

## **Position of the Czech Office for the Protection of Competition to the questions raised in the Commission's *Issues Paper on Resale Price Maintenance & Resale Restrictions***

The Office for the Protection of Competition (hereinafter "the Office") welcomes and appreciates the initiative of the European Commission as far as the amendment of the Block Exemption Regulation on Vertical Restraints is concerned and would like to state its position in response to the questions raised in the Commission's *Issues Paper on Resale Price Maintenance & Resale Restrictions* and during meeting of the Working Group on review of Vertical restraints block exemptions regulation.

### **I. Legal Treatment of RPM**

With regard to the possibilities concerning legal treatment of RPM, the Office fully supports the opinion of the Commission considering RPM as a hardcore restriction, which nevertheless could benefit from the exemption of Article 81 (3) of the Treaty should the pro-competitive efficiencies be proven.

The Office recently issued a number of decisions concerning RPM; it started to deal with this issue mainly due to the fact that, according to numerous reports and market researches, the Czech Republic is one of the countries with the highest retail prices in Central Europe. The Office has thus far completed investigations into the sales of outdoor equipments, selective cosmetics and books. One of the most important RPM cases was closed following the Office's settlement procedure; the Office fined the producer of non-alcoholic beverages for entering into a long-term agreement containing fixed prices to be observed by its distributors.

Due to the fact that undertakings have never claimed efficiencies resulting from their relevant conduct (with the exception of the abovementioned non-alcoholic beverages case, where the undertakings concerned nonetheless admitted the infringement), the Office has never had an opportunity to carry out an in-depth analysis of whether the conditions of Article 81 (3) of the Treaty were met. Notwithstanding this fact, the Office takes the position that undertakings who want to benefit from Article 81 (3) of the Treaty are responsible for claiming and proving that conditions of that Article are fulfilled and therefore efficiencies outweigh the negative effects of RPM. The legal and economic analysis are to encompass several steps, especially the assessment of the causal link between RPM and efficiencies, absence of other (less anti-competitive) alternative pursuing the same aim, passing on efficiencies to the consumers and the fact that positive effects of efficiencies outweigh the negative ones.

### **II. Internet Sales**

Despite having limited practical experience with internet sales, the Office is convinced that the distinction between active and passive sales is still useful and qualifying the internet as active sales in all cases might be to the detriment of consumers. The only case dealt with by the Office concerning internet sales was settled under the Office's settlement procedure, without issuing a formal decision. The selective distribution system of an importer of chainsaws and other garden power tools raised competition concerns due to the restriction of internet sales of these products. In order to disperse competition concerns, the importer permitted selling and promoting these products on the internet under the condition that specific requirements guaranteeing the safety of final consumers would be fulfilled.

The Office holds the view that undertakings should be free to set up their selective distribution system on the qualitative condition of having a brick and mortar shop. However, as far as the quantitative condition of minimum sales threshold via brick and mortar shop as a percentage of total sales is concerned, the Office would like to point out that such a provision might go beyond its intended purpose, i.e. securing quality of sales, and it may on the contrary *de facto* lead to foreclosure of internet sales, as the minimum sales threshold via brick and mortar shop could amount to or even exceed the whole volume of sales of a particular distributor.

On the other hand, the Office fully supports the amendment to the Guidelines on *dual pricing* as proposed on the Working Group. The Office is of the opinion that *dual pricing* could lead to the limitation of RPM within the European Union and the Czech Republic as well. RPM is highly extended in the Czech Republic and its introduction is often justified by the protection of brick and mortar shops against internet sales.