Competition Law Flash Guides

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Resale Price Maintenance (RPM)

What is an RPM?

Under section 43 of the Competition Act 2007, RPM is a prohibited agreement between a supplier and its dealer (reseller), if the agreement has the object or effect of determining the price at which the dealer will resell the supplier's product or service to customers.

Types of RPM

- Agreement setting minimum resale price, a price level, a fixed price to be observed when reselling
- Absence of terms 'recommended price' on price labels affixed on products
- Price list issued by supplier without mentioning 'recommended price'

What are the risks attached to RPM conducts?

✓ The Act treats a vertical agreement involving RPM as a 'hard-core restriction' of competition. Any agreement between a supplier and a dealer that involves RPM, qualifies as collusive agreement and thus violates the prohibition contained in the Act.

✓ No consideration is required to be given to the economic strength of the parties to the agreement (for instance, their market shares) nor to the 'public benefits' or 'economic efficiencies' which may result from the RPM practice.

✓ The Competition Act provides that RPM agreements may be penalised with fines. Thus, **both the supplier and reseller may be liable to pay fines of up to 10% of their respective turnovers during the period of the breach for up to 5 years, if they have engaged in RPM conduct.**

✓ In addition to fines, enterprises involved may be directed to implement certain measures to ensure that it ceases to be a party to the RPM.

To Keep in Mind

A retailer may be found to be directly or indirectly involved in an unlawful RPM agreement where it has:

✓ facilitated the implementation of an RPM

✓ accepted a periodic offer from its supplier and the offer involves an RPM

✓ accepted rebates, reimbursement of promotional costs by the supplier subject to the observance of a given price level

✓ directly or indirectly required or coerced suppliers to make binding any price/price level upon resellers.

RPM prohibition is a Vertical agreement

The prohibition covers an agreement which is 'vertical', that is the agreement is between enterprises operating at different levels of the supply chain.

For example, the agreement involves a supplier and a distributor; a wholesaler and a retailer; a manufacturer and a wholesaler.

For simplicity, the parties to a RPM agreement are referred to as 'supplier' and 'dealer' (reseller) with the latter reselling the products and services of the former to customers

Genuine price recommendation

RPM does not occur if the supplier genuinely recommends a non-binding minimum resale price or price level to his dealer and where the terms 'recommended price' appear next to the resale price.

These materials do not constitute legal advice and should not be relied upon as such.

The legislation, guidelines and further materials are available on our website www.competitioncommission.mu