



# **Decision of the Competition Commission**

**CCM/DS/0030/67**

**Non-Confidential**

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

**by**

**D.A.J Co. Ltd**

**21 June 2019**

## Competition Commission

**Decision of the Competition Commission (the 'Commission') on the application made by D.A.J Co. 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 D.A.J Co. Ltd on 15 April 2019,

Having regard to a Report of the Executive Director of the Commission (the 'Executive Director') dated 29 April 2019 on the Undertakings given by D.A.J Co. Ltd,

We, Commissioners, decide as follows:

### Introduction

- 1.0 This Decision relates to an application for immunity dated 17 October 2017 made by D.A.J Co. Ltd (the Applicant), through its Director, Mr Nasser Jahaly, 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 15 April 2019.
- 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 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 Applicant is a private company and bears Business Registration Number C13114816. It operates as a supplier of general merchandise and as distributor of food products supplied by Tea Blenders Ltd. Its registered office situates at Royal Road, Nouvelle France.

5.0 From the Application and documents in support thereof, it is established that the Applicant has participated in RPM conduct which falls under section 43 of the Act in the following manner:-

5.1 the Applicant has been issuing invoices to its resellers which contain a column entitled ‘P.P’ which can be interpreted as ‘Proposed Price’, that is the resale price to be practiced by the resellers at the retail level; and

- 5.2 the resellers have to sign the invoices which contain the column entitled 'P.P'.
- 6.0 It is the Executive Director's view that the above conduct of the Applicant, in its capacity as distributor has, firstly, resulted in acquiescence on the retail price by the Applicant as the resellers have accepted to sign the invoices which contain the terms and conditions, including the resale price, and effected payments accordingly without any protest.

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/071) 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 29 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 Application satisfies the conditions set out under paragraph 5.6A of CCM3 Guidelines for RPM amnesty;
  - 9.2 the Applicant in its capacity as distributor of food products supplied by Tea Blenders Ltd has 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 Applicant has undertaken:-
    - 9.3.1 to, where it issues a price list or invoice to resellers which contains a resale price, state clearly that the resale price is a recommended price and shall include a clause therein to the effect that the recommended price is not binding on them and they are free to determine their own resale prices;
    - 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 sale and marketing of its products are fully aware of and actively implement the Undertakings when designing and/or implementing its commercial policy; and

- 9.3.3 to inform all dealers, in writing and in clear and unequivocal terms and to ensure that they have understood the above Undertakings.

10.0 We note that the Applicant has submitted a copy of the amended invoice to the Commission which is annexed to the Report as Annex III.

#### Executive Director's recommendations

11.0 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

12.0. 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 –

12.1 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;

12.2 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

12.3 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

13.0 The Commission therefore decides as follows:

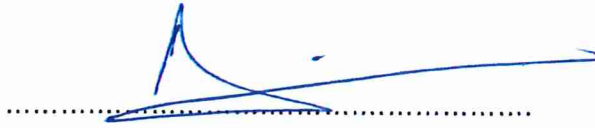
13.1 We accept that the Applicant satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements.

13.2 We accept the Undertakings offered by the Applicant.

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

13.4 We grant immunity from financial penalty to the Applicant pursuant to section 59(7) of the Act in respect of its RPM conduct as highlighted in paragraphs 5.1 and 5.2 above for the period 25 February 2013 to 17 October 2017 only.

Mrs. M. B. Rajabally  
(Chairperson)

A handwritten signature in blue ink, consisting of a large, stylized 'M' followed by a long horizontal stroke, positioned above a dotted line.

Mr. C. Seebaluck  
(Commissioner)

A handwritten signature in blue ink, appearing to read 'Seebaluck' with a flourish, positioned above a dotted line.

Mrs. V. Bikhoo  
(Commissioner)

A handwritten signature in blue ink, consisting of a large, stylized 'V' followed by a horizontal stroke, positioned above a dotted line.

21 June 2019