LIDC

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INTERNATIONAL LEAGUE OF COMPETITION LAW
INTERNATIONALE LIGA FÜR WETTBEWERBSRECHT

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Which, if any, agreements, practices or information exchanges about prices should be prohibited in vertical relationships?

Taking into consideration: (1) recent changes in the economic theory underpinning resale price maintenance (**RPM**); (2) developments such as the *Leegin* case in the US and recent changes to the European Commission's Guidelines on Vertical Restraints; and (3) the significant variation in national enforcement policies and practices across the world in relation to RPM and the legal uncertainty which this generates, the LIDC makes the following recommendations:

i) Genuine maximum resale prices and recommended resale prices should be permissible without regard to any market share threshold.

ii) The overall effect of the arrangements on competition should be considered and full account should be taken of efficiency arguments brought by parties, so that RPM could be permissible or exempted and should be presumed not to be anti-competitive where both parties have a low market share (for example, less than 15%).

iii) Genuine short-term low price campaigns with fixed prices shall be presumed to be permissible regardless of the parties' market shares.

iv) Minimum and fixed resale prices shall be permissible or exempted if efficiencies may be proved such as:
   - Introduction of a new product/service or a supplier entering a new market;
   - Pre-sales and after-sales services.

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