

Who Should Set Book Prices?

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Tensions

- ❖ Tensions between competition law and cultural policy
 - Desired coverage by Brick-and-Mortar bookstores below coverage implied by competitive markets
 - Related tension between competition law and IP
- ❖ Similarities in remedies and policy responses to digitalisation
- ❖ Remedies:
 - Books: softening competition to encourage investment in BaM stores
 - IP: softening competition to encourage investments in creativity
- ❖ Reform: marginal (adaptation) not fundamental (rethink)

Tension between DG Competition and national rules

- ❖ Both Apple e-book cases and Amazon case demonstrate DG Comp's distaste for RPM
 - Agency pricing + platform parity = RPM
 - EU and member state competition law: RPM illegal by object
 - ☐ With the potential for Art 101(3) to come to the rescue
 - Some member state CAs also willing to challenge
- ❖ In some member states Fixed Book Prices mandated through law
 - Fixed book prices = RPM
- ❖ Reconciling the ban on RPM at the EU level with extensions of RPM at the national level

Source of tension?

- ❖ The RPM is intended to soften competition between bookstores
 - The desired outcome has either too little exit or too much entry relative to the market outcome
- ❖ Competition law is focused on consumer welfare
 - Do benefits from BaM stores outweigh the cost of too many stores?
- ❖ Competition law increasingly looking at distributional effects
 - That may challenge the cost-benefit analysis
 - More research and better data needed!

The three shocks to the system

Brick-and-Mortar bookstores challenged by three events:

- ❖ Internet retail
 - Decentralised retailer
- ❖ Digitalisation part I: e-books
- ❖ Digitalisation part II: streaming

Policy response – adaptation of current rules

- ❖ Extending fixed book prices

Bigger issue: if fixed book prices is the answer, what is the question?

- ❖ Given radical disruptions, adaptation may lead us to forget why a legal remedy was the answer in the first place
- ❖ Is the original question (policy concern) still relevant?
 - Given the information available on-line combined with delivery to the door, to pick-up points nearby or directly to electronic devices:
 - what unique benefits do brick-and-mortar bookstores offer?
- ❖ What is the USP of a brick-and-mortar bookstore?

“What was the problem which FBP was supposed to solve?”

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