



Decision of the Competition Commission

CCM/DS/0030/33

Non-Confidential

**Application for immunity under the Amnesty
Programme for Resale Price Maintenance**

by

Archemics Ltd

21 June 2019

Competition Commission

Decision of the Competition Commission (the 'Commission') on the application by Archemics Ltd for immunity under the Amnesty Programme for Resale Price Maintenance.

THE COMMISSION –

Mrs M. Rajabally - Commissioner,
Mr. C. Seebaluck - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to the Undertakings given by Archemics Ltd on 11 December 2018,

Having regard to a Report of the Executive Director of the Commission (the 'Executive Director') dated 15 February 2019 on the Undertakings given by Archemics Ltd,

We, Commissioners, decide as follows:-

Introduction

- 1.0 This Decision relates to an application (the 'Application') for immunity dated 29th September 2017 made by Archemics Ltd (the Applicant), through its Managing Director, Mr Anthony R. Coombes, pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance (RPM) prescribed under paragraph 5.6A of CCM3 Guidelines on Collusive Agreements. As part of the conditions set out thereunder, undertakings ('the Undertakings') have been offered to the Competition Commission (the 'Commission') on 06 November 2018 as an annex to the Application.
- 2.0 Having taken cognizance of a report of the Executive Director dated 15 February 2019 in respect of this matter, the Commission has determined the present matter under section 59(7) of the Competition Act (the Act), the conditions prescribed under paragraph 5.6A of CCM3 Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

The law

- 3.0 Section 43 of the Act prohibits and renders void 'any vertical agreement between enterprises to the extent that it involves resale price maintenance'. RPM is in turn defined under section 2 of the Act as 'an agreement between a supplier and a dealer with the object or effect of directly or indirectly establishing a fixed or

minimum price or price level to be observed by the dealer when reselling a product or service to his customers’.

- 4.0 An enterprise can only benefit from immunity to financial penalty if it is involved in conduct(s) that falls within the scope of section 43 of the Act and satisfies the conditions prescribed for the RPM Amnesty Programme, that is if it -
 - 4.1 admits its participation in an agreement involving RPM;
 - 4.2 provides the Commission with all the information, documents and evidence available to it regarding its RPM conduct;
 - 4.3 maintains continuous and complete co-operation until the conclusion of any action by the Commission in relation to the matter; and
 - 4.4 offers undertakings that satisfactorily address the competition concerns of the Commission.
- 5.0 The threshold for accepting undertakings under section 63(3) is that the Commission must be satisfied that they address “all the concerns it has about any prevention, restriction [or] distortion (...) of competition”.
- 6.0 Pursuant to section 59 of the Act, the Commission may grant immunity or leniency to any person in such circumstances as may be prescribed. Effective from 05th June 2017 until 20th October 2017 inclusively, the Commission put in place a one-off, time-limited amnesty programme for any enterprise involved in resale price maintenance by waiving the restriction at paragraph 5.3 of CCM3 Guidelines on Collusive Agreements, viz., that only RPM which facilitates a cartel can benefit from leniency and the associated footnote 3 thereat and subject to the applicant-enterprise fulfilling the conditions prescribed under paragraph 5.6A (b) of the said Guidelines (the ‘RPM Amnesty Programme’).

Facts

- 7.0 The Applicant, previously known as Henkel Chemicals Ltd, is presently the exclusive franchisee of Henkel and Les Laboratoires Rochex for Mauritius. It is a manufacturer and supplier of consumer and industrial products to a variety of sectors in Mauritius and the region. As such, it specialises in the production, marketing, sales and distribution of household and industrial detergents, cosmetics, adhesives and textile products. It distributes international branded products like Le Chat, Xtra, Diadermine, Fa, Schwarzkopf, Pattex and many others.
- 8.0 Following a joint venture between Harel Mallac & Co Ltd and the Henkel Group in 1983, the applicant traded as Henkel until 2008 when the company was renamed as Archemics Ltd.
- 9.0 The Applicant has admitted its participation in conduct falling within the ambit of section 43 of the Act. The Applicant’s reprehensible RPM conduct may be summarised as follows:-

- 9.1 it has agreed with or imposed on its resellers, a minimum selling price to be observed by the latter when reselling the products it has supplied to them;
- 9.2 it has issued, through emails, price lists containing a minimum resale price ('PV* MINIMUM TTC') to its resellers, and
- 9.3 it has issued price lists, to its resellers, containing a resale price ('prix TTC Unité Public') without specifying that the prices contained therein are recommended prices.

Investigation and findings

- 10.0 Upon receipt of the Application and pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV042/RPM/026) whether the reported conduct may amount to an RPM within the ambit of section 43 of the Act.
- 11.0 The Executive Director submitted his Report on the matter to the Commission on 15th February 2019. The Report contains the findings of the Executive Director, his assessment of whether the proposed Undertakings address all the concerns identified by him, and his recommendations in respect of the Application.
- 12.0 The findings of the Executive Director further to the assessments carried out are that-
 - 12.1 the Application satisfies the conditions set out under paragraph 5.6A of CCM3 Guidelines for RPM amnesty;
 - 12.2 the Applicant in its capacity as manufacturer and supplier of household and industrial detergents, cosmetics, adhesives and textile products has engaged in a conduct that raises competition concerns under section 43 of the Act; and
 - 12.3 the Undertakings offered by the Applicant on 06 November 2018 in respect of RPM conduct as highlighted in paragraphs 9(a) and (c) above satisfactorily address all the concerns he has about any prevention, restriction of competition as required under section 63 of the Act, in that the Applicant has undertaken -
 - 12.3.1 to remove the terms; 'PV Minimum TTC', 'Prix Public', 'Normal Price Excl Vat', 'Unité Client', 'Unité Public' in all its price lists and instead use the terms 'Prix Recommande' and 'Recommended public price' to denote recommended prices;
 - 12.3.2 not to implement or cause to be implemented, in any manner whatsoever, any measure (by using economic advantages, incentives or otherwise), having the object or effect of compelling, inducing or attempting to compel or induce resellers

to apply the retail prices or retail price levels or retail price components communicated to them by it;

12.3.3 to take all reasonable steps to ensure that all communications, negotiations and arrangements with dealers are properly documented and archived; and

12.3.4 to ensure that dealers exercise their freedom in fixing or otherwise applying their own prices or price levels when reselling the Applicant's products.

Executive Director's recommendations

13.0 The Executive Director recommends that the Commission accepts the Undertakings and grant immunity from fine to the Applicant for its participation in the RPM conduct for the period.

Determination

14.0 Having regard to the Application submitted by the Applicant, the concerns which have been identified by the Executive Director in his Report, the Undertakings offered by the Applicant and all relevant documentary evidence as submitted by the Applicant, the Commission determines that –

14.1 the Applicant has, in its Application, admitted, in clear and unequivocal terms, its participation in one or more RPM agreement(s) viz admission of having participated in or otherwise having engaged in RPM conduct in relation to the supply of household and industrial detergents, cosmetics, adhesives and textile products that falls within the ambit of section 43 of the Act;

14.2 The Applicant has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CCM 3 Guidelines, as stated in the Report; and

14.3 The Undertakings submitted by the Applicant satisfactorily address the Commission's concerns in so far as it will ensure that Applicant ceases its participation in RPM agreements.

Decision

15.0 The Commission therefore decides as follows:

15.1 We accept that the Application made by the Applicant satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements;

15.2 We accept the Undertakings offered by the Applicant;

15.3 The Undertakings shall be effective as from the date of this Decision;

- 15.4 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act for the Reported RPM conduct in respect of only resellers specified in Annex 1 to the letter of undertakings dated 31 October 2018 and that the immunity is valid for the period 26 November 2011 to 29 September 2017 only.

Mr. C. Seebaluck
(Chairperson)


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Mrs. M. B. Rajabally
(Commissioner)


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Mrs. V. Bikhoo
(Commissioner)


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21 June 2019