



Decision of the Competition Commission

CCM/DS/0030/68

Non-Confidential

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

by

Grandes Surfaces Reunies Ltée (GSR Ltée)

21 June 2019

Competition Commission

Decision of the Competition Commission (the 'Commission') on the application made by GSR Ltée and other supermarkets 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 GSR Ltée on 24 January 2019,

Having regard to a report of the Executive Director of the Commission (the 'Executive Director') dated 30 April 2019 on the Undertakings given by GSR Ltée,

We, Commissioners, decide as follows:

Introduction

- 1.0 This Decision relates to an application for immunity dated 20 October 2017 made by GSR Ltée and supermarkets trading under the name of 'GSR' (the Applicants), through their respective authorised representatives 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 all the Applicants.
- 2.0 Having taken cognizance of a report (the Report) of the Executive Director dated 30 April 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 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

- 4.0 The Applicant, GSR Ltée, is a business entity and bears Business Registration Number C06026837. It operates as an association of several supermarkets which resell goods, foods, non-foodstuffs and beverages. Its registered office situates at c/o A & W Property, La Tour Koenig. The associated supermarkets -
 - 4.1 **Ibrahim Edoo & Sons Ltd** – bears Business Registration Number C07005791, situates at 20, Farquar Street, Port Louis and submitted undertakings to the Executive Director on 25 February 2019;
 - 4.2 **Wong Min Co. Ltd** – bears Business Registration Number C07009303, situates at 14, Queen Street, Port Louis and

submitted undertakings to the Executive Director on 01 March 2019;

- 4.3 **Cheval de Mer Co. Ltd** (trading as 'Store 2000') - bears Business Registration Number C06003816, situated at Royal Road, Grand Bay and submitted undertakings to the Executive Director on 26 February 2019;
- 4.4 **Antonio Maurer & Co. Ltd** (trading as 'Popo Supermarket'), bears Business Registration Number C06016061, situated at Royal Road, Trou Aux Biches and submitted undertakings to the Executive Director on 26 February 2019;
- 4.5 **Société Commerciale Wong ChoiChat Wong Lun Sang & Cie** - bears Business Registration Number P07005411, situated at Royal Road, La Gaulette and submitted undertakings to the Executive Director on 25 January 2019;
- 4.6 **Lam Chee Fong & Co Ltd** (trading as 'Central Supermarket') - bears Business Registration Number C07001582, situated at St Jean Road, Quatre Bornes and submitted undertakings to the Executive Director on 25 February 2019;
- 4.7 **Sheridan International Ltd** - bears Business Registration Number C06058614, situated at La Tour Koenig Commercial Centre, Pointe aux Sables and submitted undertakings to the Executive Director on 21 February 2019;
- 4.8 **S F Loyeung Co Ltd** - bears Business Registration Number C06042119, situated at Labourdonnais Street, Mahebourg and submitted undertakings to the Executive Director on 26 February 2019;
- 4.9 **Soonilduth Shewdeen** (trading as 'Riambel Self Service') - bears Business Registration Number I07008187, situated at Royal Road, Riambel, Surinam and submitted undertakings to the Executive Director on 05 March 2019; and
- 4.10 **Manory Ltd** - bears Business Registration Number C06010322, situated at 10, Emile Duvivier Street, Beau Bassin and submitted undertakings to the Executive Director on 06 March 2019.

5.0 From the Applications and documents in support thereof, it is established that the Applicants have participated in RPM conducts which fall under section 43 of the Act in the following manner:-

- 5.1 **Conduct I** - the Applicants have been accepting products with resale prices pre-determined and pre-labelled on chilled and frozen variable weighted products from certain suppliers, namely: Innodis Ltd, Panagora

Marketing Ltd, Fast Foods Ltd, Tiremaster Ltd, Fine Foods Marketing Ltd, IBL Ltd, Top Nature Ltd and ENL Agri Ltd, without the words 'recommended price' appearing next to the resale prices; and

- 5.2 **Conduct II** - the Applicants have entered into written agreements with Phoenix Beverages Ltd, Scott & Co Ltd and Grays Inc Ltd and such agreements contain clauses on the resale prices of products which may amount to RPM. The impugned clauses are as follows:-

5.2.1 Agreement with Phoenix Beverages Ltd: *"Le distributeur s'engage à ne pas vendre les produits commercialisés par le Fournisseur en dessous des prix d'achats. En Cas de non-respect de cette clause, le Fournisseur se réserve le droit d'annuler immédiatement toute promotion en cours".*

5.2.2 Agreement with Scott & Co Ltd: *"de plus, le Client s'engage , pour les produits mentionnés ci-dessous"; and*

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

5.2.3 Agreement with Grays Inc Ltd: *"d'autre part, nous vous rappelons de ne pas vendre nos produits à moins cher que stipule dans notre liste "trade" incluant la TVA. Au cas où cette clause ne serait pas respectée, nous nous trouverons dans l'obligation d'annuler tout paiement au(x) member(s) en question"; and*

"nous vous prions de ne pas vendre nos produits à un prix inférieur au prix stipulé sur notre liste de prix trade incluant la TVA ou à un prix communément agree par écrit. Au cas où cette clause ne serait pas respectée, nous ne pourrions vous livrer les produits aux termes et conditions come stipulés dans cet accord et nous ne pourrions vous payer la remise de fin d'année."

6.0 It is the Executive Director's view that –

- 6.1 as regards Conduct I, the said agreement is a 'system of arrangements with the object to fix the price at which Applicants must resell the products of their suppliers. In other words, by accepting the products of the suppliers with a pre-affixed resale, the Applicants have acquiesced to the policy and resale prices as determined by the suppliers. Thus, unless the affixed prices are changed by the Applicants, the resale prices as determined and affixed by the suppliers would establish a Resale Price Maintenance under section 43 of the Act.; and

- 6.2 For Conduct II which relates to the agreements that the Applicants have, through GSR Ltée, entered into with the specific suppliers as highlighted at paragraph 5.2 above, we are in agreement with the Executive Director

that certain clauses of the agreements as reproduced under subparagraphs 5.2.1, 5.2.2 and 5.2.3 above are clear evidence of imposition by the suppliers of a pricing restriction on the Applicants.

Investigation and findings

- 7.0 Upon receipt of the Applications and pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV042/RPM/070) whether the reported conducts 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 30 April 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 Applications satisfy the conditions set out under paragraph 5.6A of CCM3 Guidelines for RPM amnesty;
 - 9.2 the Applicants in their capacity as resellers of goods, foods, non-foodstuffs and beverages have engaged in conducts that raise competition concerns under section 43 of the Act.
 - 9.3 the Undertakings offered as part of the Applications 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, individually, undertaken:-
 - 9.3.1 to inform their suppliers that they can no longer be party, in relation to conduct II, to the restrictive clauses of the agreements constituting RPM and that they will either modify the agreements to exclude the restrictive clauses therefrom or they will enter into new agreements which do not contain RPM clauses;
 - 9.3.2 to take all appropriate measures to ensure that all the staff of its internal management such as 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;
 - 9.3.3 to take all reasonable steps to ensure that all communications, negotiations, arrangements with their suppliers are properly documented and archived to demonstrate their compliance with the undertakings; and

- 9.3.4 to provide to the Commission a copy of any amended agreement governing their commercial relationship with their suppliers as evidence that they have irrevocably ceased to practice RPM.

Executive Director's recommendations

- 10.0 The Executive Director recommends that the Commission accepts the Undertakings and grant immunity from fines to the Applicant for its participation in the RPM conduct as aforesaid.

Determination

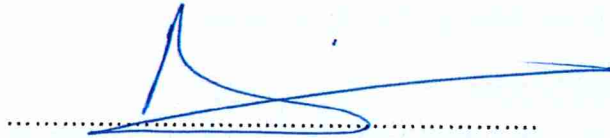
- 11.0. Having regard to the Application submitted by the Applicant, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by the Applicant, the Commission determines that –
- 11.1 the Applicant has, in its Application, admitted, in clear and unequivocal terms, its participation in one or more RPM agreement(s) viz admission of having participated in or otherwise having engaged in conduct as distributor of food products supplied by Tea Blenders Ltd to resellers, that falls within the ambit of section 43 of the Act;
- 11.2 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
- 11.3 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

- 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 as follows:-
- 12.4.1 for the period 25 November 2009 to 20 October 2017 only and in respect of their RPM conduct with specific suppliers as highlighted at paragraph 5.1 above;

- 12.4.2 for the period 01 January 2016 to 20 October 2017 only and in respect of their RPM agreement with Phoenix Beverages Ltd;
- 12.4.3 for the period 01 January 2014 to 20 October 2017 only and in respect of their RPM agreement with Scott & Co. Ltd; and
- 12.4.4 for the period 01 January 2009 to 31 December 2016 only and in respect of their RPM agreement with Grays Inc Ltd.

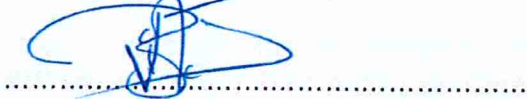
Mrs. M. B. Rajabally
(Chairperson)

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Mr. C. Seebaluck
(Commissioner)

A handwritten signature in blue ink, appearing to be 'C. Seebaluck' in a cursive script.

Mrs. V. Bikhoo
(Commissioner)

A handwritten signature in blue ink, featuring a large, stylized 'V' and 'B'.

21 June 2019