



African Jurisdictions Regulating Resale Price Management Clauses

Client briefing | Antitrust & Merger Control

Africa | RPMs under Egyptian, Moroccan, and Nigerian law as well as COMESA and ECOWAS

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Resale Price Maintenance (RPM) refers to arrangements whereby a supplier, manufacturer, or licensor sets a minimum for, or otherwise restricts the price at which downstream distributors or retailers may resell goods or services. Such arrangements may arise through explicit contractual provisions or through indirect mechanisms that, in practice, limit the pricing autonomy of distributors. RPM clauses are subject to heightened scrutiny across competition law regimes and are frequently treated as serious infringements, particularly where they involve minimum or fixed resale prices. Enforcement trends across Morocco, Nigeria, Egypt, COMESA, and ECOWAS reflect an increasingly strict approach, including significant financial fines and, in certain jurisdictions, potential criminal liability.

Morocco

The Moroccan antitrust regime is established by Law No. 104-12 on Freedom of Prices and Competition (Moroccan Competition Law) and enforced by the Moroccan Competition Council (MCC). Art. 6 Moroccan Competition Law prohibits agreements, decisions, and concerted practices that have the object or effect of restricting competition. This prohibition extends to vertical arrangements, including distribution agreements. Within this framework, RPM clauses are treated as a restriction by object. Fixed and minimum resale prices are considered inherently anti-competitive and do not require a demonstration of actual market effects. The MCC Competition Guidelines clarify that recommended resale prices may be permissible where they remain genuinely non-binding. However, the assessment is based on economic reality rather than contractual form. Where recommended prices are systematically applied in practice, or where supplier exert pressure or adopt

mechanisms to ensure adherence, such arrangements may be considered as unlawful RPM.

Enforcement has intensified significantly in recent years. The most significant action to date arose in the fuel distribution sector, where the MCC imposed aggregate fines of MAD 1.84 billion (approx. USD 181 million) on nine companies for collusive pricing and RPM practices.

Nigeria

In Nigeria RPM clauses are governed by the Federal Competition and Consumer Protection Act 2018 (FCCPA), enforced by the Federal Competition and Consumer Protection Commission (FCCPC) and adjudicated by the Competition and Consumer Protection Tribunal. The FCCPA establishes a dedicated and self-contained regime addressing RPM, reflecting a clear legislative intent to prohibit minimum resale price controls.

Under Sections 63 *et seq* FCCPA, suppliers are prohibited from requiring or inducing dealers to maintain minimum resale prices. Any such provisions are rendered unenforceable. The regime further extends to indirect enforcement mechanisms, including the refusal to supply a dealer solely on the basis that it has discounted below a specified level. This framework operates as a quasi *per se* prohibition, as it does not require an assessment of competitive effects and does not admit efficiency-based justifications. The Act does, however, permit the imposition of maximum resale prices where the supplier of a patented product draws a clear distinction between permissible price ceilings and prohibited price floors.

The FCCPC has adopted an increasingly active enforcement posture, and infringements may give rise to administrative penalties based on the gravity, duration, and impact of the infringement, as well as cooperation and prior conduct. Criminal liability applies for individuals for up to 5 years imprisonment and/or fines, while

companies may be fined up to 10 percent of their turnover.

Egypt

Competition in Egypt is governed by Law 3/2005 (Egyptian Competition Law) and its Executive Regulations, with enforcement entrusted to the Egyptian Competition Authority (ECA). RPM is not expressly defined in the legislation but is captured within the broader prohibition of anti-competitive vertical agreements under Art. 7 Egyptian Competition Law.

In practice, the ECA treats fixed and minimum resale prices as hard-core restrictions, given their inherent capacity to eliminate intra-brand competition and lead to higher consumer prices. Recommended resale prices are not prohibited *per se*, provided they remain genuinely non-binding. However, where such recommendations are accompanied by incentives, pressure, or sanctions that effectively compel compliance, they may be qualified as unlawful RPM. The prohibition applies irrespective of whether the supplier holds a dominant position, although the imposition of resale pricing constraints by a dominant undertaking may also constitute an abuse of dominance under Art. 8 Egyptian Competition Law, thereby engaging an additional basis for enforcement.

The ECA has demonstrated increased scrutiny of vertical pricing practices in recent years, including enforcement action confirming that minimum RPM constitutes a direct infringement of the law. Penalties may include fines of up to 10 percent of the revenues generated from the relevant product during the infringement period. Criminal sanctions may also be imposed on responsible individuals.

COMESA

At the regional level, competition within COMESA is governed by the Competition and Consumer

Protection Regulations (2025), and are enforced by the COMESA Competition and Consumer Commission (CCCC). The 2025 Regulations apply to conduct that has or is likely to have an appreciable effect on trade between Member States and may, where jurisdiction is established, displace parallel national enforcement.

The 2025 Regulations mark a significant shift in the treatment of vertical restraints by introducing a strict *per se* prohibition of minimum RPM. Unlike the previous framework, which allowed for a rule-of-reason assessment, minimum resale price restrictions are now prohibited without exception, and no efficiency or pro-competitive justification may be advanced. This places RPM among the most serious forms of anti-competitive conduct within the COMESA regime.

The CCCC has signaled a strong enforcement stance, including through prior cases addressing RPM practices in distribution networks by approving a significant settlement with a multinational beverage company. The investigation found that the company's distribution agreements imposed minimum resale prices on distributors across multiple member states, alongside territorial restrictions and bans on handling competing brands. The company denied the allegations but agreed to audit and amend its distribution agreements, and to notify the CCCC of its remediation steps.

Sanctions may include fines of up to 10 percent of the undertaking's turnover within the COMESA region, as well as interim measures requiring the cessation of conduct. The 2025 Regulations also introduce a formal leniency program, enabling entities that voluntarily disclose participation in prohibited practices to benefit from immunity or reductions in fines.

ECOWAS

Competition within the ECOWAS framework is governed by the Supplementary Act on

Community Competition Rules and subsequent procedural regulations, with enforcement entrusted to the ECOWAS Regional Competition Authority (ERCA). Although RPM is not expressly defined as a standalone concept, it falls within the scope of Art. 5 Supplementary Act, which prohibits agreements and concerted practices that restrict competition, including the direct or indirect fixing of purchase or selling prices. Accordingly, RPM is captured as a form of vertical price fixing, and any such provisions are void and unenforceable. The prohibition extends to both explicit contractual clauses and indirect mechanisms that restrict pricing freedom. Where a supplier holds a dominant position, the imposition of resale pricing constraints may also constitute an abuse of dominance under Art. 6 Supplementary Act, thereby giving rise to an additional infringement.

Unlike other regimes, ECOWAS provides for a formal exemption mechanism under Art. 11 Supplementary Act, pursuant to which restrictive agreements may be authorized where they generate efficiencies, contribute to economic progress, and allow consumers a fair share of the resulting benefits. The ERCA has not yet issued a decision directly targeting RPM clauses. Still, its enforcement activity demonstrates active scrutiny of pricing coordination within vertical relationships. The ERCA has reviewed an agreement governing a trade association through which competing processors in Senegal's industrial tomato sector exchanged pricing information, market forecasts, and commercial strategies. The ERCA found that while the arrangement contained no express price-fixing clause, the repeated exchange of sensitive commercial data between the actors, created conditions for pricing alignment with downstream effects functionally analogous to RPM. The agreement was authorized under Art. 11 Supplementary Act, but only subject to strict conditions. The ERCA prohibited the actors from sharing individual price data and forward-looking information. All shared data was required to be

aggregated, anonymized, and historical, and participation was required to remain expressly non-binding. The decision signals that the ERCA will scrutinize any vertical arrangement, whether it contains an express RPM clause or not, that risks producing price coordination effects along the supply chain. Where an infringement is established, the ERCA may impose fines of up to 10 percent of annual turnover, periodic penalty payments, and compensation to harmed parties, with decisions subject to appeal before the ECOWAS Community Court of Justice.

Conclusion

Across all five jurisdictions, RPM is consistently treated as a serious restriction of competition, with limited or no scope for justification in the case of minimum or fixed resale prices. The assessment is grounded in substance rather than form, such that indirect mechanisms designed to influence resale pricing are subject to the same scrutiny as explicit contractual provisions. Considering the increasingly robust enforcement environment, businesses should ensure that their distribution arrangements preserve the commercial independence of downstream partners and avoid any form of resale price control.



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