

EUROPEAN COMMISSION OPENS INVESTIGATION INTO SUSPECTED PRICE RESTRICTIONS BY ELECTRONIC GOODS PRODUCERS

Date: 7 February 2017

Antitrust, Competition & Trade Regulation Alert

By: Gabriela R. Da Costa, Declan C. Gallivan, Tatiana Siakka, Scott S. Megregian

Following the recent warning by the European Commission ("Commission") in its Preliminary Report on the e-Commerce Sector Inquiry, the Commission has announced that it has launched a full fledged investigation into four major electronic goods makers' agreements and practices with online retailers. The investigation focuses on retail price restrictions suspected of breaching EU competition law, and further signals to consumer goods producers in all sectors that they should review and amend potentially non-compliant pricing practices or face the risk of significant sanctions. While the current investigation targets only four companies, this investigation will have an impact on companies throughout the consumer electronics sector.

BACKGROUND

It has long been accepted that a supplier can recommend resale prices to a reseller, provided that the reseller retains its discretion to set its own resale prices. However, as considered in our recent alert, in September 2016 the Commission expressed a potential concern that whilst increasingly sophisticated price monitoring software (and the resultant price transparency) may be pro-competitive, these are also making it easier to detect deviations from suppliers' recommended resale prices. This in turn allows suppliers to retaliate against those deviations and may possibly limit retailers' incentives to deviate from such pricing recommendations in the first place.

Although the Commission did not go so far as to expressly condemn recommended resale prices or price monitoring in its Preliminary Report, the Commission warned that it may open investigations into specific companies to ensure compliance with EU rules on restrictive business practices. It called for "...companies to review their current distribution contracts and bring them in line with EU competition rules if they are not".

The Commission has been true to its word.

NEW INVESTIGATION AND IMPLICATIONS FOR SUPPLIERS OF CONSUMER GOODS

The Commission has launched a formal investigation into whether four prominent electronic goods makers have breached EU competition law rules by restricting the ability of online retailers to set their own prices for widely used consumer electronics products such as household appliances, notebooks and hi-fi products. The

Commission has drawn particular attention to its concern that the use of pricing software that automatically adapts retail prices to those of leading competitors is aggravating suspected price restrictions.

The investigation is a reflection of the Commission's renewed interest and activism in the area of retail prices, particularly online, and is expected to be the start of a significant wave of enforcement efforts which mirrors the increasing scrutiny of national competition authorities into suspected resale price maintenance. Although this particular investigation focuses on electronic goods, suppliers of other types of consumer goods will also be deemed to have been put on notice and should expect potential investigations in the future.

WHAT K&L GATES CAN DO FOR YOUR BUSINESS

Our Antitrust, Competition and Trade Regulation team remains at the cutting edge of this developing area of law. We have extensive experience advising suppliers of branded products on the distribution of their products in Europe, including in particular on lawful pricing-maximising strategies. We regularly assist clients to best achieve their commercial objectives whilst minimising their legal risk, including evaluating, designing or refining distribution models, updating agreements, preparing distribution criteria, and implementing and monitoring effective resale policies.

KEY CONTACTS



GABRIELA R. DA COSTA
SPECIAL COUNSEL
LONDON
+44.(0)20.7360.8115
GABRIELA.DACOSTA@KLGATES.COM



DECLAN C. GALLIVAN
ASSOCIATE
LONDON
+44.(0)20.7360.8272
DECLAN.GALLIVAN@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.