



Being able to set prices competitively and with some flexibility is a fundamental need for all small business. The Trade Practices Act contains a provision to protect all businesses from having other businesses dictating the prices at which they can sell their goods: the resale price maintenance provision.

What is resale price maintenance?

Resale price maintenance is illegal and occurs when a supplier sets, or tries to set, a minimum price below which retailers cannot on-sell its products or brand. While it is not illegal for suppliers to specify an upper price limit, they cannot use any form of persuasion, pressure or influence to induce retailers to comply with a minimum price.

Consider this example:

Sandra runs a hardware store selling power tools. Lately her supplier has been putting pressure on her to sell its tools at set prices. They have sent her a contract to sign which states that she will follow the RRP of the supplier. She has been threatened that if she does not sign they will refuse to continue supplying products to her.



Suppliers are allowed to suggest a recommended retail price (RRP). However it must remain just that, a recommended price. Sandra cannot be forced to adhere to an RRP or any other minimum selling or advertising price.

Pressure for resale price maintenance can also come from the other side of the supply chain. Other retail customers may threaten to stop buying a product unless the supplier forces their retail competitors to stop discounting it. Despite this, if a supplier tries to enforce a minimum price on a product once it has been sold to a retailer, they are breaking the law.

Why is it illegal?

When retailers are coerced into setting their prices at a particular rate both businesses and consumers suffer. Resale price maintenance inhibits the ability of businesses, often small business retailers, to respond competitively to the market and to set prices as they see fit. If businesses cannot offer discounts to become competitive, artificially high prices are passed on to consumers or businesses further down the supply chain.

What to look out for

There are a number of ways in which suppliers may try to specify a minimum price on the goods they have sold to retailers.

They may:

- threaten to cut off supply
- supply on disadvantageous terms when compared with other similar resellers
- try to write a term into a contract specifying a minimum price
- state a price which is understood to be the price below which the product cannot be sold.

Importance of ownership

To clarify the circumstances in which resale price maintenance can arise, consider this example:

John wants to buy a new vacuum cleaner. He has been to several stores and noticed that the price on a particular brand is the same wherever he goes. John reckons that the supplier might be engaging in resale price maintenance because no matter where he goes to buy the vacuum there is no competition on the price.

In addition to buying goods to on-sell, retail stores can also stock goods that are sold on commission, for which the supplier retains the ownership of the goods (the retailer has not actually bought them to on-sell). In such circumstances the retailer is an agent and never actually owns the goods.

Because the vacuum cleaners are still owned by the supplier, not the retailer, the supplier is free to set their own prices and resale price maintenance does not occur. Whether it occurs depends upon who owns the product at the time of sale. Whoever owns the product is entitled to set the price. Resale price maintenance occurs when suppliers try to set the price on a product for which they do not have ownership.

Loss leader selling

A common response made by suppliers when retailers question resale price maintenance conduct is that maintaining a certain price is important for a product's prestige and reputation. While retailers cannot be prevented from selling goods below cost for a genuine clearance sale, suppliers may be within their rights to refuse to supply goods to retailers who have sold their goods at less than cost over the previous 12 months without permission or genuine clearance reasons. These retailers may not be genuinely competing on price but are using the goods to attract customers to other products.

How do I find out more?
To find out more, contact the ACCC infocentre by:

Phone: 1300 302 502

Email: infocentre@acc.gov.au

or visit the ACCC website at www.accc.gov.au.