

Size doesn't matter for persistent offenders

August 29, 2017

The Competition and Markets Authority (CMA) last week announced that it is withdrawing immunity from fines for a supplier of mobility scooters which it alleges has persistently engaged in anti-competitive pricing practices, despite a previous warning by the authorities.

It is a reminder to small businesses that they cannot ignore competition law with impunity. Although “small” anti-competitive agreements, where the combined turnover of the parties is below £20 million, enjoy limited immunity from fines if competition law is breached, that protection is not absolute. The CMA can, and is clearly willing to, withdraw immunity if it suspects that a business continues to flout the law.

This is the latest development in the CMA's investigations into mobility scooters suppliers, which has already seen two suppliers, Roma Medical Aids Limited and Pride Mobility Products Limited, and a number of retailers, reprimanded by the CMA for their online pricing practices. The suppliers prevented retailers from advertising products online below recommended retail prices (RRPs). However, despite the CMA concluding that the parties involved broke the law, no fines were imposed as all agreements involved fell below the £20 million threshold.

Suspecting that similar restrictions were also widespread in the sector, the CMA's predecessor, the OFT, issued warning letters to mobility scooter suppliers that such behaviour was illegal and should be brought to an end. A recipient of one of those warnings, TGA Mobility Limited (TGA), continued to prevent retailers from advertising online or advertising below specified prices. It now faces being the first supplier in the sector to be fined up to 10% of annual turnover if it continues to restrict retailers in this way in the future. To avoid this, TGA has agreed to bring an end to the restrictions and put in place a comprehensive competition compliance policy and training.

Warning letters are a tool that the CMA is increasingly using to raise awareness of competition concerns. If you are in receipt of a warning letter from the CMA, this latest case shows that it should be taken seriously and acted upon. In another case involving online pricing restrictions, a light fittings company, The National Lighting Company Limited, was recently fined £2.7 million, suffering a 25% uplift in the fine that it would otherwise have had to pay for ignoring a warning letter from the CMA.

Rooting out anti-competitive practices affecting e-commerce is a priority for both the CMA and the European Commission, including bans on internet selling, minimum advertised pricing policies, restrictions on discounting below RRP and cross border sales restrictions. With plenty of retailers willing to report errant suppliers to the authorities and the number of investigations launched on the rise, there is every reason to ensure that your business is complying with the law.

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