

From: Ann Pope  
Senior Director, Antitrust  
Competition and Markets Authority

21 June 2016

## **Restricting resale prices: an open letter to suppliers and retailers**

In May 2016, the Competition and Markets Authority (CMA) imposed substantial fines on suppliers in the bathroom fittings and commercial catering equipment sectors. The CMA found that the suppliers had illegally engaged in online resale price maintenance (RPM) with some of their retailers, specifying the minimum prices that the retailers could advertise for sales of the suppliers' products over the internet.

The CMA is publishing this open letter so that suppliers and retailers understand the practices that are regarded as RPM, and what to do if they are or may have been involved in RPM or similar practices.

### **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.

Resale price maintenance (RPM) occurs where a supplier and retailer agree that the retailer 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. 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. However, in the majority of cases, RPM is illegal because it constitutes vertical price-fixing, preventing retailers from offering lower prices and setting their prices independently to attract more customers.

## Case study: *Bathroom fittings and commercial catering equipment*

In the *bathroom fittings* and *commercial catering equipment* cases, the CMA found that the supplier in each case had engaged in RPM.

<p><i>Commercial catering equipment</i></p> <p>The supplier imposed a “minimum advertised price” policy that restricted the price at which retailers could advertise the supplier’s product online. The policy was accompanied by threats to dealers - including threats to charge them higher cost prices for Foster products or stopping supply - if they advertised below the minimum price. The CMA found that prohibiting retailers from advertising online below a certain price restricted in practice their freedom to set the price for online sales and, as such, amounted to illegal RPM for these sales.</p>	<p><i>Bathroom fittings</i></p> <p>Whilst it is generally lawful for a supplier to specify <b><u>recommended</u></b> retail prices (RRPs) for retailers, in this case the supplier threatened retailers with penalties for not pricing at or above a ‘recommended’ online price. Such threats included charging retailers higher prices for products, withdrawing their rights to use the supplier’s images online or withholding supply. The CMA found that this amounted to illegal RPM as it restricted the retailers’ freedom to set their online prices.</p>
--	---

Each of these arrangements restricted the retailers’ ability to sell their products online at independently determined prices. This can reduce price competition between competing retailers, and contribute to keeping prices artificially high.

The CMA would like to highlight certain important points from these cases:

*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 retailers stick to recommended resale prices.

*If you are a retailer:*

- **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 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.**

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 these recent cases is clear: the CMA takes resale price maintenance 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 resale price maintenance. 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 other companies in your industry that may have been involved in an anti-competitive arrangement, then you can report this [on the CMA's website](#). 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 also recommend that you seek independent, legal advice.

Yours faithfully

Ann Pope  
Senior Director, Antitrust