

Vertical relationships subject to competition law prohibition include: resale price maintenance (RPM), exclusive territorial and customer restrictions (ETCR), exclusive dealing (ED), tied sales (TS) and vertical franchising agreements (FA). Except RPM, all other vertical arrangements are basically examined under the rule of reason approach in the Triad. Such a convergence in the treatment of vertical arrangements reflects the philosophy in the Triad that vertical contracts can, depending on circumstances, both improve market competition and economic welfare or reduce competition and welfare in the economy.

All the Triad jurisdictions provide for a *per se* prohibition of RPM business arrangements. The philosophy behind the RPM illegality is the apprehension that RPM would facilitate horizontal price fixing or cartelization in the Triad.

In sum, all Triad jurisdictions treat vertical arrangements, except RPM, on a case-by-case basis, i.e., the rule of reason standard. Again, the U.S. is the only country among the Triad that still retains some echo of *per se* illegality/tests for exclusive dealing and, considerably less so, for tied sales business practices. Thus, the philosophy with regard to vertical restraints, the differences are not particularly striking, although with the U.S. set moderately apart.

● Enforcement in practice

Whereas enforcement in the U.S. and the EU regularly feature criminal prosecutions and penalties for competition law violations, in Japan the JFTC pursues primarily a civil-administrative process. Although criminal prosecution may be utilized for private monopolization and unreasonable restraints of trade, the agency appears to regard criminal indictment as a method of last resort.¹⁵⁴

U.S.: In addition to federal authorities, the enforcement system in the U.S. also has other points of entry for state attorneys general and private parties. The ethics of democratic rights and individualistic profit motivate individuals to come to court and even potentially to amend the common law. The profit

¹⁵⁴With regard to this issue, see Sharma, Thomson and Christie, *op.cit.*, 1994.