

PENALTIES UNDER THE ACT

Businesses engaged in price fixing can face hefty penalties:

- ✦ Breaches by business may result in monetary penalties of up to PGK10 million;
- ✦ Breaches by individuals may result in monetary penalties of up to PGK500 thousand; and
- ✦ Management ban for a maximum of 5 years.

WHAT TO DO

Businesses with knowledge of price fixing practices occurring in the market are encouraged to come forward with information. You could assist the ICCC to encourage a competitive market by observing the following:

- ✦ Immediately record the details of the conversation or event while still fresh in your memory;
- ✦ keep documents or records of your conversation with the competitors or conspirators, including the time and date;
- ✦ Contact the ICCC.



“Help us help you create a Competitive and Fair Trading Market Place”



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COMPETITION COMMISSION**

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NOTICE

Information in this brochure is for general guidance only and reflects the ICCC's views on price fixing provisions of the Act. It is not legal advice and should not be relied on as a statement of law relating to the Act. If you have doubt whether any conduct may breach the Act, you should obtain professional legal advice or discuss the matter with the ICCC.



**INDEPENDENT CONSUMER &
COMPETITION COMMISSION**

***CREATING A COMPETITIVE AND FAIR
TRADING MARKET PLACE***

Understanding

PRICE FIXING

a prohibited trade practice

PRICE FIXING

PROHIBITION OF PRICE FIXING

Section 53 of the Independent Consumer and Competition Commission Act 2002 (ICCC Act) prohibits price fixing arrangements between competitors. This is because price fixing arrangements are inherently anti-competitive and are deemed by law to have the purpose or effect of substantially lessening competition in a market, and are thus prohibited. Price fixing is a prohibited practice in very many countries around the world.

This prohibition also applies to covenants over land, where the covenant has the purpose or effect of fixing prices.

Perpetrators of price fixing have the common goal of coordinating pricing for their mutual benefit, but that is at the expense of buyers or consumers. The customer loses as fixed prices are, in the long term, always higher than if the price was to be determined by the competitive market forces of demand and supply.

WHAT IS PRICE FIXING?

Price fixing is a contract, arrangement or understanding between two or more competing businesses with the purpose or effect or likely effect of fixing, controlling or maintaining the price for goods or services. Price fixing arrangements between competitors or potential competitors can be formal or infor-

mal, written or oral. Either way, such arrangements are prohibited by the ICCC Act. A price fixing arrangement need not specify a fixed price for selling the product; setting or limiting rebates or discounts, or fixing minimum margins or setting prices by a formula, can all amount to prohibited price fixing.

Price fixing is illegal because competitors, who would otherwise compete independently on price and non price terms in the market are collectively working out their prices and terms of sale, to the detriment of consumers.

Price fixing is prohibited *per se*, that is, there is no excuse or reason which makes price fixing allowable. However, some specific commercial conduct would not breach the price fixing prohibition.

EXCEPTIONS

Sections 54, 55, and 56 of the ICCC Act exempt the following from the general price fixing prohibition:

- ◆ Agreements between parties to a joint venture, to market the joint venture's products at fixed prices;
- ◆ A large group of retailers (more than 50) who wish to **recommended** uniform retail prices for products. However, these must be recommended maximum prices only, not an enforced minimum price; and
- ◆ Competitors, for example retailers who are members of a buying group, who col-

lectively acquire goods at the same price and wish to jointly advertise the price at which they will then sell those goods.

EXAMPLES OF PRICE FIXING

Some examples of price fixing may include collusive agreements between competitors to:

- ◆ Establish or adhere to fixed price discounts.
- ◆ Hold prices firm for sustained periods of time.
- ◆ Eliminate or reduce discounts.
- ◆ Adopt a standard formula for computing prices.
- ◆ Maintain certain price differentials between different types, sizes, or quantities of products.
- ◆ Adhere to a minimum fee or price schedule.
- ◆ Fix credit terms, rebates.
- ◆ Not to advertise their prices.

WHERE TO FROM HERE?

Do not engage in price discussions with your competitors. If in any doubt, or if you become aware of others engaging in price fixing conduct, contact the Competitive Markets and Fair Trade Division of the ICCC at the ICCC Head Office.