

# Rise and shine, the Commission is up and ready to fine!

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The European Commission has recently fined four consumer electronics manufacturers for resale price maintenance (RPM). These decisions may mark an end to the Commission's seemingly slumbering approach to RPM enforcement. It could also be the start of a more standardised informal cooperation procedure where companies receive fine reductions in vertical cases. Commission decisions are imminent, and national competition authorities are likely to continue their crusade against online sales and other vertical restrictions. Manufacturers and retailers should double-check their policies and practices (including their software tools) to make them, as Commissioner Vestager puts it, "antitrust-compliant by design". Companies are well-advised to keep tabs on how their algorithms work and to monitor their pricing or foreclosure effects on a regular basis.

Following the antitrust e-commerce [sector inquiry](#) launched in May 2015, the Commission initiated [investigations](#) into:

- consumer electronics manufacturers on possible online RPM
- video games (regarding geo-blocking)
- hotel price discrimination
- cross-border and online sales restrictions of certain [merchandising products](#).

The investigation into online price fixing by consumer electronics manufacturers recently came to an end. Manufacturers Asus, Denon & Marantz, Philips, and Pioneer were [fined](#) a total of over EUR 111 million for pressuring online retailers to keep their prices high. These are the Commission's first RPM fines since [2003](#). Each manufacturer targeted retailers selling their products at the lowest price, pushing them to adjust their prices under threat of blocking supplies. According to the Commission, sophisticated monitoring tools helped manufacturers to: 1) track the resale price settings in their distribution networks, and 2) respond quickly to sudden price decreases. The Commission also stated that the online retailers' use of pricing algorithms had strengthened the impact of the manufacturers' RPM practices. Many online retailers use pricing algorithms to automatically modify their prices to match their competitors' prices. Consequently, if one retailer increases its price, others may follow suit without any interference by the manufacturers.

The Commission's press release, and its decisions (when published), may serve as a warning for manufacturers and retailers. Even though the Commission left the online retailers in this particular online RPM case untouched, online retailers may not be off the hook forever. Many competition authorities are currently either taking stock of the digital challenges ahead (see our earlier In context [article](#)) or are cracking down on online anti-

competitive conduct (see our earlier Best Friends' *Competition Law in the Digital Age* [newsletter](#)). Moreover, in future cases, the Commission and national authorities may follow the German competition authority's [example](#) and consider that in vertical price fixing cases, the competition rules apply to both the supplier's meddling with a retailer's pricing policy, and to the retailer's conduct. According to the Bundeskartellamt, the retailer "ultimately agreed to the suggested price fixing practice and thus concluded an anti-competitive agreement with the supplier".

Manufacturers and retailers should also beware that using software tools to monitor illegal vertical restrictions more effectively could lead to higher fines. However, these higher fines did not materialise in this particular online RPM case. The consumer electronics manufacturers obtained fine reductions of 40-50% for their effective cooperation with the Commission. They acknowledged the infringement before issuing a statement of objections, and provided evidence of significant added value to the Commission. This cooperation procedure is new in vertical cases, where settlement and leniency [procedures](#) do not apply. It remains to be seen whether this will be a more commonly used procedure by the Commission and national authorities in future cases.