

Resale Price Maintenance in EU Competition Law and Reflections on the development of E-commerce

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Abstract

Resale-price-maintenance (RPM) has both pro-competitive and anti-competitive effects in relation to solving the free-riding theory and outlets theory. The U.S. Supreme Court in the *Leegin* case (2007) acknowledged the free-riding theory. Compared with the U.S., the EU views the lowest resale-price-maintenance as a hardcore restriction in the Vertical Block Exemption Regulation, and is not exempt from the prohibition. Furthermore, it is very difficult for RPM to fit the requirements of Article 101(3) of the Treaty on the Functioning of the European Union. On July 24, 2018, the EU commission sanctioned four consumer electronics manufacturers, including ASUS, for implementing their resale-price-maintenance policy against their online retailers, which was therefore deemed to be a violation of EU competition law by the EU Commission. From these sanctions we can see that the EU commission has maintained a consistent position whereby the lowest resale-price-maintenance is categorized as a hardcore restriction according to Article 101(1), is presumed to have an anti-competitive effect, which is not suited to the Vertical Block Exemption Regulation, and also does not give rise to much possibility for qualifying the requirements of the individual exemption of Article 101(3). This position is beneficial to the low-price war between online retailers, and thereby allows consumers to buy cheap products. However, on the other hand, under this E-commerce development, the low-price competition by online retailers deprives bricks-and-mortar retailers of the space to survive. This phenomenon, which has less to do with free-riding theory, and more to do with outlets theory, is related to the survival of bricks-and-mortar retailers. While the number of bricks-and-mortar retailers has decreased, the overall number of manufacturers' products sold has also declined. Finally, several alternatives to RPM are discussed, but there are still obstacles both from the legal and practical aspects.

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