OFT cases on RPM: Toys and Football Kits

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NB The views expressed here are my own, and not necessarily those of the OFT
RPM on toys and football kits

- Competition Act Chapter 1 investigations
  - Equivalent to Article 81 EC

- Large-ish fines: 80m Euros pre-leniency

- Upstream firms with market power and large downstream firms

- ‘Object’ case (no need for case-specific theory of harm) — did they do it?
RPM on children’s toys (2003)

- Two bilateral RPM agreements
- RPM not industry-wide upstream
- RPM appeared to be driven by retailers
- Argos a ‘price-leader’ downstream?
Toys: RPM as information-sharing?

“Having determined Argos’ pricing intentions and passed these on to the other account managers within Hasbro, I received information from those account managers regarding the intentions of other retailers to go with RRPs. I then reverted to Argos and said, without being specific, that it was my belief that the future retail price of a product would or would not be at the RRP. I told Argos which products this related to. I never mentioned the name of the retailer who was involved or quantified exactly the price that retailer would go out at. I simply said to Argos that it was my belief from what retailers told us that this or that product would or would not be at the RRP.”

Declaration of Hasbro Sales manager on the communication flows role played by the RRP (OFT Decision, 2003)
RPM on children’s toys

- Most likely to be about downstream collusion, not upstream

- Contrast with fines: Hasbro given 10% uplift for ‘instigating’!

- [Although 100% leniency!]
RPM on Football kit (2003)

Upstream:
- Licence holders
- License to Manufacturers

Sell back to club
Run own shops

Sell to retailers

NOTE: Simplified structure. Not all parties involved represented.
RPM on Football kit (2003)

Licensor sponsors RPM

Manufacturer enforces RPM

NOTE: Simplified structure. Not all parties involved represented.
RPM on Football kit (2003)

But what is the theory of harm?

NOTE: Simplified structure. Not all parties involved represented.
Retailers force licensor to impose downstream collusion

Football kit: Theory 1

- Licensor may get a share of collusive profits in return
Football kit: Theory 1

- Licensor may get a share of collusive profits in return
- Or profit directly from ‘own-shop’ sales
Football kit: Theory 2

• Defence against low cost entrants
• But couldn’t this be achieved through selective distribution?
Football kit: Theory 3

- RPM as commitment device for upstream licensor to extract full monopoly profits
Football kit: Theory 4

• Genuine upstream collusion

• But how much do brands really compete?
RPM on football kit

- Difficult to assess the most plausible theory of harm – although several candidates

- Decision covered both vertical agreements and horizontal concerted practice

- In practice, impact of decision was to reduce prices on football shirts (at least initially)
RPM : Conclusions I

- Recent literature confirms that RPM can cause serious harm especially if industry-wide; or if retailer-instigated.

- Any harm is primarily horizontal (facilitating collusion, barriers to entry, extracting monopoly profits), not vertical

- Horizontal effects fairly clear in both OFT cases, but not always so