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Price matching rights: more trouble than they're worth?

Price matching rights were the subject of a recent dispute between Rangers Football Club and Sports Direct. They typically allow an incumbent supplier to match an offer that its customer has obtained from a competing supplier. For incumbent suppliers, such rights can be very valuable – but customers may find themselves locked into using a supplier for longer than is ideal. Price matching clauses also require careful drafting and can sometimes raise competition law and confidentiality issues.

What happened in the Rangers case?

In 2017, Rangers appointed Sports Direct as its exclusive retailer for Rangers-branded merchandise at its ground and on the Rangers webstore. It also granted Sports Direct the right to manufacture and distribute Rangers merchandise more widely, but on a non-exclusive basis. As no other supplier had been appointed, Sports Direct had de facto exclusivity in relation to these rights.

Rangers was permitted to approach alternative suppliers during the six month period prior to expiry of the initial term of the agreement on 31 July 2018. However, crucially, Sports Direct had a right to match any offer which Rangers obtained. If Sports Direct could match the offer, Rangers was prohibited from entering into a contract with the new supplier.

The price matching dispute

In June 2018, Rangers offered Sports Direct the opportunity to match an offer obtained from

another supplier, Elite. Sports Direct argued that it had not been given sufficient information about this offer to exercise its matching right effectively. It obtained an injunction preventing Rangers entering into a contract with Elite until the dispute had been resolved.

Subsequent attempts to settle the dispute failed and, on 11 September 2018, Rangers notified Sports Direct that it had entered into a non-exclusive agreement with Elite, based on a revised offer. In a further attempt to enforce its price matching right, Sports Direct brought additional court proceedings. Among other things, Rangers argued that:

- it was only intended that Sports Direct should have one opportunity to price match – which it had effectively "used up" by failing to match Elite's initial offer to Rangers' satisfaction; and
- given its non-exclusive rights, it could not have been intended that Sports Direct should be able

to block the appointment of a new supplier by repeatedly exercising its price matching right.

The court's view

The court preferred to concentrate on the wording of the clause itself. It concluded that the price matching right was capable of applying more than once – and that Sports Direct could continue to exercise it at any point up to 2 years from expiry of the initial term of its agreement with Rangers. In practice, this meant that Sports Direct could maintain its de facto exclusivity, provided it could match any offers that Rangers obtained from another supplier during that period. Among other things, the court granted an injunction preventing Rangers from performing the agreement with Elite.

Price matching clauses can confer valuable rights but require careful drafting.

Lessons for suppliers

For suppliers, the outcome of this case highlights the potential value of price-matching rights – although Sports Direct still had to go to court to enforce them. It is also a reminder that, to be effective, price-matching clauses need to specify:

- the scope and duration of the right in detail (including whether the right can be exercised multiple times);
- all the relevant information to be provided about a rival offer from another supplier and what counts as "matching"; and
- the consequences of the rival offer being matched (e.g. the other party is prevented from taking up the rival offer).

Lessons for customers

For customers, requests from suppliers for price matching rights may initially appear reasonable – after all, if the supplier cannot match an offer from a rival, you should be free to contract with that rival. But any wording put forward by the supplier should be carefully scrutinised, since it may impose more constraints than are desirable – as Rangers found in this case.

In addition, bear in mind that price may not be the only reason for wanting to switch suppliers – other factors such as quality of service may be just as important. If so, it may be preferable to reject any requests for matching rights, since factors such as quality are much more difficult to compare on an objective basis.

Competition law risks and confidentiality

Finally, there may be circumstances in which price matching clauses could give rise to infringements of competition law or a breach of confidence. For example, as demonstrated by this case, price matching rights can result in de facto exclusivity for suppliers, effectively shutting rivals out. If the supplier has significant market power and/or has managed to obtain such rights in contracts with a significant proportion of the available customer base, this could amount to an infringement of competition law.

A breach of confidence could arise where a customer passes on details of a rival offer to the incumbent supplier without having first obtained the permission of the rival supplier. Even where permission has been obtained, such exchanges of sensitive information would constitute an additional competition law risk, especially where the use of price-matching clauses is widespread. It is therefore essential to ensure that information flows in the context of price matching are very carefully managed.

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