

Korg fined £1.5 million for illegally preventing online price discounts

Background

When online resellers have the freedom to price items independently this leads to healthy competition – rivals strive to offer the best deal for customers and people can shop around for a better deal.

However, if a supplier dictates to its resellers a specific minimum price that they cannot drop below, or tries to stop them from selling at a reduced price, rival resellers are blocked from competing on price and customers lose out. This practice is known as Resale Price Maintenance (RPM) and is illegal.

We recently fined Korg, a supplier of electronic music equipment, £1.5 million for breaking the law by manipulating online resale prices in this way.

What Korg did

Between June 2015 and April 2018, Korg set minimum prices for its electronic music equipment and told resellers not to sell below these prices.

It monitored its resellers to make sure they complied with its minimum pricing policy. In order to make sure that resellers kept to these prices, Korg threatened (and sometimes applied) sanctions against those who advertised and sold at lower prices. For example, Korg:

- considered closing certain resellers' accounts
- temporarily restricted a reseller's access to a popular product range
- considered withholding financial support it otherwise would have given

These sanctions were clearly seen as a real risk to resellers who may otherwise have decided to offer lower prices to customers. One reseller noted that Korg would:

be monitoring those that get in line by the 14th and those that don't will not get the first extra marketing discount.

And that Korg had:

suspended a lot of accounts.

Korg used price-monitoring software, to monitor online prices (sometimes in real time), tracking prices to make sure resellers were selling at or above the prices Korg specified. Korg's monitoring was also helped by resellers

themselves reporting on one another and letting Korg know when other resellers were dropping their price. In one internal email exchange a reseller told a colleague to:

look at [market prices, to identify] anyone undercutting we can report.

Price monitoring software, when used correctly, should benefit competition by encouraging firms to undercut rivals. In this instance the software was misused as a tool for Korg to help keep resellers' prices artificially high.

How Korg broke the law

RPM is illegal because it cheats people out of a fair deal. It involves a supplier enforcing a minimum price, and therefore restricting the possibility of discounts – rather than allowing resellers to compete for business.

In this case, Korg's senior employees knew competition law well enough to train staff internally and knew the practice of setting a minimum resale price was illegal. One Korg employee noted internally that Korg:

need to stop this before we find ourselves being fined 10% of [...] turnover for the past 10 years!

However, Korg continued to enforce RPM, and established a culture of hiding its wrongdoing. Staff used increasingly secure, encrypted communication platforms, and tried to 'stop using direct language' when writing about Korg's policy. Korg tried to delete all records of the WhatsApp group used to enforce its minimum pricing policy.

What action we took

We fined Korg £1.5 million for breaking the law. The fine was increased because senior management was involved, and because the illegal behaviour was considered to be intentional – staff even knew what they were doing was against the law and sought to hide it.

In this case, Korg admitted to breaking the law, and cooperated with the CMA's investigation, and its fine was reduced to reflect this.

What the lessons are

There are a number of lessons that businesses can learn from this case, including an understanding that:

- It is illegal for a supplier to interfere with a reseller's ability to independently set their own price.
- The consequences of breaking competition law can include fines of up to

10% of a business's global turnover.

- The CMA has sophisticated means of gathering evidence and uncovering evidence even where the companies have tried to hide their actions by deleting communications.
- If you are ever asked not to put something down in writing, you should be suspicious as it could relate to something illegal. If so, you should seek legal advice and seriously consider whether to report the matter to the CMA.
- Directors and senior staff have a special responsibility to be well informed on competition law and make sure their companies are behaving legally and ethically.
- Attending compliance training alone isn't sufficient to be compliant – you must actively comply with the law.
- As a reseller you can also be investigated for breaking the law if you are found to have co-operated with a minimum pricing policy. If a supplier tries to make you comply with a minimum pricing policy, you should refuse and point them to our guidance. We would also urge you to report them to us. Resellers may also face enforcement action such as fines if they have gone along with the supplier's resale price policy.

What you can do

This case shows that it's important for suppliers and resellers to review their pricing practices so they don't risk entering into illegal agreements. Some of the ways to do this are to:

- Create a culture of compliance – everyone in your business must understand what they need to do to stay on the right side of competition law.
- Read our [60-second summary on RPM](#) and watch our video – both give pointers to help businesses avoid breaking the law.

[Video](#)