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Introduction to the Special Issue

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1 Introduction

It is difficult to exaggerate the importance of the US Supreme Court's 1977 decision in *Continental T.V. v. GTE Sylvania*.[1] Before *GTE Sylvania*, as exemplified by the 1967 *Schwinn* decision,[2] antitrust's core approach in the US was to rely on competition in the sense of rivalry to deliver good market performance. *Sylvania* reversed *Schwinn*, and after *Sylvania*, the scope of the rule of reason expanded—for all areas of antitrust, not only vertical restraints—as courts entered into explicit evaluation of the impact of business practices on market performance.

From a perspective of 40 years with respect to the decision, the papers that make up this special issue explore the economics of the intrabrand competition/interbrand competition tradeoff that is central to *Sylvania*, give some detail about the ways other competition policy regimes have handled the issues that were present in the decision, and challenge the economic basis for one of *Sylvania*'s most influential

[1] 433 US 36 (1977).

[2] *US v. Arnold, Schwinn & Co.* 388 U.S. 365 (1967).

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policy pronouncements, that interbrand competition is the primary concern of antitrust.

In the spirit of such explicit evaluation, in the lead paper of this special issue, Liang Lu compares market performance under alternative distribution arrangements when two firms in an imperfectly competitive manufacturing segment distribute their differentiated products through differentiated retailers in an imperfectly competitive downstream market (Lu 2017). The first arrangement she examines, the wholesale model, has each manufacturer set a wholesale price for each retailer. Each retailer then sets its retail price. This contrasts with the second arrangement, the agency model, in which the manufacturer sets the retail price at a given retail outlet, after the retailer sets the proportion by which it divides revenue with the manufacturer.

Under the wholesale model, there is a double-marginalization problem. Because the agency model eliminates this, consumer surplus is higher under the agency model than under the wholesale model. But manufacturer profit is less under the agency model than under the wholesale model, while retailer profits may be greater under the agency model if products are sufficiently differentiated. The analysis implies that agency distribution may be observed when retailers are powerful relative to manufacturers, and illustrates that fine points are involved in the explicit evaluation of the welfare consequences of alternative distribution arrangements.

Competition policy regimes around the world face the same economic and policy issues that are present in *Sylvania*. The second and third contributions to the special issue explain how competition authorities in India and China, respectively, have come to grips with these issues.

In the second contribution, Aditya Bhattacharjea examines a decision of the Supreme Court of India that came 5 months before *Sylvania* and anticipated the main lines of *Sylvania*'s policy orientation, before suffering legislative reversal (Bhattacharjea 2017). He then reviews some recent cases that have been decided under India's newer competition law, which suggest that the rule of reason is once again beginning to be applied to vertical restraints.

In the third contribution, John Liu and Yue Qiao, in turn, examine recent vertical restraint cases under China's Anti-Monopoly Law. These cases too confront the same issues that arose in *Sylvania*, and Liu and Qiao's (2017) analysis of these decisions sheds light on China's rapidly-developing approach to antitrust policy. They conclude that while enforcement agencies are inclined to take a per se illegality view of vertical restraints, courts show a greater tendency to take what looks like a rule-of-reason approach.

In the final paper, Stephen Martin and John T. Scott trace the impact the US Supreme Court's remark, in footnote 19 of *Sylvania*, that "Interbrand competition… is the primary concern of antitrust law" (Martin and Scott 2017). In vertical restraint cases, this dictum has very nearly transformed *Sylvania*'s mandate to make a rule-of-reason comparison of the consequences of restrictions on intrabrand competition with the expected intensification of interbrand competition into a rule of per se legality for vertical restraints. The priority that footnote 19 gives to interbrand competition has propagated itself to all areas of US antitrust. Martin and Scott

suggest that there is no economic justification for the stance of footnote 19, and that it should be withdrawn.

The papers in this special issue illustrate that the analysis of the impact of vertical contractual relationships on market performance is complex, as is the application of policy informed by such analysis. They further illustrate that the issues that were present in *Sylvania* face antitrust and competition policy authorities around the globe.

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