MR. JUSTICE POWELL delivered the opinion of
the Court:

Franchise agreements between manufacturers and
retailers frequently include provisions barring the
retailers from selling franchised products from locations
other than those specified in the agreements. This case
presents important questions concerning the appropriate
antitrust analysis of these restrictions under § 1 of the
Sherman Act, 15 U.S.C. § 1, and our decision in United

I

Respondent GTE Sylvania, Inc. ("Sylvania")
manufactures and sells television sets through its Home
Entertainment Products Division. Prior to 1962, like most
other television manufacturers, Sylvania sold its
television to independent or company-owned distributors
who in turn resold to a large and diverse group of
intensive reassessment of its marketing strategy, and in 1962 adopted the franchise plan challenged here. Sylvania phased out its wholesale distributors and began to sell its televisions directly to a smaller and more select group of franchised retailers. An acknowledged purpose of the change was to decrease the number of competing Sylvania retailers in the hope of attracting the more aggressive and competent retailers thought necessary to the improvement of the company's market position. To this end, Sylvania limited the number of franchises granted for any given area and required each franchisee to sell his Sylvania products only from the location or locations at which he was franchised. A franchise did not constitute an exclusive territory, and Sylvania retained sole discretion to increase the number of retailers in an area in light of the success or failure of existing retailers in developing their market. The revised marketing strategy appears to have been successful during the period at issue here, for by 1965 Sylvania's share of national television sales had increased to
franchisor-franchisee relationship that had previously prospered under the revised Sylvania plan. Dissatisfied with its sales in the City of San Francisco, 4/ Sylvania decided in the spring of 1965 to franchise Young Brothers, an established San Francisco retailer of televisions, as an additional San Francisco retailer. The proposed location of the new franchise was approximately a mile from a retail outlet operated by petitioner Continental T.V., Inc. ("Continental"), one of the most successful Sylvania franchisees. 5/ Continental protested that the location of the new franchise violated Sylvania's marketing policy, but Sylvania persisted in its plans. Continental then cancelled a large Sylvania order and placed a large order with Phillips, one of Sylvania's competitors.

During this same period, Continental expressed a desire to open a store in Sacramento, California, a desire Sylvania attributed at least in part to Continental's displeasure over the Young Brothers decision. Sylvania believed that the Sacramento market
from its San Jose, California, warehouse to a new retail location that it had leased in Sacramento. Two weeks later, allegedly for unrelated reasons, Sylvania's credit department reduced Continental's credit line from $300,000 to $50,000. In response to the reduction in credit and the generally deteriorating relations with Sylvania, Continental withheld all payments owed to John P. Maguire & Co., Inc. ("Maguire"), the finance company that handled the credit arrangements between Sylvania and its retailers. Shortly thereafter, Sylvania terminated Continental's franchises, and Maguire filed this diversity action in the United States District Court for the Northern District of California seeking recovery of money owed and of secured merchandise held by Continental.

The antitrust issues before us originated in crossclaims brought by Continental against Sylvania and Maguire. Most important for our purposes was the claim that Sylvania had violated § 1 of the Sherman Act by entering into and enforcing franchise agreements that prohibited the sale of Sylvania products other than from
restrained or suppressed competition. App., at 5-6, 9-15. Relying on this Court's decision in United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967), the District Court rejected the proffered instruction in favor of the following one:

"Therefore, if you find by a preponderance of the evidence that Sylvania entered into a contract, combination or conspiracy with one or more of its dealers pursuant to which Sylvania exercised dominion or control over the products sold to the dealer, after having parted with title and risk to the products, you must find any effort thereafter to restrict outlets or store locations from which its dealers resold the merchandise which they had purchased from Sylvania to be a violation of Section 1 of the Sherman Act, regardless of the reasonableness of the location restrictions." App., at 492.

In answers to special interrogatories, the jury found that Sylvania had engaged "in a contract, combination, or conspiracy in restraint of trade with respect to location restrictions alone," and assessed Continental's damages at $591,505, which was trebled pursuant to 15 U.S.C. § 15
language in Schwinn that could be read to support the District Court's instruction but concluded that Schwinn was distinguishable on several grounds. Contrasting the nature of the restrictions, their competitive impact, and the market shares of the franchisors in the two cases, the court concluded that Sylvania's location restriction had less potential for competitive harm than the restrictions invalidated in Schwinn and thus should be judged under the "rule of reason" rather than the per se rule stated in Schwinn. The court found support for its position in the policies of the Sherman Act and in the decisions of other federal courts involving non-price vertical restrictions. 10/

We granted Continental's petition for certiorari to resolve this important question of antitrust law. ___ U.S. ___ (1976). 11/

II

A

We turn first to Continental's contention that Sylvania's restriction on retail locations is a per se
addition to Arnold, Schwinn & Co. ("Schwinn"), 22 intermediate distributors and a network of franchised retailers. Each distributor had a defined geographic area in which it had the exclusive right to supply franchised retailers. Sales to the public were made only through franchised retailers, who were authorized to sell Schwinn bicycles only from specified locations. In support of this limitation, Schwinn prohibited both distributors and retailers from selling Schwinn bicycles to non-franchised retailers. At the retail level, therefore, Schwinn was able to control the number of retailers of its bicycles in any given area according to its view of the needs of that market.

As of 1967 approximately 75 per cent of Schwinn's total sales were made under the "Schwinn Plan". Acting essentially as a manufacturer's representative or sales agent, a distributor participating in this plan forwarded orders from retailers to the factory. Schwinn then shipped the ordered bicycles directly to the retailer, billed the retailer, bore the credit risk, and
retailers through the hands of the distributors. For the most part the distributors functioned as traditional wholesalers with respect to these sales, stocking an inventory of bicycles owned by them to supply retailers with emergency and "fill-in" requirements. A smaller part of the bicycles that were physically distributed by the distributors were covered by consignment and agency arrangements that had been developed to deal with particular problems of certain distributors. Distributors acquired title only to those bicycles that they purchased as wholesalers; retailers, of course, acquired title to all of the bicycles sold by them.

In the District Court, the United States charged a continuing conspiracy by Schwinn and other alleged co-conspirators to fix prices, allocate exclusive territories to distributors, and confine Schwinn bicycles to franchised retailers. Relying on United States v. Bausch & Lomb Co., 321 U.S. 707 (1944), the Government argued that the non-price restrictions were per se illegal as part of a scheme for fixing the retail prices of
franchised retailers was permissible under § 1. The court found a § 1 violation, however, in "a conspiracy to divide certain borderline or overlapping counties in the territories served by four Mid-western cycle distributors." 237 F.Supp., 323, 342 (N.D. Ill. 1965).

The court described the violation as a "division of territory by agreement between the distributors . . . horizontal in nature," and held that Schwinn's participation did not change that basic characteristic. Id., at 342. The District Court limited its injunction to apply only to the territorial restrictions on the resale of bicycles purchased by the distributors in their roles as wholesalers. Ibid.

Schwinn came to this Court on appeal by the United States from the District Court's decision. Abandoning its per se theories, the Government argued that Schwinn's prohibition against distributors and retailers selling Schwinn bicycles to non-franchised retailers was unreasonable under § 1 and that the District Court's injunction against exclusive distributor territories
did not challenge the decision on exclusive distributor territories.

The Court acknowledged the Government's abandonment of its \textit{per se} theories and stated that the resolution of the case would require an examination of "the specifics of the challenged practices and their impact upon the marketplace in order to make a judgment as to whether the restraint is or is not 'reasonable' in the special sense in which § 1 of the Sherman Act must be read for purposes of this type of inquiry." 388 U.S., at 374. Despite this description of its task, the Court proceeded to articulate the following "bright line" \textit{per se} rule of illegality for vertical restrictions: "Under the Sherman Act, it is unreasonable without more for a manufacturer to seek to restrict and confine areas or persons with whom an article may be traded after the manufacturer has parted with dominion over it." Id. at 379. But the Court expressly stated that the rule of reason governs when "the manufacturer retains title, dominion, and risk with respect to the product and the position and function of
Application of these principles to the facts of Schwinn produced sharply contrasting results depending upon the role played by the distributor in the distribution system. With respect to that portion of Schwinn's sales for which the distributors acted as ordinary wholesalers, buying and reselling Schwinn bicycles, the Court held that the territorial and customer restrictions challenged by the Government were *per se* illegal. But, with respect to that larger portion of Schwinn's sales in which the distributors functioned under the Schwinn Plan and under the less common consignment and agency arrangements, the Court held that the same restrictions should be judged under the rule of reason. The only retail restriction challenged by the Government prevented franchised retailers from supplying non-franchised retailers. *Id.*, at 377. The Court apparently perceived no material distinction between the restrictions on distributors and retailers, for it held that:

"The principle is, of course, equally
where and to whom it will resell the products." \textit{Id.}, at 378.

Applying the rule of reason to the restrictions that were not imposed in conjunction with the sale of bicycles, the Court had little difficulty finding them all reasonable in light of the competitive situation in "the product market as a whole." \textit{Id.}, at 382.

B

In the present case, it is undisputed that title to the televisions passed from Sylvania to Continental. Thus, the Schwinn \textit{per se} rule applies unless Sylvania's restriction on locations falls outside Schwinn's prohibition against a manufacturer attempting to restrict a "retailer's freedom as to where and to whom it will resell the products." \textit{Id.}, at 378. As the Court of Appeals conceded, the language of Schwinn is clearly broad enough to apply to the present case. Unlike the Court of Appeals, however, we are unable to find a principled basis for distinguishing Schwinn from the case now before us.

Both Schwinn and Sylvania sought to reduce but not to eliminate competition among their respective
the Schwinn franchise plan included a location restriction similar to the one challenged here. These restrictions allowed Schwinn and Sylvania to regulate the amount of competition among their retailers by preventing a franchisee from selling franchised products from outlets other than the one covered by the franchise agreement. To exactly the same end, the Schwinn franchise plan included a companion restriction, apparently not found in the Sylvania plan, that prohibited franchised retailers from selling Schwinn products to non-franchised retailers. In Schwinn the Court expressly held that this restriction was impermissible under the broad principle stated there. In intent and competitive impact, the retail customer restriction in Schwinn is indistinguishable from the location restriction in the present case. In both cases the restrictions limited the freedom of the retailer to dispose of the purchased products as he desired. The fact that one restriction was addressed to territory and the other to customers seems irrelevant to functional antitrust analysis and, indeed, to the language and broad
distinguished, it should be reconsidered. Although Schwinn is supported by the principle of stare decisis, Illinois Brick Co. v. Illinois, ___ U.S. ___, ___ (1977), we are convinced that the need for clarification of the law in this area justifies reconsideration. Schwinn itself was an abrupt and largely unexplained departure from White Motor Co. v. United States, 372 U.S. 253 (1963), where only four years earlier the Court had refused to endorse a per se rule for vertical restrictions. Since its announcement, Schwinn has been the subject of continuing controversy and confusion, both in the scholarly journals and in the federal courts. The great weight of scholarly opinion has been critical of the decision, 13/ and a number of the federal courts confronted with analogous vertical restrictions have sought to limit its reach. 14/ In our view, the experience of the past ten years should be brought to bear on this subject of considerable commercial importance.

The traditional framework of analysis under §
century a judicial gloss on this statutory language has established the "rule of reason" as the prevailing standard of analysis. *Standard Oil Co. v. United States*, 221 U.S. 1 (1911). Under this rule, the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as anti-competitive. 15/ *Per se* rules of illegality are discrete and carefully defined exceptions to this general standard. As the Court explained in *Northern Pac. R. Co. v. United States*, 356 U.S. 1, 5 (1958), "there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." (Emphasis added). 15/

In essence, the issue before us is whether Schwinn's *per se* rule can be justified under the demanding standards of *Northern Pac. R. Co.* The Court's refusal to endorse a *per se* rule in *White Motor Co.* was based on its

"We need to know more than we do about the actual impact of these arrangements on competition to decide whether they have such a 'pernicious effect on competition and lack . . . any redeeming virtue' . . . ."

372 U.S., at 263, quoting Northern Pac. R. Co. v. United States, supra, at 5.

The market impact of vertical restrictions is complex because of their potential for a simultaneous reduction of intrabrand competition and stimulation of interbrand competition.

Significantly, the Court in Schwinn did not distinguish among the challenged restrictions on the basis of their individual potential for intrabrand harm or interbrand benefit. Restrictions that completely eliminated intrabrand competition among Schwinn distributors were analyzed no differently than those that merely moderated intrabrand competition among retailers. The pivotal factor was the passage of title: All restrictions were held to be per se illegal where title had passed, and all were evaluated and sustained under the rule of reason where it had not. The location restriction at issue here would be subject to the same pattern of analysis under
Rider A, p. 16.

Only four years later the Court in Schwinn announced its sweeping per se rule without even a reference to Northern Pac. R. Co. and with no explanation of its sudden change in position. 17/ We turn now to consider Schwinn in light of Northern Pac. R. Co.
accommodate the perceived intrabrand harm and interbrand benefit of vertical restrictions. The per se rule for sale transactions reflected the view that vertical restrictions are "so obviously destructive" of intrabrand competition that their use would "open the door to exclusivity of outlets and limitation of territory further than prudence permits." 388 U.S., at 379, 380. Conversely, the continued adherence to the traditional rule of reason for non-sale transactions reflected the view that the restrictions have too great a potential for the promotion of interbrand competition to justify complete prohibition. The Court's opinion provides no analytical support for these contrasting positions. Nor is there even an assertion in the opinion that the competitive impact of vertical restrictions is significantly affected by the form of the transaction. Non-sale transactions appear to be excluded from the per se rule not because of a greater danger of intrabrand harm or a greater promise of interbrand benefit, but rather because of the Court's unexplained belief that a complete
Vertical restrictions reduce intrabrand competition by limiting the number of sellers of a particular product competing for the business of a given group of buyers. Location restrictions have this effect because of practical constraints on the effective marketing area of retail outlets. Although intrabrand competition may be reduced, the ability of retailers to exploit the resulting market power may be significantly limited both by the ability of consumers to travel to other franchised locations and, perhaps more importantly, to purchase the competing products of other manufacturers. None of these key variables, however, is affected by the form of the transaction by which a manufacturer conveys his products to the retailers.

Vertical restrictions promote interbrand competition by allowing the manufacturer to achieve certain efficiencies in the distribution of his products. These "redeeming virtues" are implicit in every decision sustaining vertical restrictions under the rule of
e.g., Preston, Restrictive Distribution Arrangements: Economic Analysis and Public Policy Standards, 30 Law & Contemp. Prob. 506, 511 (1965). For example, new manufacturers and manufacturers entering new markets can use the restrictions to offer a somewhat higher return in order to induce competent and aggressive retailers to distribute their products. Established manufacturers can use them to induce retailers to engage in promotional activities or to provide maintenance and repair facilities necessary to the efficient marketing of their products. Maintenance and repair are vital services for many products, especially the more expensive and complex ones. The availability and quality of such services affects a manufacturer's good will and the competitiveness of his product. Because of market imperfections such as the so-called "free rider" effect, these services might not be provided by retailers in a purely competitive situation, despite the fact that each retailer's benefit would be greater if all provided the services than if none did. Bork, The Rule of Reason and the Per Se Concept:
Economists also have argued that manufacturers have an economic interest in maintaining as much intrabrand competition as is consistent with the efficient distribution of their products. Bork, supra, at 403; Posner, supra n. 13, at 283, 287-288. Although the view that the manufacturer’s interest necessarily corresponds with that of the public is not universally shared, even the leading critic of vertical restrictions concedes that Schwinn’s distinction between sale and non-sale transactions is essentially unrelated to any relevant economic impact. Comanor, Vertical Territorial and Customer Restrictions: White Motor and Its Aftermath, 81 Harv. L. Rev. 1419, 1422 (1968) Indeed, to the extent that the form of the transaction is related to interbrand benefits, the Court’s distinction is inconsistent with its articulated concern for the ability of smaller firms to compete effectively with larger ones. Capital requirements and administrative expenses may prevent smaller firms from using the exception for non-sale transactions. See, e.g., McLaren, supra n. 13,
transactions. The question remains whether the *per se* rule stated in *Schwinn* should be expanded to include non-sale transactions or abandoned in favor of a return to the rule of reason. We have found no support for expanding the rule. As noted above, the *Schwinn* Court recognized the undesirability of "prohibit[int] all vertical restrictions of territory and all franchising . . ." 388 U.S., at 379, 380. 27/ And even Continental does not urge us to hold that all such restrictions are *per se* illegal.

We revert to the standard articulated in *Northern Pac. R. Co.*, and reiterated in *White Motor*, for determining whether vertical restrictions must be "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use". 356 U.S., at 5. Such restrictions, in varying forms, are widely used in our free market economy. As indicated above, there is substantial scholarly and judicial authority supporting their social utility and economic
agreements, that vertical restrictions have or are likely to have a "pernicious effect on competition" or that they "lack . . . any redeeming virtue." Accordingly, we conclude that the per se rule stated in Schwinn must be overruled. In so holding we do not foreclose the possibility that particular applications of vertical restrictions might justify per se prohibition under Northern Pac. R. Co. But we do make clear that departure from the rule of reason standard must be based upon demonstrable economic effect rather than - as in Schwinn - upon formalistic line-drawing.

In sum, we conclude that the appropriate decision is to return to the rule of reason that governed vertical restrictions prior to Schwinn. When competitive effects are shown to result from particular vertical restrictions they can be adequately policed under the rule of reason, the standard traditionally applied for the majority of anticompetitive practice challenged under § 1 of the Act. Accordingly, the decision of the Court of Appeals is
We conclude that there is no justification for the distinction drawn in Schwinn between sale and nonsale transactions. The question remains whether the per se rule stated in Schwinn should be expanded to include nonsale transactions. It would be argued, at least in theory, that such a rule should be expanded to include nonsale transactions. But we have found no such support for such an expansion. As noted above, the Schwinn Court recognized the undesirability of "prohibiting all vertical restrictions of territory and franchising..." 388 U.S., at 379, 380.

And even Continental does not urge us to hold that all such restrictions are per se illegal.

We revert to the standard articulated in Northern Pac. R. Co., and reiterated in White Motor, for determining whether vertical restrictions must be "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise form that have caused or the business excuse for their use". 356 U.S., at 5. Such restrictions, in varying forms, are widely used in our
substantial scholarly and judicial authority supporting the social utility and economic soundness of vertical restrictions. There is relatively little authority to the contrary. Certainly, there has been no showing in this case, either generally or with respect to Sylvania's agreements, that vertical restrictions have or are likely to have a "pernicious effect on competition" or that they "lack . . . any redeeming virtue." Accordingly, we conclude that the per se rule stated in Schwinn must be overruled.

In so holding we do not foreclose the possibility that particular applications of vertical restrictions might justify per se prohibition under Northern Pacific R. Co. But we do make clear that departure from the rule of reason standard must be drawn; they should be based upon substantive economic effect rather than - as in Schwinn - upon formalistic line-drawing. See Robinson, supra, n. 13, at p. 79; Averill, Sealy, Schwinn and Sherman One: An Analysis and Prognosis, 19 N.Y.U.L. Rev. 39, 65 (1969). We therefore conclude that the appropriate decision is to revert to the rule of reason that governed vertical restrictions prior to Schwinn. When competitive effects are shown to
adequately policed under the rule of reason, the standard traditionally applied for the majority of anticompetitive practice challenged under § 1 of the Act. Accordingly, the decision of the Court of Appeals is

Affirmed.
FOOTNOTES

1/ RCA at that time was the dominant firm with as much as as 60 to 70 percent of national television sales in an industry with more than 100 manufacturers.

2/ The number of retailers selling Sylvania products declined significantly as a result of the change, but in 1965 there were at least two franchised Sylvania retailers in each metropolitan center of more than 100,000 population.

3/ Sylvania imposed no restrictions on the right of the franchisee to sell the products of competing manufacturers.

4/ Sylvania's market share in San Francisco was approximately 2.5 percent -- half its national and
5/ There are in fact four corporate petitioners: Continental T.V., Inc.; A & G Sales; Sylpac, Inc.; and S.A.M. Industries, Inc. All are owned in large part by the same individual, and all conducted business under the trade style of "Continental T.V." We adopt the convention used by the court below of referring to petitioners collectively as "Continental."

6/ Sylvania had achieved exceptional results in Sacramento, where its market share exceeded 15 percent in 1965.

7/ In its findings of fact made in conjunction with Continental's plea for injunctive relief, the District Court rejected Sylvania's claim that its actions were prompted by independent concerns over Continental's credit. The jury's verdict is ambiguous on this point. In any event, we do not consider it relevant to the issue before us.
it now concedes that its location restriction involved understandings or agreements with the retailers.

9/ The jury also found that Maguire had not conspired with Sylvania with respect to this violation. Other claims made by Continental were either rejected by the jury or withdrawn by Continental. Most important was the jury's rejection of the allegation that the location restriction was part of a larger scheme to fix prices. A pendent claim that Sylvania and Maguire had willfully and maliciously caused injury to Continental's business in violation of California law also was rejected by the jury, and a pendent breach of contract claim was withdrawn by Continental during the course of the proceedings. The parties eventually stipulated to a judgment for Maguire on its claim against Continental.

10/ There were two major dissenting opinions. Judge Kilkenny argued that the present case is
found the interpretation responsive to and justified by
the need to protect "individual traders from unnecessary
restrictions upon their freedom of action." 537 F.2d, at
1021.

11/ This Court has never given plenary
consideration to the question of the proper antitrust
analysis of location restrictions. Before Schwinn such
restrictions had been sustained in Boro Hall Corp. v.
General Motors Corp., 112 F.2d 822 (CA 2 1942). Since the
decision in Schwinn, location restrictions have been
sustained by three Courts of Appeals, including the
decision below. Salco Corp. v. General Motors Corp., 517
F.2d 567 (CA 10 1975); Kaiser v. General Motors Corp., 396
F. Supp. 33 (E.D. Pa. 1975), aff'd without opinion, 530
F.2d 964 (CA 3 1976).

12/ Sylvania's suggested distinction focuses
customer restrictions in Schwinn on the theory that Sylvania's franchise agreement embodies no similar provisions. Continental's response is that a location restriction also is capable theoretically of producing complete insulation from intrabrand competition. Despite this possibility, it seems more likely that only a manufacturer oblivious to its own interest in effective market development would use the policy to achieve that result. In any event, we consider the comparison drawn in the text to be the relevant one. As Chief Justice Hughes stated in Appalachian Coals, Inc. v. United States, 288 U.S. 344, 363, 377, "Realities must dominate the judgment... The Anti-Trust Act aims at substance."

13/ A former Assistant Attorney General for Antitrust has described Schwinn as "an exercise in barren formalism" that is "artificial and unresponsive to the competitive needs of the real world." Baker, Vertical Restraints in Times of Change: From White to Schwinn to
Indeed, as one commentator has observed, many courts "have struggled to distinguish or limit Schwinn in ways that are a tribute to judicial ingenuity." Robinson, supra n. 13, at 272. Thus, the statement in Schwinn that post-sale vertical restrictions as to customers or territories are "unreasonable without more," 388 U.S., at 379, has been interpreted to allow an exception to the per se rule where the manufacturer proves "more" by showing that the restraints will protect consumers against injury and the manufacturer against product liability claims. See, e.g., Tripoli Co. v. Wella Corp., 425 F.2d 932, 936-938 (CA 3 1970) (en banc).

Similarly, the statement that Schwinn's enforcement of its restrictions had been "firm and resolute," 388 U.S., at 372, has been relied upon to distinguish cases lacking that element. See, e.g., Janel Sales Corp. v. Lanvin Parfums Inc., 396 F.2d 398, 406 (CA 2 1968). Other factual distinctions have been drawn to justify upholding territorial restrictions that would seem to fall within the scope of the Schwinn per se rule. See, e.g., Carter
a higher price); *Colorado Pump & Supply Co. v. Febco, Inc.*, 472 F.2d 637 (CA 10 1973) (apparent territorial restriction characterized as primary responsibility clause). One Court of Appeals has expressly urged us to consider the need in this area for greater flexibility. *Adolph Coors Co. v. F.T.C.*, 497 F.2d 1178, 1187 (CA 10 1974). The decision *Schwinn* and the developments in the lower courts have been exhaustively surveyed in *ABA Antitrust Section, Monograph No. 2, Vertical Restrictions Limiting Intrabrand Competition* (1977) ["ABA Monograph No. 2"].

15/ One of the most frequently cited statements of the rule of reason is that of Justice Brandeis in *Chicago Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918):

"The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must
restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of the intent may help the court to interpret facts and to predict consequences."

16/ **Per se** rules thus require the Court to make broad generalizations about the social utility of particular commercial practices. The probability that anti-competitive consequences will result from a practice and the severity of those consequences must be balanced against its pro-competitive consequences. Cases that do not fit the generalization may arise, but a **per se** rule reflects the judgment that such cases are not sufficiently common or important to justify the time and expense necessary to identify them. Once established, **per se** rules tend to provide guidance to the business community and to minimize the burdens on litigants and the judicial
609-610 (1972), but those advantages are not sufficient in themselves to justify the creation of per se rules. If it were otherwise, all of antitrust would be reduced to per se rules, thus introducing an unintended and undesirable rigidity in the law.

17/ After White Motor Co., the Courts of Appeals continued to evaluate territorial restrictions according to the rule of reason. Sandura Co. v. F.T.C., 339 F.2d 847 (CA 6 1964); Snap-On Tools Corp. v. F.T.C., 321 F.2d 825 (CA 7 1963).

For an exposition of the history of the antitrust analysis of vertical restrictions before Schwinn, see ABA Monograph No. 2, supra n. 14, at 6-7.

18/ As in Schwinn, we are concerned here only with non-price vertical restrictions. The per se illegality of price restrictions has been established
Interbrand competition is the competition between the manufacturers of the same generic product -- television sets in this case -- and is the primary concern of antitrust law. The extreme example of a deficiency of interbrand competition is monopoly, where there is only one manufacturer. In contrast, intrabrand competition is the competition between the distributors -- wholesale or retail -- of the product of a particular manufacturer.

The degree of intrabrand competition is wholly independent of the level of interbrand competition confronting the manufacturer. Thus, there may be fierce intrabrand competition among the distributors of a product produced by a monopolist and no intrabrand competition among the distributors of a product produced by a firm in a highly competitive industry. But when interbrand competition exists, as it does among television manufacturers, it provides a significant check on the exploitation of intrabrand market power because of the ability of consumers to substitute a different brand of
20/ The Court did not specifically refer to intrabrand competition, but this meaning is clear from the context, and the Court's later reference to interbrand competition.

21/ The Court also stated that to impose vertical restrictions in sale transactions would "violate the ancient rule against restraints on alienation." 388 U.S., at 380. This isolated reference has provoked sharp criticism from virtually all of the commentators on the decision, most of whom have regarded the Court's apparent reliance on the "ancient rule" as both a misreading of legal history and a perversion of antitrust analysis.

See, e.g., Baker, supra n. 13, at 544; Handler, supra Posner, supra n. 13, at 295-296 n. 13, at 1684-1686; Robinson, supra n. 13, at 271; but see Louis, supra n. 13, We quite agree with MR. JUSTICE STEWART's dissenting comment in Schwinn that "the state of the common law 400 or even 100 years ago is irrelevant to the issue before us: "the effect of the antitrust laws
We are similarly unable to accept Judge Browning's argument in his dissent below that the Sherman Act was intended to prohibit restrictions on the autonomy of independent businessmen even though the restrictions have no impact on "price, quality, and quantity of goods and services." 537 F.2d, at 1019. Competitive economies have social and political as well as economic advantages, see, e.g., Northern Pac. R. Co. v. United States, supra 356 U.S., at 4, but an antitrust policy divorced from market considerations would lack any objective benchmarks. As Justice Brandeis reminded us, "Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain is of their very essence." Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918).
In that section, the Court specifically
stated that a more complete determination "might severely
Hamper smaller enterprises (especially those in need of
or meeting the competition of giants and
monopolies.) The
Court also pointed to the fact that many
entrepreneurs have exceptions to the law to take to new
ventures
in an industry that has split into large, small parts of which
were
mentioned in White Motor as candidates for each
exception. 388 U.S. 676, 714. The Court might have
limited the exceptions to the law to take to these
situations, which present the strongest arguments for the

Securities and Investment Commission for interpreting
competition. Significantly, it appears intended to create
the more expensive exception for non-safe transactions
which is available to all businesses, regardless of their
size, financial position or market share. This procedure
excludes, apparently, even more clearly the courtes
awareness of "regaining altitude" or acquired restrictions"
control over the manner in which his products are sold and serviced. As a result of statutory and common law developments, society increasingly demands that manufacturers assume direct responsibility for the safety and quality of their products. For example, at the federal level, apart from more specialized requirements, all manufacturers of consumer products have safety responsibilities under the Consumer Product Safety Act, 15 U.S.C. § 2051 et seq., and obligations for warranties under the Consumer Product Warranties Act, 15 U.S.C. § 2301 et seq. Similar obligations are imposed by state law. See, e.g., California Civil Code § 1709 et seq.

The legitimacy of these concerns has been recognized in cases involving vertical restrictions. See, e.g., Trigoli Co. v. Wella Corp. supra n. 14.

24/ Because of the availability of competing products, the manufacturer is likely to prefer as competitive an intrabrand market as is consistent with the efficient marketing of its product. "Generally a manufacturer would prefer the lowest retail price possible, once its price to dealers has been set, because a lower retail price means increased sales and higher
is likely to view the difference between the price at which it sells to its retailers and its price to the consumer as his cost of distribution, which it would prefer to minimize. Posner, supra n. 13, at 283.

25/ Professor Comanor argues that the promotional activities encouraged by vertical restrictions result in product differentiation and, therefore, a decrease in interbrand competition. This argument is flawed by its necessary assumption that a large part of the promotional efforts resulting from vertical restrictions will not convey socially desirable information about product availability, price, quality and services. Nor is it clear that a per se rule would result in anything more than a shift to less efficient method of obtaining the same promotional effects.

26/ We also note that per se rules in this area may work to the ultimate detriment of the small
important to its successful operation, the rule creates an
incentive for vertical integration into the distribution
system, thereby eliminating to that extent the role of
independent businessmen. See, e.g., Baker, supra n. 13,

27/ Continental's contention that balancing
intrabrand and interbrand competitive effects of vertical
restrictions is not a "proper part of the judicial

(1972), is not to the contrary, for it involved a
horizontal restriction among ostensible competitors. 405
Distribution, 2 Antitrust L. & Econ. Rev. (No. 2), 111,
115 (1968).

28/ There may be occasional problems in
latter category would be illegal per se, see, e.g., United States v. General Motors Corp., 384 U.S. 127 (1966); United States v. Topco Associates, Inc., 405 U.S. 596 (1972), and we do not regard the problems of proof as sufficiently great as to justify a per se rule.

29/ The location restriction used by Sylvania was neither the least nor the most restrictive provision that it could have used. See ABA Monograph No. 2, supra n. 14, at 20-25. But we agree that the implicit judgment in Schwinn that a per se rule based on the nature of the restriction is, in general, undesirable. Although distinctions can be drawn among the frequently used restrictions, we are inclined to view them as differences of degree and form. See Robinson, supra n. 13, at 279; Averill, Sealy, Schwinn and Sherman One: An Analysis and Prognosis, 15 N.Y.L.F. 39, 65 (1969). We are unable to perceive significant social gain from channelling transactions into one form or another.
Sylvania was faltering, if not failing, and we think it would be unduly artificial to deny it the use of valuable competitive tools.

30/ The importance of stare decisis is of course, unquestioned, but as Mr. Justice Frankfurter stated in Helvering v. Hallock, 309 U.S. 106, 119 (1940):

"stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience."
At issue in this case is the appropriate standard of analysis under § 1 of the Sherman Act, 15 U.S.C. § 1, of a marketing program adopted by Respondent Sylvania in 1962 in an effort to improve the sales of the television sets produced by its Home Entertainment Products Division. As an integral part of that program, Sylvania and its retailers entered into agreements prohibiting retailers from selling Sylvania products from locations other than those specified in the agreements. Continental's challenge to those restrictions presents important questions concerning our decision in United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).
to a large and diverse group of retailers. Prompted by a decline in its market share to a relatively insignificant one to two percent of national television sales, Sylvania conducted an intensive reassessment of its marketing strategy in 1962 and, as a result, adopted the "elbow room" policy challenged here. Under this revised marketing system, Sylvania phased out its wholesale distributors and substituted a "straight-line" distribution system through which television sets were sold directly to a smaller and more select group of franchised retailers. An acknowledged purpose of the change was to decrease the number of retailers selling Sylvania television sets in the hope of attracting the more aggressive and competent retailers thought necessary to the improvement of the company's market position. To this end, Sylvania limited the number of franchises granted for any given area and required each franchisee to agree to sell the Sylvania products only from the location or locations at which he was franchised. A franchise did not constitute an exclusive territory, and
number of retailers in an area in light of the success or failure of existing retailers in penetrating a market.

Although judgments of cause and effect are difficult, Sylvania's new policy appears to have been successful during the period at issue here. By 1965, Sylvania's share had increased to approximately five percent, and Sylvania had become a significant factor in its industry, ranking as the nation's eighth largest manufacturer and seller of color television sets.

This suit is the result of the repute of a previously successful franchisor-franchisee relationship between Sylvania and Petitioner Continental T.V., Inc. 4/ The "elbow room" policy had been in effect for some time when in May of 1964 Sylvania persuaded Continental, an established retailer of television sets in northern California, to become a franchised Sylvania retailer.

Initially the relationship prospered. By May of 1965, Continental was one of the largest Sylvania retailers in the country, operating Sylvania franchises at eight locations in a number of northern California counties.
surprisingly, the parties present sharply contrasting
versions of the events leading up to the termination. For
purposes of our discussion of the Sherman Act issue before
us, 5/ only a brief summary is necessary.

Dissatisfied with its sales in the City of
San Francisco, 6/ Sylvania decided in the spring of 1965
to franchise Young Brothers, an established San Francisco
retailer of television sets, as an additional San
Francisco retailer. Because the proposed location of the
new franchise was approximately a mile from one of
Continental's franchised locations, Continental protested
to Sylvania that the new franchise violated the "elbow
room" policy. When Sylvania persisted in its plans,
Continental cancelled a large Sylvania order and placed a
large order with Phillips, one of Sylvania's competitors.
During this same period, Continental expressed a desire to
open a store in Sacramento, California, a desire Sylvania
attributes at least in part to Continental's displeasure
over the Young Brothers decision. Sylvania believed that
Continental advised Sylvania in early September of 1965 that it was in the process of moving Sylvania merchandise from its San Jose, California warehouse to a new retail location that it had leased in Sacramento. Two weeks later, Sylvania's credit department reduced Continental's credit line from $300,000 to $50,000. Despite Sylvania's assertion that the credit decision was simply the culmination of a continuing review of Continental's credit situation, Continental attributed the decision to Sylvania's effort to keep it out of the Sacramento market. In response to the reduction in credit and the generally deteriorating relations with Sylvania, Continental withheld all payments owing to Maguire, the company that handled the credit arrangements between Sylvania and its retailers. After payments had been withheld for three weeks and at least $62,000 was due, Maguire repossessed the Sylvania merchandise in Continental's control and filed this action to collect the amounts due, including indebtedness accelerated because of the payment default. On October 12, 1965, the same date that this action was filed, Sylvania notified Continental
counterclaims and crossclaims brought by Continental against Maguire and Sylvania. 2/ Alleging that Sylvania's franchise agreement included an unwritten provision that prohibited franchisees from Sylvania products from any locations other than the ones at which they were franchised. Continental argued that the making and enforcement of these agreements constituted a per se violation of § 1 of the Sherman Act, as interpreted in United States v. Arnold, Schwinn Co., supra.

The case was tried to a jury which returned its verdict in the form of answers to special interrogatories. Although the jury rejected Continental's claim that its locations policy had been coupled with unlawful price fixing, it held that Sylvania had engaged "in a contract, combination or conspiracy in restraint of trade with respect to location restrictions alone." The jury assessed Continental's damages from this violation at $591,505, which was trebled pursuant to 15 U.S.C. § 15 to produce an award of $1,775,515. 537 F.2d, at 986. The
On appeal to the Court of Appeals for the Ninth Circuit, Sylvania argued that the District Court had instructed the jury incorrectly under § 1. Relying on the decision in Schwinn, the District Court had rejected an instruction phrased in terms of the reasonableness of the challenged restrictions, and instructed instead as follows:

"Therefore, if you find by a preponderance of the evidence that Sylvania entered into a contract, combination or conspiracy with one or more of its dealers pursuant to which Sylvania exercised dominion or control over the products sold to the dealer, after having parted with title and risk to the products, you must find any effort thereafter to restrict outlets or store locations from which its dealers resold the merchandise which they had purchased from Sylvania to be a violation of Section 1 of the Sherman Act, regardless of the reasonableness of the location restrictions."

A divided panel of the Court of Appeals affirmed in an unpublished opinion that was subsequently withdrawn when en banc consideration was granted. The Court of Appeals sitting en banc reversed the District Court, also by a divided vote, distinguishing the present
locations policy under § 1. Acknowledging that there is language in the Schwinn opinion that could be read to support the instruction given by the District Court, the court concluded that the present case could and should be distinguished from Schwinn:

"Thus a critical and very obvious distinction between the restrictions in Schwinn and those of Sylvania is that Schwinn involved a restriction on the locations and types of permissible vendees, while Sylvania only imposed restrictions on the permissible locations of vendors. . . . [I]t is clear to us that 'territory' and 'areas' refer to the location of vendees, rather than vendors." 537 F.2d, at 990.

Focusing on exclusive distributor territories at issue in Schwinn, the court noted that intrabrand competition there was "wholly destroyed." 537 F.2d, at 990. The court found the locations policy of Sylvania to be in "marked contrast," because

"Sylvania franchised at least two dealers in the major markets and each Sylvania dealer was free to sell to any buyer he chose -- preserving intrabrand competition and allowing to every potential purchaser of Sylvania..."
The court embraced the above distinction because of its view that a per se rule of illegality for a locations policy would be inconsistent with the policies underlying the Sherman Act and with numerous federal court decisions sustaining the same or similar restrictions.

There were two major dissenting opinions. Judge Kilkenny argued that the present case is indistinguishable from Schwinn and that the jury had been correctly instructed. Agreeing with Judge Kilkenny's interpretation of Schwinn, Judge Browning stated that he found the interpretation responsive to and justified by the need to protect "individual traders from unnecessary restrictions upon their freedom of action." 537 F.2d, at 1021.

We granted Continental's petition for certiorari because of the confusion in the federal courts as to the correct application of the decision in Schwinn to these and related restrictions. 10/ U.S. ____ (197 ).
spirit of Schwinn per se rule for vertical territorial restrictions imposed by a manufacturer after parting with title. Sylvania advances two theories in support of the result below. First, Sylvania argues that this case is distinguishable from Schwinn, as the Court of Appeals held. Second, assuming that Schwinn is not distinguishable, Sylvania urges it to reconsider the correctness of the per se rule enunciated there.

As the Court's decision in Schwinn is central to the resolution of this case, it will be discussed in some detail. We commence with a summary of the marketing program adopted by Schwinn and attacked by the Government under § 1. Schwinn had revised its marketing program after its management had concluded that the previous "saturation" approach was inefficient because of the presence of too many non-productive retailers. The company's solution was to streamline its marketing efforts in a new three-tier system comprising, in addition to Schwinn itself, 22 intermediate distributors and a network
retailers would sell Schwinn bicycles to the public.

Schwinn limited the franchised retailers in any given area by number and location, according to its view of the needs of the market. In order to enforce this aspect of the system, both distributors and retailers were prohibited from selling Schwinn bicycles to non-franchised retailers. In addition, the distributors were given the exclusive right to supply the franchised retailers located within their respective geographical areas.

Schwinn bicycles moved through this distribution system in four ways. As of 1967 approximately 75% of Schwinn's total sales were made under the "Schwinn Plan". Acting essentially as a manufacturer's representative or sales agent, a participating distributor forwarded orders from retailers to the factory. \( \text{\textcopyright 11/} \) Schwinn ten shipped the ordered bicycles directly to the retailer, billed the retailer, before the credit risk, and paid the distributor a commission on the sale. Under the Schwinn Plan, the distributor thus never had title or even possession of the bicycles.
retailer through the hands of the distributors. For the most part the distributors functioned as traditional wholesalers with respect to these sales, stocking an inventory of bicycles owned by them to supply retailers with emergency and "fill-in" requirements. A smaller part of the bicycles that were physically distributed by the distributors were covered by consignment and agency arrangements that had been developed to deal with particular problems of certain distributors. 12/

In the District Court the United States charged a continuing conspiracy by Schwinn and other alleged co-conspirators to fix prices, allocate exclusive territories to distributors, and confine Schwinn bicycles to franchised retailers. Relying on United States v. Bausch & Lomb Co., 321 U.S. 707 (1944), the Government argued that the non-price restrictions were also per se illegal as part of a scheme for fixing the retail prices of Schwinn bicycles. The District Court rejected the price-fixing allegation because of a failure of proof and
divide certain borderline or overlapping counties in the territories served by four Mid-western cycle distributors." 237 F.Supp., at 342. The court described the violation as a "division of territory by agreement between the distributors . . . horizontal in nature," and held that Schwinn's participation did not change that basic characteristic. Id., at ___. The District Court limited injunction however to the territorial restrictions on the resale of bicycles purchased by the distributors. Ibid.

Schwinn came to this Court on appeal by the United States from the District Court's decision. The Government abandoned its per se theories in favor of a rule of reason analysis of Schwinn's marketing practices. The Government argued that Schwinn's prohibition against distributors and retailers selling Schwinn bicycles to non-franchised dealers was unreasonable under § 1 and that the District Court's injunction against exclusive
decision on exclusive distributor territories where the
bicycles had been sold.

As presented in the Government's appeal,
Schwinn involved "challenged vertical restrictions as to
territory and dealers" imposed by the manufacturer on its
distributors and retailers. 388 U.S., at ___. The Court
acknowledged the Government's abandonment of its per se
theory of illegality under § 1 and stated that the
resolution of the case required it to "look to the
specifics of the challenged practices and their impact
upon the marketplace in order to make a judgment as to
whether the restraint is or is not 'reasonable' in the
special sense in which § 1 of the Sherman Act must be read
for purposes of this type of inquiry." 388 U.S., at 374.
Despite this restrained description of its task, the Court
proceeded to articulate a "bright line" per se rule of
illegality under § 1 for vertical restrictions. 13/ The
opinion in Schwinn makes clear, the crucial analytical element in this *per se* rule is the notion of parting with "title, dominion, or risk with respect to the article" by the manufacturer. *Ibid.*

Applying the rule to the facts of Schwinn, the Court reached sharply contrasting results depending upon the role played by the distributor in the distribution system. With respect to that portion of Schwinn's sales for which the distributors acted as ordinary wholesalers, buying and reselling Schwinn bicycles, the Court held that the territorial and customer restrictions challenged by the Government were *per se* illegal. But, with respect to that larger portion of Schwinn's sales in which the distributors functioned under the Schwinn Plan and under the less common consignment and agency arrangements, the Court held that the same restrictions should be judged under the rule of reason. The only retail restriction
and retailers, for it held that:

"The principle is, of course, equally applicable to sales to retailers, and the decree should similarly enjoin the making of any sales to retailers upon any condition, agreement or understanding limiting the retailer's freedom as to where and to whom it will resell the products." 388 U.S., at 378.

Applying the rule of reason to the restrictions that were not imposed in conjunction with the sale of bicycles, the Court had little difficulty finding them all reasonable in light of the competitive situation in "the product market as a whole." 388 U.S., at 382.

B

We first consider whether the present case can be distinguished from Schwinn. There being no dispute that title to the television sets passed from Sylvania to Continental, the Schwinn per se rule would apply here unless the locations policy falls outside the prohibition against a manufacturer's attempt "to restrict territory or..."
restriction of territory. The issue, therefore, is whether the necessary holding in Schwinn also encompasses this case.

Under a functional analysis, a reasoned distinction of the present case from Schwinn is simply not possible. Both Schwinn and Sylvania sought to reduce but not to eliminate intrabrand competition among their retailers through the adoption of a franchise system. Although it was not one of the issues addressed by the District Court or presented on appeal by the Government, the Schwinn franchise plan included a locations policy similar to the one challenged here. These locations policies allowed Schwinn and Sylvania to regulate the amount of intrabrand competition by preventing a franchisee from selling franchised products from outlets other than the one covered by the franchise agreement. To exactly the same end, the Schwinn franchise system included a companion restraint, apparently not found in
In intent and competitive impact, the retail customer restriction in *Schwinn* is indistinguishable from the locations clause in the present case. In both cases the restrictions interfered with the freedom of the retailer to dispose of the purchased products as he desired. The fact that one restriction was addressed to territory and the other to customers seems irrelevant to antitrust policy and, indeed, to the broad thrust of the opinion in *Schwinn*. 14/

In the ten years since *Schwinn* was decided, the antitrust doctrine established there has been the subject of escalating controversy and confusion, both in the scholarly journals and in the federal courts. The great weight of scholarly opinion has been critical of the decision, 15/ and a number of the federal courts
analysis of those provisions is unclear. After ten years, this issue of considerable commercial importance is ripe for reconsideration.

The framework of analysis under § 1 of the Sherman Act is familiar and does not require extended discussion. Section 1 prohibits "[e]very contract, combination ... or conspiracy, in restraint of trade or commerce," but since the early years of this century, a judicial gloss on this statutory language has been made the "rule of reason" the prevailing standard of analysis. 

Standard Oil Co. v. United States, 221 U.S. 1 (1911).

Under the rule of reason, the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as anti-competitive. Per se rules of illegality are discrete and carefully defined exceptions to this general standard. As the Court explained in Northern Pac. R. Co.
The first case to reach this Court involving a location restriction imposed by a vertical agreement was White Motor Co. v. United States, 372 U.S. 253 (1963). The manufacturer there sold its trucks to retailers and wholesalers under agreements imposing territorial and customer restrictions on their resale that were more stringent than those presently before us. Although urged to do so the Court in White Motor refused to establish a per se of invalidity with respect to such restrictions, and remanded the case saying:

"We need to know more than we do about the actual impact of these arrangements on competition to decide whether they have such a 'pernicious effect on competition and lack . . . any redeeming virtue' . . . ." Id., at 263.

Only four years later in Schwinn, and without citation of Northern Pacific, or specific reference to its critical language, the Court announced the per se rule of illegality with respect to vertical location restrictions that it had disclaimed sufficient knowledge to endorse in White Motor. The Court simply held, without economic analysis, that "[s]uch restraints are so obviously destructive of competition that their mere existence is enough." 393
occasion to consider the reasonableness or the likely economic effect of the restraints before us. The answer follows "obviously" from the mere description of the location clause in the agreement quite without regard to its purpose or effect or the market conditions that may have prompted the restriction. We are unwilling, however, to endorse this broad exception to the normal rule of reason applicable to § 1 of the Sherman Act, at least without making the analytical inquiry that the Schwinn Court apparently thought was unnecessary. In undertaking this, the relevant question - as stated in Northern Pacific - is whether agreements of this type have such a "pernicious effect on competition and [are so lacking in] any redeeming virtue" as to justify a conclusive presumption of unreasonableness and resulting illegality. Northern Pacific, supra at 5.
Although not expressly cited in Schwinn, Northern Pac. R. Co. undoubtedly informed the Court's decision. The Court's earlier refusal in White Motor Co. v. United States, 372 U.S. 253 (1963), to create per se rules for vertical restrictions was based explicitly on its uncertainty as to whether such restrictions satisfied the conditions of "pernicious effect on competition" and "lack of any redeeming virtue" stated in Northern Pac. R. Co.

The Court in Schwinn resolved its earlier uncertainties in favor of a per se rule of illegality, but only after concluding that "[s]uch restraints are so obviously destructive of competition that their mere existence is enough." 388 U.S., at 379. Thus, our reconsideration of Schwinn involves the application of an accepted legal standard to a class of commercial practices.
sale transactions are per se illegal, but restrictions imposed in conjunction with non-sale transactions are judged under the rule of reason. We begin our reconsideration of Schwinn with an examination of this basic distinction in light of Northern Pac. R. Co.

As the Court recognized in Schwinn, the market impact of vertical restrictions is complex and controversial because two potentially contradictory forces are at work. Such restrictions may at the same time reduce the intrabrand competition among the businesses involved in the marketing of the franchised product and increase the efficiency of the manufacturer's marketing operation, thus stimulating interbrand competition. Both effects found expression in the Court's opinion. Schwinn's per se rule is based on the conclusion that post-sale vertical restrictions are "so obviously
vertical restrictions can contribute to marketing efficiencies that may promote interbrand competition. The Court feared that a more complete prohibition "might severely hamper smaller enterprises resorting to reasonable methods of meeting the competition of giants and merchandising through independent dealers, and [that] it might sharply accelerate the trend towards vertical integration of the distribution process."

It is clear that the decision in Schwinn reflects an attempt to represent a balance between perceived intrabrand competitive loss and interbrand competitive gain. The question is whether that balance was correctly struck, a question made more difficult by its rather conclusory treatment in Schwinn. The relevant inquiry under Northern Pac. R. Co. is, however, clear. In order for the distinction between sale and non-sale transactions to be sustained, it must correspond to a substantial difference either in intrabrand competitive harm or in interbrand
The form of the transaction is not one of the factors influencing the level of intrabrand competition. It is elementary economics that, other things being equal, the larger the number of competing sellers, the greater the competition. Vertical restrictions may reduce intrabrand competition by limiting the number of sellers competing for the business of a given group of buyers. There is no dispute that a locations policy has this effect, albeit somewhat less directly than other forms of restrictions. Whatever the form of the restriction, however, intrabrand competition depends on the number of sellers having access to a given group of buyers, not on the manner in which the sellers obtained the goods. 26/

The opinion in Schwinn does not assert that interbrand competitive advantage inheres predominantly in vertical restrictions imposed in non-sale transactions. Nor has our own study revealed any support for that view. Moreover, to the contrary, it appears that the distinction is
smaller companies is that the independent businesses involved in the distribution of the product provide their own capital. Consignment and agency arrangements, however, require the manufacturer to finance the cost of inventory carried by the distributors. Similarly, a distribution scheme like the Schwinn Plan may require more elaborate and expensive administrative procedures than a small company can afford. 27/

For the reasons stated above, we conclude that the Schwinn per se rule cannot be justified under the Northern Pac. R. Co. The question remains, however, whether the appropriate response is to expand or to contract the rule or to abandon it altogether. In considering these alternatives, we are guided by the standards discussed above. Under those standards a heavy burden of proof lies on those who support a per se rule. In contrast, we need not be persuaded that vertical restrictions always work for the competitive good in order
marketing of their products, a goal consistent with § 1. Although it cannot be denied that such restrictions interfere in varying degrees with the free play of competitive forces in the distribution of the franchised products, proponents argue that the risk of overall competitive harm is acceptably small. 28/ The view that the economic interests of manufacturer and consumers are compatible is central to this position. Although some diminution of intrabrand competition may be necessary, the manufacturer has a genuine personal interest in assuring the maximum intrabrand competition consistent with the efficient marketing of his product. 29/

Proponents assert that a variety of competitive objectives can be achieved through vertical restrictions 30/ A manufacturer might seek nothing more than to assure that his retailers operate at the most efficient scale, a result that would ultimately be reached through the interplay of competitive forces. By using
his retailers somewhat more than competitive market power. For example, a new manufacturer or a manufacturer entering a new market may find it necessary to offer a somewhat higher return in order to induce competent and aggressive retailers to distribute his products. It also has been suggested that the combination of vertical restrictions and intrabrand competition might be used to induce retailers to engage in promotional activities or to provide maintenance and repair facilities necessary to the efficient marketing of his products. Because of market imperfections such as the so-called "free rider" effect, these necessary services might not be provided by retailers in a purely competitive situation, despite the fact that each retailer's benefit would be greater if all provided the services than if none did. It is true that services of these types could be provided in other ways, but the fact that manufacturers choose to use vertical restrictions strongly suggests that the other ways
serviced. As a result of statutory and common law developments, society increasingly demands that manufacturers assume direct responsibility for the safety and quality of their products. For example, at the federal level, apart from more specialized requirements, all manufacturers of consumer products have safety responsibilities under the Consumer Product Safety Act, 15 U.S.C. § 2051 et seq., and obligations for warranties under the Consumer Product Warranties Act, 15 U.S.C. § 2301 et seq. Similar obligations are imposed by state law. See, e.g., California Civil Code § 1709 et seq.

The argument most frequently advanced against vertical restrictions is, in effect, that they are too successful in inducing retailers to promote the franchised products. The critics argue that consumer loyalties for particular brands are strengthened by such promotion to the detriment of interbrand competition. This argument assumes that a large part of the promotional effort will
problem. Prohibition of vertical restrictions would not necessarily end the type of promotion to which the critics object but might simply result in the promotion being done by less efficient, more costly methods -- arguably socially undesirable result.

The most commonly acknowledged competitive risk from vertical restrictions is that they will not be truly vertical, but rather the result of a horizontal agreement among retailers imposed on an unwilling manufacturer. In such a case, the manufacturer's economic interest would no longer serve as a check on the distinctly anti-competitive interests of the retailers, and there is no doubt that the agreement would be illegal per se. United States v. General Motors Corp., 384 U.S. 127 (1966); United States v. Topco Associates, Inc., 405 U.S. 596 (1972). There may be some difficulties in determining the true nature of the restrictions in a given
per se prohibition. There are troubling anti-competitive problems with vertical restrictions. But these problems are not pervasive, and their evaluation is a question of degree involving a number of factors.

Nor are we able at this time to identify any discrete situations justifying partial per se rules. Franchise agreements may include a variety of provisions restricting the parties. An exclusive franchise is a promise by the manufacturer not to franchise any other retailers in a particular area. Provisions imposing restrictions on retailers include customer restrictions, territorial restrictions, locations clauses, profit-passover clauses, and primary responsibility clauses. Although distinctions can be drawn among these restrictions, we are inclined to view them as constituting only differences of degree and form.

Continental does not urge us to make all such restrictions per se illegal; yet, we are unable to perceive significant
another. Were we to do so, the argument would inevitably be made that permissible forms were being used to achieve impermissible results. Resolution of these disputes
would involve inquiries closely resembling rule of reason inquiries.

Both because we take a more sanguine view of vertical restrictions in general and because we perceive no new line of demarcation that could be sustained under Northern Pac. R. Co., we believe that the appropriate decision is to revert to the rule of reason analysis that governed vertical restrictions before Schwinn. Whatever anticompetitive effects may flow from vertical restrictions can be adequately policed under the rule of reason, which is the standard applied to the vast majority of restrictive practices challenged under § 1.

Accordingly, the decision of the Court of Appeals is Affirmed.
MR. JUSTICE POWELL delivered the opinion of the Court:

Franchise agreements between manufacturers and retailers frequently include provisions barring the retailers from selling franchised products from locations other than those specified in the agreements. This case presents important questions concerning the appropriate antitrust analysis of these restrictions under § 1 of the Sherman Act, 15 U.S.C. § 1, and the Court's decision in United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

I

Respondent GTE Sylvania, Inc. ("Sylvania") manufactures and sells television sets through its Home Entertainment Products Division. Prior to 1962, like most other television manufacturers, Sylvania sold its televisions to independent or company-owned distributors
who in turn resold to a large and diverse group of retailers. Prompted by a decline in its market share to a relatively insignificant 1 to 2 percent of national television sales, 1/ Sylvania conducted an intensive reassessment of its marketing strategy, and in 1962 adopted the franchise plan challenged here. Sylvania phased out its wholesale distributors and began to sell its televisions directly to a smaller and more select group of franchised retailers. An acknowledged purpose of the change was to decrease the number of competing Sylvania retailers in the hope of attracting the more aggressive and competent retailers thought necessary to the improvement of the company's market position. 2/ To this end, Sylvania limited the number of franchises granted for any given area and required each franchisee to sell his Sylvania products only from the location or locations at which he was franchised. 3/ A franchise did not constitute an exclusive territory, and Sylvania retained sole discretion to increase the number of retailers in an area in light of the success or failure of existing retailers in developing their market. The revised marketing strategy appears to have been successful during the period at issue here, for by 1965 Sylvania's share of national television sales had increased to approximately 5 percent, and the company ranked as the
nation's eighth largest manufacturer of color television sets.

This suit is the result of the rupture of a franchisor-franchisee relationship that had previously prospered under the revised Sylvania plan. Dissatisfied with its sales in the City of San Francisco, Sylvania decided in the spring of 1965 to franchise Young Brothers, an established San Francisco retailer of televisions, as an additional San Francisco retailer. The proposed location of the new franchise was approximately a mile from a retail outlet operated by petitioner Continental T.V., Inc. ("Continental"), one of the most successful Sylvania franchisees. Continental protested that the location of the new franchise violated Sylvania's marketing policy, but Sylvania persisted in its plans. Continental then cancelled a large Sylvania order and placed a large order with Phillips, one of Sylvania's competitors.

During this same period, Continental expressed a desire to open a store in Sacramento, California, a desire Sylvania attributed at least in part to Continental's displeasure over the Young Brothers decision. Sylvania believed that the Sacramento market was adequately served by the existing Sylvania retailers and denied the request. In the face of this denial,
Continental advised Sylvania in early September 1965 that it was in the process of moving Sylvania merchandise from its San Jose, California, warehouse to a new retail location that it had leased in Sacramento. Two weeks later, allegedly for unrelated reasons, Sylvania's credit department reduced Continental's credit line from $300,000 to $50,000. 2/ In response to the reduction in credit and the generally deteriorating relations with Sylvania, Continental withheld all payments owed to John P. Maguire & Co., Inc. ("Maguire"), the finance company that handled the credit arrangements between Sylvania and its retailers. Shortly thereafter, Sylvania terminated Continental's franchises, and Maguire filed this diversity action in the United States District Court for the Northern District of California seeking recovery of money owed and of secured merchandise held by Continental.

The antitrust issues before us originated in crossclaims brought by Continental against Sylvania and Maguire. Most important for our purposes was the claim that Sylvania had violated § 1 of the Sherman Act by entering into and enforcing franchise agreements that prohibited the sale of Sylvania products other than from specified locations. 8/ At the close of evidence in the jury trial of Continental's claims, Sylvania requested the District Court to instruct the jury that its location
restriction was illegal only if it unreasonably restrained or suppressed competition. App., at 5–6, 9–15. Relying on this Court's decision in *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365 (1967), the District Court rejected the proffered instruction in favor of the following one:

"Therefore, if you find by a preponderance of the evidence that Sylvania entered into a contract, combination or conspiracy with one or more of its dealers pursuant to which Sylvania exercised dominion or control over the products sold to the dealer, after having parted with title and risk to the products, you must find any effort thereafter to restrict outlets or store locations from which its dealers resold the merchandise which they had purchased from Sylvania to be a violation of Section 1 of the Sherman Act, regardless of the reasonableness of the location restrictions." App., at 492.

In answers to special interrogatories, the jury found that Sylvania had engaged "in a contract, combination, or conspiracy in restraint of trade with respect to location restrictions alone," and assessed Continental's damages at $591,505, which was trebled pursuant to 15 U.S.C. § 15 to produce an award of $1,774,515. App., at 498, 501.

On appeal, the Court of Appeals for the Ninth Circuit, sitting *en banc*, reversed by a divided vote. 537 F.2d 980 (1976). The court acknowledged that there is language in *Schwinn* that could be read to support the District Court's instruction but concluded that *Schwinn*
was distinguishable on several grounds. Contrasting the nature of the restrictions, their competitive impact, and the market shares of the franchisors in the two cases, the court concluded that Sylvania's location restriction had less potential for competitive harm than the restrictions invalidated in Schwinn and thus should be judged under the "rule of reason" rather than the per se rule stated in Schwinn. The court found support for its position in the policies of the Sherman Act and in the decisions of other federal courts involving non-price vertical restrictions. 10/

We granted Continental's petition for certiorari to resolve this important question of antitrust law. ___ U.S. ___ (1976). 11/

II

A

We turn first to Continental's contention that Sylvania's restriction on retail locations is a per se violation of § 1 of the Sherman Act as interpreted in Schwinn. The restrictions at issue in Schwinn were part of a three-tier distribution system comprising, in addition to Arnold, Schwinn & Co. ("Schwinn"), 22 intermediate distributors and a network of franchised retailers. Each distributor had a defined geographic area in which it had the exclusive right to supply franchised
retailers. Sales to the public were made only through franchised retailers, who were authorized to sell Schwinn bicycles only from specified locations. In support of this limitation, Schwinn prohibited both distributors and retailers from selling Schwinn bicycles to non-franchised retailers. At the retail level, therefore, Schwinn was able to control the number of retailers of its bicycles in any given area according to its view of the needs of that market.

As of 1967 approximately 75 percent of Schwinn's total sales were made under the "Schwinn Plan." Acting essentially as a manufacturer's representative or sales agent, a distributor participating in this plan forwarded orders from retailers to the factory. Schwinn then shipped the ordered bicycles directly to the retailer, billed the retailer, bore the credit risk, and paid the distributor a commission on the sale. Under the Schwinn Plan, the distributor never had title to or possession of the bicycles. The remainder of the bicycles moved to the retailers through the hands of the distributors. For the most part the distributors functioned as traditional wholesalers with respect to these sales, stocking an inventory of bicycles owned by them to supply retailers with emergency and "fill-in" requirements. A smaller part of the bicycles that were
physically distributed by the distributors were covered by consignment and agency arrangements that had been developed to deal with particular problems of certain distributors. Distributors acquired title only to those bicycles that they purchased as wholesalers; retailers, of course, acquired title to all of the bicycles sold by them.

In the District Court, the United States charged a continuing conspiracy by Schwinn and other alleged co-conspirators to fix prices, allocate exclusive territories to distributors, and confine Schwinn bicycles to franchised retailers. Relying on United States v. Bausch & Lomb Co., 321 U.S. 707 (1944), the Government argued that the non-price restrictions were per se illegal as part of a scheme for fixing the retail prices of Schwinn bicycles. The District Court rejected the price-fixing allegation because of a failure of proof and held that Schwinn's limitation of retail bicycle sales to franchised retailers was permissible under § 1. The court found a § 1 violation, however, in "a conspiracy to divide certain borderline or overlapping counties in the territories served by four Mid-western cycle distributors." 237 F.Supp., 323, 342 (N.D. Ill. 1965). The court described the violation as a "division of territory by agreement between the distributors . . . horizontal in nature," and held that Schwinn's
participation did not change that basic characteristic. \textit{Id.}, at 342. The District Court limited its injunction to apply only to the territorial restrictions on the resale of bicycles purchased by the distributors in their roles as wholesalers. \textit{Ibid.}

\textbf{Schwinn} came to this Court on appeal by the United States from the District Court's decision. Abandoning its \textit{per se} theories, the Government argued that Schwinn's prohibition against distributors and retailers selling Schwinn bicycles to non-franchised retailers was unreasonable under § 1 and that the District Court's injunction against exclusive distributor territories should extend to all such restrictions regardless of the form of the transaction. The Government did not challenge the District Court's decision on price-fixing, and Schwinn did not challenge the decision on exclusive distributor territories.

The Court acknowledged the Government's abandonment of its \textit{per se} theories and stated that the resolution of the case would require an examination of "the specifics of the challenged practices and their impact upon the marketplace in order to make a judgment as to whether the restraint is or is not 'reasonable' in the special sense in which § 1 of the Sherman Act must be read for purposes of this type of inquiry." \textit{388 U.S.}, at 374.
Despite this description of its task, the Court proceeded to articulate the following "bright line" per se rule of illegality for vertical restrictions: "Under the Sherman Act, it is unreasonable without more for a manufacturer to seek to restrict and confine areas or persons with whom an article may be traded after the manufacturer has parted with dominion over it." Id. at 379. But the Court expressly stated that the rule of reason governs when "the manufacturer retains title, dominion, and risk with respect to the product and the position and function of the dealer in question are, in fact, indistinguishable from those of an agent or salesman of the manufacturer." Id., at 380.

Application of these principles to the facts of Schwinn produced sharply contrasting results depending upon the role played by the distributor in the distribution system. With respect to that portion of Schwinn's sales for which the distributors acted as ordinary wholesalers, buying and reselling Schwinn bicycles, the Court held that the territorial and customer restrictions challenged by the Government were per se illegal. But, with respect to that larger portion of Schwinn's sales in which the distributors functioned under the Schwinn Plan and under the less common consignment and agency arrangements, the Court held that the same
restrictions should be judged under the rule of reason. The only retail restriction challenged by the Government prevented franchised retailers from supplying non-franchised retailers. \textit{Id.}, at 377. The Court apparently perceived no material distinction between the restrictions on distributors and retailers, for it held that:

"The principle is, of course, equally applicable to sales to retailers, and the decree should similarly enjoin the making of any sales to retailers upon any condition, agreement or understanding limiting the retailer's freedom as to where and to whom it will resell the products." \textit{Id.}, at 378.

Applying the rule of reason to the restrictions that were not imposed in conjunction with the sale of bicycles, the Court had little difficulty finding them all reasonable in light of the competitive situation in "the product market as a whole." \textit{Id.}, at 382.

\textbf{B}

In the present case, it is undisputed that title to the televisions passed from Sylvania to Continental. Thus, the \textit{Schwinn per se} rule applies unless Sylvania's restriction on locations falls outside Schwinn's prohibition against a manufacturer attempting to restrict a "retailer's freedom as to where and to whom it will resell the products." \textit{Id.}, at 378. As the Court of
Appeals conceded, the language of Schwinn is clearly broad enough to apply to the present case. Unlike the Court of Appeals, however, we are unable to find a principled basis for distinguishing Schwinn from the case now before us.

Both Schwinn and Sylvania sought to reduce but not to eliminate competition among their respective retailers through the adoption of a franchise system. Although it was not one of the issues addressed by the District Court or presented on appeal by the Government, the Schwinn franchise plan included a location restriction similar to the one challenged here. These restrictions allowed Schwinn and Sylvania to regulate the amount of competition among their retailers by preventing a franchisee from selling franchised products from outlets other than the one covered by the franchise agreement. To exactly the same end, the Schwinn franchise plan included a companion restriction, apparently not found in the Sylvania plan, that prohibited franchised retailers from selling Schwinn products to non-franchised retailers. In Schwinn the Court expressly held that this restriction was impermissible under the broad principle stated there. In intent and competitive impact, the retail customer restriction in Schwinn is indistinguishable from the location restriction in the present case. In both cases the restrictions limited the freedom of the retailer to
dispose of the purchased products as he desired. The fact that one restriction was addressed to territory and the other to customers seems irrelevant to functional antitrust analysis and, indeed, to the language and broad thrust of the opinion in Schwinn. 12/

III

Sylvania argues that if Schwinn cannot be distinguished, it should be reconsidered. Although Schwinn is supported by the principle of stare decisis, Illinois Brick Co. v. Illinois, ___ U.S. ___, ___ (1977), we are convinced that the need for clarification of the law in this area justifies reconsideration. Schwinn itself was an abrupt and largely unexplained departure from White Motor Co. v. United States, 372 U.S. 253 (1963), where only four years earlier the Court had refused to endorse a per se rule for vertical restrictions. Since its announcement, Schwinn has been the subject of continuing controversy and confusion, both in the scholarly journals and in the federal courts. The great weight of scholarly opinion has been critical of the decision, 13/ and a number of the federal courts confronted with analogous vertical restrictions have sought to limit its reach. 14/ In our view, the experience of the past ten years should be brought to bear on this subject of considerable commercial importance.
The traditional framework of analysis under § 1 of the Sherman Act is familiar and does not require extended discussion. Section 1 prohibits "[e]very contract, combination . . . or conspiracy, in restraint of trade or commerce." Since the early years of this century a judicial gloss on this statutory language has established the "rule of reason" as the prevailing standard of analysis. Standard Oil Co. v. United States, 221 U.S. 1 (1911). Under this rule, the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as anti-competitive. 15/ Per se rules of illegality are discrete and carefully defined exceptions to this general standard. As the Court explained in Northern Pac. R. Co. v. United States, 356 U.S. 1, 5 (1958), "there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." (Emphasis added). 16/

In essence, the issue before us is whether Schwinn's per se rule can be justified under the demanding standards of Northern Pac. R. Co. The Court's refusal to endorse a per se rule in White Motor Co. was based on its
uncertainty as to whether vertical restrictions satisfied those standards. Addressing this question for the first time, the Court stated:

"We need to know more than we do about the actual impact of these arrangements on competition to decide whether they have such a 'pernicious effect on competition and lack . . . any redeeming virtue'. . . ." 372 U.S., at 263, quoting Northern Pac. R. Co. v. United States, supra, at 5.

Only four years later the Court in Schwinn announced its sweeping per se rule without even a reference to Northern Pac. R. Co. and with no explanation of its sudden change in position. 17/ We turn now to consider Schwinn in light of Northern Pac. R. Co.

The market impact of vertical restrictions 18/ is complex because of their potential for a simultaneous reduction of intrabrand competition and stimulation of interbrand competition. 19/ Significantly, the Court in Schwinn did not distinguish among the challenged restrictions on the basis of their individual potential for intrabrand harm or interbrand benefit. Restrictions that completely eliminated intrabrand competition among Schwinn distributors were analyzed no differently than those that merely moderated intrabrand competition among retailers. The pivotal factor was the passage of title: All restrictions were held to be per se illegal where title had passed, and all
were evaluated and sustained under the rule of reason where it had not. The location restriction at issue here would be subject to the same pattern of analysis under Schwinn.

It appears that this distinction between sale and non-sale transactions resulted from the Court's effort to accommodate the perceived intrabrand harm and interbrand benefit of vertical restrictions. The per se rule for sale transactions reflected the view that vertical restrictions are "so obviously destructive" of intrabrand competition 20/ that their use would "open the door to exclusivity of outlets and limitation of territory further than prudence permits." 388 U.S., at 379, 380. 21/ Conversely, the continued adherence to the traditional rule of reason for non-sale transactions reflected the view that the restrictions have too great a potential for the promotion of interbrand competition to justify complete prohibition. 22/ The Court's opinion provides no analytical support for these contrasting positions. Nor is there even an assertion in the opinion that the competitive impact of vertical restrictions is significantly affected by the form of the transaction. Non-sale transactions appear to be excluded from the per se rule, not because of a greater danger of intrabrand harm or a greater promise of interbrand benefit, but
rather because of the Court's unexplained belief that a complete per se prohibition would be too "inflexibile." Id., at 379.

Vertical restrictions reduce intrabrand competition by limiting the number of sellers of a particular product competing for the business of a given group of buyers. Location restrictions have this effect because of practical constraints on the effective marketing area of retail outlets. Although intrabrand competition may be reduced, the ability of retailers to exploit the resulting market power may be limited both by the ability of consumers to travel to other franchised locations and, perhaps more importantly, to purchase the competing products of other manufacturers. None of these key variables, however, is affected by the form of the transaction by which a manufacturer conveys his products to the retailers.

Vertical restrictions promote interbrand competition by allowing the manufacturer to achieve certain efficiencies in the distribution of his products. These "redeeming virtues" are implicit in every decision sustaining vertical restrictions under the rule of reason. Economists have identified a number of ways in which manufacturers can use such restrictions to compete more effectively against other manufacturers. See,
e.g., Preston, Restrictive Distribution Arrangements: Economic Analysis and Public Policy Standards, 30 Law & Contemp. Prob. 506, 511 (1965). For example, new manufacturers and manufacturers entering new markets can use the restrictions to offer a somewhat higher return in order to induce competent and aggressive retailers to distribute their products. Established manufacturers can use them to induce retailers to engage in promotional activities or to provide service and repair facilities necessary to the efficient marketing of their products. Service and repair are vital for many products, such as automobiles and major household appliances. The availability and quality of such services affect a manufacturer's good will and the competitiveness of his product. Because of market imperfections such as the so-called "free rider" effect, these services might not be provided by retailers in a purely competitive situation, despite the fact that each retailer's benefit would be greater if all provided the services than if none did. Bork, The Rule of Reason and the Per Se Concept: Price Fixing and Market Division II, 75 Yale L.J. 373, 403 (1966); Posner, supra n. 13, at 285; cf. P. Samuelson, Economics 506-07 (10th ed. 1976).

Economists also have argued that manufacturers have an economic interest in maintaining as much
intrabrand competition as is consistent with the efficient distribution of their products. Bork, supra, at 403; Posner, supra, n. 13, at 283, 287-288. Although the view that the manufacturer's interest necessarily corresponds with that of the public is not universally shared, even the leading critic of vertical restrictions concedes that Schwinn's distinction between sale and non-sale transactions is essentially unrelated to any relevant economic impact. Comanor, Vertical Territorial and Customer Restrictions: White Motor and Its Aftermath, 81 Harv. L. Rev. 1419, 1422 (1968). Indeed, to the extent that the form of the transaction is related to interbrand benefits, the Court's distinction is inconsistent with its articulated concern for the ability of smaller firms to compete effectively with larger ones. Capital requirements and administrative expenses may prevent smaller firms from using the exception for non-sale transactions. See, e.g., McLaren, supra n. 13, at 145; Phillips, Schwinn Rules and the "New Economics" of Vertical Relationships, 44 Antitrust L.J. 573, 576 (1975); Pollock, supra n. 13, at 610.

We conclude that there is no justification for the distinction drawn in Schwinn between sale and non-sale transactions. The question remains whether the per se rule stated in Schwinn should be expanded to include
non-sale transactions or abandoned in favor of a return to the rule of reason. We have found no persuasive support for expanding the rule. As noted above, the Schwinn Court recognized the undesirability of "prohibit[ing] all vertical restrictions of territory and all franchising . . ." 388 U.S., at 379, 380. 27/ And even Continental does not urge us to hold that all such restrictions are per se illegal.

We revert to the standard articulated in Northern Pac. R. Co., and reiterated in White Motor, for determining whether vertical restrictions must be "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use". 356 U.S., at 5. Such restrictions, in varying forms, are widely used in our free market economy. As indicated above, there is substantial scholarly and judicial authority supporting their social utility and economic soundness. There is relatively little authority to the contrary. 28/ Certainly, there has been no showing in this case, either generally or with respect to Sylvania's agreements, that vertical restrictions have or are likely to have a "pernicious effect on competition" or that they "lack . . . any redeeming virtue." 29/ Accordingly, we conclude that the per se rule stated in Schwinn must be
overruled. In so holding we do not foreclose the possibility that particular applications of vertical restrictions might justify per se prohibition under Northern Pac. R. Co. But we do make clear that departure from the rule of reason standard must be based upon demonstrable economic effect rather than - as in Schwinn - upon formalistic line-drawing.

In sum, we conclude that the appropriate decision is to return to the rule of reason that governed vertical restrictions prior to Schwinn. When competitive effects are shown to result from particular vertical restrictions they can be adequately policed under the rule of reason, the standard traditionally applied for the majority of anti-competitive practices challenged under § 1 of the Act. Accordingly, the decision of the Court of Appeals is

Affirmed.
FOOTNOTES

1/ RCA at that time was the dominant firm with as much as as 60 to 70 percent of national television sales in an industry with more than 100 manufacturers.

2/ The number of retailers selling Sylvania products declined significantly as a result of the change, but in 1965 there were at least two franchised Sylvania retailers in each metropolitan center of more than 100,000 population.

3/ Sylvania imposed no restrictions on the right of the franchisee to sell the products of competing manufacturers.

4/ Sylvania's market share in San Francisco was approximately 2.5 percent -- half its national and Northern California average.

5/ There are in fact four corporate petitioners: Continental T.V., Inc.; A & G Sales; Sylpac, Inc.; and S.A.M. Industries, Inc. All are owned in large part by the same individual, and all conducted business.
under the trade style of "Continental T.V." We adopt the convention used by the court below of referring to petitioners collectively as "Continental."

6/ Sylvania had achieved exceptional results in Sacramento, where its market share exceeded 15 percent in 1965.

7/ In its findings of fact made in conjunction with Continental's plea for injunctive relief, the District Court rejected Sylvania's claim that its actions were prompted by independent concerns over Continental's credit. The jury's verdict is ambiguous on this point. In any event, we do not consider it relevant to the issue before us.

8/ Although Sylvania contended in the District Court that its policy was unilaterally enforced, it now concedes that its location restriction involved understandings or agreements with the retailers.

9/ The jury also found that Maguire had not conspired with Sylvania with respect to this violation. Other claims made by Continental were either rejected by the jury or withdrawn by Continental. Most important was
the jury's rejection of the allegation that the location restriction was part of a larger scheme to fix prices. A pendent claim that Sylvania and Maguire had willfully and maliciously caused injury to Continental's business in violation of California law also was rejected by the jury, and a pendent breach of contract claim was withdrawn by Continental during the course of the proceedings. The parties eventually stipulated to a judgment for Maguire on its claim against Continental.

10/ There were two major dissenting opinions. Judge Kilkenny argued that the present case is indistinguishable from Schwinn and that the jury had been correctly instructed. Agreeing with Judge Kilkenny's interpretation of Schwinn, Judge Browning stated that he found the interpretation responsive to and justified by the need to protect "individual traders from unnecessary restrictions upon their freedom of action." 537 F.2d, at 1021.

11/ This Court has never given plenary consideration to the question of the proper antitrust analysis of location restrictions. Before Schwinn such restrictions had been sustained in Boro Hall Corp. v. General Motors Corp., 112 F.2d 822 (CA 2 1942). Since the
decision in Schwinn, location restrictions have been sustained by three Courts of Appeals, including the decision below. *Salco Corp. v. General Motors Corp.*, 517 F.2d 567 (CA 10 1975); *Kaiser v. General Motors Corp.*, 396 F. Supp. 33 (E.D. Pa. 1975), aff'd without opinion, 530 F.2d 964 (CA 3 1976).

12/ Sylvania's suggested distinction focuses on a comparison of the likely diminution of intrabrand competition under the location clause and under the exclusive distributor territories in *Schwinn* and ignores the customer restrictions in *Schwinn* on the theory that Sylvania's franchise agreement embodied no similar provisions. Continental's response is that a location restriction also is capable theoretically of producing complete insulation from intrabrand competition. Despite this possibility, it seems more likely that only a manufacturer oblivious to its own interest in effective market development would use the policy to achieve that result. In any event, we consider the comparison drawn in the text to be the relevant one. As Chief Justice Hughes stated in *Appalachian Coals, Inc. v. United States*, 288 U.S. 344, 363, 377, "Realities must dominate the judgment .... The Anti-Trust Act aims at substance."
of a Partial Per Se Approach; Zimmerman, Distribution Restrictions After Sealy and Schwinn, 12 Antitrust Bull. 1181 (1967). For a more inclusive list of articles and comments, see 537 F.2d, at 988 n.13.

14/ Indeed, as one commentator has observed, many courts "have struggled to distinguish or limit Schwinn in ways that are a tribute to judicial ingenuity." Robinson, supra n. 13, at 272. Thus, the statement in Schwinn that post-sale vertical restrictions as to customers or territories are "unreasonable without more," 388 U.S., at 379, has been interpreted to allow an exception to the per se rule where the manufacturer proves "more" by showing that the restraints will protect consumers against injury and the manufacturer against product liability claims. See, e.g., Tripoli Co. v. Wella Corp., 425 F.2d 932, 936-938 (CA 3 1970) (en banc). Similarly, the statement that Schwinn's enforcement of its restrictions had been "firm and resolute," 388 U.S., at 372, has been relied upon to distinguish cases lacking that element. See, e.g., Janel Sales Corp. v. Lanvin Parfums Inc., 396 F.2d 398, 406 (CA 2 1968). Other factual distinctions have been drawn to justify upholding territorial restrictions that would seem to fall within the scope of the Schwinn per se rule. See, e.g., Carter
One of the most frequently cited statements of the rule of reason is that of Justice Brandeis in *Chicago Bd. of Trade v. United States*, 246 U.S. 231, 238 (1918):

"The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable."
The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of the intent may help the court to interpret facts and to predict consequences."

16/ Per se rules thus require the Court to make broad generalizations about the social utility of particular commercial practices. The probability that anti-competitive consequences will result from a practice and the severity of those consequences must be balanced against its pro-competitive consequences. Cases that do not fit the generalization may arise, but a per se rule reflects the judgment that such cases are not sufficiently common or important to justify the time and expense necessary to identify them. Once established, per se rules tend to provide guidance to the business community and to minimize the burdens on litigants and the judicial system of the more complex rule of reason trials, see Northern Pac. R. Co. v. United States, 356 U.S. 1, 5 (1958); United States v. Topco Associates, 405 U.S. 596, 609-610 (1972), but those advantages are not sufficient in themselves to justify the creation of per se rules. If it were otherwise, all of antitrust law would be reduced to per se rules, thus introducing an unintended and undesirable rigidity in the law.
17/ After White Motor Co., the Courts of Appeals continued to evaluate territorial restrictions according to the rule of reason. Sandura Co. v. F.T.C., 339 F.2d 847 (CA 6 1964); Snap-On Tools Corp. v. F.T.C., 321 F.2d 825 (CA 7 1963). For an exposition of the history of the antitrust analysis of vertical restrictions before Schwinn, see ABA Monograph No. 2, supra n. 14, at 6-7.

18/ As in Schwinn, we are concerned here only with non-price vertical restrictions. The per se illegality of price restrictions has been established firmly for many years and involves significantly different questions of analysis and policy.

19/ Interbrand competition is the competition between the manufacturers of the same generic product -- television sets in this case -- and is the primary concern of antitrust law. The extreme example of a deficiency of interbrand competition is monopoly, where there is only one manufacturer. In contrast, intrabrand competition is the competition between the distributors -- wholesale or retail -- of the product of a particular manufacturer.

The degree of intrabrand competition is
wholly independent of the level of interbrand competition confronting the manufacturer. Thus, there may be fierce intrabrand competition among the distributors of a product produced by a monopolist and no intrabrand competition among the distributors of a product produced by a firm in a highly competitive industry. But when interbrand competition exists, as it does among television manufacturers, it provides a significant check on the exploitation of intrabrand market power because of the ability of consumers to substitute a different brand of the same product.

20/ The Court did not specifically refer to intrabrand competition, but this meaning is clear from the context.

21/ The Court also stated that to impose vertical restrictions in sale transactions would "violate the ancient rule against restraints on alienation." 388 U.S., at 380. This isolated reference has provoked sharp criticism from virtually all of the commentators on the decision, most of whom have regarded the Court's apparent reliance on the "ancient rule" as both a misreading of legal history and a perversion of antitrust analysis. See, e.g., Handler, supra n. 13, at 1684-1686; Posner,
supra n. 13, at 295-296; Robinson, supra n. 13, at 271; but see Louis, supra n. 13, at 276 n. 6. We quite agree with MR. JUSTICE STEWART's dissenting comment in Schwinn that "the state of the common law 400 or even 100 years ago is irrelevant to the issue before us: the effect of the antitrust laws upon vertical distributional restraints in the American economy today." 388 U.S., at 392.

We are similarly unable to accept Judge Browning's argument in his dissent below that the Sherman Act was intended to prohibit restrictions on the autonomy of independent businessmen even though the restrictions have no impact on "price, quality, and quantity of goods and services." 537 F.2d, at 1019. Competitive economies have social and political as well as economic advantages, see, e.g., Northern Pac. R. Co. v. United States, 356 U.S., at 4, but an antitrust policy divorced from market considerations would lack any objective benchmarks. As Justice Brandeis reminded us, "Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain is of their very essence." Chicago Board of Trade v. United States, 246 U.S., at 238.

22/ In that regard, the Court specifically stated that a more complete prohibition "might severely hamper smaller enterprises resorting to reasonable methods
of meeting the competition of giants and merchandising through independent dealers." 388 U.S., at 380. The Court also broadly hinted that it would recognize additional exceptions to the per se rule for new entrants in an industry and for failing firms, both of which were mentioned in White Motor as candidates for such exceptions. Id., at 374. The Court might have limited the exceptions to the per se rule to these situations, which present the strongest arguments for the sacrifice of intrabrand competition for interbrand competition. Significantly, it chose instead to create the more extensive exception for non-sale transactions which is available to all businesses, regardless of their size, financial health, or market share. This broader exception demonstrates even more clearly the Court's awareness of "redeeming virtues" of vertical restrictions.

Marketing efficiency is not the only legitimate reason for a manufacturer's desire to exert control over the manner in which his products are sold and serviced. As a result of statutory and common law developments, society increasingly demands that manufacturers assume direct responsibility for the safety and quality of their products. For example, at the federal level, apart from more specialized requirements,
all manufacturers of consumer products have safety responsibilities under the Consumer Product Safety Act, 15 U.S.C. § 2051 et seq., and obligations for warranties under the Consumer Product Warranties Act, 15 U.S.C. § 2301 et seq. Similar obligations are imposed by state law. See, e.g., California Civil Code § 1709 et seq. The legitimacy of these concerns has been recognized in cases involving vertical restrictions. See, e.g., Tripoli Co. v. Wella Corp., supra n. 14.

24/ "Generally a manufacturer would prefer the lowest retail price possible, once its price to dealers has been set, because a lower retail price means increased sales and higher manufacturer revenues." Note, 88 Harv. L. Rev. 636, 641 (1975) (footnote omitted). In this context, a manufacturer is likely to view the difference between the price at which it sells to its retailers and its price to the consumer as his cost of distribution, which it would prefer to minimize. Posner, supra n. 13 at 283.

25/ Professor Comanor argues that the promotional activities encouraged by vertical restrictions result in product differentiation and, therefore, a decrease in interbrand competition. This argument is flawed by its necessary assumption that a large part of
the promotional efforts resulting from vertical restrictions will not convey socially desirable information about product availability, price, quality and services. Nor is it clear that a per se rule would result in anything more than a shift to less efficient method of obtaining the same promotional effects.

26/ We also note that per se rules in this area may work to the ultimate detriment of the small businessmen who operate as franchisees. To the extent that a per se rule prevents a firm from using the franchise system to achieve efficiencies that it perceives as important to its successful operation, the rule creates an incentive for vertical integration into the distribution system, thereby eliminating to that extent the role of independent businessmen. See, e.g., Baker, supra n. 13, at 538; Keck, The Schwinn Case, 23 Bus. Law. 669 (1969).

27/ Continental's contention that balancing intrabrand and interbrand competitive effects of vertical restrictions is not a "proper part of the judicial function," Pet. Br., at 52, is refuted by Schwinn itself. United States v. Topco Associates, Inc., 405 U.S. 596 (1972), is not to the contrary, for it involved a horizontal restriction among ostensible competitors.

28/ There may be occasional problems in differentiating vertical restrictions from horizontal restrictions originating in agreements among the retailers. There is no doubt that restrictions in the latter category would be illegal per se, see, e.g., United States v. General Motors Corp., 384 U.S. 127 (1966); United States v. Topco Associates, Inc., 405 U.S. 596 (1972), and we do not regard the problems of proof as sufficiently great as to justify a per se rule.

29/ The location restriction used by Sylvania was neither the least nor the most restrictive provision that it could have used. See ABA Monograph No. 2, supra n. 14, at 20-25. But we agree that the implicit judgment in Schwinn that a per se rule based on the nature of the restriction is, in general, undesirable. Although distinctions can be drawn among the frequently used restrictions, we are inclined to view them as differences of degree and form. See Robinson, supra n. 13, at 279; Averill, Sealy, Schwinn and Sherman One: An Analysis and Prognosis, 15 N.Y.L.F. 39, 65 (1969). We are
unable to perceive significant social gain from channelling transactions into one form or another. Finally, we agree with the Court in Schwinn that the advantages of vertical restrictions should not be limited to the categories of new entrants and failing firms. Sylvania was faltering, if not failing, and we think it would be unduly artificial to deny it the use of valuable competitive tools.

30/ The importance of stare decisis is, of course, unquestioned, but as Mr. Justice Frankfurter stated in Helvering v. Hallock, 309 U.S. 106, 119 (1940): "stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine moreembracing in its scope, intrinsically sounder, and verified by experience."