



Decision of the Competition Commission

CC/DS/0030/73

Non- Confidential

**Application for Immunity made by Ramdenee Edible
Oil Products Limited under the Competition
Commission Amnesty Programme for Resale Price
Maintenance**

29 June 2020

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**Decision of the Commissioners of the Competition Commission
of 29 June 2020**

**relating to a proceeding under section 59(7) of the Competition Act 2007
further to a Report of the Executive Director on the matter referred to as
'INV042/RPM/019 – Review of Ramdenee Edible Oil Products Limited RPM
Amnesty application'**

**(CC/DS/0030/73 – Application for Immunity made by Ramdenee Edible Oil
Products Limited under the Competition Commission's Amnesty Programme
for Resale Price Maintenance)**

THE COMMISSION

Mr. M. A. Bocus - Chairperson,
Mr. C. Seebaluck - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of CC3 Guidelines on Collusive Agreements
regarding the Competition Commission's Amnesty Programme for Resale Price
Maintenance,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to the undertakings offered by Ramdenee Edible Oil Products Limited
on 08 August 2017,

Having regard to a report of the Executive Director dated 26 December 2018,

WHEREAS:

I. Introduction

1.1 This Decision relates to an application for immunity dated 08 August 2017 made by Ramdenee Edible Oil Products Limited (hereinafter 'REOP Ltd') pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings have been offered to the Commission by REOP Ltd on 08 August 2017 ('the Undertakings').

1.2 Having taken cognizance of a report of the Executive Director dated 26 December 2018 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of the Competition Act 2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of CC3



Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

II. Background

i. *Competition Commission's RPM Amnesty Programme*

1.3 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 June 2017 until 20 October 2017 inclusively¹, the Commission put in place a one-off, time-limited amnesty programme for any enterprise involved in resale price maintenance (RPM) by waiving the restriction at paragraph 5.3 of CC3 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').

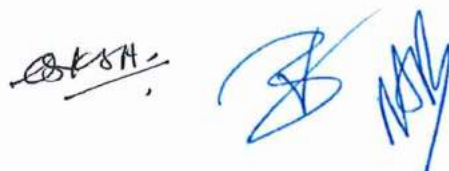
1.4 The conditions prescribed under the RPM Amnesty Programme for providing immunity from financial penalties to any enterprise applying for RPM Amnesty are that the applicant -

- i. admits its participation in an agreement involving RPM,
- ii. provides the Competition Commission with all the information, documents and evidence available to it regarding the RPM, and as required by the Competition Commission,
- iii. maintains continuous and complete co-operation until the conclusion of any action by the Competition Commission in relation to the matter, and
- iv. offers undertakings that satisfactorily address the competition concerns of the Competition Commission.

ii. *The Applicant and the Application*

1.5 The applicant, REOP Ltd (bearing Business Registration Number C07006019), is a private company incorporated in Mauritius since 24 April 1987. REOP Ltd is a supplier of edible oil products that are sold to resellers across Mauritius. The application made does not relate to all of the resellers of REOP Ltd, it is rather in relation to one particular reseller named Masters Express. REOP Ltd deals in "Rajah" branded edible oil products

¹ The Commission had extended the validity of the RPM Amnesty (CC 3 Guidelines - Amended 3rd October 2017) from 05 October 2017 to 20 October 2017.



which are available in different varieties such as soya oil, palm oil, sunflower oil and vegetable oil.

- 1.6 The Marketing Executive of REOP Ltd and the Finance Manager, respectively having duly been authorised by the director of REOP Ltd to apply for immunity under the RPM Amnesty programme by way of letter dated 08 August 2017.

REOP Ltd applied RPM Amnesty for having been party to an agreement involving RPM in connection with the sale of edible oil products of the brand "Rajah" by indirectly imposing a minimum price in its email and communications involving Masters Express (the reported activity). Since January 2013 to December 2014, REOP Ltd had indirectly placed a pricing restriction on the reseller, through the use of supportive measures of granting rebates if the minimum price contained in the email and communications is respected. Extracts of the email and communications dated 16 September 2013 and 25 June 2014 containing RPM clauses are reproduced below, respectively:

(i) *"For masters express, tell Kiran to inform S.M that the deal we have done with them for this month is the best deal we can give, i.e., invoice price rs170 plus a refund of rs2 for 20000 boxes and rs3 for 30000 boxes. But the refund applies only if their selling price is not below than rs168.50 per box."*

(ii) *"For rajah pouchs there will be a refund of 3 rupees per box if target sales of 20000 boxes achieved and if selling price on brochure is not less than rs163 per box."*

iii. The Investigation

- 1.7 Upon receipt of the Application and pursuant to section 51 of the Act, the Executive Director proceeded to investigate whether the reported conduct may amount to an RPM within the ambit of section 43 of the Act.
- 1.8 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 26th December 2018. 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 (the 'Report').
- 1.9 The Executive Director's findings are that :-

a. REOP Ltd has participated in agreement(s) involving RPM, as described above, having a restrictive object or effect viz., indirectly establishing a

minimum resale price ('pricing restriction') to be practised by Masters Express when reselling REOP Ltd's products.

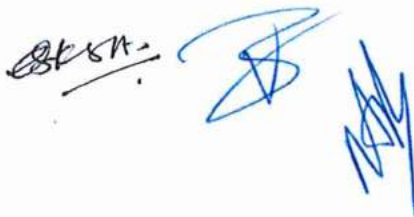
- b. REOP Ltd has admitted being a party to transactions involving RPM conduct as a supplier of edible oil products.
- c. REOP Ltd has maintained continuous cooperation with the Competition Commission by responding to the Competition Commission's information request and submitting all additional information documents, and evidence required from it in a timely manner

The Executive Director has further assessed the Undertakings offered by REOP Ltd. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the following reasons –

- a. REOP Ltd has undertaken to cease the reported RPM conduct and has undertaken to inform all dealers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by REOP Ltd;
- b. REOP Ltd has undertaken not to implement or cause to be implemented any measure (including through the use of 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 REOP Ltd;
- c. REOP Ltd has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of REOP Ltd's products of the behavioural measures it has adopted, thereby minimising risks of RPM conduct being promoted by employees and ensuring that commercial dealings with resellers are in compliance with the Act;
- d. REOP Ltd has also undertaken to affix or cause to be affixed the words "recommended price" next to the resale price where a minimum resale price has been recommended to dealers.

- 1.10 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.

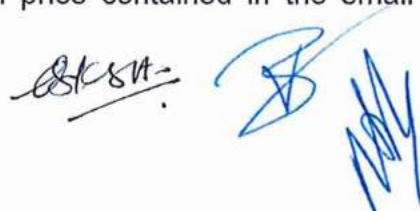
III. Legal Framework

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- 1.11 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 at 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'.
- 1.12 Having regard to the conditions prescribed under the RPM Amnesty Programme, an enterprise will benefit from immunity from financial penalty if it is involved in a conduct(s) that falls within the scope of section 43 of the Act and satisfies the conditions of the said programme.
- 1.13 In addition to admitting having participated in one or more RPM agreement(s), the applicant-enterprise is required to provide full and complete disclosure of all information, evidence and records available to it that relate to the reported RPM conduct. The enterprise is also required to maintain continuous and complete co-operation from the time of its application until the conclusion of any action by the CC on the matter, including by securing the cooperation of its directors, officers and employees in view of effectively and expeditiously concluding the assessment process.
- 1.14 Pursuant to section 63(3) of the Act, the threshold for the acceptance of undertakings under section 63(3) is that the Commission must be satisfied that the undertakings address "*all the concerns it has about any prevention, restriction [or] distortion (...) of competition*" which may arise from the matter at hand.

IV. Determination under sections 59(7) and 63 of the Act

- 1.15 Having regard to the Application submitted by REOP Ltd, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by REOP Ltd, the Commission determines that –
- 1) REOP Ltd has, in its Application, admitted its participation in one or more RPM agreement(s) viz :-
 - a. For having been party to an agreement involving RPM in connection with the sale of edible oil products of the brand "Rajah" by indirectly imposing a minimum price in its email and communications involving Masters Express; and
 - b. For having, since January 2013 to December 2014, indirectly placed a pricing restriction on the reseller through the use of supportive measures of granting rebates if the minimum price contained in the email and communications is respected.

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- 2) REOP Ltd has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC 3 Guidelines, as stated in the Report;
- 3) The Undertakings submitted by the REOP Ltd satisfactorily address the Commission's concerns in so far as –
 - a. REOP Ltd has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
 - b. REOP Ltd has undertaken to cease the reported RPM conduct and has undertaken to inform all dealers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by REOP Ltd;
 - c. REOP Ltd has undertaken not to implement or cause to be implemented any measure (including through the use of 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 REOP Ltd;

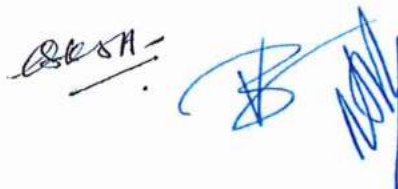
REOP Ltd has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of REOP Ltd's products, of the behavioural measures it has adopted; and
 - d. REOP Ltd has also undertaken to affix or cause to be affixed the words "recommended price" next to the resale price where a minimum resale price has been recommended to dealers.

V. Decision

NOW THEREFORE,

For the reasons set out in this Decision, the Commission decides as follows:

- 1) We accept that the Application made by REOP Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC 3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to REOP Ltd pursuant to section 59(7) of the Act for the Reported RPM conduct;

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- 3) We accept the Undertakings offered by REOP Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.

Done at Port-Louis this 29 June 2020.

Mr. M. A. Bocus
(Chairperson)

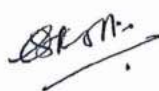
Mr. C. Seebaluck
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)



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Annex: Undertakings offered by Ramdenee Edible Oil Products Limited on 08 August 2017





RAMDENEED EDIBLE OIL PRODUCTS LIMITED
MEMBER OF RAMDENEED GROUP

Registered Office :
Industrial Zone
Phoenix
Rep. of Mauritius
Tel : 696 7954 / 697 9876
698 8128 / 8533 / 8389
Fax : (230) 698 8360
Email : edible@intnet.mu

Undertakings to the CCM

Undertakings provided by RAMDENEED EDIBLE OIL PRODUCTS LIMITED to the Competition Commission

Pursuant to an Application for Amnesty dated 08th of August, 2017

In connection with the Competition Commission's Amnesty Programme for Resale Price Maintenance

08th of August, 2017

[Handwritten signatures]



RAMDENEE EDIBLE OIL PRODUCTS LIMITED
MEMBER OF RAMDENEE GROUP

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1. Background:

By its letter dated 08th of August, 2017, RAMDENEE EDIBLE OIL PRODUCTS LIMITED has notified the Executive Director of the Competition Commission of its application for immunity under the CCM Amnesty Programme for Resale Price Maintenance (the 'Application').

The agreement has been in place since or around January 2013 to December 2014 was intended to be implemented during that same period and concerns the following: MASTERS EXPRESS located at Buchoo Building (opposite Bus Terminal), Saint Pierre. The agreement involves resale price maintenance in connection with the sales of its products whereby a minimum selling price was advised to the dealer. There was no binding contract. The agreement has the object to advise Masters Express's stakeholders to tap on bulk purchase discount with no intention to prevent, restrict or distort competition.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, RAMDENEE EDIBLE OIL PRODUCTS LIMITED is, by the presents, providing undertakings related specifically to the impugned agreement and any restrictive effects it has had on competition under section 63 of the Competition Act 2007 with a view to allaying the concerns of the Competition Commission in relation thereto and obtaining the requested immunity.

2. Definitions:

For the purpose of the present undertakings, the following terms shall have the following meaning:

"REOP LTD" or "TheCompany": RAMDENEE EDIBLE OIL PRODUCTS LIMITED

Commission: the Competition Commission established under section 4 of the Competition Act 2007;

Dealer: any distributor, reseller, retailer, or other entity involved in the resale of REOP LTD's goods or services in Mauritius.



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MEMBER OF RAMDENEE GROUP

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3. Measures proposed as Undertakings

REOP LTD hereby undertakes to apply the following measures in its commercial dealings with all existing dealers involved in the resale of REOP LTD's goods or services in Mauritius;

3.1. Behavioural Undertakings

REOP LTD shall not, in any manner whatsoever, implement or cause to be implemented any measure (including through the use of 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 REOP LTD;

REOP LTD shall clearly and unequivocally inform all dealers, in writing, that resale prices or resale price levels communicated to them by REOP LTD are non-binding "recommended" prices or price levels and they can freely decide their resale price;

REOP LTD shall, 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;

3.2. Information Dissemination

REOP LTD shall take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the sales and marketing of REOP LTD's products with dealers (hereinafter 'commercial employees') are fully aware of and actively implement the present Undertakings when designing and/or implementing the commercial policy of REOP LTD vis-à-vis dealers, in line with the provisions of the Act;

REOP LTD shall use its best efforts to ensure that the present Undertaking is made known to and is understood by all dealers.

3.3. Reporting

REOP LTD shall, as from the date of this Undertaking, take all reasonable steps to ensure that all communications, negotiations, arrangements with dealers are properly documented and archived to demonstrate REOP LTD's compliance with the present Undertakings and a general understanding among dealers of their freedom and ability to fix or otherwise apply their own prices or price levels when reselling REOP LTD's products;

REOP LTD shall submit a written report to the Commission within 5 months from the acceptance of these Undertakings by the Commission, detailing how the Undertakings have been implemented.



RAMDENEE EDIBLE OIL PRODUCTS LIMITED
MEMBER OF RAMDENEE GROUP

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4. Entry into force

These Undertakings shall be implemented within 3 months from the date it is accepted by the Commission.

Signature of Authorised Signatory
Name of Authorised Signatory
Position occupied

: 
: Mr Toolseeram Sabhi Appanna (Rajesh)
: Marketing Executive

Duly authorised for and on behalf of:
Name of Enterprise
Address of Enterprise
Telephone number
Email address

: RAMDENEE EDIBLE OIL PRODUCT LIMITED
: Industrial Zone, Pont Fer, Phoenix
: 698 8389
: reop58@intnet.mu

Signature of Authorised Signatory
Name of Authorised Signatory
Position occupied

: 
: Mr Pravesh Toolsee
: Finance Manager

Duly authorised for and on behalf of:
Name of Enterprise
Address of Enterprise
Telephone number
Email address

: RAMDENEE EDIBLE OIL PRODUCT LIMITED
: Industrial Zone, Pont Fer, Phoenix
: 698 8389
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