# Decision of the Competition Commission

## CCM/DS/0030/34

**Non-Confidential**

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

**by**

**M Savers Ltd**

**21 June 2019**

# Competition Commission

**Decision of the Competition Commission (the 'Commission') on the application by M Savers 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 M Savers Ltd on 04 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 M Savers Ltd,

We, Commissioners, decide as follows:-

Introduction

1.0 This is an application for immunity dated 20 October 2017 made by M. Savers Ltd (the Applicant), through its Managing Director, Mr Jalill Ahmud Bhojul, 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 04 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 was duly incorporated as a private company on 26 January 2001, bearing Company Registration Number C27086 and Business Registration Number C07002398, and it operates a supermarket at Royal Road, Bel Air, Riviere Sèche.

8.0 The Applicant is engaged in the retail distribution of beverage products supplied by three of its upstream suppliers, namely Phoenix Beverages Ltd, Grays Inc Ltd and Scott Ltd and consumer goods supplied by various other suppliers.

9.0 The Applicant has admitted being party to written agreements with its suppliers, namely; Phoenix Beverages Ltd, Grays Inc Ltd and Scott & Co Ltd to maintain the resale price of beverage products dictated by them and that such RPM conduct falls within the ambit of section 43 of the Act. The said agreements comprise of the following clauses:

9.1 Agreement (Protocole d'Accord) with **Phoenix Beverages Ltd** for the period 01 January to 31 December 2016:

9.1.1 *"Le Distributeur s'engage, autant que possible a respecter les prix de ventes recommandés du Fournisseur".*

9.1.2 *"En cas ou le Distributeur souhaiterais vendre les produits du Fournisseur au-dessus ou en dessous des prix de ventes recommandés, le Distributeur se devra de contacter le Fournisseur et un accord devra etre trouve et officialise entre les deux parties".*

9.2 Agreement with **Grays Inc Ltd's** (Accord Commercial) for the period 01 January to 31 December 2016

9.2.1 *"Nous vous prions de ne pas vendre nos produits a un prix inferieur au prix stipulé sur notre liste de prix trade incluant la TVA ou a un prix communément agréé en ecrit."*

9.3 Agreement with Scott & Co Ltd (Protocol d'Accord) for the period 01 January to 31 December 2015.

9.3.1 *"De plus le client s'engage, pour tous les produits qui lui sont vendus par le fournisseur: A ne pas vendre en dessous du prix d'achat les produits mis en promotions."*

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/034) 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 retail distributor of beverage products 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:-

12.3.1 not to enter into any agreement, in any manner whatsoever or otherwise facilitate, either explicitly or implicitly, the

implementation of any agreement with the enlisted suppliers and/or any other suppliers that involves RPM;

12.3.2 not to accept any offers – whether periodic, promotional or otherwise – from the suppliers that involve RPM or are otherwise made conditional upon its observance of RPM;

12.3.3 to include a clause in all existing agreements, contracts, or other express arrangements with the suppliers, existing and prospective, to the effect that it remains entirely free to fix or otherwise 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 levels communicated to it by its suppliers; and

12.3.4 to take all reasonable steps to ensure that all communications, negotiations and arrangements with the suppliers are properly documented and archived as evidence of compliance with the present undertakings when reselling supplier'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 it has reported to him.

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, and the Undertakings offered 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 conduct in relation to the retail distribution of beverage products falling 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 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 as follows:–

15.4.1 For the period 01 January 2014 to 20 October 2017 and only in respect of its dealings with the following suppliers:-

(a) Phoenix Beverages Ltd;

(b) Grays Inc. Ltd; and

(c) Scott & Co Ltd

Mrs. V. Bikhoo
(Chairperson) .....

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

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

21 June 2019