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Restricting resale prices: an open letter to suppliers and resellers

You may be aware that the Competition and Markets Authority (CMA) recently imposed a substantial fine – £2.7 million - on a supplier of domestic light fittings for engaging in illegal resale price maintenance (RPM). The supplier tried to dictate the minimum prices at which resellers could sell its products online.

This latest case resulted from reseller complaints and follows two similar CMA investigations last year that saw a supplier of commercial refrigeration equipment fined over £2 million, and a bathroom fittings manufacturer fined over £780,000, for their part in similar RPM activities online.

We receive a steady stream of RPM complaints and take all such complaints seriously. In addition to the latest fine we have sent warning letters to a number of other suppliers in the domestic light fittings sector who we suspect could also be breaking the law by engaging in RPM.

If you receive a CMA warning letter you should take it seriously. The supplier in the latest case ignored a previous warning letter and received a 25% uplift in fine for doing so.

The CMA is publishing this open letter to remind all suppliers and resellers what RPM practices look like, and what to do if they are or may have been involved in them.

What you need to know

Competition law exists to protect businesses and consumers from anti-competitive behaviour. The internet is an increasingly important channel for businesses to advertise and sell their products, as it opens up markets, provides customers with more choice and enhances price competition.

RPM occurs where a supplier and reseller agree that the reseller will sell the supplier's product at or above a particular price. RPM can also be achieved indirectly, for example

as a result of restrictions on discounting or where there are threats or financial incentives to sell at a particular price. RPM is illegal because it constitutes vertical price-fixing, preventing resellers from offering lower prices and setting their prices independently to attract more customers.¹

Case study: *Domestic light fittings*

In the *Domestic light fittings* case, the CMA found that the supplier broke competition law by dictating the minimum prices at which resellers could sell its products online. The supplier set a maximum discount off the recommended resale price (RRP) that resellers were allowed to offer. The supplier used an Internet Licence Agreement (ILA) as a way of enforcing the policy – resellers understood that an unwritten condition of the ILA was agreeing to the pricing restriction.

Whilst it is generally lawful for a supplier to **recommend** retail prices for resellers, in this case the supplier threatened resellers with penalties for not pricing at or above its specified price. Such threats included suspending resellers' accounts or revoking the ILA and the ability to use official images online.

These arrangements restricted the resellers' ability to sell the supplier's products online at independently determined prices and therefore amounted to illegal RPM. This can reduce price competition between competing resellers, and contribute to keeping prices artificially high.

Key points to know

The *domestic light fittings* case has much in common with other recent RPM cases the CMA has taken. Therefore, the CMA would like to highlight important points that are relevant to all businesses where there is a supplier/ reseller relationship.

If you are a supplier:

- **You must not dictate the price at which your products are sold**, either online or through other sales channels.
- Policies that set a **minimum advertised price** for online sales can equate to RPM and are usually illegal.
- **You must not use threats**, financial incentives or take any other action, such as withholding supply or offering less favourable terms, to make resellers stick to recommended resale prices.
- **You cannot hide RPM agreements** - restrictive pricing policies in business-to-business arrangements are illegal whether verbal or written. Equally you cannot try to use apparently legitimate policies (e.g. image licensing) to conceal RPM practices.

¹ There are some very exceptional circumstances in which it may not be unlawful to specify retail prices and you may wish to seek independent legal advice on this point.

- **If you receive a CMA warning letter, take it seriously** and seek independent legal advice to ensure your business is compliant with competition law.

If you are a reseller:

- **You are entitled to set the price of the products you sell**, whether online or through other sales channels.
- Suppliers are not usually allowed to dictate the prices at which you sell or at which you advertise their products online.
- If you have agreed to sell at fixed or minimum prices with your supplier, **you may both be found to be breaking competition law.**
- If a supplier asks you to comply with a restrictive pricing policy you should **report this to the CMA.**

There can be serious consequences for businesses that break competition law, including fines of up to 10% of a business's worldwide turnover.

How to ensure your business does not break the law

The message from this latest case, and those before it, is clear: the CMA takes RPM seriously and is focused on tackling anti-competitive practices that diminish the many benefits of e-commerce.

Most businesses want to comply with the law. Not only because it is the right thing to do, but also because it is in their commercial interests to do so. That is why it is important to ensure that everyone in your organisation understands what they need to do to stay on the right side of the law.

There is a range of guidance on the CMA's website to help businesses comply with the law, including a [60-second guide](#) and more detailed [case studies](#) to help businesses understand more about RPM. There is also [a short video](#) that explains what RPM looks like. The CMA has also published [guidance on effective compliance programmes](#), which can help businesses identify if they are at risk of breaking the law.

If you have information on companies in your industry that may have been involved in an anti-competitive arrangement, you should report this to us by emailing general.enquiries@cma.gsi.gov.uk or calling the CMA enquiries team on 020 3738 6000. If you think your business has been involved in RPM, then you may even benefit from [lenient treatment](#) by coming forward to the CMA.

We always recommend that you seek independent legal advice.

Yours faithfully
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