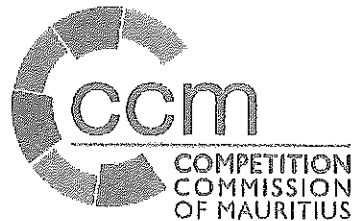


General Notice No. 179 of 2019

CCM/DS/0030/25



Decision of the Competition Commission

CCM/DS/0030/25
Non-Confidential

**Application for Immunity made by Innodis Ltd under
the Competition Commission Amnesty Programme for
Resale Price Maintenance**

12 December 2018

CCM/DS/0030/25

**Decision of the Commissioners of the Competition Commission
of 12 December 2018**

**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/010- Review of Innodis Ltd RPM Amnesty application'**

**(CCM/DS/0030/25 – Application for Immunity made by Innodis Ltd under the
Competition Commission's Amnesty Programme for Resale Price
Maintenance)**

THE COMMISSION

Mr. C. Seebaluck - Commissioner (Chairperson),
Mrs. M. B. Rajabally - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of CCM3 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 Innodis Ltd on 23rd April 2018,

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

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 18th October 2017 made by Innodis Ltd pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of CCM3 Guidelines on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings have been offered to the Commission by Innodis Ltd on 23rd April 2018 (the 'Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 29th May 2018 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of 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 Competition Act 2007 (the 'Act').

CCM/D5/0030/25

II. Background

I. Competition Commission's RPM Amnesty Programme

- 1.3 Pursuant to section 59 of the Competition Act 2007 (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 CCM3 Guidelines on Collusive Agreements, viz., that only RPM which facilitates a cartel can benefit from leniency and the associated footnote 3 thereof 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 ('CCM') with all the information, documents and evidence available to it regarding the RPM, and as required by the CCM,
 - iii. maintains continuous and complete co-operation until the conclusion of any action by the CCM in relation to the matter, and
 - iv. offers undertakings that satisfactorily address the competition concerns of the CCM.

II. The Applicant and the Application

- 1.5 Founded in 1973, Innodis Ltd is a publicly listed company with Business Registration Number C06002174. Innodis Ltd is involved in food and non-food production and distribution in Mauritius. The food products distributed range from dairy and milk products, margarine, poultry, meat, fish and seafood and other foods. Innodis Ltd supplies its products to more than 5,700 outlets consisting of hypermarkets, supermarkets, corner shops, food chains and hotels across the country.
- 1.6 The application for amnesty was made on 18th October 2017 by Innodis Ltd for the following conducts, namely:

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

CCM/DS/0030/25

- (i) For having sold products to dealers with resale prices as determined by itself pre-labelled on the products without the words "recommended price" appearing next to the resale prices; and
- (j) For having issued price lists to its dealers with a column "RSP" which could have been interpreted as a 'Retail Selling Price' instead of 'Recommended Selling Price', which may amount to RPM. Innodis Ltd did not make it clear to its dealers that such prices are merely recommended prices.

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 29th May 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:
 - i. The first conduct relates to the practice of Innodis Ltd to sell certain products with resale prices (as determined by itself) affixed on the products without making it clear that the price determined and affixed on the product is a 'recommended price'. It may be a policy of Innodis Ltd, as a supplier, to affix on its products a resale price as determined by itself. By accepting the products of the supplier with such a resale price pre-affixed on the products, the reseller/dealer may have acquiesced to the policy of the supplier to pre-affix a resale price on the product as determined by the supplier itself amounting to an agreement. In turn, that agreement, unless the price as affixed is changed by the reseller/dealer, will establish the resale price of the reseller/dealer, amounting to RPM.
 - ii. The second conduct for which amnesty has been sought by Innodis Ltd relates to price lists sent by Innodis Ltd with the resale price of the products. The fact that the dealers may have continuously acquiesced to the prices affixed on the labels and have ordered as per the price lists without any protest may amount to acquiescence on the retail price by the applicant. This acquiescence on the part of the dealers to the pricing policy of Innodis Ltd may thus constitute an agreement between Innodis Ltd and its dealers on the normal resale price of the mentioned products.

CCM/DS/0030/25

- iii. The Executive Director understood from information provided in the application that both conducts were present at the time of the Act came into force, that is, since the year 2009. The applicant stated that the conducts have been remedied in or about March 2017.
- iv. The applicant has provided the CCM with all the information, documents, and evidence available to it regarding the RPM, and as required by the CCM; and
- v. The applicant has maintained a continuous and complete collaboration with the CCM throughout the whole amnesty process.

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

- a. Innodis Ltd will amend its conduct regarding the affixation of resale prices and where it affixes a resale price as determined by itself on the product, it will affix the words 'recommended price' next to the resale price. Through the above-mentioned measures proposed to be taken by Innodis Ltd, it will be ensured that where Innodis Ltd recommends a fixed or minimum price and that price appears on the product, the wordings 'recommended price' will appear next to the price. This will eliminate the possibility of creating an understanding that the price as affixed is the final (fixed) resale price and it will be therefore clear to both dealers and consumers that the price as affixed is merely a price recommendation.
- b. Furthermore, Innodis Ltd will offer the possibility to dealers to affix their own prices on the products or to purchase products without any price affixed on it, giving further flexibility for dealers to determine their individual resale prices.
- c. Innodis Ltd has undertaken that where it issues a price list to dealers which contain a resale price (recommended) as determined by Innodis Ltd, it shall state clearly that the resale price is a recommended price, and shall include a clause clearly stating that the recommended price is not binding on resellers and resellers are free to determine their own resale price. By so doing, it will be made clear to dealers that the retail price in the invoice is just a price recommendation and they are free to deviate from that price. This will be further reinforced by the clause in the invoice making clear that the retail price is not binding and that dealers are free to determine their own resale prices.

CCM/DS/0080/25

d. The behavioural measures undertaken by Innodis Ltd shall be disseminated to its internal management and commercial employees engaged in the sales and marketing of Innodis Ltd's products, thereby minimizing risks of RPM conduct being promoted by employees and ensuring that commercial dealings with the resellers are in compliance with the Act.

1.11 Therefore, it appears that the undertakings offered will satisfactorily address the competition concerns as per the reported conducts.

1.12 The Executive Director recommends that the Commission accept the Undertakings and grant immunity from fines 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 CCM 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.

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

CCM/DS/0030/25

1.17 Having regard to the Application submitted by Innodis 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) Innodis Ltd has, in its Application, admitted its participation in one or more RPM agreement(s) viz
 - (i) Having sold products to dealers with resale prices as determined and pre-labelled without the words "recommended price" appearing next to the resale prices;
 - (ii) Having issued price lists to its dealers which make mention of 'RSP' which could have been interpreted as a 'Retail Selling Price' instead of 'Recommended Selling Price', which may amount to RPM. Innodis Ltd did not make it clear to its dealers that such prices are merely recommended prices.
- 2) Innodis Ltd has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CCM 3 Guidelines, as stated in the Report;
- 3) The Undertakings submitted by Innodis Ltd satisfactorily address the Commission's concerns in so far as –
 - a. It will ensure that Innodis Ltd ceases its participation in all reported RPM agreements to which it was a party;
 - b. The undertakings will ensure that the reported conducts are modified such that where the supplier recommends a resale price, it is made clear to the reseller that such price is simply a price recommendation.

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 Innodis Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements;
- 2) We accept the Undertakings offered by Innodis Ltd, which are being published as per section 63(4) of the Act (see Annex);

CCM/OS/0030/25

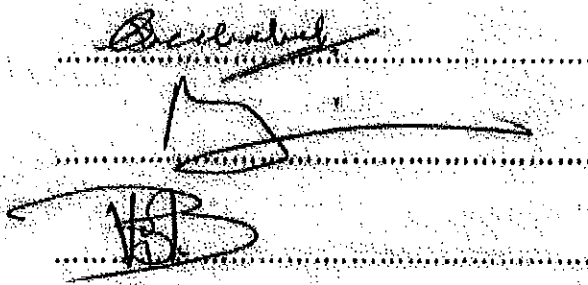
- 3) The Undertakings shall be effective as from the date of this Decision.
- 4) We grant immunity from financial penalty to Innodis Ltd pursuant to section 59(7) of the Act for the reported RPM conduct.

Done at Port-Louis this 12 December 2018.

Mr. C. Seebaluck
(Commissioner)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)



The image shows three handwritten signatures, each written over a horizontal dotted line. The top signature is cursive and appears to be 'C. Seebaluck'. The middle signature is a stylized, blocky signature. The bottom signature is also stylized and appears to be 'V. Bikhoo'.



Undertakings to the CCM

Undertakings provided by Innodis Ltd to the Competition Commission

Pursuant to an Application for Amnesty dated 18th October 2017

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

23 April 2018



1. Definitions:

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

Innodis: Innodis Ltd and includes its branches, subsidiaries, or affiliates;

Affiliate: any enterprise directly or indirectly controlled by Innodis Ltd;

Act: the Competition Act 2007;

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 Innodis Ltd'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:

Innodis is a publicly listed company founded in 1973, and is involved in food and non-food production and distribution in Mauritius. The food products distributed range from dairy and milk products, margarine, poultry, meat, fish and seafood and other foods.

By its letter dated 18th October 2017 addressed to the Competition Commission and pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Innodis has made an application for amnesty under the CCM Amnesty Programme for Resale Price Maintenance ('RPM') (the 'Application').

The conduct for which RPM Amnesty has been sought is in relation to seafood, meat and poultry products with variable weights of various brands such as 'Prodigal', 'Le Poulet Fermier', 'Carmen', 'Premier' and 'Marlin' and has involved/involves the following conducts:

- (i) Not affixing the words 'recommended price' next to prices as determined by Innodis and which are affixed on certain products;
- (ii) Innodis issued price lists to its dealers which had a column entitled 'RSP' which could have been interpreted as a 'Retail Selling Price', instead of 'Recommended Selling Price';
which may amount to RPM in breach of the Act.

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, Innodis 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, Innodis hereby undertakes to apply the following measures by the full implementation date in its commercial dealings with all existing dealers involved in the resale of Innodis's products in Mauritius:

3.1. Behavioural Undertakings

- a. Where Innodis offers products to dealers for resale and affixes a resale price (recommended minimum or fixed price) as determined by itself on such products, it shall affix the words 'Recommended Price' next to the price on the product in a conspicuous manner and such pricing shall not be binding on the resellers;
- b. Innodis shall offer each reseller the flexibility to determine their own individual resale prices to be affixed on the products or the possibility to purchase the products without a resale price pre-affixed on the product;
- c. Where Innodis issues a price list to dealers which contain a resale price (recommended) as determined by Innodis, it shall state clearly that the resale price is a recommended price, and shall include a clause clearly stating that the recommended price is not binding on resellers and resellers are free to determine their own resale prices.

3.2. Information Dissemination

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

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

A handwritten signature in black ink, appearing to be the initials "S2" or similar, located at the bottom right of the page.



3.3. Reporting

Innodis shall provide the Commission with a copy of the amended price tag and price list, which is in compliance with the Act and these Undertakings as proof that Innodis has irrevocably ceased the Impugned resale price maintenance;

Innodis shall, as from the date of the present undertakings, take all reasonable steps to ensure that all communications, negotiations, arrangements with dealers are properly documented and archived to demonstrate Innodis'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 Innodis's products;

Innodis 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.

Handwritten signature of Jean-Pierre Lim Kong in black ink.

Jean-Pierre Lim Kong
Chief Executive Officer

Duly authorised for and on behalf of:
Innodis Ltd

Handwritten signature of Sonny Wong Lun Sang in black ink, with the date "24/2/18" written below it.

Sonny Wong Lun Sang
General Manager - Commercial

Duly authorised for and on behalf of:
Innodis Ltd