

Canadian Competition Bureau Cracks Down on Minimum Advertised Pricing Programs

John Deere agrees to pay over \$1 million in restitution to settle landmark price maintenance case.

The Federal Court of Canada has ordered that over \$1 million in restitution be paid by John Deere Limited ("JDL") to Canadian retailers who may have been affected by a US-based minimum advertised price ("MAP") program.

The case evolved from an agreement in the United States between JDL's parent and US-based retailer Home Depot to sell a new line of garden tractors. The agreement contained a MAP provision but the program was not intended to apply in Canada. However, several of John Deere's Canadian retailers had the impression that they were not allowed to advertise below the minimum suggested price. The Competition Bureau commenced an investigation based on complaints that John Deere's Canadian affiliate was discouraging the reduction of advertised prices contrary to Canada's statutory price maintenance offence.

Once made aware of the concern, JDL took steps to make it clear that the MAP program did not apply in Canada. It avoided a criminal charge by settling the case without admitting liability. The terms of the settlement included a "restitution" payment amounting to 5% of sales to each dealer - totalling \$1.191 million - as well as a five-year consent prohibition order requiring implementation of a competition law compliance program and changes to its administrative and sales practices in Canada.

The case highlights the risks of failing clearly to carve Canada out of US-based MAP programs and ensure that any suggestions of resale prices are accompanied by clear indications that there is no obligation to accept the suggestion and no adverse consequences if the suggestion is not followed. Price maintenance is a criminal offence and the Competition Act prohibition is more restrictive than the comparable US rules. The Bureau has successfully secured high settlements and penalties in a string of price maintenance cases in recent years.

For a detailed discussion about MAP programs and Canada's price maintenance offence click [here](#).

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