



# **Decision of the Competition Commission**

**CCM/DS/0030/35**

**Non-Confidential**

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

**by**

**Somags Ltée**

**21 June 2019**

# Competition Commission

**Decision of the Competition Commission (the 'Commission') on the application by Somags Ltée 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 Somags Ltée 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 Somags Ltée,

We, Commissioners, decide as follows:

### Introduction

- 1.0 This is an application for immunity dated 13 October 2017 made by Somags Ltée (the Applicant), through its Purchasing Director, Mr Gessen Veeraragoo, 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 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

- 7.0 The Applicant was duly incorporated as a private company limited by shares on 06 March 1975, bearing Company Reg. No. C2456 and Business Reg. No. C06002456, and its registered office address is c/o Navitas Corporate Services Ltd, Navitas House, Robinson Road, Floreal.
- 8.0 The Applicant is a reseller of consumer goods to end consumers. It is a subsidiary of the Casino Group and has two supermarkets chains in operation, namely, Jumbo Score and Spar. Jumbo Score has 2 distribution outlets and Spar has 6 distribution outlets in Mauritius.
- 9.0 The Applicant has admitted being party to a written agreement with Mauritius Oil Refineries Limited (MOROIL) dated 12 January 2016. One of the clauses therein compels the Applicant to practice price restriction on all products supplied by MOROIL in the following terms:-
- 9.1 **"C. Remise Promotionnelle**

*Le/Les produit/s en promotion fera l'objet d'un accord sur le prix de vente et devra etre respecté par tous les magasins."*

- 9.2 The Executive Director views the above clause as to prevent the Applicant from freely determining the resale price of the products of MOROIL thus establishing a fixed price/price level to be observed by the Applicant, likely to form an RPM, notwithstanding the impugned clause relates to promotional offers.

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/043) 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 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.
- 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 reseller of MOROIL products has engaged in a conduct that raises competition concerns under section 43 of the Act;
- 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 take the necessary steps required to put an end to the agreement and, in particular, it will inform MOROIL that it is no longer party to the price restriction set by the agreement with it and that it will enter into a new agreement or modify the agreement to remove the RPM clause therefrom;
- 12.3.2 refrain, in any manner whatsoever, from entering into or likewise facilitating, either explicitly or implicitly, the implementation of any agreement or part of agreements with MOROIL and/or other suppliers that involves resale price maintenance;
- 12.3.3 take all appropriate measures to ensure that all its internal management officers, directors, and employees who are engaged in the purchase and/or resale of goods and/or services are fully aware of and actively implement the Undertakings when implementing its pricing policy, in accordance with the provisions of the Act;



- 12.3.4 take all reasonable steps to ensure that all communications, negotiations, arrangements with its suppliers are properly documented and archived to demonstrate its compliance with the Undertakings when reselling its supplier's goods;
- 12.3.5 to provide to the Commission with a copy of any amended agreement governing its commercial relationship with its suppliers as a matter of evidence that it has irrevocably ceased the impugned RPM conduct; and
- 12.3.6 submit a written report to the Commission detailing the implementation of the Undertaking.

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 to an agreement involving an RPM conduct under section 43 of the Act. More precisely, the Applicant has admitted being party to a written agreement with MOROIL which contains a clause constituting RPM as particularised at paragraph 9 above;
- 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 by the Applicant.

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

16.3 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act for the Reported RPM conduct occurred during the period 01 January to 31 December 2016 and only in respect of its dealings with Mauritius Oil Refineries Limited (MOROIL).

Mr. C. Seebaluck  
(Chairperson)




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Mrs. M. B. Rajabally  
(Commissioner)



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Mrs. V. Bikhoo  
(Commissioner)



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21 June 2019