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Italian domestic appliance manufacturer SMEG admits that it enforced a minimum resale price

The Competition Tribunal (“Tribunal”) has confirmed a consent agreement entered into between the Competition Commission (“Commission”) and SBS Household Appliances t/a SMEG (Pty) Ltd (“SMEG”) wherein SMEG admits that it has engaged in the practice of minimum resale price maintenance in contravention of section 5(2) of the Competition Act.

SMEG is the exclusive distributor of SMEG branded products in South Africa. It supplies a variety of home appliance products, including gas stoves, to wholesalers and retailers.

The Tribunal in its reasons commended the wholesaler who brought a complaint to the Commission and expressed its concern that minimum resale price maintenance was not being reported in other cases because retailers were afraid of losing their supply of the products from distributors or manufacturers. It is possible too that many retailers did not know their rights in this regard in terms of the Competition Act, the Tribunal said.

The consent agreement follows the Commission’s investigation after receiving a complaint from Save Hardware Wholesalers CC and Save Wholesalers Cash and Carry CC, based in KwaZulu-Natal (collectively “the complainants” or “Save”). The Save Group is active in the retail sale of various categories of products, including appliances such as televisions, general merchandise as well as other items.

The Commission found that in 2014 Save sold a specific SMEG gas stove at R14 999 whilst Hirsch, a retailer and also a SMEG customer, sold the same gas stove at R17 999. A disappointed Hirsch customer complained to Hirsch about its pricing of the specific gas cooker given that Save sold the same model at a price that was R3 000 lower. Hirsch then requested SMEG’s intervention. Eventually SMEG terminated the supply of all of its products to Save as a sanction for Save’s

refusal to succumb to SMEG's request to increase its price in respect of the product.

On the Commission's finding, when the large difference in resale prices came to the attention of SMEG, it instructed Save not to sell the gas stove at R14 999 failing which, SMEG would stop supplying them with any products. When Save refused to adhere to SMEG's instruction, SMEG terminated the supply of all its products to the complainants.

The Commission concluded that SMEG's conduct contravenes section 5(2) of the Act which is the practice of minimum resale price maintenance. It said that SMEG's conduct commenced from October 2014 and continued until January 2016, i.e. the termination of supply of products by SMEG to Save endured for a period of about 15 months.

The Tribunal said that minimum resale price maintenance, as a species of price fixing, is a serious competition offence. It said while the administrative penalty of R100000 was "on the low side given the aggregating refusal by SMEG to supply the complainants with any product for a considerable period of time" it accepted that the conduct in this case was limited to Save based in Pietermaritzburg, KwaZulu-Natal and was therefore retailer specific and limited in scope.

In its reasons the Tribunal noted that Save had acted correctly in standing up to SMEG - despite threats that they would lose all supply of product by SMEG if they continued discounting the gas appliance in question - and should be commended for that. Their actions have helped society at large to acquaint themselves with the provisions of the Act which afford them protection against such practices.

The Tribunal further said that resellers/retailers may not be aware that minimum resale price maintenance is prohibited in South Africa or may be reluctant to report minimum resale price maintenance to the competition authorities because of fear of losing their source of supply of the products. In this case SMEG did not shy away from terminating all supply to Save when they refused to remove the discount that they gave on the applicable gas appliance.

The Tribunal said one of the aims of making the reasons available with its order is to enhance awareness that the practice of minimum resale price maintenance by suppliers/manufacturers/ distributors is *per se* prohibited in South Africa. If resellers/retailers are prevented by their suppliers from discounting products (off a recommended price) they should take up the issue with the Commission since

such conduct may amount to minimum resale price maintenance which is *per se* prohibited in South Africa.

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