

Why is resale price maintenance illegal?

The freedom of cooperation between undertakings affects the basic interests of undertakings. The different forms of cooperation help to harmonise the complex parts of the process of sales. Why is price maintenance still penalised by the Hungarian Competition Authority? The rules of competition law basically wish to hinder the conclusion of agreements restricting competition since such agreements are to the detriment of unrelated parties and confers advantage on the parties. The agreements with vertical nature, which determine the sales price at the different stages of the distribution chain, also fall within the scope of illegal conduct.

The determination of the resale price may have severe effects which restrict competition. The fixed price hinders the supplier to have benefit from the increase of sales, and thus to reduce its prices offered to its distributors. Furthermore, it can also facilitate collusion between distributors. It can mitigate the competition between manufacturers and retailers in general, and can reduce the pressure on the margin of the manufacturer.

It is also emphasized in the latest decree No. **Vj/104/2014** of the Hungarian Competition Authority. The Competition Council acting in the specific case refers in its justification to that the competition law of the European Union must already be applied if the practices examined are capable of having an impact on the trade between the Member States. It is interesting that **it can be also stated when wholesalers and retailers are only engaged in an activity in Hungary but the manufacturer of the products marketed by the resellers operates in a Member States other than Hungary.**

In terms of the EU regulation regarding vertical agreements, **the main element of the concept of the agreement is the concurrence of will between the contracting Parties. The practice examined can be deemed to be a vertical agreement also in the case when there is no explicit agreement, which expresses the concurrence of wills because the Hungarian Competition Authority can still prove that either Party agree with the unilateral policy of the other Party.** It must be stressed that **the intention for the agreement can be also expressed in an indirect way.** The acceptance of the price offered alone could refer to that a concurrence of wills has been established.

In connection with the case examined, it can also be stated that in two cases, the acting Competition Council easily makes decisions on the establishment of the concurrence of wills. The first case is **when it has found specific evidences**, for example, in the course of examining the email communication. The wholesaler makes a proposal to the retailer, for example, as follows:



“I think, it should be repriced. You cannot make a profit and it is not good for the market.”, and it is answered as follows,” I have corrected the prices.” The other obvious case is and at this time the concurrence of wills and with it the infringement of the retailer can also be easily excluded, **if the request regarding the increase in prices is refused** and the retailer expressly distances oneself from the attempt to restrict competition.