

TRADE PRACTICES COMMISSION V. COMMODORE BUSINESS MACHINES PTY LTD (1989)
ATPR 40-976

Federal Court of Australia – 3 August 1989

FACTS

Respondent supplied personal computers to 150 dealers around the country, requiring a commitment in writing that the computers would not be advertised at less than the recommended retail price. They obtained legal advice that this clause would be lawful so long as dealers recognised that they could sell the computers at whatever price they wished. Commodore threatened a number of dealers that supply would be withheld or dealerships cancelled unless the product was advertised at the recommended price. TPC contacted Commodore and advised that the conduct was a breach of the resale price maintenance provisions of the Act. A month later, Commodore wrote to the relevant dealers advising that the dealers could sell the computers at whatever price they wished.

Commodore argued that it merely wanted the computers to be advertised at a certain price and did nothing to prevent discounts. In relation to penalty, Commodore argued that it had acted on legal advice in the first place and had changed its practices as soon as the Commission notified it of alleged breaches.

ISSUE

Imposition of penalties and injunctions and the effect of legal advice in mitigating these penalties.

FINDINGS

Commodore's conduct was in breach of the resale price maintenance provisions; substantial monetary penalties and injunctions were granted.

QUOTE

Justice Einfeld:

"It is one thing to argue that clause 4 was thought to be legal; this may entitle the respondent to some mitigating effect in the penalty for the distribution of the documents alone. It is quite another matter to use this to justify multiple efforts by employees to impose a quite crude regime of enforcement clearly outlawed by the Act and exposed by the considerable publicity given to this practice over many years."

"It thus seems to me that the respondent's activities represent a significant and deliberate interference with the rights of both dealers and the ordinary public which are protected and defined by the Act."

The fact that the large chains were not asked to sign the document and did not do so leads to two further conclusions. One is that the retailers with whom this case is concerned, in the main, are presumably small business proprietors. The second is that they were disadvantaged in relation to large stores by having their capacity to compete on price reduced or removed."

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com

IMPACT

Obtaining and following legal advice of a low standard may only be given limited regard when penalties are being considered.

Generally, the whole circumstances of the breach will be considered.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com