

Antitrust Policy and Vertical Restraints
Robert Hahn, Editor
AEI, Brookings Joint Center for Regulatory Studies (2006)

This slim but elegant volume contains the principal papers from a May 2005 conference held by the AEI (American Enterprise Institute)-Brookings Joint Center for Regulatory Studies. This conference is the continuation of a series of impressive conferences and publications in the antitrust and regulation fields conducted by these two distinguished research institutes.¹ Although the introduction by Robert Hahn focuses on the centrality of vertical restraints generally in antitrust policy, the three chapters that follow focus on the appropriate standards for bundling and tying. Bruce Kobayashi examines the economic literature and case law on bundling and concludes that insufficient attention has been paid to the efficiency explanations and rejects any bright line rules to deal with the pro- and anti-competitive aspects of this ubiquitous practice.² Dennis Carlton and Michael Waldman dispute the Chicago school claim that monopolists have no incentive to tie essential goods.³ They conclude that monopolists have exclusionary reasons to do so from a long term perspective or where switching costs for durable good make consumers vulnerable. Nonetheless, the authors acknowledge the efficiency-based reasons and ambiguous welfare implications for tying and argue for a high evidentiary rules for tying cases. Finally, David Evans argues for the rejection of the limited per se rule governing tying and the adoption of a full rule of reason analysis as part of the ongoing modernisation of U.S. antitrust policy.⁴ Together, these papers reflect a cogent contemporary snapshot of the continuing interplay between economic theory and legal precedent in U.S. antitrust.

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¹ See <http://www.aei-brookings.org>.

²Bruce H. Kobayashi, *Two Tales of Bundling: Implications for the Application of Antitrust Law to Bundled Discounts*, in ANTITRUST POLICY AND VERTICAL RESTRAINTS at 10 (Robert W, Hahn, ed 2006)(ANTITRUST POLICY).

³ Dennis W. Carlton & Michael Waldman, *Why Tie an Essential Good?*, in ANTITRUST POLICY, *supra* note 2 at 38.

⁴ David S, Evans, *Tying: The Poster Child for Antitrust Modernization*, in ANTITRUST POLICY, *supra* note 2 at 65.