



Decision of the Competition Commission

CC/DS/0030/71

Non-Confidential Version

**Application for Immunity made by Mauritius Oil
Refineries Ltd 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/021– Review of Mauritius Oil Refineries Ltd RPM Amnesty
application'**

**(CC/DS/0030/71 – Application for Immunity made by Mauritius Oil Refineries
Ltd under the Competition Commission's Amnesty Programme for Resale
Price Maintenance)**

THE COMMISSION

Mr. M. A. Bocus - Chairperson,
Mrs. M. B. Rajabally - 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 Mauritius Oil Refineries Ltd on 01 June
2018,

Having regard to a report of the Executive Director dated 29 June 2018,

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 02 October 2017 made by Mauritius Oil Refineries 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 Mauritius Oil Refineries Ltd on 01 June 2018 ('the Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 29 June 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, Mauritius Oil Refineries Ltd (bearing BRN C09001521), started its commercial operations in 1968. Mauritius Oil Refineries Ltd.'s core business is the refining and marketing of edible oil. Mauritius Oil

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.



Refineries Ltd is also active as a wholesale supplier of crude oil and its by-products and markets a selected range of food products.

- 1.6 Mauritius Oil Refineries Ltd is a supplier of edible oil and other food products ('the concerned products') in Mauritius. Amongst the various brands marketed by Mauritius Oil Refineries Ltd, there are Rani vegetable oil, MOROIL Soja, MOROIL Sunflower, Olivor, Lesieur, Puget, Amadora, Attianese and Fragata. Mauritius Oil Refineries Ltd supplies its products to retailers and supermarkets. The company has a portfolio of [REDACTED] resellers around the island.
- 1.7 The Managing Director of Mauritius Oil Refineries Ltd applied for immunity under the RPM Amnesty Programme by way of letter dated 2nd October 2017.
- 1.8 Mauritius Oil Refineries Ltd applied for RPM Amnesty for being party to an agreement involving RPM in connection with the sale of refined and packed edible oils in Mauritius. The agreement related to promotional prices circulated to three of its retail customers. The impugned conduct of Mauritius Oil Refineries Ltd are as follows:

a. In an agreement [REDACTED], a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' which related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. It was also stipulated that Mauritius Oil Refineries Ltd reserves the right to cancel the promotional offer in case of non-conformity. [REDACTED]

b. In an agreement [REDACTED], a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' which related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. [REDACTED]



c. In an agreement [REDACTED], a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' which related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. [REDACTED]

iii. The Investigation

- 1.9 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.
- 1.10 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 29 June 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').
- 1.11 The Executive Director's findings are that:-
 - a. Mauritius Oil Refineries Ltd has participated in agreements involving RPM within the ambit of section 43 of the Act, by entering into agreements with three of its resellers with the object of directly establishing retail prices/price level to be observed by the respective dealers when reselling the products to final customers.

b. Mauritius Oil Refineries Ltd has admitted having participated in an RPM conduct as a supplier of edible oil products and other foodstuffs.

c. Mauritius Oil Refineries 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.

1.12 The Executive Director has further assessed the Undertakings offered by Mauritius Oil Refineries Ltd. The Executive Director takes the view that the proposed Undertakings satisfactorily address the concerns identified in the Report for the following reasons –

a. Mauritius Oil Refineries Ltd has ceased the reported RPM conduct and undertaken to remove all commercial clauses in any agreement, contracts or other express arrangements with dealers, existing and prospective, relating to promotional offers being granted to the reseller subject to an agreement on the retail price of its products that must be respected by concerned resellers; and

b. Mauritius Oil Refineries Ltd shall not, in any manner whatsoever implement or cause to be implemented any measure, having the object or effect of compelling, inducing or attempting to compel or induce dealers to apply the retail prices or retail price levels communicated to them by Mauritius Oil Refineries Ltd.

1.13 The Executive Director recommends that the Commission accepts the Undertakings and grants immunity from fines to Mauritius Oil Refineries Ltd for its participation in the reported RPM conduct.

III. Legal Framework

1.14 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'.

1.15 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.



1.16 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.

1.17 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

1.18 Having regard to the Application submitted by Mauritius Oil Refineries Ltd, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by the Applicant, the Commission determines that –

- 1) Mauritius Oil Refineries 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 refined and packed edible oils in Mauritius. The agreement related to promotional prices circulated to three of its retail customers;
 - b. For having entered into an agreement [REDACTED] where a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. It was also stipulated that Mauritius Oil Refineries Ltd reserved the right to cancel the promotional offer in case of non-conformity.
 - c. For having entered into an agreement [REDACTED] where a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' related to promotional offers, stipulated that promotional products

will be subject to an agreement on the retail price and that it must be respected by all stores.

- d. For having entered into an agreement [REDACTED] where a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. [REDACTED]

- 2) Mauritius Oil Refineries 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 Mauritius Oil Refineries Ltd satisfactorily address the Commission's concerns in so far as –
- a. Mauritius Oil Refineries Ltd has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
 - b. Mauritius Oil Refineries Ltd has ceased the reported RPM conduct and undertaken to remove all commercial clauses in any agreement, contracts or other express arrangements with dealers, existing and prospective, relating to promotional offers being granted to the reseller subject to an agreement on the retail price of its products that must be respected by concerned resellers; and
 - a. Mauritius Oil Refineries Ltd shall not, in any manner whatsoever implement or cause to be implemented any measure, having the object or effect of compelling, inducing or attempting to compel or induce dealers to apply the retail prices or retail price levels communicated to them by Mauritius Oil Refineries Ltd.

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 Mauritius Oil Refineries 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;

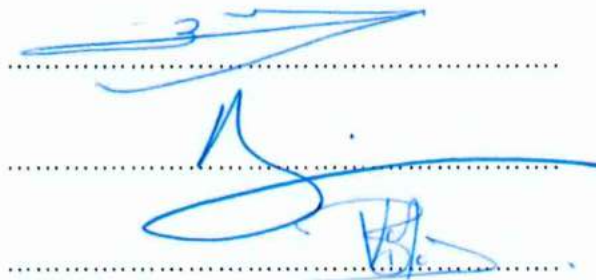
- 2) We grant immunity from financial penalty to Mauritius Oil Refineries Ltd pursuant to section 59(7) of the Act for the Reported RPM conduct;
- 3) We accept the Undertakings offered by Mauritius Oil Refineries Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.

Done at Port-Louis this 29 June 2020

Mr. M. A. Bocus
(Chairperson)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

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Annex: Undertakings offered by Mauritius Oil Refineries Ltd on 01 June 2018



Undertakings to the CCM

Undertakings provided by Mauritius Oil Refineries Ltd to the Competition Commission

Pursuant to an Application for Amnesty dated 2nd October 2017.

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

DATE: 1st June 2018



1. Background:

By its letter dated 2nd October 2017 made pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Mauritius Oil Refineries Ltd 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 agreements [REDACTED] for the period 1 January 2017 to 31 December 2017 in relation to the supply of edible oil products and other foodstuffs, wherein Mauritius Oil Refineries Ltd stated a commercial clause relating to promotional offers being granted to the reseller subject to an agreement on the retail price that must be respected by the concerned resellers.

In its agreement [REDACTED] Mauritius Oil Refineries Ltd also stipulated that it reserves the right to cancel the promotional offer in case of non-conformity.

[REDACTED]

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, Mauritius Oil Refineries Ltd 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:

MOROIL: Mauritius Oil Refineries Ltd

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

[REDACTED]

Effective Date: the date on which the Commission delivers its decision to accept these Undertakings;

Full Implementation Date: a maximum of three (3) months as from the effective date;

Resale Price Maintenance: means 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;

RPM: resale price maintenance.

3. Measures proposed as Undertakings

MOROIL hereby undertakes to apply the following measures in its commercial dealings with the concerned dealers and any distributor, reseller, retailer, or other entity involved in the resale of MOROIL's products in Mauritius;

3.1. Behavioural Undertakings

- i. MOROIL 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 MOROIL;
- ii. MOROIL shall remove all commercial clauses in any agreement, contracts, or other express arrangements with dealers, existing and prospective, relating to promotional offers being granted to the reseller subject to an agreement on the retail price of its products that must be respected by concerned resellers; and

3.2. Information Dissemination

MOROIL shall take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the sales and marketing of MOROIL'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 MOROIL vis-à-vis dealers, in line with the provisions of the Act;

MOROIL shall use its best efforts to ensure that the present undertaking is made known to and is understood by the concerned dealers.

3.3. Reporting

MOROIL shall, as from the Effective Date, take all reasonable steps to ensure that all communications, negotiations, arrangements with dealers are properly documented and archived to demonstrate MOROIL'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 MOROIL's products;

MOROIL shall, within the Full Implementation Date, submit a written report to the Commission that *inter alia* -

- i. confirms that MOROIL has implemented a compliance programme, details of which shall be submitted to the Commission; and
- ii. describes the steps taken by MOROIL to comply with the present undertakings and in particular, setting out all the appropriate measures taken by MOROIL to correct any deviation by MOROIL's management, directors, or commercial employees from the present undertakings.

4. Entry into force

The present undertakings shall take effect upon the Effective Date.



André Espitalier Noël

Managing Director

Duly authorised for and on behalf of:

Mauritius Oil Refineries Ltd



Rehaç Sayed Hassen

Financial Manager

Duly authorised for and on behalf of:

Mauritius Oil Refineries Ltd

