



# **Decision of the Competition Commission**

**CCM/DS/0030/47**

**Non-Confidential**

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

**by**

**Leal & Co Ltd**

**21 June 2019**

# Competition Commission

**Decision of the Competition Commission (the 'Commission') on the application made by Leal & Co 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 Leal & Co Ltd on 10 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 Leal & Co Ltd,

We, Commissioners, decide as follows:

### Introduction

- 1.0 This is an application for immunity dated 20 October 2017 made by Leal & Co Ltd (the Applicant), through its legal advisor, Me Gavin Glover, 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 10 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’.

- 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 05<sup>th</sup> June 2017 until 20<sup>th</sup> 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, having its registered office situate at Motroway M1, Les Pailles, is a private Company and is duly registered to the Registrar of Companies bearing Business Registration No. C06002598.
- 5.0 The Applicant operates in the automotive sector as a supplier of brand new cars, branded parts and automotive products as well as maintenance services. It supplies cars of brand like BMW, MINI, Mitsubishi and KIA. It also supplies automotive products like automotive abrasives of brand ‘MIRKA’, automotive batteries of brand ‘FIAMM’, automotive paints of brands ‘MAXMEYER’, ‘PPG’ and ‘SELEMIX’, horns and spark plugs of brand ‘DENSO’, lubricants of brand ‘ELF’ and tires.

#### Reported Conducts

- 6.0 The Applicant has disclosed in its application the following conducts:-
- 6.1 It has issued price lists to its resellers which contained a resale price referred to therein as 'retail price' or 'unit price' but without the mention of the terms 'recommended price' appearing on the price lists, and
  - 6.2 It has communicated its listed prices on parts sales quotes to resellers which according to the Applicant may be interpreted by the resellers as being the "price at which they ought to sell the products.

Investigation and findings

- 7.0 Upon receipt of the Application and pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV042/RPM/031) whether the reported conduct may amount to an RPM within the ambit of section 43 of the Act.
- 8.0 The Executive Director submitted his Report on the matter to the Commission on 15<sup>th</sup> 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.
- 9.0 The findings of the Executive Director further to the assessments carried out are that-
  - 9.1 the Application satisfies the conditions set out under paragraph 5.6A of CCM3 Guidelines for RPM amnesty;
  - 9.2 the Applicant in its capacity as supplier of brand new cars, branded parts and automotive products has engaged in a conduct that raises competition concerns under section 43 of the Act.
  - 9.3 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:-
    - 9.3.1 not to implement or cause to be implemented either explicitly or implicitly, any agreement involving resale price maintenance when dealing with resellers; and
    - 9.3.2 to inform all its resellers in writing, in clear and unequivocal words, that prices or price levels it has communicated to them are 'recommended prices' or 'price levels'.

Executive Director's recommendations

- 10.0 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

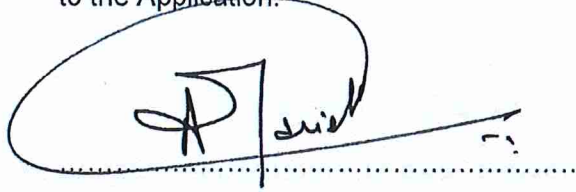
- 11.0. Having regard to the Application submitted by the Applicant, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by the Applicant, the Commission determines that –
- 11.1 the Applicant has, in its Application, admitted, in clear and unequivocal 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 as a supplier of brand new cars, branded parts and automotive products to specified resellers, that falls within the ambit of section 43 of the Act;
- 11.2 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
- 11.3 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

- 12.0 The Commission therefore decides as follows:
- 12.1 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.
- 12.2 We accept the Undertakings offered by the Applicant.
- 12.3 The Undertakings shall be effective as from the date of this Decision.
- 12.4 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act for the Reported RPM conduct which occurred during the period 25 November 2009 to 20 October 2017 and in respect of -
- 12.4.1 its dealings with all resellers as per annexed list to the Application; and

12.4.2 automotive products as per lists (Annex A to Annex I) annexed to the Application.

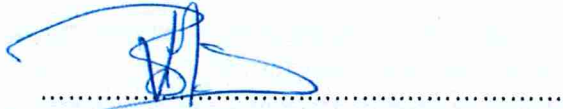
Mr. A. Mariette  
(Vice-Chairperson)



Mr. C. Seebaluck  
(Commissioner)



Mrs. V. Bikhoo  
(Commissioner)



21 June 2019