



Decision of the Competition Commission

CCM/DS/0030/40

Non-Confidential

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

by

DistriPC Ltd

21 June 2019

Competition Commission

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

THE COMMISSION –

Mr. A. Mariette	-	Vice-Chairperson,
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 DistriPC Ltd on 17 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 DistriPC Ltd,

We, Commissioners, decide as follows:

Introduction

- 1.0 This is an application for immunity dated 18 October 2017 made by DistriPC 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 Competition Commission (the 'Commission') by the Applicant on 17 December 2018.
- 2.0 Having taken cognizance of a report (the 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, trading under the name ‘Elytis’, was duly incorporated as a private company limited by shares on 06 July 1999, bearing Company Reg. No. C22621 and Business Reg. No. C07022621, and its registered office address is Motorway M2, Pailles.
- 8.0 The Applicant is a supplier and the Regional Distributor of IT brands of hardware and software including Microsoft, Symantec, Lexmark, ViewSonic, Transcend, and MSI.
- 9.0 The Applicant has admitted being party to one RPM conduct in its capacity as a reseller and four types of RPM conduct as a supplier –
 - 9.1 as a reseller, it has been receiving price lists from its suppliers (✗, ✗ and ✗) which contain a resale price termed as ‘Estimated Retail Price (ERP)’ and ‘Manufacturers Suggested Retail Price (MSRP)’ – without mentioning the terms ‘recommended price’; and

- 9.2 as a supplier, it distributes IT products to resellers, by -
 - 9.2.1 issuing price lists and quotations containing a resale price, to its resellers, without the terms 'recommended price' appearing thereon in respect of the supply of Microsoft, Veritas and Symantec branded IT products; and
 - 9.2.2 advertised its products in newspapers and magazines as well as through emails but without mentioning that the advertised price is a recommended selling price.

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/029) 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 supplier and regional distributor of IT brands of hardware and software has engaged in a conduct that raises competition concerns under section 43 of the Act; and
 - 12.3 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 to:-
 - 12.3.1 inform all its resellers in writing that the price list communicated to them are recommended prices and that it will amend all its price lists and quotations to include the terms 'recommended price' thereon and as such, all resellers would be free to set their own retail prices;
 - 12.3.2 clearly specify in all its advertisements for its IT products that the prices mentioned therein are 'recommended selling prices';
 - 12.3.3 inform its suppliers that it would no longer accept minimum resale prices and that it should be free to set its own resale prices;

- 12.3.3 inform the Commission of any attempt by its suppliers to implement or otherwise coerce or induce the implementation of RPM;
- 12.3.4 take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the purchase and/or resale of goods and/or services are fully aware of and actively implement the present undertakings when implementing its pricing policy, in line with the provisions of the Act; and
- 12.3.5 refrain from entering into any agreement that involves RPM with suppliers and resellers.

13.0 The Applicant has informed that it will implement the above undertakings within three months of the date of the Commission's decision in respect of its Application for immunity.

Executive Director's recommendations

14.0 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 it has reported to him.

Determination

15.0 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 –

- 15.1 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 IT products falling within the ambit of section 43 of the Act;
- 15.2 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
- 15.3 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

16.0 The Commission therefore decides as follows:

- 16.1 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.

16.2 We accept the Undertakings offered and direct the Applicant to comply with same in its entirety.

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

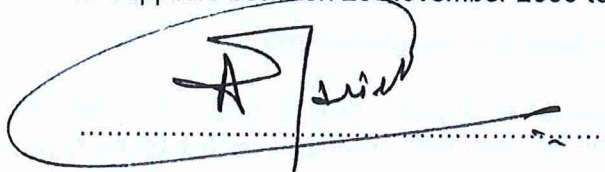
16.4 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act as follows and only for the Reported conduct in respect of:-

16.4.1 price lists issued to its resellers between 01 January 2013 to 18 October 2017;

16.4.2 advertisements in newspapers, magazines and via emails of prices of its IT products between 01 January 2015 to 18 October 2017; and

16.4.3 for the Reported conduct in respect of price lists received from its suppliers between 25 November 2009 to 18 October 2017.

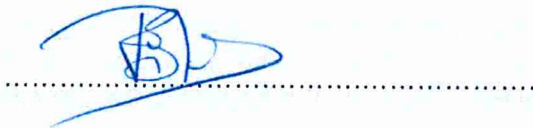
Mr. A. Mariette
(Vice-Chairperson)

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Mr. C. Seebaluck
(Commissioner)

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Mrs. V. Bikhoo
(Commissioner)

A handwritten signature in blue ink, written over a dotted line.

21 June 2019