Decision of the Competition Commission

CCM/DS/0030/27

Non-Confidential

Application for immunity under the Amnesty Programme for Resale Price Maintenance

by

Mauvilac Industries Ltd

21 June 2019

✂ represents excised confidential information

Competition Commission

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

THE COMMISSION –

Mr. A. Mariette	-	Vice-Chairperson
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 Mauvilac Industries Ltd on 11 December 2018,

Having regard to a report of the Executive Director of the Commission dated 15 February 2019 on the Undertakings given by Mauvilac Industries Ltd,

We, Commissioners, decide as follows:

Introduction

1.0 This Decision relates to an application for immunity dated 16th October 2017 made by Mauvilac Industries Ltd (the Applicant), through its Chief Operating Officer, (✂), 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 Commission by the Applicant on 11th December 2018

2.0 Having taken cognizance of a report (the Report) of the Executive Director of the Commission 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.

3.1 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 -

3.1.1 admits its participation in an agreement involving RPM;

3.1.2 provides the Commission with all the information, documents and evidence available to it regarding its RPM conduct;

3.1.3 maintains continuous and complete co-operation until the conclusion of any action by the Commission in relation to the matter; and

3.1.4 offers undertakings that satisfactorily address the competition concerns of the Commission.

3.2 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".

3.3 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

4.0 The Applicant is a private Company and is duly registered to the Registrar of Companies bearing Company Registration No. C 9978 and Business Registration No. C07009978. It is a manufacturer and distributor of paint products at its principal place of business at Les Pailles Road, Les Pailles as well as distributor of products manufactured by its supplier, (✂)

4.1 The Applicant has admitted its participation in conduct falling within the ambit of RPM under section 43 of the Act, both as a supplier in relation to the supply of paint and paint related products to its resellers and as a reseller at wholesale level of adhesive products sourced from its supplier, (✂). The Applicant's reprehensible RPM conduct may be summarised as follows:-

4.1.1 imposing RPM as a supplier on its resellers (from 01 December 2009 and 01 September 2016 as regards (✂) and (✂) respectively) via contractual agreements, in respect of the supply of paint and paint related products;

4.1.2 imposing minimum resale price as a supplier on its reseller (Quinc. ✂ – from 20 May 2015 up to December 2015) by way of letter, in respect of the supply of paint and paint related products;

4.1.3 imposing minimum resale price as a supplier on its resellers through emails, in respect of the supply of paint and paint related products, namely (✂) for the month of December 2015 and 08 to 18 March 2016, (✂) for the month of December 2015 and for periods 25 March to 10 April 2016 and 21 June to 01 July 2016, and (✂) for the periods 28 March to 10 April 2016 and 29 July to 07 August 2016;

4.1.4 issuing price lists to its resellers (as per Annex G of the Application) for the years 2009 to 2016, without mentioning the terms 'recommended price' thereon, in respect of the supply of paint and paint related products, and

4.1.5 agreement since 10 September 2002 on price and discount between the Applicant as a reseller and (✂) as the supplier, in respect of the downstream supply of adhesives products by the Applicant to downstream retailers.

Investigation and findings

5.0 Upon receipt of the Application and pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV042/RPM/028) whether the reported conduct may amount to an RPM within the ambit of section 43 of the Act.

5.1 The Executive Director submitted his Report (the 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.

5.2 The findings of the Executive Director further to the assessments carried out are that-

5.2.1 the Application satisfies the conditions set out under paragraph 5.6A of CCM3 Guidelines for RPM amnesty;

5.2.2 the Applicant in its capacity as manufacturer and distributor of paints and as reseller at wholesale level of adhesive products sourced from its supplier, (✂), has engaged in a conduct that raises competition concerns under section 43 of the Act; and

5.2.3 the Undertakings offered as part of the Application 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:-

5.2.3.1 to amend the agreements with its resellers (✂, and ✂) by removing the infringing clause and replacing it, via addendums, by a new clause to the effect that resellers are free to set their own prices and discount and that any price recommendation made by the Applicant shall not be binding on them;

5.2.3.2 not to send any letter or email to its resellers which may have the object or effect of restricting their ability to offer discounts. The Applicant also offers to include a clause in each statement of account sent to its resellers with the following terms 'the reseller is free to set its own selling price and rate of discounts and any price given by Mauvilac is only a recommended price and not binding";

5.2.3.3 to amend all its price lists by including the terms 'recommended price' thereon. A sample copy of the amended price list with the terms 'recommended price' has been submitted by the Applicant as Annex J to its Undertakings; and

5.2.3.4 to amend its agreement with (✂), and has indeed brought an amendment, by way of an addendum, which has deleted and replaced the infringing clause 6.1.2 with effect from 20 October 2017. The Applicant has submitted a copy of the addendum as Annex H to its Undertakings and the new clause 6.1.2 now reads as; "re-sell the products at such prices and allow such discounts at the discretion of the distributor. The Company shall have the right to recommend prices, but these should not be binding on the distributor."

5.3 As a measure of precaution and in order to circumvent any re-occurrences of such RPM conduct, the Applicant has given further undertakings –

5.3.1 not to enter into any agreement that involves RPM with suppliers;

5.3.2 to inform its suppliers that the terms 'recommended price' must appear on their products in the event they provide the Applicant with a recommended which appears on the products supplied to it by the suppliers; and

5.3.3 to inform all its dealers, in writing, that the prices or price levels communicated to them are 'recommended' prices or price levels.'

Executive Director's recommendations

6.0 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

7.0 Having regard to the Application submitted by the Applicant, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by the Applicant, the Commission determines that –

7.1 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 conduct in relation to the supply of paints and paints related products to specified resellers and as a reseller at wholesale level of adhesive products supplied by (✂), both conducts falling within the ambit of section 43 of the Act;

7.2 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

7.3 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

8.0 The Commission therefore decides as follows:

8.1 We accept that 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.

8.2 We accept the Undertakings offered by the Applicant.

8.3 The Undertakings shall be effective as from the date of this Decision.

8.4 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act for the Reported RPM conduct as follows:–

8.4.1 in respect of Paints & (✂); for the period 01 December 2009 to 16 October 2017 only;

8.4.2 in respect of (✂) Hardwares; for the period 01 September 2016 to 16 October 2017 only;

8.4.3 in respect of Quinc. (✂) for the period 20 May 2015 to 31 December 2015;

8.4.4 in respect of (✂) U; for the month of December 2015 and 08 to 18 March 2016;

8.4.5 in respect of (✂)max; for the month of December 2015 and for periods 25 March to 10 April 2016 and 21 June to 01 July 2016;

8.4.6 in respect of Espace (✂); for the periods 28 March to 10 April 2016 and 29 July to 07 August 2016;

8.4.7 in respect of the list of resellers as per ANNEX G to the Application; for the period 25 November 2009 to 31 December 2016 only; and

8.4.8 in respect of (✂) Ltd; for the period 25 November 2009 to 20 October 2017 only.

Mr. A. Mariette
(Vice-Chairperson) .....

Mr. C. Seebaluck
(Commissioner) .....

Mrs. M. B. Rajabally
(Commissioner) .....

Mrs. V. Bikhoo
(Commissioner) .....

21 June 2019