

RESALE PRICE MAINTENANCE EDUCATION, AWARENESS AND COMPLIANCE PROGRAM

Part VI of the Independent Consumer and Competition Act, 2002, became effective on the 16th May, 2003 twelve (12) months after the main Act became effective. Part VI of the Act contains provisions for promoting and protecting competition and fair trade in the market generally known as the Market Conduct Rules.

The ICCC is keen to ensure awareness and assist businesses to comply with the law. As part of this education, awareness and guidance program, the Commission is concerned that there is practice and conduct in the market that is in breach of the provisions of the ICCC Act and proposes a series of awareness and compliance measures, the first of which relates to the breach or possible breach of Section 59 of the ICCC Act dealing with Retail Price Maintenance (RPM).

Resale price maintenance is where a supplier, be it a manufacturer, importer, wholesaler or distributor, sets the minimum price at which goods or services can be re supplied and/ or sets the minimum price at which they can be advertised.

Section 59 prohibits not only entering into agreements which contain resale price maintenance terms, but also the supplier (or a third party) refusing or threatening to refuse to supply, a retailer, for example, unless the retailer agrees not to resell the goods below the price specified by the supplier; or refuses further supply where the retailer has resold the supplier's goods at less than the price specified by the supplier.

The refusal or threatened refusal of supply is, in effect, enforcement by the supplier of the resale price maintenance requirement in its supply agreement with the retailer.

At the time these agreements were entered into Resale Price Maintenance was not unlawful. However it is now.

Taking into account the need to create awareness and compliance with the provisions of the law but, at the same time, mindful of the need to give reasonable time and assistance for businesses to comply with the law, the following are to be observed;

- Parties who lodge contracts or agreements, etc, containing possible resale price maintenance provisions by the 31st December, 2004, will not be investigated for possible breach of the law until the ICCC has provided the lodging party with a view.

- The ICCC will examine these agreements and provide the party lodging with a view whether the conduct is likely to constitute resale price maintenance and hence unlawful. The ICCC will carefully consider all such lodgments as expeditiously as possible but will not set timetables.
- Once the ICCC has provided a view and depending on the outcome of the ICCC review, the parties together with the ICCC will need to assess future steps including amendment of the agreements.

It should be noted that;

- This is a special concession to assist business in situations where business may inadvertently already be in breach of the law.
- This special concession does not in any way affect the right of any person taking legal action for breach of the law.
- There are provisions under the law whereby the Commission may grant authorization on public benefit grounds for business dealings which otherwise may contain elements of resale price maintenance, or any anti-competitive conduct or practice, for that matter. It should be noted that, while authorisation will be appropriate for resale price maintenance in some supply agreements, there are many other supply agreements where resale price maintenance could be justified on public benefit grounds.

For queries, please contact us at the address below:

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