



shaping markets, furthering progress

**Decision of the Competition
Commission**

CC/DS/0030/75

Non Confidential

**Application for Immunity made by Udis Ltée under the
Competition Commission Amnesty Programme for
Resale Price Maintenance**

29 June 2020

Three handwritten signatures in blue ink. The first is a stylized 'S' or 'Z' shape. The second is a more complex, cursive signature. The third is a simple, bold signature.

**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/069 – Review of Udis Ltée RPM Amnesty application'**

**(CC/DS/0030/75 – Application for Immunity made by Udis Ltée 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 Udis Ltée on 05 March 2019,

Having regard to a report of the Executive Director dated 30 April 2019,

WHEREAS:

I. Introduction

1.1 This Decision relates to an application for immunity dated 20 October 2017 made by Udis Ltée 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 Udis Ltée on 05 March 2019 ('the Undertakings').

1.2 Having taken cognizance of a report of the Executive Director dated 30 April 2019 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.

Handwritten signature and initials in black ink, located at the bottom right of the page.

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 05th June 2017 until 20th October 2017 inclusively¹, 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 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 (CC) with all the information, documents and evidence available to it regarding the RPM, and as required by the CC,
 - iii. maintains continuous and complete co-operation until the conclusion of any action by the CC in relation to the matter, and
 - iv. offers undertakings that satisfactorily address the competition concerns of the CC.

ii. The Applicant and the Application

- 1.5 The Applicant, Udis Ltée, is a private company limited by shares incorporated under the laws of Mauritius with Business Registration Number (BRN) C8088 and the registered nature of its respective business being, among others, 'Hypermarket carrying a general line of goods'. The applicant owns the 'Super U' chain of hypermarkets. Super U is a hypermarket carrying a general line of consumer goods and was incorporated in 1989. It has 3 distribution outlets in Mauritius respectively located in Flacq, Belle Rose and Grand Bay.
- 1.6 The Applicant has, by way of a letter dated 20 October 2017, applied for immunity under the RPM Amnesty.

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

The block contains three handwritten marks in blue ink. On the left is a stylized signature. In the center is a signature that appears to read 'NSP'. On the right is a set of initials, possibly 'MR'.

1.7 Udis Ltée applied for RPM Amnesty for the following conducts (the 'reported conducts'):

- a. for having accepted products with a resale price as determined by the supplier affixed on those products, [REDACTED]

[REDACTED]

[REDACTED] and

- b. for having entered into a written agreement with [REDACTED] suppliers [REDACTED]

[REDACTED] containing a clause on the resale prices of products which may amount to an RPM conduct.

iii. The Investigation

1.8 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.

1.9 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 30 April 2019 (the 'Report'). 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.

1.10 The Executive Director's findings are that -

- (a) Udis Ltée, to the extent that it operates supermarkets/hypermarkets around the island and is engaged in the resale of consumer goods at retail level, qualifies as an 'enterprise';
- (b) Insofar as Udis Ltée, through its retail outlets, supplies consumer goods to end customers, it operates in the downstream level of the supply chain and the Applicant is thus in a vertical relationship with its suppliers;
- (c) The Application meets all the requirements as set out under paragraph 5.6A of the CC3 Guidelines in as much as:
 - (ii) Udis Ltée has admitted having participated and/or being party to the following reported conducts, namely: for having accepted



products with a resale price as determined by the supplier affixed on those products, with [REDACTED] suppliers who deliver pre-price labelled products, and for contracting commercial agreements with a minimum price/fixed price restriction clause with [REDACTED] suppliers;

- (iii) Udis Ltée has provided the Competition Commission with all the information, documents and evidence available to it regarding the reported conducts, and as required by the Competition Commission:
- (iv) Udis Ltée has maintained continuous and complete collaboration with the Competition Commission throughout the whole amnesty process until the submission of undertakings; and
- (v) Udis Ltée has offered undertakings that satisfactorily address the competition concerns of the Competition Commission.

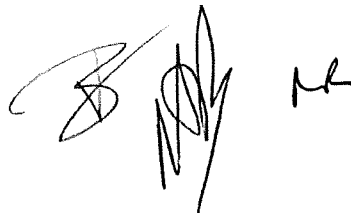
1.11 The Executive Director has further assessed the Undertakings offered by Udis Ltée. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the following reasons –

- a. Udis Ltée has undertaken to inform its [REDACTED] suppliers

[REDACTED]
[REDACTED] that it is no longer party to the restrictive clause constituting RPM in the written agreements entered into with the said suppliers (as mentioned at paragraph 1.7b above) and that it shall either modify the agreement or enter into a new agreement that does not contain RPM clauses with the suppliers. This will ensure that the applicant as reseller will be free to determine its own resale prices or promotional prices;

- b. With respect to accepting products with a resale price as determined by the suppliers [REDACTED]

[REDACTED]
[REDACTED] Udis Ltée has undertaken to ensure that the words 'recommended price' appear next to the resale price and that it will not accept such products

Handwritten signatures and initials in black ink, including a large stylized signature, a set of initials, and a small mark.

from suppliers unless the words 'Recommended price' are duly fixed;

- c. The implementation of such undertakings will therefore ensure that Udis Ltée is no longer party to the RPM clause contained in the agreements and/or dealings between the Applicant and the above-mentioned suppliers; and
- d. The undertakings provide for a reporting mechanism through which the Competition Commission will be able to monitor its implementation.

1.12 The Executive Director recommends that the Commission accept the Undertakings and grant immunity from financial penalty to the Applicant for its participation in the reported RPM conduct.

III. Legal Framework

1.13 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'.

1.14 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.

1.15 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.

1.16 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.

Handwritten signature and initials in blue ink, including a large stylized 'J' and the letters 're'.

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

1.17 Having regard to the Application submitted by Udis Ltée, 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) Udis Ltée has, in its Application, admitted its participation in one or more RPM agreement(s) viz., -

a. for having accepted products with a resale price as determined by the supplier affixed on those products, with [REDACTED] suppliers who deliver pre-price labelled products. [REDACTED]

[REDACTED]

[REDACTED] and

b. for having entered into respective written agreement with [REDACTED] suppliers: [REDACTED]

[REDACTED]

[REDACTED] containing a clause on the resale prices of products which may amount to an RPM conduct.

2) Udis Ltée has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC3 Guidelines, as stated in the Report;

3) The Undertakings submitted by the Udis Ltée satisfactorily address the Commission's concerns in so far as –

a. the implementation of such undertakings will therefore ensure that Udis Ltée is no longer party to the RPM clause contained in the agreements and/or dealings with the suppliers concerned;

b. Udis Ltée has undertaken to inform all suppliers concerned that it is no longer party to the price restriction imposed upon it through the written agreements with them; and

c. Udis Ltée has, with respect to accepting products with a resale price as determined by the suppliers, undertaken to ensure that the words 'recommended price' appear next to any pre-printed resale price and that it will not accept products from suppliers containing pricing unless the words 'Recommended price' are duly fixed.

Handwritten signature and initials in blue ink, located at the bottom right of the page.

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 Udis Ltée satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to Udis Ltée pursuant to section 59(7) of the Act for the reported RPM conducts;
- 3) We accept the Undertakings offered by Udis Ltée, 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)



**ANNEX: Undertakings offered by Udis Ltee under section 63 of the
Competition Act 2007 pursuant to paragraph 5.6A of the CC 3 Guidelines –
Collusive Agreements (RPM Amnesty Programme)**

Handwritten signatures and initials in blue ink. On the left, a stylized signature above the initials 'MK'. On the right, a more complex signature.


Undertakings to the CCM

Undertakings provided by Udis Ltee to the Competition Commission


Pursuant to an Application for Amnesty dated 20th October 2017

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

5 March 2019



Page 1 of 4



1. Definitions:

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

Udis Ltee: Udis Ltee and includes its branches, subsidiaries, or affiliates;

Affiliate: any enterprise directly or indirectly controlled by Udis Ltee;

Act: the Competition Act 2007;

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

Dealer: any distributor, reseller, retailer, or other entity involved in the resale of Udis Ltee's goods or services in Mauritius;

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

Full Implementation date: a maximum period 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

2. Background:

Incorporated in 1989, Udis Ltee owns the 'Super U' chain of hypermarkets. Super U is a hypermarket carrying a general line of consumer goods and has 3 outlets, namely located in Flacq, Belle Rose and Grand Bay.

By its letter dated 20th October 2017 addressed to the Competition Commission and pursuant to paragraph 5.6A of the CCM 3 Guidelines-Collusive Agreements (amended June 2017), Udis Ltee has made an application for amnesty under the CCM Amnesty Programme for Resale Price Maintenance (the 'Application').

The reported activity involves two practices whereby Udis Ltee has:

- (i) Accepted products with resale prices pre-determined and pre-labelled on the products by its suppliers without the words "recommended price" appearing next to the resale prices; (the "Practice I"); and
- (ii) Entered, in its own name, into contractual agreements with suppliers, which contain minimum price restriction clauses on the resale prices of products (the "Practice II").

Practice I is in relation to the following suppliers:

[REDACTED]

The agreement with respect to Practice II is in relation to the following suppliers:

The identified suppliers for Practice I and II shall altogether herein after be referred to as 'the Suppliers'.

Section 43 of the Act prohibits resale price maintenance and section 43(3) of the Act provides that 'where a supplier or producer has recommended a minimum resale price to a reseller of goods and the resale price appears on the goods, the words 'recommended price' shall appear next to the resale price.'

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining amnesty, Udis Ltee is, by the present, 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 amnesty.

3. Measures proposed as Undertakings

Pursuant to section 63 of the Act, Udis Ltee hereby undertakes to apply the following measures by the implementation date in its commercial dealings with the above-mentioned suppliers, in the resale of their respective goods or services in Mauritius:

3.1. Behavioural Undertaking

Udis Ltee shall inform the suppliers in relation to Practice II that it is no longer party to the restrictive clause constituting RPM and shall either modify the agreement or enter into a new agreement which does not contain RPM clauses with the suppliers;

Udis Ltee shall not, in any manner whatsoever, enter into or otherwise facilitate either explicitly or implicitly, the implementation of any agreement with the above-mentioned suppliers and/or any other supplier that involves resale price maintenance;

Udis Ltee shall, where any of the above-mentioned suppliers and/or any other supplier has recommended a minimum resale price for its goods and the resale price appears on the goods, inform the supplier, in writing, that it shall make sure that the words 'recommended price' appear next to the resale price, and shall not accept/offer for sales such products.

3.2. Information Dissemination

Udis Ltee shall take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the purchase and/or resale of goods and/or services are fully aware of

and actively implement the present undertakings when designing and/or implementing Udis Ltee pricing policy, in line with the provisions of the Act.

3.3. Reporting

Udis Ltee shall immediately inform the Commission, in writing, of any attempt on the part of the above-mentioned suppliers to implement or otherwise coerce or induce the implementation of resale price maintenance to be observed by Udis Ltee reselling the supplier's goods and shall provide the Commission with all documents, information, and evidence available to it in support thereof;

Udis Ltee shall provide the Commission with a copy of any amended agreement governing its commercial relationship with each of the above-mentioned suppliers as proof that Udis Ltee has irrevocably ceased the impugned resale price maintenance;

Udis Ltee shall, as from the effective date, take all reasonable steps to ensure that all communications, negotiations, arrangements with the above-mentioned suppliers are properly documented and archived to demonstrate compliance with the present undertakings when reselling the above-mentioned suppliers' goods;

Udis Ltee shall, by the full implementation date, submit a written report to the Commission detailing the implementation of this undertaking.

4. Entry into force

These undertakings shall be effective as from the date it is accepted by the Commission in the form of a decision of the Commission and shall be fully implemented by full implementation date.



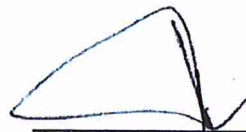
[Signature of Director No 1]

Pascal Tsin Sa Ah Vi

CEO

Duly authorised for and on behalf of:

Udis Ltee



[Signature of Director No 2]

Patrick Tsin Sa Ah Vi

Director

Duly authorised for and on behalf of:

Udis Ltee