



Digital fixation: The law and Economics of a fixed e-Book price

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Background: fixed prices for print books

- Books subject to price fixing or retail price maintenance (RPM) since 1829. Usually originated from agreements between publishers and booksellers. Arrangements in legislation over the years.
- Usual motivation: ‘books are different’: Special cultural and educational value, which justifies promoting the production, diversity, availability and consumption of quality books and promoting readership.
- Fixed books prices often considered to be a means to these ends:
 - Helps small booksellers to survive, which supports availability and promotes demand.
 - Allows booksellers and publishers to cross-subsidize between commercially more and less attractive titles.

Background: along came e-books

- What to do? Extend RPM to e-books? Do the same arguments apply? Or repeal existing legislation?
- Agency pricing: effectively RPM applied by large publishers in US and EU against Amazon's buying power, to prevent cannibalization of print, price erosion, pressure on wholesale prices. Abandoned after start of antitrust investigations.
- *Research questions: What are the cultural and economic arguments and legal context of RPM for e-books? How should these arguments be weighted in light of the evidence?*

Economics of RPM: theoretical arguments

- In perfectly competitive market, a manufacturer would not prefer RPM. Yet it used to be very common: >25% of retail sales in Canada & UK in 1960s
- Anti-competitive explanations for RPM:
 - Retailer cartel argument
 - Delays entry by discounters
 - Manufacturer cartel argument: RPM as a way to monitor prices
 - Foreclosure: RPM to convince retailers not to supply competing products
- Pro-competitive explanations for RPM:
 - Service argument if sales service raises demand but free-riding occurs
 - Avoid double marginalization problem
 - Effect of retail availability on demand
 - Effect on inventory
 - Service as a signal of quality/luxuriousness

Economics of RPM: empirical evidence

- Depending market structure and demand characteristics, RPM can be pro- or anticompetitive: prices, service and social welfare may increase or decrease
- Empirical evidence:
 - Price increase often observed but inconclusive; studies on quantity sold scarce.
 - Ippolito (1991): collusion primary explanation in < 15% of RPM cases. Similar in Matthewson & Winter (1998), Cooper *et al.* 2005, Lafontaine & Slade (2008).
 - Rule of reason approach as in US makes sense. In EU hardcore restriction under Block Exemption Regulation.
- Kretschmer (2014): anticompetitive RPM signaled by concentration in manufacturing, high adoption rate of RPM, dealer initiation

Fixed book prices are no remnant of the past

RPM for printed books	RPM for e-books?	No RPM for books
Austria	Yes	Australia
France	Yes	Belgium
Germany	Yes	Canada
Greece	Yes	Czech Republic
Korea	Yes	Denmark
Norway	Yes	Estonia
Slovenia (2014)	Yes	Finland
Spain	Yes	Hungary
Italy	No	Iceland
Japan	No	Ireland
Netherlands	No	New Zealand
Portugal	No	Poland
Luxembourg	N/A	Slovak Republic
Mexico	N/A	Sweden
Israel (2013)	N/A	Switzerland
		Turkey
		United Kingdom
		United States

Sources: Compiled based on IPA (2014), OECD (2012), Kurschus (2015), http://www.buchmesse.de/en/international/book_markets/, http://www.boekenvak.be/sites/default/files/EBF_surveyfixedfreepices_112010.pdf. No information available for Chile.

Some characteristics of the publishing and book selling industries

- Publishing has high fixed costs and low marginal costs; nobody knows principle; reputation effects → economies of scale and scope
- For e-books, decreasing costs and disintermediation exert opposing force
- Globally: six dominant publishers, 300-400 medium sized, 80 thousand small publishers. C50 > 80%
- Different books are imperfect substitutes → monopolistic competition
- Love for variety at retail level, countered by skewed distribution of turnover. In The Netherlands, 13% of titles accounted for 90% of 2010 turnover.
- W.r.t. e-books: consumers require a complementary device → lock-in, etc.
- E-books ~19% of US turnover, > 50% in some segments. UK 15%, much smaller market share elsewhere.
- E-books increasingly sold in flat-rate subscriptions

Economic analysis of RPM for printed books

- Policy motivations largely consistent with anti-competitive cartel argument: help small booksellers to survive, keep discounters away, generate higher profits for retailers and publishers to be used for cross-subsidization.
- No guarantee or evidence that any extra profits are indeed used to cross-subsidize. Due to nobody knows principle, publishers and retailers need to invest anyway.
- Most pro-competitive motivations do not seem to apply:
 - Books are no complex or luxury products and search costs high compared to price of books
 - Demand uncertainty resolved by right to return unsold copies.
 - Double marginalization can be resolved by price ceiling
- Positive effect of wide presence of bookstores may still apply by loses importance as also print sales moves to the internet.

Economic analysis of RPM for printed books

- Very little and inconclusive/contradicting empirical evidence about the effect of fixed book prices on title production, number of bookstores, readership.
- Market structure also suggests anti-competitive explanations.
- Partly due to large country differences and lack of good data sets, even disputes about price development in UK after abolishing NBA.
- Bestsellers seem to gain from repealing RPM, low volume titles become more expensive.

Fixed prices for e-books: economic analysis

- For e-books, retailer-related arguments lose their direct relevance as the Internet provides access anywhere, anytime.
- Shelf space/inventory arguments irrelevant, hence cross-subsidization by retailer can be ruled out.
- Possible argument that fixed e-book price helps small retailers survive for print requires yet another uncertain cross-subsidization.
- Pro-competitive sales service arguments apply even less for e-books than for print.
- Only anticompetitive arguments remain, without no evidence that profits are reinvested in title production.
- Many opportunities for publishers and retailers to sidestep RPM for e-books: lending or streaming, enhancing e-books, sales per chapter.

Fixed prices for e-books: legal context

- EU law does not rule out fixed e-book prices in principle, but are subject to closer scrutiny: e-books are a service rather than a good and fixed prices may hamper the free movement of services.
- European Commission started an investigation against France but did not push through with a formal procedure.
- In 2015, French Minister of Culture announced subscription services are illegal: how can this be squared with the policy objectives?
- Commission opened antitrust proceedings against agency pricing in 2011, resulting in settlement to abandon it.

Conclusions and recommendations

- Economic theory and evidence increasingly supports pro-competitive use of RPM in general.
- Motivations for RPM for books remain anti-competitive, backed by a hope for socially efficient cross-subsidization, but with no guarantee or evidence.
- Yet, 15 OECD countries have fixed prices for printed books, and at least 8 for e-books as well.
- Case for RPM for e-books is weaker than for print, as retailer related arguments become irrelevant, while legal concerns can be raised.
- Most compelling argument for fixed e-book prices may be its contribution to a diverse retail market, but it is an oxymoron to allow publishers to fix retail prices to improve retail competition.
- Rather, general competition policy should be applied, along with other instruments to promote the production or consumption of books.

Thank you for your attention!

Questions, comments?

Full paper available at *International Journal of Cultural Policy*