



# **Decision of the Competition Commission**

**CCM/DS/0030/44**

**Non-Confidential**

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

**by**

**King Savers Ltd,  
Goodhands Co. Ltd  
&  
Three Kings Ltd**

**21 June 2019**

# Competition Commission

**Decision of the Competition Commission (the 'Commission') on the application made jointly by King Savers Ltd, Goodhands Co. Ltd & Three Kings 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 King Savers Ltd, Goodhands Co. Ltd & Three Kings 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 King Savers Ltd, Goodhands Co. Ltd & Three Kings Ltd,

We, Commissioners, decide as follows:

### Introduction

- 1.0 This is an application for immunity dated 20 October 2017 made jointly by King Savers Ltd, Goodhands Co. Ltd & Three Kings Ltd (the Applicants), through their Director, Mr Alain Saverettiar, 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 Applicants on 06 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 Applicants are supermarkets trading under the name of 'King Savers' and are resellers of consumer goods in Mauritius.
- 5.0 The Applicants are private companies limited by shares incorporated under the laws of Mauritius with Business Registration Numbers C06021340, C13119463 and C16139461 respectively and the registered nature of their respective businesses being, among others, 'Supermarket (foodstuff predominant)'
- 6.0 The Applicants have admitted their participation in conduct falling within the ambit of RPM under section 43 of the Act. Such reprehensible RPM conduct may be summarised as follows:-



- 6.1 the Applicants have entered into written agreements with their suppliers, namely, Scott & Co Ltd and Grays Inc Ltd, containing clauses on the resale prices of products which may amount to RPM conducts;
- 6.2 the Applicants resell the products of their suppliers to end consumers and are therefore dealers of the suppliers' products. They share a vertical relationship with their suppliers including the suppliers concerned by the above-referred conduct;
- 6.3 The written agreement entered into by the Applicants with Scott & Co Ltd contains a term regarding price levels to be applied:-

*"A ne pas vendre en dessous du prix d'achat les produits mis en promotions", and*

- 6.4 As regards the written Agreement with Grays Inc Ltd, it contains clauses such as:-

*"K. Respect des prix de ventes*

*Nous vous prions de ne pas vendre nos produits a un prix inférieur au prix stipulé sur notre liste de prix trade incluant la TVA ou a un prix communément agréé par écrit.*

*Au cas ou cette clause ne serait pas respectée, nous ne pourrions vous livrer les produits aux termes et conditions comme stipulés dans cet accord et nous ne pourrions vous payer la remise de fin d'année."*

#### 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/044) 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 Applicants in their capacity as resellers of consumer goods have 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 Applicants have undertaken:-

9.3.1 to take the necessary steps required to put an end to the agreements and, in particular, they will inform Scott & Co Ltd and Grays Inc Ltd that they are no longer party to the price restrictions set by the agreements with them and that they will enter into new agreements or modify the agreements to remove the RPM clauses therefrom; and.

9.3.2 to 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 the above-mentioned suppliers and/or any other supplier that involves resale price maintenance.

#### Executive Director's recommendations

10.0 The Executive Director recommends that the Commission accepts the Undertakings and grant immunity from fine to the Applicants for their participation in the RPM conduct it has reported to him.

#### Determination

11.0. Having regard to the Application submitted by the Applicants, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by the Applicants, the Commission determines that –

11.1 the Applicants have, in their 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 as resellers of consumer goods, that falls within the ambit of section 43 of the Act;

11.2 The Applicants have 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 Applicants satisfactorily address the Commission's concerns in so far as it will ensure that Applicants cease their participation in RPM agreements.

#### Decision

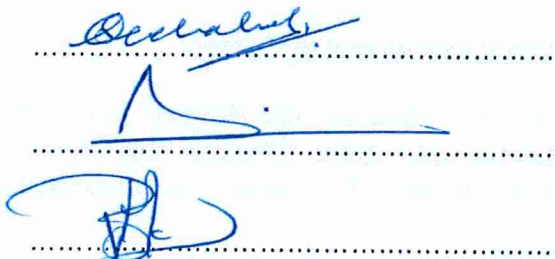
12.0 The Commission therefore decides as follows:

- 12.1 We accept that the Applicants satisfy 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 Applicants.
- 12.3 The Undertakings shall be effective as from the date of this Decision.
- 12.4 We grant immunity from financial penalty to the Applicants pursuant to section 59(7) of the Act for the Reported RPM conduct as follows:—
- 12.4.1 in respect of their dealings with Scott & Co. Ltd; for the period 01 January 2016 to 20 October 2017 only; and
- 12.4.2 in respect of their dealings with Grays Inc. Ltd; for the period to 20 October 2017 only.

Mr. C. Seebaluck  
(Chairperson)

Mrs. M. B. Rajabally  
(Commissioner)

Mrs. V. Bikhoo  
(Commissioner)



21 June 2019