



Decision of the Competition Commission

CCM/DS/0030/31

Non-Confidential

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

by

Panagora Marketing Co. Ltd

21 June 2019

Competition Commission

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

THE COMMISSION –

Mrs. V. Bikhoo	-	Commissioner,
Mrs M. Rajabally	-	Commissioner,
Mr. C. Seebaluck	-	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 Panagora Marketing Co. 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 Panagora Marketing Co. Ltd,

We, Commissioners, decide as follows:

Introduction

- 1.0 This Decision relates to an application for immunity dated 07 September 2017 made by Panagora Marketing Co. Ltd (the Applicant), 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 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’.

- 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 limited by shares in 1974, bearing Business Registration Number: C07002398, and its registered office is at the Eclasia Group Headquarters, Gentilly, Moka and its head office at Pont Fer, Phoenix.
- 8.0 The Applicant is a marketing and distribution company, marketing 64 brands in Mauritius. The Applicant supplies its products to over 4500 clients and its clients range from supermarkets to corner stores and comprise of hotels and restaurants.
- 9.0 The products to which the Application relates are all the non-Chantecler branded foodstuff supplied by the applicant and include: products sold under Farmstead brand, products sold under Cuisto brand, products sold under Dodo brand; products sold under Sea Harvest brand; products sold under Mc Cain brand, products sold under Sumeru brand; products sold under Royal Choice brand; products sold under Watties brand; products sold under Miko brand; products sold under Camel brand; products sold under Bledor brand; products sold under

Perette brand; products sold under Regal brand; products sold under Pongo brand; products sold under Candia brand; Canneton de Beauvoir, Yoplait products; Erica butter; Cape juice; Bega processed cheese; Royal corn mutton; life tomato ketchup.

10.0 The list of clients of the Applicant for which RPM Amnesty has been applied is as follows:

10.1 Supermarkets trading under the name of GSR

10.2 Supermarkets trading under the name of Way

10.3 Supermarkets trading under the name of Intermarkt

10.4 Supermarkets trading under the name of Super U

10.5 Mauridistridom

10.6 Supermarkets trading under the name of Winners

10.7 Supermarkets trading under the name of Pick n Pay

10.8 Food Lover's Market

11.0 The Applicant has admitted has its participation in conduct falling within the ambit of RPM under section 43 of the Act in that it has used deal sheets to communicate promotional offers on various products to its resellers. The said deal sheets comprise of the following clause:

11.1 *"Le fournisseur se réserve le droit d'annuler le tarif promotionnel au cas ou:-certains produits sont vendus en dessous du prix normal".*

Investigation and findings

12.0 Upon receipt of the Application and pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV042/RPM/042) whether the reported conduct may amount to an RPM within the ambit of section 43 of the Act.

13.0 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.

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

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

- 14.2 the Applicant in its capacity as supplier of branded foodstuffs has engaged in a conduct that raises competition concerns under section 43 of the Act; and
- 14.3 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:-
 - 14.3.1 to continue using deal sheets which are in compliance with the Act, i.e., without the impugned clause in its commercial dealings with all existing dealers involved in the resale of the Applicant's branded foodstuffs;
 - 14.3.2 to take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the sales and marketing of its products with dealers are fully aware of and actively implement the undertakings submitted to the Commission when designing and/or implementing the Applicant's commercial policy for its dealers;
 - 14.3.3 to use its best efforts to ensure that the undertakings submitted to the Commission is made known to and is understood by all dealers; and
 - 14.4.4 to take all reasonable steps to ensure that all communications, negotiations and arrangements with dealers are properly documented and archived as evidence of general understanding among dealers of their freedom and ability to fix or otherwise apply their own prices or price levels when reselling Applicant's products.

Executive Director's recommendations

- 15.0 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.

Determination

- 16.0 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 –
 - 16.1 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 branded foodstuffs to specified retailers falling within the ambit of section 43 of the Act;
 - 16.2 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

16.3 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

17.0 The Commission therefore decides as follows:

17.1 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;

17.2 We accept the Undertakings offered by the Applicant;

17.3 The Undertakings shall be effective as from the date of this Decision; and

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

17.4.1 For the period 25 November 2009 to 31 May 2014 and only in respect of following dealers:-

17.4.1.1 Supermarkets trading under the name of GSR;

17.4.1.2 Supermarkets trading under the name of Way;

17.4.1.3 Supermarkets trading under the name of Intermarkt;

17.4.1.4 Supermarkets trading under the name of Super U;

17.4.1.5 Mauridistridom;

17.4.1.6 Supermarkets trading under the name of Winners;

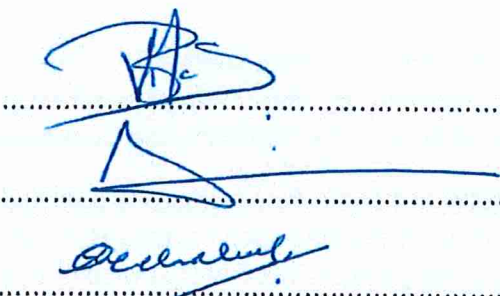
17.4.1.7 Supermarkets trading under the name of Pick n Pay

17.4.1.8 Food Lover's Market.

Mrs. V. Bikhoo
(Chairperson)

Mrs. M. B. Rajabally
(Commissioner)

Mr. C. Seebaluck
(Commissioner)



21 June 2019