



# **Decision of the Competition Commission**

**CCM/DS/0030/28**

**Non-Confidential**

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

**by**

**Edendale Distributors Ltd**

**21 June 2019**

# Competition Commission

**Decision of the Competition Commission (the 'Commission') on the application made by Edendale Distributors 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 Edendale Distributors Ltd on 31 October 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 Edendale Distributors Ltd,

We, Commissioners, decide as follows:

### Introduction

- 1.0 This Decision relates to an application for immunity dated 17 October 2017 made by Edendale Distributors 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 31 October 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 is a private Company and is duly registered to the Registrar of Companies bearing Company Registration No. C 64211 and Business Registration No. C06064211. It is a distributor of foods and beverages (milk, sauces, burgers, fruit juices, among others) and other consumer goods and its principal place of address is Anse Courtois, Les Pailles, Mauritius.
- 8.0 The Chief Executive Officer of Applicant, has, by way of letter dated 17 October 2017, applied for immunity under the RPM Amnesty Programme. The Applicant has admitted having participated in and/or otherwise being party to an agreement involving RPM in connection with the supply of its food and beverages products by issuing price lists, via email or otherwise, to dealers containing the respective retail normal and/or promotional prices (at times fixed, minimum or within a price range) for its products and without making it clear to the dealers that these prices are recommended prices. The Applicant states that its RPM conduct has been in place since the year 2011.

Investigation and findings

- 9.0 Upon receipt of the Application and pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV042/RPM/061) whether the reported conduct may amount to an RPM within the ambit of section 43 of the Act.
- 10.0 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.
- 11.0 The findings of the Executive Director further to the assessments carried out are that-
- 11.1 the Application satisfies the conditions set out under paragraph 5.6A of CCM3 Guidelines for RPM amnesty;
  - 11.2 the Applicant in its capacity as distributor of foods and beverages and other consumer goods has engaged in a conduct that raises competition concerns under section 43 of the Act.
  - 11.3 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:-
    - 11.3.1 to cease the reported RPM conduct and has, accordingly, amended its product price list (as per Annex 1 of the Undertakings) by clearly inserting a heading 'Recommended Selling Price' in the appropriate pricing column such that resellers are clearly informed, upon receiving the price list, that the retail prices contained therein are non-binding pricing recommendations. It has further undertaken not to implement any direct or indirect measure, whatever its form, that compels or induces resellers to apply or practise retail prices/price levels communicated to them;
    - 11.3.2 to inform all its dealers in writing that prices or price levels communicated to them are "recommended" prices or price levels. It did so on 23 February 2018.
    - 11.3.3 to provide training to all its staff dealing with its dealers so that they, on behalf of the Applicant, inform same dealers, in clear and unequivocal words that the prices communicated to them are merely "recommended" prices or price levels and that they remain free to practise their own retail prices;



- 11.3.4 to ensure that all agreements, contracts, or other express arrangements with dealers, existing and prospective, expressly include a clause therein to the effect that dealers shall remain entirely free to fix or otherwise apply their own prices or price levels and that they are neither bound nor legally or contractually compelled to apply or comply with any recommended price or price level communicated to them;
- 11.3.4 to communicate the measures undertaken above (paragraph 11 (c)(i) to (iv)) to its internal management and commercial employees engaged in the sales and marketing of its products, thereby minimising risks of RPM conduct being promoted by employees and ensuring that commercial dealings with resellers are in compliance with the Act.

#### Executive Director's recommendations

- 12. The Executive Director recommends that the Commission accepts the Undertakings and grants immunity from fines to the Applicant for its participation in the reported RPM conduct

#### Determination

- 13. 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 –
  - 13.1 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 distribution of foods and beverages and other consumer goods that falls within the ambit of section 43 of the Act;
  - 13.2 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
  - 13.3 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

- 14. The Commission therefore decides as follows:
  - 14.1 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.
  - 14.2 We accept the Undertakings offered by the Applicant.

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

14.4 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act in respect of the Reported RPM conduct for the period 01 January 2011 to 17 October 2017 only. The immunity is in respect of the 98 retail outlets only as per Annex 3 of the Report.

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