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EXAMINING THE ILLEGALITY OF 'RESALE PRICE MAINTENANCE': The Modern Judicial Approach

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[Abstract: *Price-fixing agreements have always been viewed as anti-competitive and have been outlawed by multiple jurisdictions. This paper seeks to examine the position of the Indian, European and American Jurisdictions on one form of these agreements i.e., Resale Price Maintenance (RPM). Competition law saw its inception with the passing of the Sherman Act, 1890 in the United States of America following which other jurisdictions followed suit. In India RPM has been prohibited under Section 3(4) of The Competition Act, 2002. European Regulations on anti-trust Law and American anti-trust laws provide a similar position in their respective jurisdictions. However, while deciding upon the anti-competitiveness of RPM, the courts including the CCI in India, the European Court of Justice and the US Supreme Court have often adopted the rule of reason approach which finds that this practice is not necessarily anti-competitive in all instances. Through this paper the authors seek to examine the shifting position of the aforementioned Courts and tribunals over the years through specific case analysis, the positive and negative effects the criminalisation of RPM has on the position of the dominant players in the market. This paper shall further compare the position of India with other prominent jurisdictions such as the United States, and the European Union with respect to their positions on RPM. The analysis of some of the recent cases in these jurisdictions reveals that even though these courts have adopted the rule of reason approach they have not incorporated many other factors that fail to place the issues brought before the courts in the appropriate economic and legal contexts, thus leading to adverse consequences for the economy and the authors seek to rectify this through a comparative analysis of jurisdictions.*]

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I

Introduction

Resale Price Maintenance ("RPM") refers to the practice by which a manufacturer sets or directs a price for the downstream retailers to sell their goods[1]. It is generally observed that manufacturers can strictly enforce their suggested prices only when they employ a selective and exclusive distributive pattern, or when the brand has achieved a high degree of consumer adoption and popularity[2]. Manufacturers often adopt the practice of RPM to ensure that a specific good may not be resold by resellers and distributors for commercial purposes at a price less than that determined by the manufacturer. The manufacturer has a plethora of benefits by pre-fixing the price at which the resellers may sell a good. One of the greatest benefits of prescribing a minimum price at which a retailer may sell the manufacturer's goods is that, in this manner, the supplier ensures that the distributor or the retailer makes a certain margin of profit at every stage of distribution. Thus, the manufacturer enjoys a certain degree of support from the distributors by ensuring that the distributors make an adequate degree of profit on each such transaction.

1.1 Legislation prohibiting RPM in India

Resale Price Maintenance has been outlawed within the territory of India under section 3(4) of the Competition Act, 2002[3]. The section further provides for the outlawing of other vertical agreements, which include (a) tie-in agreements, (b) exclusive supply agreements, (c) exclusive distribution agreements, and (d) refusal to deal. The Competition Act defines Resale Price Maintenance as an agreement to sell goods on the condition that the prices to be charged on the consumer during resale by the purchaser shall be the prices dictated by the seller unless it is expressly stated or provided that prices lower than the specified prices may be charged on the buyers or consumers."[4]

The practice of RPM was illegalised even before the Competition Act of 2002 passed. Before the commencement of the Competition Act in 2003, the Monopolies and

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1 Matthew Bennet & Amelia Fletcher, *Resale price maintenance: Explaining the controversy, and small steps towards a more nuanced policy*, 33 FORDHAM INT. LAW J. 1278, 1278-1280 (2009).

2 D.P.S Verma, *Notes and Comments: Regulation of Resale Price Maintenance*, 21 JILI 74, 75 (1979).

3 The Competition Act, 2002, S. 3(4).

4 *Id.*

Restrictive Trade Practices Act, of 1969 also illegalised the practice of RPM according to section 33 of the old act[5].

II

Per E v. *Rule of Reason Approach*

2.1 History

The US Congress passed the Sherman Antitrust Act[6] in 1890 to regulate a fair and competitive economic market while keeping in mind the prevailing conditions.

Every contract which imposed a restraint on trade and commerce would considered to be illegal, and every person who monopolised any portion of the trade would be guilty of a felony crime in accordance with sections 1 and 2 of the Sherman Act. The Competition Act of 2002, which replaced the Monopolies and Restrictive Trade Practices Act of 1969, was also along the same lines as the Sherman Act. It aimed to prevent acts that had unfavourable outcomes for competition in India. The development of the antitrust acts was supplemented by 2 rules cementing themselves as the main rules in competition law, namely the rule of reason and the per se rule.

The word per se essentially means by itself. This rule is to be applied if concrete evidence regarding the indiscretion of unreasonable restriction. The infractions will always be anticompetitive and are considered damaging to the prevailing market conditions, so it does not require a detailed analysis or inquiry into the alleged violation. It establishes a presumption that specific types of acts or restrictions are by itself illegal or inherently anti-competitive. Under the doctrine, such actions are deemed illegal at the very first instance itself, regardless of any justifications or efficiencies it might possess. Such infractions that come under the per se scanner include price fixing, bid rigging and market allocation agreements which are considered harmful and damaging to competition. It simplifies the legal process and analysis by scaling down the inquiry in cases where the anticompetitive effects are presumed to be obvious.[7]

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[5] Monopolies and Restrictive Trade Practices Act, 1969, S. 33(1).

[6] An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies Act, 1890, S. 107 (United States of America).

[7] Robert Bork, *The Rule of Reason and the Per Se Concept: Price Fixing and Market Division*, 75 YALE L.J. 375, 403 (1966).

2.2 Evolving position of the Supreme Court of the United States of America

Agreements that always or predominantly seek to raise the price and reduce prices are deemed to be, per se, illegal. They cannot be challenged once held illegal. Apart from the aforementioned agreements, which divide markets by allocation of customers, suppliers, territories, or lines of commerce, can also be held to be illegal. The courts conclusively presume such agreements on their identification itself to be illegal without inquiring into the degree of the anti-competitiveness, future benefits, competitive plus points and claimed business purposes. In the US, The Department of Justice prosecutes cartel members involved in hard-core agreements under the per se rule as well.

Under the per se rule the restraints warrant condemnation without having an in-depth review into their effects on the market or whether they have an objective justification. The same was seen in cases like *U.S.* v. *Socony-Vacuum Oil Co*[8], *Craftsmen Limousine Inc.* v. *Ford Motor Co*[9] in which the per se rule was followed without question. Besides cases related to antitrust injury, while filing a plaint a plaintiff only has to put forth before the court that such an anticompetitive instance has happened. There arises no necessity to prove before the court any reason or rationale which the restriction or action by the defendant has not followed. Moreover, the defendants is not allowed to justify his restrictions or actions or provide any objective justification as per competitive market norms. Lastly, a plaintiff has little to no duty to provide a market analysis of where and when the restraint in question is to be deemed unreasonable by the per se doctrine.

Actions declared unreasonable per se include *inter alia* horizontal market allocation group boycotts and tying arrangements if the particular scenario operates in the grey. In Indian Competition Law, the per se rule can be read concerning section 3(3) of the Indian Competition Act of 2002,[10] which presumes certain agreements to have an appreciable adverse effect on the competition in the relevant Indian markets. In the case of *Automobiles Dealers Assn.* v. *Global Automobiles Ltd*[11], the CCI held that although an inquiry into the backdrop of the relevant and prevailing market factors might prove fruitful, even if such consequences are probable, the agreement itself is anti-competitive. As per the aforementioned 3(3) ICA section coupled with the per se rule, such agreements which cause adverse effects on competition are deemed illegal per se.

A significant weak link to the per se rule is when the actors are party to a joint venture or any other such pro-competition structure, and restraints are necessary to the functions and formation of such a venture or structure. They cannot be deemed

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8 *United States* v. *Socony-Vacuum Oil Co., Inc.*, 310 U.S. 150 (1940).

9 *Craftsmen Limousine, Inc.* v. *Ford Motor Co.*, 363 F.3d 761 (8th Cir. 2004).

10 The Competition Act, 2002, S. 3(3).

11 *Automobiles Dealers Ass'n, Hathras* v. *Global Automobiles*, 2012, SCC OnLine, CCI, 827.

illegal under the per se rule because they are inherently competitive or are plus points for the market. This resulted in the per se rule losing its effect and the tilting of the scales towards a fresher, more analytical, and ancillary approach. The case of *US* v. *Microsoft*[12] showed the adaptation and transitioning of the courts in real-time from the per se rule to the rule of reason approach.

Actions by economic actors like possession of a monopoly should be put to the test of the rule of reason because it cannot inherently be certified as anti-competitive or illegal. It is only to be considered illegal when its purposive effect or resultant action is to result in a restraint or barrier to trade and its practices. The term rule of reason was first coined in the landmark case of *Addyston Pipe Co.* v. *US*[13] by the Sixth Circuit Court of Appeals Chief Judge, J. William Howard Taft. In the case of *std oil company NJ* v. *US*,[14] the rule of reason made its mark. Only if the monopoly had been acquired by illegal means or if one was possessing and maintaining a monopoly unreasonably would the monopoly be termed to be illegal. If by purely competitive methods, violating no laws and having a better market product altogether, then the monopoly would be legal as per the rule of reason approach.

Any contract conspiracy or combination that has an unreasonable restriction on trade and does come under the per se rule can be put to the test of the rule of reason. It focuses on whether the competition practice comes under the ambit of a well-defined clause of a relevant act under the same criteria. It needs to be further supplemented by an analysis which includes (i) product definition along with its market, (ii) the defendant's market power in the same market, and (iii) the reasons why the product is anti-competitive. The aforementioned needs to be proved before the court takes note of the alleged infraction. Then, the burden shifts to the defendants who take steps to provide an objective justification for their actions. This analysis helps to rationally differentiate between unreasonable restraints on trade, which might result in an eventual injury or market failure, and restraints, which actually help facilitate healthy competition between the sellers and consumers amidst competing market forces.

When put before the court, judges must consider the competitive standing of the accused both before and after the act takes place or prior and post such a restraint was imposed. The judges must also pinpoint the main purpose or intent behind adopting or carrying out such an action. However, none of the above factors are conclusive, and the judges must make judgment calls on a case-to-case basis to determine whether the restraint is unreasonable or not. These calls can be made based on data collected about the actors in question as well as the history, effects and nature of the restraints applied as well as an analysis which entails a flexible

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12 *United States of America* v. *Microsoft Corporation*, 253 F.3d 34 (D.C. Cir. 2001)

13 *Addyston Pipe and Steel Company et al., Appts* v. *United States*, 175 U.S. 211 (1899)

14 *The Standard Oil Company of New Jersey, et al.* v. *The United States*, 221 U.S. 1 (1910)

inquiry and varies in focus and detail under the conditions on the nature of the agreement, consumer welfare, potential efficiencies and market structures.

2.3 Current Position in India

It is observed that India is also following in its Western counterparts' footsteps, as observed in *Neeraj Malhotra* v. *Deutsche Post Bank Home*,[15] wherein the per se rule was deemed to be losing its effect as a standard doctrine to test the unreasonableness of restraint or action. Making a presumption beforehand that a restraint is anticompetitive was said to be rebuttable. The per se rule, as mentioned in section 3(3) of the Competition Act, where a presumption as to the illegality of the act is made in the first instance. Thus, the per se rule was considered unfair and unreasonable and heavily criticised by the Competition Commission bench in the same case. Indians also have limited usage of the rule to only price-fix cases where no other external analysis or reasonable test is required. Courts in India and abroad use the rule of reason as it provides a much more in-depth comprehensive study and analysis into why or for what reason such an act or restraint was imposed. Slowly but steadily, the per se rule is being replaced by the rule of reason.

III

Examining the Approach of the Competition Commission of India with regards to 'Resale Price Maintenance'

Over the years, the CCI has adopted the *rule of reason* approach. While price agreements between rivals that are horizontal in nature are assumed to have a significant negative impact on competition, this assumption does not apply to agreements that are vertical in nature (between organisations operating at various levels of the value chain). The CCI has recently found a leading automobile manufacturer, Maruti Suzuki, liable for indulging in the imposition of RPM on its retailers and found the manufacturer liable for employing practices that have appreciable adverse effects on competition **('AAEC')**.[16]

3.1 Background

Maruti Suzuki India Limited (MSIL) was penalised to INR 200 crores for limiting and restricting the maximum discount a car dealership could offer its customers. The Suo Moto case commenced its investigation when the anti-trust regulator received an anonymous complaint that MSIL was limiting the discounts that could

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15 *Neeraj Malhotra v. Deutsche Post Bank Home Finance Limited*, 2010 SCC OnLine, CCI 28.

16 *In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers*., 2021, SCC OnLine, CCI, 45.

be provided by the dealerships in the West-2 regions comprising Maharashtra (excluding Mumbai and Goa). MSIL ensured the implementation of a pre-decided RPM policy through a 'Discount Control Policy' agreement between MSIL and the exclusive Maruti dealerships. The CCI had passed a *prima facie* order under section 26(1) of the Competition Act, 2002[17], instructing the Director General to assess and report the impact of RPM on such markets.

3.2 Arguments and Proceedings before the CCI

The Maruti Case resembles the Hyundai Case,[18] deciding upon 2 years before the Maruti case in many aspects. Similar to the Hyundai Case, the dealerships were functioning in the downstream market as dealerships and marketers of these vehicles, whereas MSIL was the upstream manufacturer and maker of the cars, according to the CCI's findings.

The CCI held that MSIL ensured the existence of an RPM even though the contracts between the dealerships and MSIL indicated through their contracts with the dealerships that it was up to the latter to offer any discounts and any other incentives, such as free services and accessories as the dealership may deem fit. However, evidence in the form of emails to the dealerships was found, which indicated that MSIL pressured car dealerships from offering additional discounts below the minimum price as stipulated by MSIL. While interpreting section 2(b) of the Competition Act,[19] the CCI ruled that an agreement in anti-trust law cannot be equated to the term agreement as provided under contract law, concluding competition law has a much wider ambit. The term agreement was seen to have a wider connotation and includes both formal and informal agreements and written and unwritten agreements. The Commission took up this interpretation to prevent large firms and manufacturers from exploiting legislative loopholes to gain an unfair advantage.

While examining evidence, the CCI found a chain of emails between MSIL and its dealership where MSIL forced the dealerships not to sell any of its vehicles below the minimum prescribed price. MSIL ensured this by threatening to stop supplies and charging the dealerships a penalty. The primary justifications given by the CCI in this regard was that MSIL was the sole supplier of the automobiles to these dealerships, and considering the manufacturer held 51% of the market, it was found that MSIL used its position of dominance in the relevant market to cause an Appreciable Adverse Effect on Competition.

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[17] The Competition Act, 2002, S. 26(1).

[18] *Fx Enterprise Solutions India Pvt. Ltd. & Ors* v. *Hyundai Motor India Limited.*, 2017, S.C.C OnLine, CCI, 586.

[19] The Competition Act, 2002, S. 2(b).

The Commission proceeded to analyse the AAEC caused under Section 19(3) of the Competition Act[20], and observed that RPM has the potential to obstruct both effective competition between and within brands. When a manufacturer sets a minimum RPM for distributors, the distributors are unable to lower sale prices below the set threshold. Stated differently, the distributors are unable to effectively compete on pricing due to the process. As a result, suppressing intra-brand competition drives up consumer costs..[21]

3.3 Analysis and Conclusion

The CCI noted that the imposition of an RPM in the present case had hurt competition, and consumers and customers had to suffer the brunt of this anti-competitive measure. The primary consequences were:

i. The Consumers were denied the opportunity of being provided lower and more competitive prices by the dealerships,
ii. This led to a reduction in both intra-brand and inter-brand competition in the automobile market,
iii. This practice essentially created a barrier to entry for potential new entrants to the automobile market as they would have to compete with MSIL, which holds a majority of the market share.

When it came to deliberating on the positive effects of RPM in this case, the CCI found no positive effect on competition. The CCI duly noted that there had been no positive effects on competition and that any benefits offered to the consumers in the form of accessories and freebies do not redress the harm caused to the consumers caused due to a deficiency of intra-brand competition on price competition.

A primary argument offered by the counsels representing MSIL was that by providing a minimum stipulated price above which the dealerships are allowed to sell a vehicle provides for a uniform playing field amongst all the dealerships selling the manufacturers vehicles. The CCI failed to consider that by providing a uniform price for all vehicles, the manufacturer, in fact, promotes competition amongst various dealerships by promoting competition on non-price factors, including quality of service, pick up and drop off services, accessories and merchandise provided to the consumer and maintenance benefits.

The Competition Commission, which continued with a similar approach to the Hyundai Case,[22] held the manufacturer MSIL liable for engaging in anti-competitive measures. This judgement is criticised because of certain aspects of the finding of the Commission wherein the CCI relies on the assumption that when a firm with a

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[20] The Competition Act, 2002, S. 19(3).

[21] *Supra.*, note 16.

[22] *Supra*, note 18, *Fx Enterprise Solutions India Pvt. Ltd. & Ors* v. *Hyundai Motor India Limited*, at 23.

considerable market share engages in the practice of RPM, there is a reduction in both inter and intra-brand competition because it sets a benchmark for other MSIL dealerships and manufacturers in the industry to adhere to.

Similar to the finding in the Hyundai Case, the CCI failed to consider that in India, car dealerships are a single entity that operates on a contractual basis with the manufacturer. When the manufacturers are fined to the tune of hundreds of crores of INR, such as in the present case, the manufacturers may choose not to engage in business with dealerships that fail to conform to and agree with the manufacturer's terms.

IV

The European Court of Justice's Rule of Reason Approach Examined

In the European Union context Resale Price Maintenance is still considered seen as a hardcore restriction. The recently revised Vertical Block Exemption Regulation does not provide an exemption under Article 101(1) of the TFEU[23], unlike other kinds of vertical agreements.

With the emergence of the new rule of reason approach, the Court of Justice of the European Union (CJEU), in the recent case of *Super Bock Bebidas SA and Others* v. *Autoridade da Concorrência*[24] held that the mere existence of RPM does not attract a penalty pursuant to Article 101(1) of the TFEU and Article 4(a) of Regulation No 330/2010.[25]

4.1 Background

Super Bock Bebidas, a leading Portuguese beverage manufacturer that engages in the supply of alcoholic and non-alcoholic drinks such as beer, wine, rum and iced tea, was fined EUR 24 million by the Portuguese competition authority. The beverage company was fined for the said amount as the Court found that they were in violation of the above-mentioned provisions for imposing upon its distributors either a specific or a minimum price to be charged upon customers at bars, restaurants and hotels. The Court found that Super Bock forced RPM upon its distributors even after stiff resistance from the latter. Bock further enforced this by strictly monitoring the compliance of these distributors on a monthly basis.

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[23] Treaty on the Functioning of the European Union, 1958, § 101(1), 1958 (European Union).

[24] *C-211/22*, *Super Bock Bebidas SA and Others* v. *Autoridade da Concorrência.*, ECLI:EU:C:2023:529 (2023).

[25] Commission Regulation, 2010, S. 4. (European Union).

Super Bock appealed the case to the CJEU on the following grounds- *firstly*, the finding that such an agreement exists and *secondly,* that the conduct accused of impunity did have harmful effects on competition. The appellants in this case want the imposed fined cancelled or at least reduced.

4.2 Summary and Proceedings

The first finding of the CJEU was upon deciding the validity of 101 (1) of the TFEU, where the court found that under specific conditions, RPM is seen as a restriction of competitiveness in a market by "object". This essentially meant that under certain circumstances, the competition authorities operating in the European Union could hold firms liable without needing to prove the adverse impact it has on the market conditions. However, regarding the question of "by object," the Court clarified that the classification of these objects must be done in a narrow manner. The relevant authorities must keep in mind whether the said agreements cause a sufficient degree of harm to competition, their objectives coupled with the specific legal and economic contexts. The court emphasised that when adjudicating upon and ruling RPM as anti-competitive in some contexts, the legal background and context of the specific RPM must be regarded.

The CJEU further confirmed the existence of an agreement between Bock and its distributors. The court while adjudicating on the same found that Bock regularly imposed a minimum price through emails, verbal communications in person or over call. The CJEU even found the existence of penalties and retaliatory measures through fines, penalties and even threats to stop supply to distributors altogether if they failed to comply with Bock in maintaining a minimum price.

A vital conclusion by the Court was that for the existence of an RPM, there should exist a "concurrence of wills"; the will can exist independently of the fact that the distributors opposed the imposition of the same. The Court noted that RPM can occur either through a clause in the contract between the supplier and distributor or through the submission of the distributor to the terms dictated by the supplier. The Court left the final assessment on whether RPM, in a particular instance, constitutes an anti-competitive measure, and it was for those authorities to conclude the same based on direct and indirect evidence.

4.3 Analysis and Conclusion

The CJEU, through the Super Bock Case, re-emphasised the principles that framed European Competition law. While the Court recognised the existence of hardcore restrictive practices such as RPM, the Court reiterated the importance of the "by object" approach, which is essentially the same as the "rule of reason" approach in practice. The Super Bock case emphasises the need to place even hardcore restrictions such as RPM in appropriate legal and economic contexts by applying its effects on the competition in a market, thus not rendering every instance of RPM illegal per se.

While this case lays down guidelines for members of the EU on future matters concerning RPM, this judgement fails to answer a few matters, leaving room for ambiguity and arbitrariness. The background of this case clearly points towards the absence of concurrence and acquiescence between the supplier and the distributor. The Case points toward the absence of a written contract between the supplier and the distributor, but the court fails to lay down guidelines for the same. The Court also failed to consider the element of coercion between the parties. The Court failed to consider the fact that distributors often act on their own judgement, thinking of their survival in a vastly competitive market without thinking about the economic consequences of RPM, and they are seen as complying with the suppliers for the same. The Court, in this case, leaves many open-ended cases that must be answered on a case-to-case basis by the relevant domestic competition authorities, thus reiterating the importance of the rule of reason approach.

V

An Examination of the Position of the United States of America on Matters Concerning the Maintainability of Resale Price Maintenance

The United States of America is regarded by many scholars as the birthplace of Competition Law. The rule of reason approach developed in the United States is examined through the case of *Leegin Creative Leather Products, Inc.* v. *PSKS*.[26]

5.1 Background

How an RSC or retail supply chain functions is that the upper product manufacturers have their products sold by individual retailers to customers. The practice usually followed is that retailers are allowed to set prices they want to charge their customers. However, in the present case, it is under deliberation whether it is an anti-competitive practice that is in violation of antitrust law for a manufacturer to impose minimum resale prices on their retailers. Leegin Creative Leather Products was a fashion manufacturer that wanted to develop a high-fashion brand and sold leather belts and accessories under the brand name Brighton. For its promotion and to create hype around its high-end brand, Leegin's marketing price strategy was to prohibit retailers from selling Brighton products below certain minimum prices. Retailers who individually fixed prices and provided large

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[26] *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc*, 551 U.S. 877 (2007).

discounts would cut corners while providing customer service, but retailers who sold at the price prescribed by Leegin would have more capital to invest in a better customer experience. However, when some retailers provided discounts and others did not, it would bring about a disparity in the different outlets of Leegin retail stores. One of its retailers, Kay's Kloset, was selling Brighton products at a discount rate which fell below the minimum price devised by Leegin and, even on repeated warnings, refused to discontinue its discounted rates. Leegin then stopped permitting its products to be sold by the retailer Kay's Kloset despite Kay's being the destination retail outlet for purchasing Brighton goods. The store's 'heart store' certification was also revoked. The loss of the Brighton goods had a major dip in the sales and thus the revenue of the store.

5.2 Proceedings before the Supreme Court

Kay's Kloset was owned by PSKS inc. who filed a federal antitrust action against Leegin. The previously held precedent for RPM was 1911's *Dr. Miles Medical Company* v. *John D Park and Sons Company*, as per which mandatory minimum price agreements are illegal per se under that act, i.e., they are automatically illegal regardless of the circumstance. Thus, in line with the precedent in the present case, vertical minimum price restraints like those imposed by Leegin on Kay's Kloset violated the antitrust law under the per se rule. Leegin contested that RPM can have pro-competitive aspects as well and is not always necessarily anti-competitive. However, the US District Court for the Eastern District of Texas refused to hear Leegin's testimony for the same. The fifth circuit for appeals concurred. The US Supreme Court then granted a writ of certiorari for it to be tried before it as a last cause for appeal.

Sherman Act Sec. 1 "*Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal*".

It was contended by PSKS that Leegin violated sec 1 of the Sherman Act and that the precedent set by Miles was to be followed in line with one of the foundational concepts of the American legal system, the Doctrine of Stare Decisis. Leegin, on the other hand, contested this allegation because the judgement was apt for the economic scenario prevalent at that time, but its principles do not hold well in the present and are extremely outdated. Their alternative was to devise a new standard for deciding on the legality of an economic practice. Setting retail price minimums would only be held illegal if they could be proven to be anti-competitive in nature. Their strong advocation led to the landmark advent of the doctrine of the rule of reason by the apex court after the lower courts felt compelled to follow the 1911 precedent.

5.3 Analysis and Conclusion

The main question to be answered was whether it per se illegal under Section 1 of the Sherman Act for a manufacturer to set mandatory minimum prices for its products. The court, after intense deliberations, ruled by a 5-4 majority that vertical price restraints, as that of the present case by Leegin, should be decided by the rule of reason if it did not result in any anticompetitive practice. It was also held that the aforementioned Dr. Miles Medical Co. case was to be overturned. Anthony Kennedy J. provided the majority opinion that horizontal fixing of prices was not be treated the same as vertical minimum price fixing and the previously held landmark authority on the same; the Miles case had, in fact, made a mistake in treating both of them as two sides of the same coin and similar to each other in all aspects. While providing the majority opinion, it was adjudged that vertical minimum price-fixing agreements are actually frequently not promoters of competition between competing firms or companies, and there was evidence cited for the same. Vertical agreements were rarely deemed to be anticompetitive or disruptors of competition. However, it has played an integral part in the functioning of cartels on occasion. But such cases, since being the exception and not the norm, could be decided on a case-by-case scenario-based rule and should not be assumed to be anticompetitive per se. Simply because vertical agreements might be stifling competition it cannot be assumed to be illegal under the Sherman Act's section 1. Higher prices for products cannot be a deciding factor of illegality as numerous competitive legitimate businesses exist, which could have possibly caused higher market prices for the goods in question. As per the American Bar Association, the principle of Stare Decisis is one in which the judges should give weightage to previous judgements, rulings, and opinions and must deal with the present fact scenario, keeping in mind the rulings of their predecessors. It involves both a higher court's decisions serving as a binding precedent on the lower courts and a course having a persuasive precedent over other similar courts of the same appellate level. In the present case's majority opinion, the judges weighed the principle of stare decisis acknowledging the Miles case 100-year precedent against treating the Sherman Act as a common law. The Sherman Act was deemed to be held as a statute of common law subject to change and adaptation as per the situation and circumstances, which must be allowed to evolve, and thus, this outweighed the principle of stare decisis in the majority judgement. Stephen Breyer J., who led the dissenting opinion, was of the opinion that no situation would be that grave that would require the Sherman Act to be changed, that the 100-year precedent of The Miles case was to be honoured and that it should be so easily overruled. He wanted a strict adherence to the doctrine of Stare decisis. However, the 5-4 majority opinion prevailed, the stare decisis principle was bypassed, and the 100-year stringent precedent set by the Mile's case was finally overruled.

VI

Conclusion

With all the instances presented it is evident that the transition from practices deemed per se anticompetitive being the norm to the exception on the surface seems to be beneficial on all counts. The rule of reason is the preferred choice by courts and tribunals alike. And it has, for the most part, been fair, and justice has been delivered. However, the judgements of cases wherein the rule of reason had been applied were not airtight. There was a lot of wiggle room which could be manipulated to their advantage by lawyers in future price maintenance cases. The judgements could not be considered ideal precedents for future application of the doctrine of stare decisis. Moreover, another noticeable factor was the non-application or improper application of the rules by the lower courts, as seen in both the US and EU cases. This resulted in a longer process with multiple appeals. The apex court finally clarified the application of the rule, specific to the particular set of facts before it. It can thus be concluded that considering the advantages of the rule of reason, it is not to be applied uniformly over all cases without question. If the situation deems fit the per se rule can also be called upon in the name of speedy justice, equity and good conscience. There must be application of the rules by rational interpretation by the judges. Retail price maintenance as a practice cannot be prima facie termed to be legal or illegal. If it promotes competition and encourages the thriving of a fair market, instead of criminalising the practice completely, benefits can actually be extracted from it.

Thus, while a uniform application of the per se rule or the rule of reason approach cannot be applied by courts in all cases within a single jurisdiction, it shall be farfetched to suggest a uniform application of the rule of reason approach' globally. Thus, it is for the courts to consider the appropriate and most suitable of the aforementioned methods. The courts must *prima facie* consider, balance out and prioritise whether the need of the hour is a speedy judgement that promotes economic activity through the per se approach or debate and deliberate to adopt the rule of reason approach while deciding upon whether 'Resale Price Maintenance' in question has a substantial negative effect on competition.