NEWS | 21 October 2022

Dutch Competition Authority launches RPM campaign: who determines the sales price in the shop? The retailer, not the supplier!

Introduction

On 17 October 2022 the Dutch Competition Authority ('ACM') issued a press release stating that it will launch a campaign to increase awareness regarding the prohibition on vertical price fixing.

Clear message on RPM

The ACM makes it clear that retailers should determine their own sales price. Suppliers can only give recommend resale prices. Retailers can check on the website of the ACM whether the conduct of suppliers is lawful. The ACM has even provided a draft letter that retailers can send to their suppliers regarding the subject.

The press release states that the letter may come in handy in the following months as usually a lot of discount campaigns are initiated before the holiday season and also on ‘Black Friday’. Supplier can never request the retailer to raise their prices nor can they prohibit the retailers to grant discounts.

If a supplier puts a retailer under pressure to follow the recommend retail price, it is considered a serious infringement. Pressure can also take the form of not delivering products, or telephone calls or apps in which the supplier strongly recommends the retailers to follow the recommend resale price or by stating that other retailers are also adhering to these prices.

Warning

The ACM will also visit several suppliers based on complaints received, for example in the bathroom and smart devices industry. The ACM will monitor the suppliers after the warnings to see if they comply in the absence of which the ACM refers to the potential fines that can be imposed.

Comment

The campaign fits the revised enforcement priorities of the ACM on vertical price fixing. We also refer to the

decision of the ACM earlier this year on Samsung and resale price maintenance.