

SPORTS BRAS RESALE PRICE MAINTENANCE INVESTIGATION

Case closure summary

Issue

Suspected breaches of competition law involving alleged bilateral resale price maintenance (RPM) agreements between DB Apparel UK Limited (DBA) and each of Debenhams Retail plc, House of Fraser (Stores) Limited, John Lewis plc (together 'the Retailers'), relating to DBA's Shock Absorber brand of sports bras.

Summary of work

1. The case concerned allegations that DBA entered into nine anti-competitive agreements with the Retailers between 2008 and 2011. It was alleged that the agreements had the aim of increasing the retail prices of DBA's Shock Absorber range of sports bras in each of the Retailer's department stores and that they were intended to set a fixed or minimum resale price on products within the Shock Absorber range.
2. The matter was brought to the attention of the OFT via a complaint from a third party.
3. During its investigation the OFT gathered and conducted a thorough review of a significant body of evidence including documentary and witness material.
4. In September 2013 the OFT issued a [Statement of Objections](#) giving the parties notice of its proposed decision that an infringement of competition law had taken place and providing the parties with an opportunity to make representations on the OFT's proposed findings.
5. The OFT received written representations from the parties in November and December 2013. All parties attended oral hearings at the CMA in April 2014.
6. In their representations the parties disputed that there had been any anti-competitive agreements in respect of pricing activity and submitted that certain communications relied on in the Statement of Objections as evidence of an infringement, regarding pricing for DBA Shock Absorber products, were part of normal commercial dealings between retailers and their supplier.

7. After the SO was issued and as per the CMA's procedures a Case Decision Group (CDG) was appointed and re-examined the evidence in light of the parties' written and oral representations. Based on this, the CDG has reached the conclusion that the CMA can no longer rely on the documentary evidence and the inferences the OFT had drawn pursuant to this evidence to reach a finding of infringement as set out in the Statement of Objections. In particular, the CDG considers that the parties have provided credible alternative explanations for the email correspondence between the parties which materially undermines the reliance that can be placed on that evidence.
8. In the circumstances, the CMA has concluded that, in light of the representations made, it has no grounds for action in relation to the allegations set out in the Statement of Objections and therefore decided to close this case.
9. The CMA considers that RPM is a serious infringement and it will continue to investigate suspected RPM activity, as appropriate. The CMA considers that agreements and/or concerted practices between undertakings that directly or indirectly fix prices are among the most serious infringements of competition law.

13 June 2014

Notes

- (i) On 1 April 2014, the [Competition and Markets Authority](#) (CMA) became the UK's lead competition and consumer body. The CMA took over the existing competition and certain consumer protection functions and responsibilities of the Office of Fair Trading (OFT), including this case, as well as the responsibilities of the Competition Commission, as amended by the Enterprise and Regulatory Reform Act 2013.