



Decision of the Competition Commission

CCM/DS/0030/36

Non-Confidential

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

by

Inicia Ltée

21 June 2019

Competition Commission

Decision of the Competition Commission (the 'Commission') on the application by Inicia 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 Inicia Ltée on 23 November 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 Inicia Ltée,

We, Commissioners, decide as follows:

Introduction

- 1.0 This is an application for immunity dated 02 October 2017 made by **Inicia Ltée** (the Applicant), through its Chief Executive Officer, Mr Emmanuel Wiehe, 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 23 November 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 (previously CERES Ltd as producer and supplier of branded eggs) was duly incorporated as a private company on 13 March 1991, bearing Company Reg. No. C 9332 and Business Reg. No. C07009332, and its registered office address is at Wooton, Eau Coulée.
- 8.0 The Applicant has over the years diversified to other sectors such as chicks and animal feed production as well as farming equipment, veterinary, and pet products. Furthermore, in collaboration with its international partners such as Immuno-Vet (South Africa) and Kepro (Holland), the Applicant also supplies a wide variety of products and services for domestic animals to local pharmacies, veterinaries and individual customers.
- 9.0 The Applicant has admitted, in its application letter, its participation in RPM conduct which is two-fold –

- 9.1 Failing to include the terms 'recommended price' on price labels affixed on pet products supplied to its resellers, namely pharmacies, veterinaries and animal/pet clinics; and
- 9.2 Accepting to sell various duck products supplied by Gourmet Foods Ltd without the terms 'recommended price' on the price labels affixed on same products.

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/063) 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 supplier of veterinary, domestic animal feed, processed duck and pet 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 to include a clause in all its contract with dealers to the effect that the dealers shall remain free to set their own resale prices and that they are not bound by any price it may recommend;
 - 12.3.2 to inform all its dealers, in writing, that the prices or price levels communicated to them are 'recommended' prices or price levels;
 - 12.3.3 to keep proper records of dealings with dealers so as to demonstrate compliance with the undertakings but also to demonstrate the understandings among dealers of their freedom to set their own resale prices independent of those it has set; 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 supply domestic animal feed and duck 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

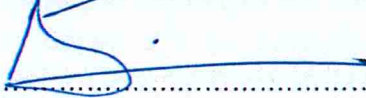
- 15.0 The Commission therefore decides as follows:
- 15.1 We accept that the Applicant satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements.
- 15.2 We accept the Undertakings offered by the Applicant.
- 15.3 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 25 November 2009 to 18 October 2017 and only in respect of pharma/pet products supplied to specific resellers as per annexed lists to its letter addressed to the Executive Director on 18 October 2017; and

- 15.4.2 For the period 01 April 2012 to 05 October 2017 and only in respect of duck products supplied by Gourmet Foods Ltd as per attached list, including resellers thereat, to its letter addressed to the Executive Director on 18 October 2017.

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