



# **Decision of the Competition Commission**

**CCM/DS/0030/29**

**Non-Confidential**

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

**by**

**Dry Mix Products Ltd**

**21 June 2019**

# Competition Commission

**Decision of the Competition Commission (the 'Commission') on the application made by Dry Mix Products Ltd for immunity under the Amnesty Programme for Resale Price Maintenance.**

## THE COMMISSION –

Mr. A. Mariette	-	Vice-Chairperson
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 Dry Mix Products Ltd on 26 September 2017,

Having regard to a report of the Executive Director of the Commission (the 'Executive Director') dated 15 February 2019 on the Undertakings given by Dry Mix Products Ltd,

We, Commissioners, decide as follows:

### Introduction

- 1.0 This Decision relates to an application for immunity dated 26<sup>th</sup> September 2017 made by Dry Mixed Products Ltd (the Applicant), through its General Manager, 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 as an annex to the Application.
- 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, a subsidiary of The United Basalt Products Ltd is a public company incorporated in Mauritius since 17 November 1994, bearing Business Registration Number C07013634 and having its registered office at Geoffroy Road, Bambous.
- 8.0 The Applicant, manufacturer and supplier of pre-packed dry-mortar products, has admitted its participation in conduct falling within the ambit of section 43 of the Act. The Applicant’s reprehensible RPM conduct may be summarised as follows:-
  - 8.1 it has imposed on its distributors in writing (Contrat de distribution) a retail pricing structure which includes fixing of selling prices and/or the transportation costs.
  - 8.2 it retaliated against one distributor, Societe I &N Jungal, by terminating the *Contrat de distribution* entered with it on ground that this distributor started



to develop promotional programmes which deviated from the retail pricing obligations it has imposed upon it; and

- 8.3 as a result of the 'contractual breach' by (X), the Applicant has tightened the RPM provisions of the new distribution agreement (Contrat de distribution) with (X) so as to preclude any discounting practice, without prior notice and written authorization of the Applicant.

#### 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/066) 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 manufacturer and supplier of pre-packed dry-mortar products 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 amend all existing agreements, contracts, or other express arrangements with dealers, existing and prospective, by expressly including 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 compelled to apply or comply with any recommended price or price level it has communicated to them;
- 11.3.2 to inform all its dealers, in writing and in clear and unequivocal words, that prices or price levels it has communicated to them are "recommended" prices or price levels;
- 11.3.3 not to implement or cause to be implemented, in any manner whatsoever, any measure (by using economic advantages, incentives or otherwise), having the object or effect of compelling, inducing or attempting to compel or induce dealers

to apply the retail prices or retail price levels or retail price components communicated to them by it;

- 11.3.4 to, where a minimum resale price has been recommended to dealers and the resale price appears on the goods, either affix or cause to be affixed the words "recommended price" next to the resale price, in compliance with the provisions of section 43(3) of the Act; and
- 11.3.5 to provide training to its staff on the importance of informing dealers, in clear and unequivocal manner, that the prices communicated to them are merely "recommended" prices or price levels and that they remain free to practise their own retail prices.

#### Executive Director's recommendations

- 12. 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 for the period

#### Determination

- 13. Having regard to the Application submitted by the Applicant, the concerns which have been identified by the Executive Director in his Report, the Undertakings offered by the Applicant and all relevant documentary evidence as submitted 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 supply of pre-packed dry-mortar products 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 Application made by 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;

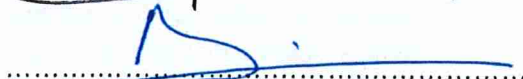
14.3 The Undertakings shall be effective as from the date of this Decision;

14.4 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act for the Reported RPM conduct in respect of only distributors specified in its letter of Application for RPM Amnesty dated 26 September 2017 and that the immunity is valid for the period 15 March 2010 to 26 September 2017 only;

Mr. A. Mariette  
(Vice- Chairperson)

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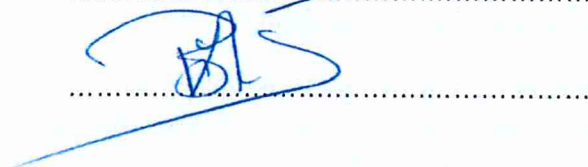
Mrs. M. Rajabally  
(Commissioner)

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Mr. C. Seebaluck  
(Commissioner)

A handwritten signature in blue ink, appearing to be 'C. Seebaluck', written over a horizontal dotted line.

Mrs. V. Bikhoo  
(Commissioner)

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21 June 2019