



What you need to know



# Resale Price Maintenance

## Who we are and what we do

The Competition and Consumer Protection Commission (CCPC) is the statutory body responsible for promoting compliance with and enforcing competition and consumer protection law in Ireland.

Our aim is to make markets work better for consumers. To achieve this, we work to influence public debate and policy development, grow public understanding of the importance of open and competitive markets, promote competition and highlight the interests of consumers.

## Competition law in Ireland

The CCPC is responsible for enforcing Irish and European competition law. These laws prohibit: (i) anti-competitive agreements; (ii) the abuse of a dominant position by businesses; and (iii) mergers or acquisitions that are likely to substantially lessen competition.

Effective competition directly benefits consumers because businesses try to win customers through lower prices, improved quality of goods and services, and greater choice.

The CCPC protects and promotes competition and strives to make markets work better for consumers in several ways:



We monitor markets and investigate complaints, and where there is evidence of businesses engaging in anti-competitive practices, the CCPC can and does intervene



We assess mergers between businesses, and can prevent those that could substantially lessen competition and negatively impact consumers



We advise the Government on how proposed legislation and regulation may affect competition

This booklet provides guidance only, and does not constitute legal advice. While we have made every effort to ensure that the information contained in this guidance document is accurate and reliable, the CCPC is not responsible for any errors or omissions, or for the results obtained from the use of this information. All traders are directed to the legislation for more detailed particulars as to their obligations under these provisions.

## Competition law and pricing

Competition law requires that businesses act independently and do not collude with each other when setting prices. Generally, the law prohibits certain types of behaviour such as agreements which fix prices or share markets. Commercial decisions, in particular decisions relating to pricing, should be based on a business's individual strategy.



### What is resale price maintenance?

Resale price maintenance (RPM) involves an agreement between a supplier and a reseller, usually a retailer, preventing the reseller from setting its own prices for the goods. The agreement requires the reseller to sell the goods or services at, or above, a specified price or margin, which is usually decided by the supplier.

RPM is usually unlawful and a breach of Section 4 of the Competition Act 2002, as amended. RPM arrangements prevent resellers from setting their prices independently.

This restricts businesses from competing properly. RPM is a serious breach of competition law.

Resellers may be concerned that, if they do not agree to maintaining prices dictated to them, their supplier may stop doing business with them. However, resellers should remember that even if they agree to RPM reluctantly or as a result of threats, they may be in breach of the law as well.

### What's the harm?

When businesses engage in RPM, consumers lose out because prices are kept artificially high and they have no possibility of shopping around for better value.

## What does RPM look like?

The most common forms of RPM arrangements are where a supplier:



Sets a specific price, or a minimum retail price, at which a product must be resold



Sets a specific price, or a minimum margin, at which a product must be resold



Grants incentives, such as rebates or bonuses, dependent on resale of the product at a specified/minimum price or margin



Imposes restrictions on how much a reseller can discount the price of the product



Prevents or limits a reseller's ability to advertise lower prices online for a product

## Are recommended resale prices allowed?

Suppliers are free to recommend prices at which resellers may resell products. This is known as a recommended resale price (RRP), and is not RPM as a reseller may resell products at a price of their own choosing. However, if a supplier tries to force a reseller to sell at the RRP, this is RPM.

## KEY POINTS



RPM is a serious infringement of competition law



Suppliers must not take any action that interferes with a reseller's ability to set their own price. Any attempt to do so is likely to be illegal



Any agreement, explicit or not, that results in, or incentivises, RPM is likely to be illegal



Any agreement, contractual or not, communicated verbally or in writing, could lead to an investigation and enforcement action by the CCPC



The CCPC can intervene in cases of resellers that were restricted in their pricing or prevented from discounting

## What can you do?

Suppliers and resellers should review their practices around pricing and discounting policies to ensure that they do not risk entering into illegal agreements.

- If you believe that your business is, or has been, involved in an RPM arrangement, you should contact the CCPC as soon as possible
- If you have information about other businesses in your industry that may be engaged in RPM arrangements, report it to the CCPC
- You may also wish to seek independent legal advice



## DOs AND DON'Ts FOR RESELLERS



### Do....

... contact the CCPC if you are concerned that RPM arrangements may be in place



### Don't....

... agree with your suppliers to resell products at specified or minimum prices / margins

... instruct or request the supplier to implement RPM across its other resellers

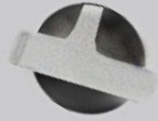
... discuss prices with competitors

### Contacting the CCPC

If you suspect that your business has been affected by RPM or any other form of anti-competitive conduct, you can contact the CCPC at **RPM@ccpc.ie** or call **01 402 5500**.



## Case study: Furniture



In April 2019, the CCPC opened an investigation into Chairs Limited, trading as Coach House, because of concerns that they had engaged in RPM. Coach House is a UK-based wholesale and trade-only supplier of household furniture products and accessories to businesses located in the State. The investigation covered the period from January 2013 up to May 2020, and focused on the manner in which Coach House implemented and enforced its “suggested selling prices” (SSPs) as a minimum resale price for its household furniture products. The investigation found evidence that between March 2013 and August 2017 Coach House had implemented and enforced its SSPs on certain businesses who were selling Coach House household furniture products online, in the State.

While SSPs or recommended resale prices are not unlawful in themselves, if a supplier seeks to ensure a retailer adheres to a certain resale price this can amount to an illegal RPM agreement. Recent European Commission cases have found that such practices are often enforced by having staff monitor the activities and websites of retailers, and threatening sanctions if they are not complying with the SSPs. With some major retailers using algorithms to adapt pricing in line with competitors’ activity, these types of pricing

restrictions can have a wide reaching impact on the prices consumers pay.

Following the investigation, Coach House denied breaching competition law but nonetheless entered into an agreement with the CCPC in which they agreed not to impose or agree any terms and conditions that place obligations on resellers to adhere to their suggested, minimum or fixed resale prices for household furniture products. They also agreed not to restrict resellers from independently deciding the resale price of household furniture products.

On 14 May 2021 the High Court granted an order in the terms of the commitment agreement between the CCPC and Coach House. The High Court order came into force on 29 June 2021, subsequent to a 45-day ‘standstill’ period under section 14B(4) of the Competition Act 2002, and it is now binding for seven years from that day. A breach of the commitments will also be a breach of the High Court order which may result in contempt of Court.

In a previous case, the CCPC’s predecessor, the Competition Authority, formed the view that the distributor of FitFlop branded footwear, had infringed competition law by engaging in resale price maintenance. That case also resulted in binding commitments which were made an order of the High Court.

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Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

**Competition and  
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