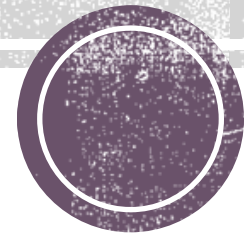


Resale Price Maintenance Trends and Patterns 2013

**Rainer Lindberg
Finnish Competition and Consumer Authority**

Views expressed do not necessarily reflect those of the FCCA



RPM Patterns 2013

B

Books (and e-books)

C

Chipboard

D

Design Glassware

Diaper Products

Dietary Products

E

Electronic Devices

F

Food Retail

Footwear

Fibreboard

H

Hotel online booking

Headphones

I

Insulating materials

L

Lubricants

M

Motor Vehicles (2)

P

Pet-Food

R

Restaurants (franchising)

S

Spare Parts (dominance)

Sanitary Ware (Hub & Spoke)

Sports underwear

T

Telecom (franchising)



Online Trading

- **Tensions**

- principal vs. retailer
- webstore vs. brick-and-mortar shop
 - potential free-rider problem
 - is RPM the solution?

- **Most favoured nation clause (MFN)**. Some views from business:

- ” MFN’s in e-books is applying old law to new digital economy”

- ” this case.. demonstrates the difficulty applying conventional antitrust analysis of harm”

- **Opposing view** : competition law toolkit is workable

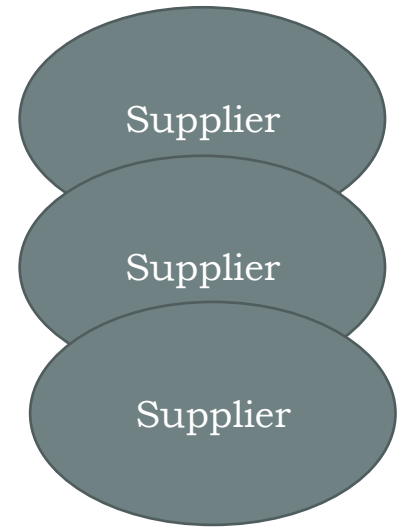
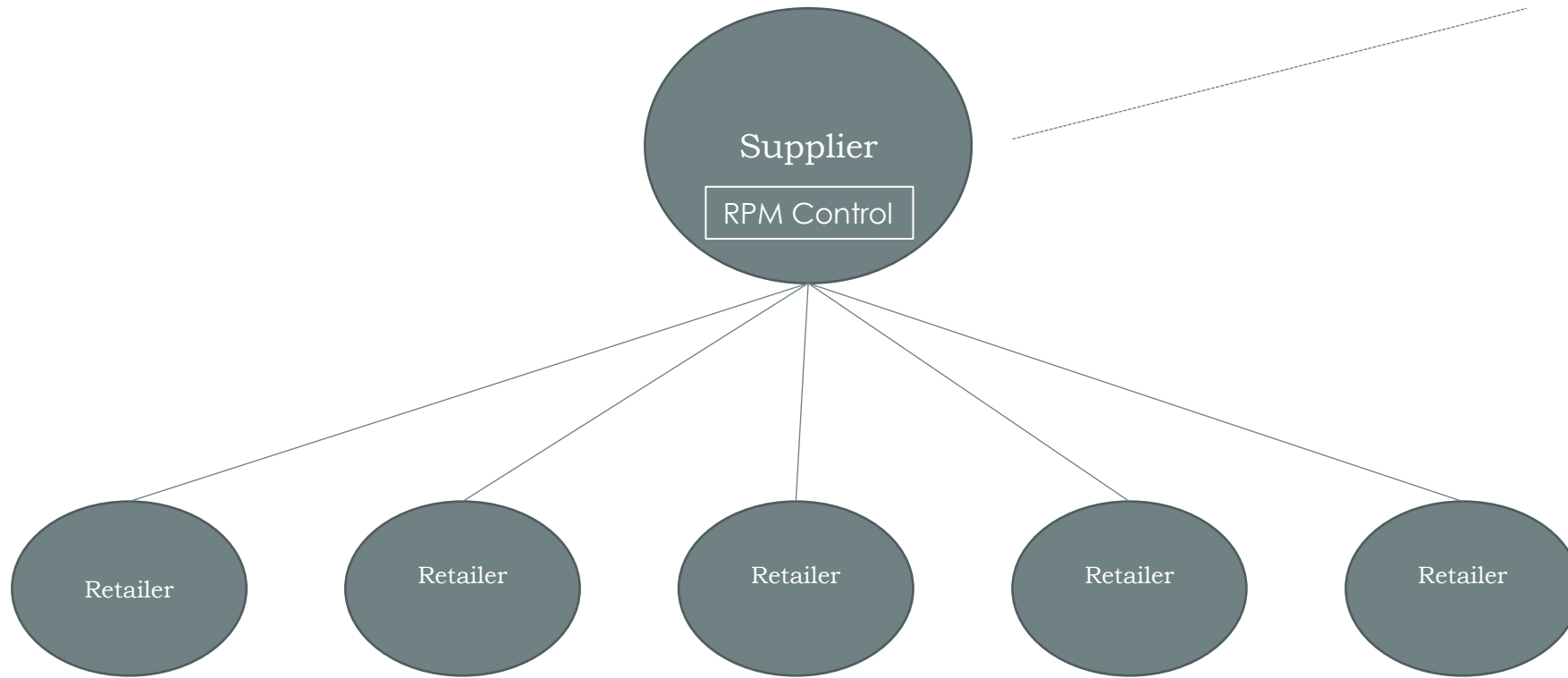
- any agreement which restricts competition, whether by its effects or by its object, may in principle benefit from an exemption (T-17/93 Matra Hachette v Commission)
- efficiency arguments available (efficiency defence – pros/cons)
- economic approach, allowing 'new' theories of harm

- **Minimum advertising price (MAP)**

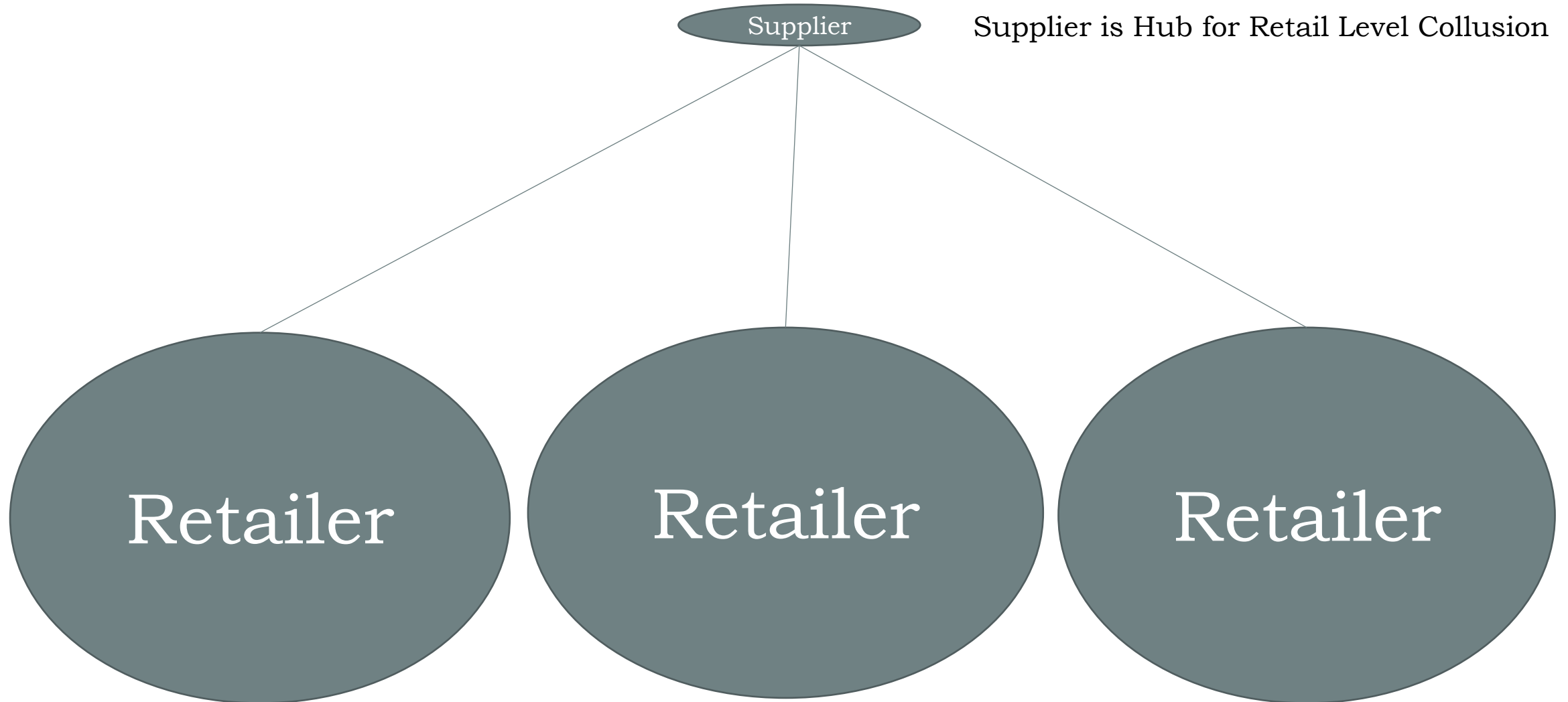
- eg. ACCC:
 - harmful for online trading
 - may harm competition among distribution channels



Resale Price Maintenance in Hub and Spoke - Scenario No.1



Resale Price Maintenance in Hub and Spoke - Scenario No.2



Hub and Spoke

Information exchange can take various forms ... data can be shared indirectly through a common agency (for example, a trade association) or a third party such as a market research organisation or through the companies' suppliers or retailers

- RPM and collusion : well-known concept in economics
 - eg. Mathewson and Winter (1998), Jullien and Rey (2007)
- Important to identify hub-and-spoke situations
 - for public enforcement : dawn-raid and enforcement tactics
 - for business/legal advice : sanctions, leniency
- Key issue : what proof needed for an agreement / concerted practice ?
- Concentrated markets in retail sector
 - how well suppliers' collusion fit in ?



Policy Issues

Facts we know:

RPM not always harmful

European way :

- prohibited, yet exemptions

US after Leegin :

- even state prohibitions

- Smith and MacKay 2013 on post-Leegin developments

- variation in RPM enforcement
 - issue of uniform application
 - issue of efficiency of competition rules/policy
 - UK Books RPM termination 1997
 - self-assessment and level playing field

- cartel enforcement : potential reason for inactivity?

- price monitoring, consumer policy

- should leniency cover RPM ?

