



# **B**UNDES**W**ETTBEWERBS**B**EHÖRDE

**4th Competition Day 2010**

**Beograd, April 12, 2010**

**Resale Price Maintenance (RPM)**

**Theodor Thanner, Director General  
Austrian Federal Competition Authority**

## Outline of the presentation

- The starting points of the discussion
- The pros of RPM
- The cons of RPM
- How to deal with it?
- The approach taken by the new BER
- Some issues for discussion

## The starting points of the discussion

- In 1911 the US Supreme Court in „Dr Miles“ decided on the per se-illegality of RPM.
- From the 70s on this decision got more and more questioned (background: evolution of an effects-based approach in competition policy)
- Courts tried to „circumvent“ the severity of this judgement („Colgate“ case ...)
- Finally on June 28, 2007 the Supr. Court made the rule of reason applicable („Leegin case“)

## The pros of RPM

- The core reasoning: RPM avoids double marginalisation (= both vertical contractors demand (monopoly) profits)
- RPM prevents free-riding (on quality, service etc. efforts)
- RPM as an incentive for market entry
- RPM enhances stock-keeping
- → Inter-brand competition is essential

## The cons of RPM

- The core reasoning: RPM is always about raising prices (minimum price fixing!), but competition aims at lowering prices (??).
- RPM strengthens up-stream market power
- RPM facilitates collusion (facilitates the monitoring of prices of competitors)
- → How important is intra-brand competition?

## How to deal with it?

- In 2007 the 1st Vienna Competition Conference discussed several approaches, how to balance the pros and cons of RPM:
- Leave it with (almost a) per se prohibition
- Institute a safe harbour (market share threshold? enterprise size?)
- On a case by case basis
- Applying a rebuttable presumption

## The approach taken by the new BER

- The Commission as well as the majority of member states (we too) opted for a flexible and cautious approach in the new Block Exemption Regulation (BER):
- RPM is still dealt with as a hard core restriction in the regulation as such
- But in the (accompanying) guidelines also the possible benefits of RPM are taken into account

## Some issues for discussion

- What does case experience tell us?
- Which analytical methods should we apply in balancing the pros and cons?
- Are presumptions an appropriate tool for making enforcement more efficient?
- What could be the likely issues against the background of the structural features of the Serbian economy?

# BUNDESWETTBEWERBSBEHÖRDE

Thank you  
for your attention !

