

Understanding competition law: resale price restrictions

*What the electrical supply chain needs to
know, with recent cases*

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The role of the CMA



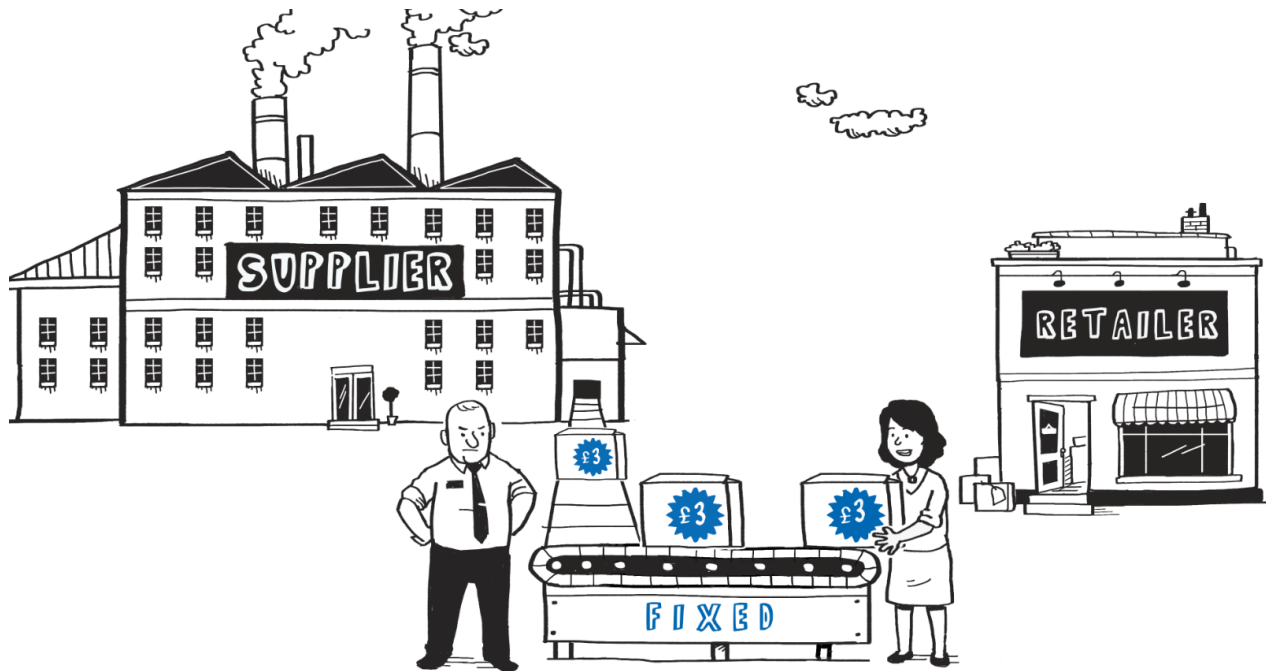
- UK's primary competition and consumer law enforcement agency
- Formed out of functions of the OFT and CC – launched in 2014
- Responsible for promoting business competition in the UK and preventing anti-competitive behaviour that can damage markets and cause harm to consumers
- Can enforce civil and criminal penalties where businesses and individuals have engaged in anti-competitive behaviour

The Chapter I prohibition: restrictive agreements

- Competition Act 1998 - prohibits agreements between businesses or decisions by trade associations that prevent, restrict or distort competition within the UK
- Includes 'hardcore' restrictive agreements such as price-fixing or market sharing between competitors
- Also covers 'hardcore' restrictive agreements in the vertical context, for example Resale Price Maintenance (RPM)

What is RPM?

- Agreement between a supplier and a retailer
- That the retailer will sell the supplier's product at or above a particular price



What are the consequences of breaking competition law?

- Penalties of up to 10% of annual worldwide turnover
- For individuals: up to five years in prison and/or an unlimited fine
- Director disqualification up to 15 years
- Damages claims by third parties



£1,000,000

Recent cases

Light Fittings, Bathroom Fittings and Commercial Catering Equipment



- All involved online RPM - companies found to have engaged in practices limiting the ability of retailers to price freely/discount online
- Significant fines imposed – would have been higher if parties hadn't settled
 - National Lighting Company **£2.7m**
 - Ultra (Bathrooms) **£786,668**
 - Foster Refrigeration **£2.3m**
- Warning letters issued to a number of other suppliers

The *Light Fittings case*

- **The National Lighting Company (Endon & Saxby brands)**
 - Verbal communication to resellers to price online at maximum 20% discount off RRP (excluding VAT)
 - Internet Licence Agreement (ILA) acted as a 'veil' for the RPM
 - Supplier threats to resellers:
 - putting accounts 'on stop'
 - withdrawing ILA & rights to use images



Evidence

- **Meeting between reseller and Endon:**

Endon representative: *"So this is why we're trying to police it in this sense of like 4% that means that everybody makes a good margin on the internet."*

- **Meeting between reseller and Endon:**

Reseller: *"Isn't it illegal to fix prices?"*

Endon representative: *"It is illegal to fix prices. That's why we won't put anything in writing."*

- **Internal NLC email:**

"Any customers found deviating from the price will be given a warning and asked to rectify the problems within 48 hours. Failure to do so will result in us withdrawing their internet agreement and image license. If the problem still persist [sic] after this time it will result in us closing their account."

The *Bathroom Fittings case*

- **Ultra Finishing**
 - Trading Guidelines for online sales
 - Included 'recommended' price for online sales - maximum 25% off RRP
 - Monitoring and enforcement of retailers' adherence to the 'recommended' online price:
 - withdrawing rights to use images
 - reducing wholesale terms
 - ceasing supply of products



Evidence

- **Internal Ultra email:**

“I am increasingly concerned the Copyright licence agreement is an obvious smoke screen for managing prices. [...] Emphasis to date has purely been on prices”

- **Email from retailer to Ultra:**

“On another note I’m very pleased about Ultra pushing this max 25% discount online, if it works then we would certainly spend time on adding a fuller HR catalogue”

- **Email from Ultra to retailer:**

“... our online trading guidelines have come into effect today and it has been reported that your site is not compliant with them ... if we can’t bring your site in line by close of business on 2/2/12 we will have to put your account on ‘stop’. We ... would appreciate it if someone contacts [xxx] ... to give him some assurances that you will have correct pricing by tomorrow¹² evening.”

The *Commercial Catering* case

- **Foster**

- Issued ‘minimum advertised price’ policy (MAP Policy) to entire network of dealers
- Prohibited advertising Foster’s products below net price plus xx%
- Monitoring and enforcement of dealers’ adherence to the MAP Policy:
 - requesting dealers increase their online prices to MAP
 - threatening to reduce dealers’ wholesale terms of supply
 - ceasing supply of products/ closing a dealer’s account



Evidence

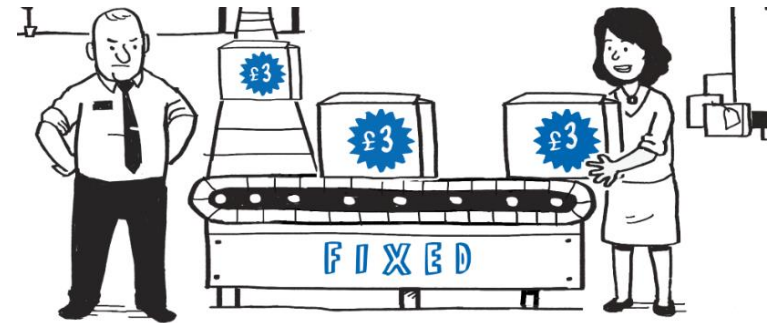
- **Example emails from Foster to dealers:**

“Whilst researching online pricing I can see a number of products which are listed below the minimum advertised price...Unfortunately by not adhering to the policy and attached minimum advertised pricing we shall no longer be able to process any order received at standard discount terms.”

“I also appreciate that price parity is vitally important in the online market and would ask if you could refrain from price matching until we have spoken to [Reseller] in order that we avert another price war where the only winner is the end user”

What do I need to know?

- RPM occurs where a retailer is not free to set its own resale prices
- RPM can be achieved:
 - Directly – eg agreeing a fixed or minimum price
 - Indirectly – eg restrictions on discounting, threats or incentives to sell at a particular price
- Retailers can also be fined for entering into RPM agreements with suppliers



All companies must comply with competition law

What do I need to know?

| Suppliers must not: | Suppliers may: |
|--|--|
| Set a fixed or minimum resale price | Set RRPs – not binding |
| Set a fixed or maximum level of discount off RRP | Set maximum retail prices |
| Offer incentives, impose penalties or put pressure on retailers to stick to RRPs | Support bricks and mortar retailers eg with marketing budget |
| Impose minimum advertised price policies for online sales | Require distributors to have one or more bricks and mortar outlet/showrooms, where justified |
| | Set quality standards for retailer websites |

What do I need to do?

You and your staff should:



- **Promote a culture of compliance**
- Identify & mitigate competition risks via:
 - Self assessment
 - Carefully considering the rules of any trade associations/agreements
 - CMA guidance
 - Legal advice

What do I need to do?

- **Take heed of warning letters**

- NLC's fine included a **25% uplift** for failing to clean up its act after a warning
- Warning letters:
 - are sent where CMA has reasonable grounds to suspect anti-competitive agreements or practices
 - are NOT a finding of infringement
 - Advise a company to:
 - carry out due diligence
 - confirm action taken
 - may be taken into account by CMA in future enforcement proceedings



Take warning letters seriously & self-assess your conduct

What do I do if I think competition law has been broken? Report it.

- If you suspect a competitor, supplier, customer or any other business is breaking the law, call the CMA enquiries team on **020 3738 6000** or email general.enquiries@cma.gsi.gov.uk



REPORT IT
BEFORE SOMEONE ELSE DOES

Making compliance easy

Useful resources to help businesses

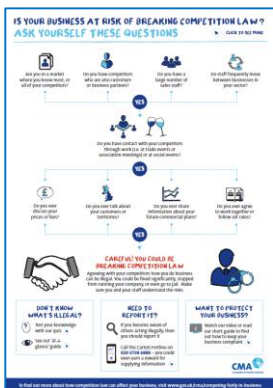
Specific guidance on Resale Price Maintenance

- Open letter to retailers and suppliers
- 60-second summary on the basics behind RPM
- Detailed case studies

The CMA also has a range of other guidance available
(short guides, videos, online tools)

Click below for more:

[Competing-fairly-in-business](#)
[Competition law & your business](#)



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The *Light Fittings* and other cases

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