SECTION 5: VERTICAL RESTRAINTS- HANDOUT

1. **What are vertical agreements?**

2. **Section 5(1) –**
   - (i) **Requirements**: how do we analyse these agreements? What evidence is required?
   - (ii) **Lessening/ preventing competition**
   - (iii) **Interbrand & int*ra*brand competition**
   - (iv) **Agreements that benefit competition**
     1) Lowering transaction costs
     2) Assuring a steady supply of a key input
     3) Eliminating negative externalities
     4) Preventing "free riding"
   - (v) **Agreements that Restrict Competition**
     1) Eliminating Competition through Foreclosure
     2) Raising rivals costs
     3) Tying Arrangements
     4) Exclusive dealing
   - (vi) **Efficiency Arguments**
   - (vii) **Franchise agreements**

3. **Case study**

4. **Section 5(2)-**RPM -What is meant by Resale Price Maintenance? Should they be per se illegal?

5. **Section 5(3)** – what is a recommended price?

CASE STUDY

Trialsoft is the leading provider of litigation support database software, with over 50% of the market. Law firms purchase litigation support software. It requires extensive training and customer support over time as the product improves. The companies rely on independent consultants to provide the training, particularly the consulting arms of the large accounting firms.

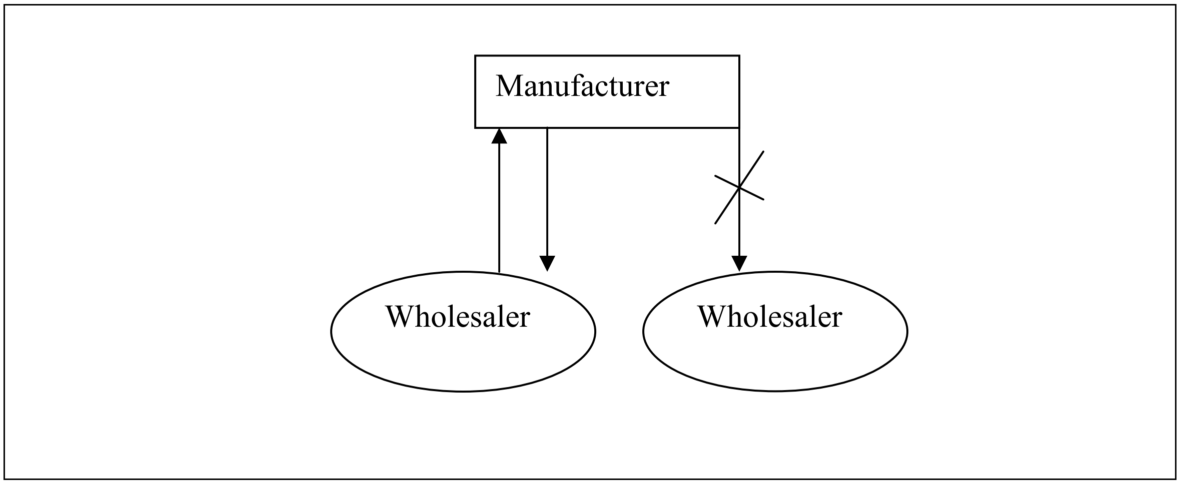
A new database entrant, NetSearch, has created an innovative database program that uses neural network techniques that dramatically improve the efficiency of searches and permit linkages to be taken to higher dimensionality.

TrialSoft has only just begun to work on upgrading its product using neural network techniques and is still 1-2 years away from having a product as good as the current release of NetSearch's product.

NetSearch is in the process of soliciting consulting firms to sell and support its software. To counter the entry of NetSearch, TrialSoft has begun to require its distributors to sell only its database program. The consulting firms would prefer to sell both programs because most clients do not need the complexity of the NetSearch product and TrialSoft's other competitors mostly appeal to specialized customer niches.

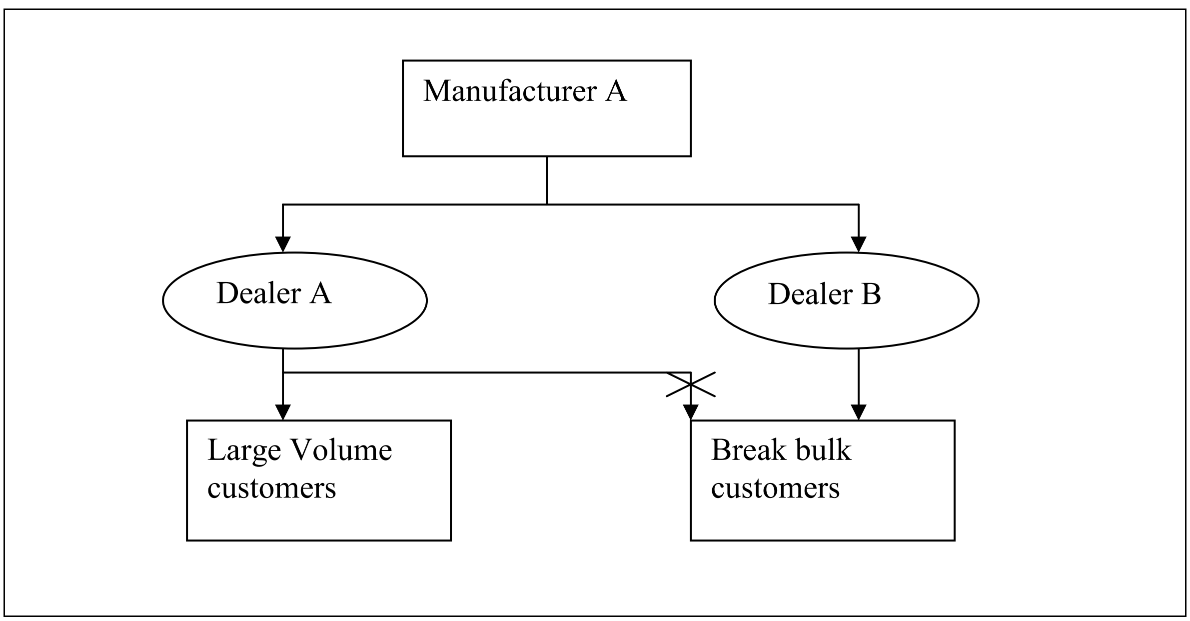
A compliant is filed with the Competition Commission by NetSearch.

Exclusive Distribution:



The manufacturer agrees to distribute and market the products exclusively through a single wholesaler, agreeing not to appoint any other wholesaler. The agreement may apply symmetrically in the sense that the wholesaler agrees to by only from this manufacturer.[1]

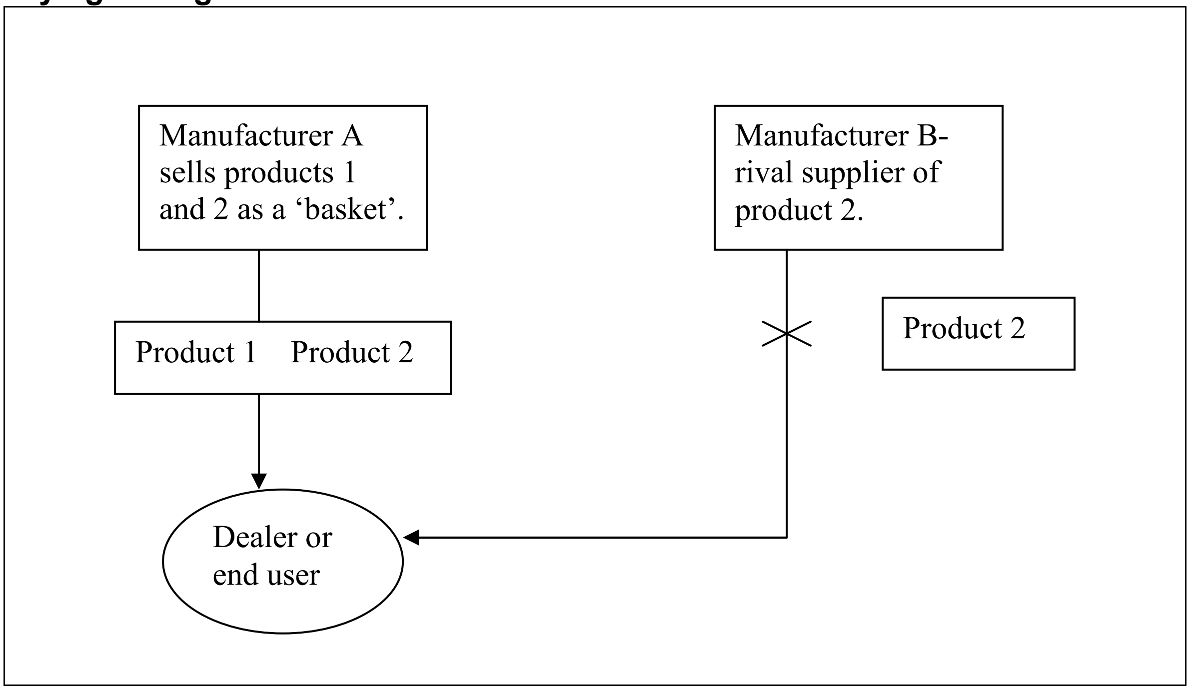
Customer Foreclosure:



The Manufacturer assigns dealer B only bulk customers. This dealer may not sell to bulk customers allocated to dealer A.[2]

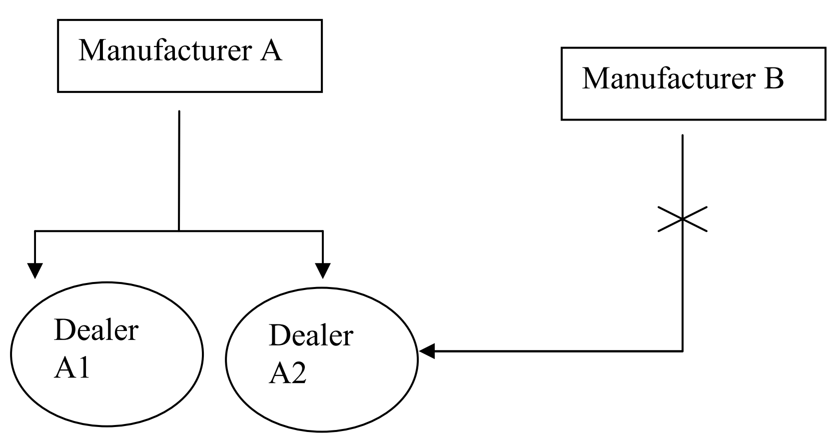
[1] Neuhoff M et al (2006) *A Practical Guide to the South African Competition Act*.
[2] Ibid

Tying arrangements:



Product 1 is only supplied by manufacturer A. Consumers require both product 1 and product 2. However, they can only get product 1 from manufacturer A if they buy product 2. Accordingly, manufacturer B is prevented from selling product 2 to dealers or consumers.[3]

(iv) Exclusive Dealing



Manufacturer B cannot sell to dealer A2, who has agreed to purchase from Manufacturer A only. Ie. The upstream party (supplier) requires the downstream party (buyer) to deal only in its products.[4]

[3] Ibid.
[4] Ibid.