

Brussels, 22 March 2002

## **Commission accepts undertaking in competition proceedings regarding German book price fixing**

***The European Commission will no longer pursue competition proceedings regarding the German book price fixing system (so-called 'Sammelrevers'). Following the sending of a Statement of Objections (see IP/01/1035 of 19 July 2001), the Börsenverein des Deutschen Buchhandels e.V. (German publishers' and booksellers' association), as well as the publisher Verlagsgruppe Random House GmbH and the bookseller Koch, Neff & Oetinger GmbH, submitted an Undertaking (see annex) which meets fully and definitively the objections raised by the Commission. It guarantees the freedom of direct cross-border selling of German books to final consumers in Germany, in particular, via the Internet. In parallel, it establishes an exclusive list of conditions under which the Commission exceptionally accepts that a circumvention of the national price fixing occurs. These conditions ensure that German publishers and booksellers cannot consider direct cross-border Internet selling of cheaper books by foreign retailers to be a circumvention of the 'Sammelrevers' system. Nor can they hinder these sales by means of a collective embargo. As a result, if correctly implemented, the current German price fixing system has no appreciable effect on trade between Member States and thus does not infringe the European Union competition rules.***

"On the basis of EU competition law the Commission has no problem with national book price fixing systems which do not appreciably affect trade between Member States. By clearing the German price fixing system the Commission, in a perspective of subsidiarity, also takes account of the national interest in maintaining these systems which are aimed at preserving cultural and linguistic diversity in Europe," Competition Commissioner Mario Monti said.

The Commission in July 2001 – with a Statement of Objections – initiated proceedings triggered by indications that the German publishers and booksellers – with the participation of the Börsenverein des Deutschen Buchhandels e.V. (German publishers' and booksellers' association), the publisher Verlagsgruppe Random House GmbH as well as the bookseller Koch, Neff & Oetinger GmbH – applied the Sammelrevers in a way that, according to the preliminary findings of the Commission, appreciably affected trade between Member States and, therefore, amounted to an infringement of Article 81 of the EC Treaty.

The Commission had also received complaints from Austrian bookseller Libro AG and its affiliated Internet branch Lion.cc, who sold German best-sellers to German final consumers via the Internet at prices far below the fixed prices, as well as from Belgian Internet bookseller Proxis who planned similar rebate sales on the German market. The complaints were essentially based on the suspicion of a concerted embargo at the expense of foreign Internet booksellers that, according to the Commission's preliminary judgment, served to block cross-border Internet trade in cut-price books with German final consumers.

In parallel to ongoing formal proceedings, including a Hearing on 30 November 2001, the Commission, together with the Börsenverein, Verlagsgruppe Random House GmbH and Koch, Neff & Oetinger GmbH, reached agreement on the submission of an Undertaking which, in the Commission's view, definitively and fully meets the objections raised.

The Undertaking – the full wording of which is annexed to this press release – guarantees the freedom of direct cross-border selling of German books to final consumers in Germany, in particular via the Internet, including ancillary services, such as cross-border advertising. At the same time, it establishes an exclusive list of conditions under which German booksellers and publishers can exceptionally stop cross-border selling to German final consumers if found to be a circumvention of the Sammelrevers agreement. In that case, the Undertaking makes it clear that for circumvention to take place it would require a German bookseller bound by the fixed price to take the initiative of circumventing the price fixing possibly by means of or with the help of a foreign bookseller. The listed categories of circumvention behaviour are to be interpreted restrictively. Moreover, the burden of proof for the relevant "objective circumstances" rests with the publishers and booksellers invoking circumvention.

The Undertaking and its defined list of circumvention behaviour merely concerns the issue of inapplicability of Article 81 paragraph 1 of the EC Treaty. In the Commission's view, the 'Sammelrevers', as long as it is interpreted and applied in conformity with this Undertaking and the Commission Notice pursuant to Article 19 paragraph 3 of Regulation No. 17 of 10 June 2000 (see IP/01/1035 of 19 July 2001), does not appreciably affect trade between Member States in the sense of Article 81 paragraph 1 of the EC Treaty. The Undertaking's content however has no bearing whatsoever on the assessment of issues related to the national book price fixing in the light of EC law as a whole, in particular, the free movement of goods and services as well as the freedom of establishment. Moreover, the Undertaking's validity in time is limited until the entry into force of a German law on fixed book prices or comparable State measures that replace the contractual price fixing system.

The detailed definition of the notion of circumvention in the Undertaking promotes legal certainty not only for the publishers participating in the 'Sammelrevers' and the booksellers bound by it, but also for foreign booksellers who aim at starting sales activity *vis-à-vis* final consumers on the German market for books. The Undertaking ensures that the Commission will intervene in case of concerted blocking of direct cross-border Internet book selling to German customers. For this reason, the complainant Libro agreed with both the Undertaking and the closure of the proceedings whilst Proxis had already withdrawn its complaint shortly before. Therefore, in conformity with its announcement in its press release of 19 July 2001 (IP/01/1035, page 3), the Directorate General Competition of the Commission intends not only to terminate the pending competition proceedings, but also to grant a so-called negative clearance that confirms the compatibility of the 'Sammelrevers' with the competition rules of the EC Treaty. However, the Commission reserves the right to intervene again should the application of the 'Sammelrevers' lead to an adverse effect on trade between Member States.

## Undertaking

**By the Börsenverein des Deutschen Buchhandels e.V., the Verlagsgruppe Random House GmbH and the Koch, Neff & Oetinger GmbH given in the proceedings**

***COMP/C-2/34.657 – Sammelrevers***

***COMP/C-2/37.906 – Internetbuchhandel***

The Börsenverein des Deutschen Buchhandels e.V., the Verlagsgruppe Random House GmbH and the Koch, Neff & Oetinger GmbH give the subsequent Undertaking with respect to the Commission Notice, in particular its paragraphs 7, 8 and 10, pursuant to Article 19(3) of Regulation No 17 on the granting of a negative clearance by reason of the inapplicability of Article 81(1) of the EC Treaty to the Sammelrevers (O.J. C No. 162 of 10 June 2000, p. 25). The Undertaking exclusively refers to the lack of applicability of Article 81(1) EC Treaty to the Sammelrevers and, in particular, has no effect on the assessment and interpretation of either its provisions or future State measures for the regulation of the price fixing of books and other printed products in the light of EC law as a whole, in particular, on the free movement of goods and services as well as the freedom of establishment:

### I.

1. The Sammelrevers does not apply to cross border activities, in particular, cross border sales of books and other printed products to end consumers in Germany including ancillary services, such as cross border advertising. This includes cross border activities in the above sense via the Internet.

2. As an exception to paragraph 1, the Sammelrevers is only applicable to cross border sales of books and other printed products to German end consumers if it is shown on the basis of objective circumstances that a bookseller bound by the Sammelrevers circumvents the retail price maintenance. Circumvention in this sense takes place only if

- a bookseller bound by the Sammelrevers colludes at the retail level with a book seller not bound by the Sammelrevers in order to sell, on the basis of a common plan, books and other printed products to end consumers in Germany at prices below the fixed price. Collusion in this sense takes place, in particular, where the bookseller bound by the Sammelrevers, on the basis of the common plan, makes available Internet access or other communication devices to the bookseller not bound by the Sammelrevers.
- a bookseller bound by the Sammelrevers exports books and other printed products in another Member State for the sole purpose of reselling them to end consumers in Germany, either unilaterally or by means of an affiliated undertaking or a third party not bound by the Sammelrevers.
- a bookseller bound by the Sammelrevers or an undertaking either controlled by or affiliated and intentionally co-operating with the former creates or gains control over an establishment in another Member State for the purpose of circumventing the retail price maintenance under the Sammelrevers.

## **II.**

3. The Sammelrevers applies to cross border sales of books and other printed products to booksellers only if it is shown on the basis of objective circumstances that they were exported for the sole purpose of re-importing them in order to circumvent the retail price maintenance under the Sammelrevers.

## **III.**

4. The clauses under paragraphs 2 and 3 constitute exceptions to be interpreted narrowly.

5. The burden of proof for the presence of objective circumstances establishing circumvention of the retail price maintenance in the sense of paragraphs 2 and 3 lies with the party invoking the exception. The further interpretation of the notion of circumvention is left to the national courts, however, subject to the competence of the European Court of Justice to give preliminary rulings and the Notice on the co-operation between the Commission and the national courts of 13 February 1993 (J.O. C No. 39 of 1993, p. 6).

6. The Sammelrevers is to be applied by the publishers in accordance with proportionality.

## **IV.**

7. This Undertaking is only valid during the maintenance in force of the Sammelrevers 2000 governing the retail price maintenance of books and other printed products in Germany. As soon as the Sammelrevers is repealed by State measures governing the retail price maintenance this Undertaking ceases its validity.

Date and signatures