



Regulation of Resale Price Maintenance (RPM) Clauses in Egypt

The Egyptian Competition Authority (ECA) has shown an increased interest in resale price maintenance (RPM) clauses over recent years. This has led to investigations of both domestic and foreign businesses with significant fines and other sanctions imposed in some cases. Given this trend companies doing business in Egypt through distributors and other re-sellers should ensure that their agreements comply with Egyptian standards.

Under Egyptian law RPM refers to any vertical arrangement that directly or indirectly restricts the pricing autonomy of downstream distributors or retailers. Minimum and fixed resale prices are strictly prohibited and are considered *per se* violations. However, non-binding RPM may also be considered a violation, where they effectively pressure distributors or other re-sellers to abide by suggested resale prices. For instance, where suppliers provide incentives for abiding by suggested resale prices are so significant that they effectively require distributors or other re-sellers to abide by them, this will be deemed a violation.

Egyptian law prohibits vertical agreements that directly or indirectly impose resale prices or minimum pricing policies. Although the law does not explicitly define RPM, the ECA's interpretive guidelines and enforcement practice allow to establish an Egyptian definition of RPM. RPM clauses may be formal—explicitly written into distribution contracts—or informal—imposed through commercial pressure, verbal instructions, or retaliatory conduct. Under Egyptian law, both explicit and tacit arrangements are caught. Furthermore, restrictions of RPM are not linked to market dominance under Egyptian law.

Maximum RPM, allowing retailers and distributors to sell at or below a maximum

threshold, are generally permitted under Egyptian law. They are, however, unlawful, if they are enforced through conditional incentives, threats, or penalties that render them effectively fixed price clauses.

Strict minimum RPM clauses are prohibited under Egyptian law as *per se* violations. Hence, they are unlawful regardless of whether they influence competition and/or resale prices in Egypt. This is due to the substantive impact such strict RPM clauses can have on market conditions. They prevent retailers or distributors from setting the resale price of a product at their own discretion. Hence, they eliminate intra-brand competition, inflate consumer prices, and reduces pricing autonomy at the distribution level. These clauses typically arise in vertical agreements and may take the form of minimum or fixed resale price obligations. Other common forms include price floor maintenance, and margin control mechanisms.

RPM clauses providing for recommended minimum resale prices on the other hand are generally allowed, provided they are not effectively binding. Egyptian law considers such recommended minimum resale prices clauses as effectively binding, if the recommended resale price is enforced by threats, penalties, or incentives. These threats, penalties, or incentives must be so significant that distributors and re-sellers—while not explicitly required to—are effectively forced to abide by the 'recommendation' due to economic pressures. Hence, unlike strict minimum RPM clauses, which are *per se* violations, recommended RPM clauses require an effects assessment. Only where they effectively constitute a binding minimum RPM clause.

The regulation of RPM under Egyptian law applies to all undertakings operating within Egypt, as well as foreign undertakings that may affect the structure, functioning, or pricing mechanisms of the Egyptian market.

The ECA has a wide range of means to address violations of the Egyptian Competition Law through RMP clauses. In addition to fines, the ECA can issue cease-and-desist orders, require amendment or nullification of anti-competitive clauses, and initiate criminal referrals in case of repeated non-compliance. Civil liability under general tort principles may also arise. Liability can extend to both the upstream supplier and the downstream distributor, especially when both parties collude to engage in RPM.

Egyptian law does not include block exemptions or safe harbor thresholds for vertical agreements. Also, while, leniency programs exist they are rarely applicable to vertical restraints such as RPM clauses.

The ECA has over the past years significantly increased enforcement against RPM across several sectors. Since the beginning of 2024 the ECA has initiated investigations in:

- the consumer electronics sector where the ECA has investigated and penalized several suppliers for imposing minimum advertised prices and fixed resale prices on cell phones and accessories;
- the pharmaceutical market where the ECA launched several cases involving manufacturers setting minimum retail prices for pharmacies, leading to ECA imposing fines and cease-and-desist orders; and
- the fast-moving consumer goods market the ECA targeted unilateral RPM strategies imposed through incentive schemes and loyalty rebates tied to price maintenance.

Given Egypt's regulatory stance, RPM clauses bear considerable risk under Egyptian law. Companies doing business in or with Egypt must consider their agreements to ensure compliance with Egyptian RPM regulations.



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