

## Don't Discuss Sale Price!

Resale price maintenance is where a company induces or attempts to influence a reseller of the product not to advertise or sell a product which was supplied to it for less than a certain price. This conduct is prohibited under the Trade Practice Act (Cth) 1974 (**Act**).

### Recent Case Law

On 13 December 2005, orders were made against a distributor of a product for a breach of the Act for resale price maintenance.

In *ACCC -v- Digital Products Group Pty Ltd*, in a decision of the Federal Court, the ACCC commenced proceedings against Digital Products Groups (**DPG**) claiming that DPG was in contravention of section 48 of the Act. This section of the Act prohibits a corporation from preventing, induces or otherwise requires a retailer as to how or at what price it may sell the products supplied to it.

The conduct in question covered almost a 2 year period for DPG. DPG admitted the contraventions and the Court imposed fines of approximately \$60,000.

DPG was also ordered to appoint a person experienced in trade practices law to assist in compliance and for DPG to implement a compliance program for 3 years.

In addition to the proceedings being brought against DPG, proceedings were commenced against the director of DPG and the National Sales manager in their individual capacities.

### Compliance Tips

There are certain elements of the Act which dictate that the following rules should be adopted by distributors and suppliers of goods:

Those rules are:

1. Don't impose a minimum price at which the retailer can sell the good;
2. Don't refuse to supply goods to a retailer in an attempt to have the retailer agree on a Resale Price; and
3. Don't withhold discounts or rebates due to a retailer in an attempt to coerce the retailer to agree to a minimum sale price.

For retailers, it is important to note that generally, the following is acceptable;

1. A supplier may indicate what the 'Recommended Retail Price' (RRP) might be in the market, however there must not be any obligation for a retailer to abide by the RRP;
2. A supplier may set a maximum price so that the goods cannot be sold at a price higher than this.

Suppliers, retailers and their respective competitors should also take care in regards to exchanging price lists between them to avoid any suggestion that there has been an arrangement reached as to a certain price for a good.

### Summary

The principle behind resale price maintenance is to ensure that retailers compete in the market abiding by the natural forces of supply and demand and that consumers should be able to expect the lowest possible price from a retailer, in accordance with these market forces.

Further, where businesses do not have an adequate trade practices compliance programs in place, if they are caught in a situation which offends the Act, then there is little doubt that a Court may force a business to adopt an immediate and robust compliance program.

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