



Decision of the Competition Commission

CCM/DS/0030/49


Non-Confidential

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

by

Fine Foods Marketing Ltd

21 June 2019

 represents excised confidential information

Competition Commission

Decision of the Competition Commission (the 'Commission') on the application by Fine Foods Marketing 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 Fine Foods Marketing 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 Fine Foods Marketing Ltd,

We, Commissioners, decide as follows:

Introduction

- 1.0 This is an application for immunity dated 18 October 2017 made by Fine Foods Marketing Ltd (the Applicant), through its Managing Director, (✗), 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 11 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 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 was duly incorporated as a private company on 21 October 2003, bearing Business Reg. No. C060048147, and its registered office address is at Industrial Park No.1, Riche Terre.
- 5.0 The Applicant is a wholesale distributor and supplier of foodstuffs. It purchases poultry of the brand 'Carmen' and smoked marlin of the brand 'Makaira' from its suppliers Innodis Ltd and Black River Seafood Ltd respectively. It also supplies its own products such as chilled lamb, Chilled beef, frozen meat and seafoods to its dealers as per annexed list (Annex 3) to its Application.

6.0 The Applicant has admitted, in its application letter, its participation in RPM conduct which is two-fold –

6.1 In its capacity as reseller of products which it has purchased respectively from Innodis Ltd and Black River Seafood Ltd, the Applicant did not object to the prices affixed on pre-packed variable weight Carmen branded chicken and seafood products as such products had retail price tags featured thereon as 'RSP'. These products were then sold to end consumers at same prices as on the retail price tags. The listed prices with the term 'RSP' were evidence that they were recommended and binding prices; and

6.2 As supplier of its products, the Applicant has, by email and fax, circulated price lists to its dealers with the term 'RSP' which can only be interpreted by same dealers as "Recommended Selling Price" and hence, binding prices.

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/032) 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 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.

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 as wholesale distributor and supplier of foodstuffs 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 , in any manner whatsoever, enter into or otherwise facilitate, either explicitly or implicitly, the implementation of any agreement with its suppliers and/or any other suppliers that involves resale price maintenance, except if it clearly states that the resale price is a recommended price and it retains its

freedom to independently determine and set its own resale prices;

- 9.3.2 to, where any of its current suppliers and/or any other suppliers have recommended a minimum resale price for their products and the resale price appears thereon, inform the supplier, in writing, that it shall ensure that the words 'recommended price' appear next to the resale price;
- 9.3.3 not to accept any offer, whether periodic, promotional or otherwise – from its actual suppliers and/or other suppliers that involves RPM or is otherwise made conditional upon its observance of RPM;
- 9.3.4 to ensure that that all existing agreements, contracts, or other express arrangements with its suppliers, existing and prospective, expressly include a clause therein to the effect that it remains entirely free to fix or otherwise to apply its own prices or price levels and that it is neither bound nor legally compelled to apply or comply with any recommended price or price level communicated by its suppliers;
- 9.3.5 to inform, in its capacity as supplier, all its resellers, in writing, that prices or price levels it has communicated to them are 'recommended' prices or 'recommended' price levels; and
- 9.3.6 to continue to conspicuously include the terms 'recommended selling price' or 'recommended price' on all price lists communicated to and on all products supplied to its dealers and to promptly notify the Commission of any change in its product packaging and/or labelling that may affect this undertaking.

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 relation to its wholesale distribution of foodstuffs and reseller of Chicken products and seafood falling 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

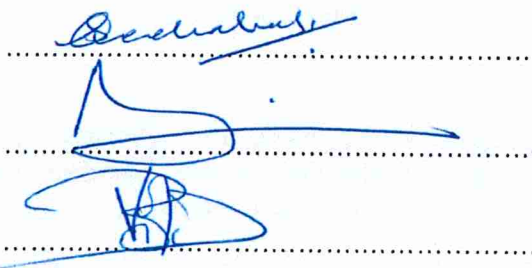
12.0 The Commission therefore decides as follows:

- 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 as follows:-
- 12.4.1 For the period 25 November 2009 to 30 April 2017 and only in respect of its dealings with Innodis Ltd;
- 12.4.2 For the period 01 January 2011 to 30 April 2017 and only in respect of its dealings with Black River Seafood Ltd; and
- 12.4.3 For the period 25 November 2009 to 18 October 2017 and only in respect of supply of its products to its dealers as per annexed list (Annex 3) of the Executive Director's Report.

Mr. C. Seebaluck
(Chairperson)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)



21 June 2019