

## **Vertical restraint – Case Work**

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**Swiss Competition Commission (COMCO)**

Macchina (Switzerland) SA (Macchina) is the exclusive importer of Macchina brand motorcycles for Switzerland. It is a subsidiary, which its 100% shares are held by Veicoli Macchina s.a.r.l., Italy.

In Switzerland, Macchina brand motorcycles are sold through a selective and exclusive distribution network. This network is constructed in the following way: Macchina as exclusive and official importer distributes the motorcycles to its concessionaires as well as to its own branches. The above-mentioned resale motorcycles to final sellers (regional active agents).

There are two types of distribution contracts imposed by Macchina to its distributors. The first one rules the relations between Macchina and its concessionaires, the second one the relations between concessionaires and final sellers.

These two types of contracts respectively allow concessionaire and agent to deploy their commercial activity in a "first responsibility" geographical zone, in which they have directly or indirectly exclusivity for the implementation of any commercial establishment for sale or after-sales activities with permanent or provisional character.

Concessionaires and agents must accomplish some conditions to be admitted into Macchina network, especially to have minimal stock and achieve annual minimal sales objectives. In turn, network members are beneficiaries of provisions implemented by Macchina such as technical, commercial and publicity support.

The contracts mentioned have the following clauses:

### **Article 3.1**

"... Concessionaire (or agent) compromise to do the best efforts for sell every year the minimal amount of new vehicles established by common agreement and settled in Annex II of the present contract, which will be acquired directly from the importer or from an official Swiss or Lichtenstein agent".

### **Article 5.2**

"... Concessionaire (or agent) are not allowed to sell new or register vehicles for less than three months to intermediation enterprises, individuals or legal entities who buy for resale or which its main activity is equivalent to resale, unless they are accepted network members of importer to resale those vehicles, established in Switzerland or Lichtenstein".

Macchina Swiss sales representative association would like to know if these two clauses are allowed according to competition law.