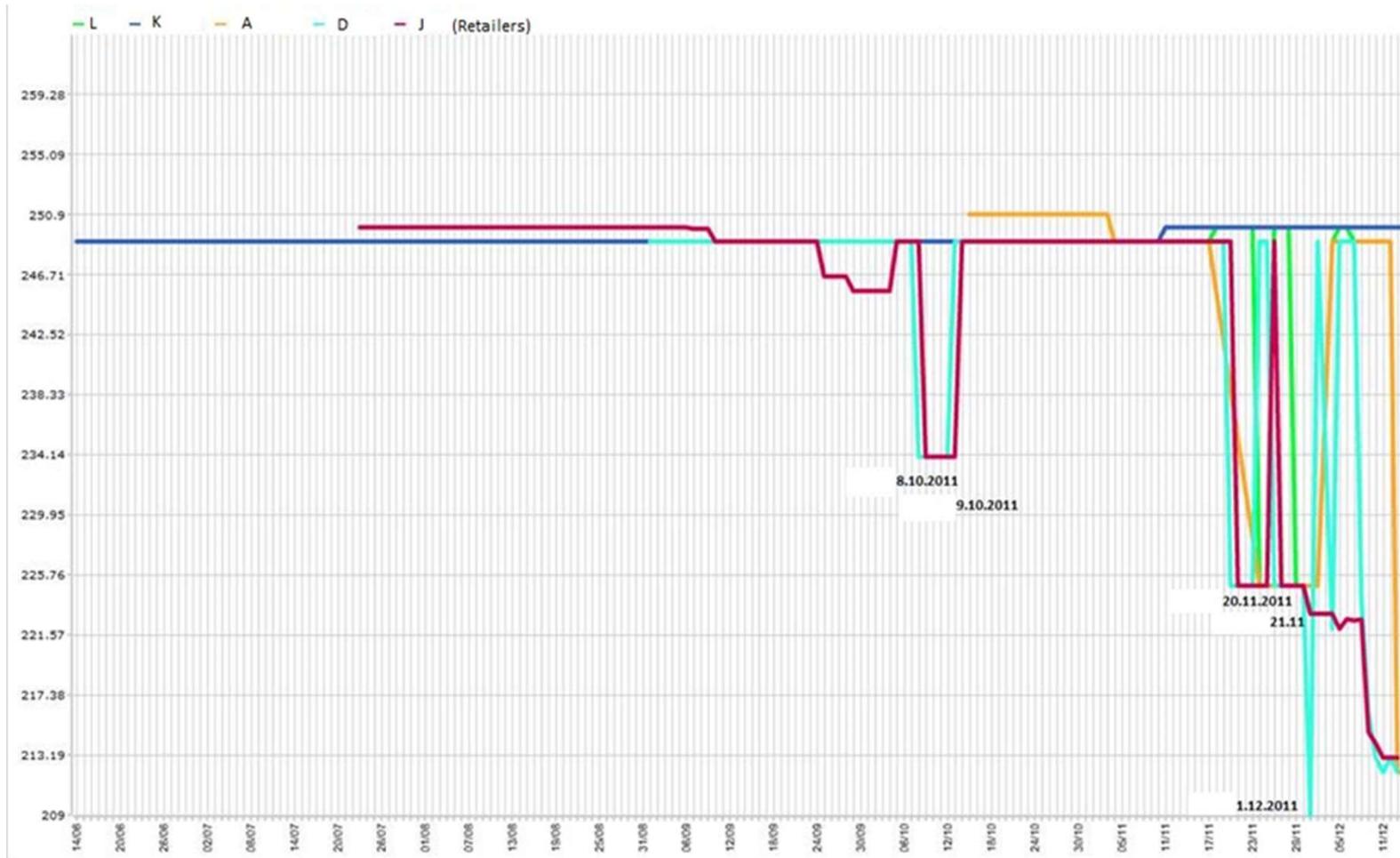
Pricing algorithms: small intervention – big impact



Spiders are a software which monitors resale prices of key competitors and automatically adjust prices to match (lowest) price in the market. Getting price mavericks to adhere / raise to desired price levels has knock-on effects on multiple e-tailers.



Pricing algorithms: small intervention – big impact



Competition



Pricing algorithms: consequences

- **Easy detection** of deviation from recommended retail prices => Higher risk of retaliation => lower incentive to deviate
- "**Followers**" (typically bigger e-commerce players) vs. "**price mavericks**" (typically smaller players)
- **Broad impact** throughout the distribution network (*intra*brand) => likely *inter*brand effects
- Potential to lead to "**hub and spoke**" scenario (However, no evidence of hub and spoke in our cases)