

Corporate Commercial Client Alert

Competition

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Beyond the Price Tag : Challenging the Legality of Retail Price Restrictions in Hong Kong

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In its 14 June 2023 Press Release, the Hong Kong Competition Commission (“**HKCC**”) cautioned that resale price maintenance (“**RPM**”) *may* have anti-competitive effects in some ways. In addition to the direct effect of lessening price competition among the distributors or retailers of the supplier’s products, RPM may preclude new distributors or retailers from entering the market by offering discounts. In other words, an RPM arrangement *may* contravene the competition law under certain circumstances.

The HKCC sets out five specific situations in which it considers an RPM arrangement to be “particularly problematic” where:

- (i) the sole purpose of the RPM is to restrict price competition
- (ii) there is already a lack of competition among different brands of the relevant product
- (iii) the relevant products do not require investment by a distributor or retailer that is subject to “free riding” from competing distributors or retailers
- (iv) there are no apparent pro-competitive benefits to consumers
- (v) the RPM is not part of a coordinated price campaign for a franchise distribution system or related to new product entry

Nevertheless, rather than prohibiting all RPM arrangements, the HKCC recognizes the pro-competitive aspects of some RPM arrangements that may benefit consumers. As such, in determining whether the RPM arrangement is in violation of the law, the HKCC will consider their effects on competition and consumers.

The HKCC also notes that the mere recommendation of a resale price, or the setting of a maximum price at which distributors or retailers may resell a supplier’s product, is “less likely” to raise competition law concerns, as long as the supplier is genuinely “recommending” the resale price, and the distributors and retailers are allowed to freely set their own respective resale prices.

In sum, determining whether a particular RPM arrangement is in violation of the competition law in Hong Kong is not a black-and-white matter. It requires nuanced examination of factors such as the extent of market power of the parties involved, the effect of the RPM on the competitive process and consumers, what the market conditions would have been in the absence of the RPM arrangement, among other considerations.

Deacons has a dedicated Competition Economist as part of our team, allowing us to integrate legal and economic expertise in analysing competition law risks of complex business arrangements. This is the first of our series of Client Alerts on specific competition law issues that are currently under the radar of the HKCC. Please look out for our future alerts.

Want to know more?

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