General Notice No. 910 of 2017

CCM/DS/0021

Decision of the Competition Commission

CCM/DS/0021

Non-confidential

Merchant discount rate of CIM Finance Ltd

20th April 2017

CCM/DS/0021

Decision of the Commissioners of the Competition Commission of 20th April 2017

relating to a proceeding under section 63 of the Competition Act 2007 further to an investigation opened by the Executive Director referred to as 'INV035 – Merchant Discount by CIM Finance Ltd'

(CCM/DS/0021 – Merchant discount rate of CIM Finance Ltd)

THE COMMISSION -

Mr. A. G. Pillay - Chairperson,

Mr. D. P. A. Mariette - Vice-Chairperson,

Mr. C. Seebaluck - Commissioner,

Mrs. M. B. Rajabally - 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 guidelines published under section 38 of the Competition Act 2007,

Having regard to a report of the Executive Director dated 14th April 2017,

Having regard to undertakings offered by CIM Finance Ltd as annexed,

WHEREAS:

I. Introduction

1.1 This Decision relates to undertakings that have been offered to the Commission by CIM Finance Ltd, in the course of an investigation opened by the Executive Director and referred to as 'INV035 – Merchant Discount by CIM Finance Ltd'.

1.2 Having taken cognizance of a report of the Executive Director dated 14th April 2017 on the matter, the Commission has determined the case on the

basis of the undertakings, pursuant to section 63(3) of the Competition Act 2007 (the 'Act').

II. Background

i. Main party

1.3 CIM Finance Ltd is a public company, incorporated under the laws of Mauritius. It is a wholly owned subsidiary of CIM Financial Services Ltd.

ii. The services concerned

1.4 The investigation pertains to the fees charged by CIM Finance Ltd on the cash price of goods and services for the supply of hire purchase facilities. The fees are charged to suppliers across the island and are referred to as 'merchant discounts'.

iii. Investigation

1.5 In May 2016, the Executive Director opened an investigation pursuant to section 51 of the Act. The investigation followed an enquiry carried out under rule 5 of the Competition Commission Rules of Procedure 2009 (the 'Rules') in 2015. The Executive Director focused on the specific conduct of CIM Finance Ltd which consists of charging different merchant discounts to merchants for the supply of hire purchase facilities.

1.6 In November 2016, CIM Finance Ltd offered written undertakings to the Commission in pursuance of section 63 of the Act and as per the requirements set out under rule 28 of the Rules.

1.7 In April 2017, the Executive Director submitted a report on the matter to the Commission, following his assessment of whether the proposed undertakings may be effective.

III. Legal framework

1.8 Having found reasonable grounds to believe that CIM Finance Ltd was engaging in conduct which was reviewable under section 46 of the Act, the Executive Director opened an investigation pursuant to section 51(1).

Determination based on undertakings

1.9 Under section 63(1) of the Act, enterprises may offer undertakings to the Commission "*to address any concern that has arisen, or is likely to arise, during an investigation in respect of (...) a monopoly situation*". This

provision enables parties to an investigation into a monopoly situation, considered to be reviewable under section 46, to offer written undertakings to the Commission.

1.10 Pursuant to section 63(3) of the Act, the Commission may determine a case on the basis of an undertaking. 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.

1.11 It follows that the Commission must first identify all the concerns which may arise from the set of facts adduced before it prior to proceeding with an assessment of whether the undertakings which have been submitted are satisfactory.

IV. Determination

1.12 The Commission has had regard to the report of the Executive Director and the concerns which have been identified therein.

i. Concerns of the Executive Director

1.13 According to the Executive Director, CIM Finance Ltd charges merchant discounts between [redacted]% of the cash value of a good or service for which hire purchase facility is sought. The rate varies from merchant to merchant whereby, on average, relatively small suppliers are charged more than large ones.

1.14 The Executive Director is concerned that the conduct of CIM Finance Ltd whereby it charges different merchant discounts to different merchants is not justified by differences in costs for providing the service. According to the Executive Director, the conduct may prevent, restrict or distort competition in the market for the supply of hire purchase facilities.

1.15 It is also a matter of concern that the significant difference in the merchant discount rates may distort competition in markets where hire purchase is used as an input as this may have a significant effect on the competitiveness of small merchants by hindering their ability to compete with large merchants.

1.16 Upon examination of the set of facts before it, the Commission concurs with the views of the Executive Director regarding the concerns which may arise from the conduct of CIM Finance Ltd. The Commission has had regard to the undertakings offered by CIM Finance Ltd and to the views of the Executive Director on whether those undertakings address those concerns.

ii. Undertakings offered by CIM Finance Ltd

1.17 CIM Finance Ltd is undertaking *inter alia* to change its conduct of charging significantly different merchant discounts by bringing down the maximum difference between the highest and lowest levels of merchant discounts from the current [redacted]% to [redacted]%.

1.18 CIM Finance Ltd commits to ensure that its new merchant discount mechanism does not result in an increase in total merchant discount. Assuming all other factors remain constant, the difference in the merchant discount will be based on volume of trade and will allow for a maximum [redacted]% point negotiation as long as the maximum difference of [redacted]% points is respected. CIM Finance Ltd has submitted that the maximum merchant discount that it will charge will be [redacted]%.

iii. Findings of the Executive Director

1.19 The Executive Director has found that, following the implementation of the undertakings, CIM Finance Ltd is likely to charge merchant discount in the range of [redacted]-[redacted]% (a maximum difference of [redacted]%), in contrast with the current range of [redacted]-[redacted]%.

1.20 Information has been gathered regarding the revenue and expense figures of CIM Finance Ltd, based on which the Executive Director has computed that the break-even merchant discount rate, i.e. where CIM Finance Ltd neither makes a profit or a loss, is [redacted]% at its lowest and is [redacted]% at its highest, meaning that there is a difference of about [redacted]%.

1.21 The Executive Director is of the view that the proposed maximum difference of [redacted]% and the new mechanism for the pricing of merchant discount is reasonably justified and does not amount to price discrimination against small merchants. This opinion is substantiated by the fact that the maximum difference of [redacted]% is justified on account of differences between the costs of supplying hire purchase facilities to customers of small and large merchants.

1.22 According to the Executive Director, other elements which justify the proposed rate difference of [redacted]% are that:

(a) large merchants can bring economies of scale to CIM Finance Ltd;

(b) the risks of providing hire purchase facility to large merchants are lower than risks to supply small merchants;

(c) it is common business practice to offer discounts for volume sales which justifies offering lower merchant discounts to large merchants; and

(d) in addition to revenue from merchant discount, revenue also accrues from interest paid by end customers.

1.23 Consequently, the Executive Director recommends that the Commission accept the undertakings.

iv. Conclusion of the Commission

1.24 Having regard to the concerns, which have been identified by the Executive Director, and the undertakings offered by CIM Finance Ltd, the Commission finds no reason to disagree with the findings and recommendation of the Executive Director.

1.25 The Commission therefore determines that the undertakings offered by CIM Finance Ltd satisfactorily address all concerns it may have as per section 63(3) of the Act.

V. Decision

NOW THEREFORE,

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

1) It accepts the undertakings offered by CIM Finance Ltd, which are being published as per section 63(4) of the Act (see Annex).

2) The undertakings must be fully implemented within a period of six months as from the date of signature of this Decision.

Done at Port-Louis this 16th May 2017,

Mr. A. G. Pillay
(Chairperson) 16.5.17

Mr. D. P. A. Mariette
(Vice-Chairperson) 16/05/2017

Competition Commission of Mauritius

Mr. C. Seebaluck
(Commissioner) 16/05/2017

Mrs. M. B. Rajabally
(Commissioner) 16/05/2017

Mrs. V. Bikhoo
(Commissioner) 16/05/2017

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UNDERTAKINGS BY CIM FINANCE LTD

UNDERTAKINGS OFFERED BY CIM FINANCE LTD, A COMPANY INCORPORATED IN MAURITIUS HAVING ITS REGISTERED ADDRESS AT 33 EDITH CAVELL STREET, PORT LOUIS, MAURITIUS, REPRESENTED AND ACTING BY AND THROUGH ITS MANAGING DIRECTOR, MR MARK VAN BEUNINGEN, DULY DELEGATED, AUTHORISED AND EMPOWERED FOR THAT PURPOSE,

TO

THE COMPETITION COMMISSION PURSUANT TO SECTION 63 OF THE COMPETITION ACT 2007

1. Introduction

1.1 These Undertakings are being offered by Cim Finance Ltd to the Competition Commission in accordance with Section 63 of the Competition Act 2007 (the Act) and Rule 28 of the Competition Commission Rules of Procedure 2009 with the aim of addressing and allaying the competition concerns which are the subject of the investigation into a potential monopoly situation of Cim Finance Ltd in relation to the supply of hire purchase services, reviewable under Section 46 of the Act, referenced as INV035.

2. Definition

2.1 For the purposes of these Undertakings, the following terms will have the meaning as provided below:

'CCM' means the Competition Commission established under Section 4 of the Act.

'Merchant Agreement' means an agreement between Cim Finance Ltd and the supplier of goods and/or services to provide credit facilities to the customers of the supplier.

'Merchant' means the supplier of goods and/or services

'Merchant Discount' means the discount rate charged by Cim Finance Ltd to Merchants on the cash price of the goods and/or services.

'Effective Date' means the date on which the Commission delivers its decision to accept these undertakings.

'Full Implementation Date' means 1st November 2017, or a maximum period of 6 months as from effective date if effective date is after 1st May 2017. [Amended on 23rd February 2017.]

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3. Statement of Facts

3.1 Cim Finance Ltd is a limited liability company incorporated in Mauritius on 9 August 1962. The Company is licenced as a deposit taking institution by the Bank of Mauritius and as a credit finance institution by the Financial Services Commission. The main activities of the company consist of hire purchase, leasing, deposit taking, credit card and factoring services.

3.2 Cim Finance Ltd provides credit facilities to end-clients wishing to acquire white and brown goods from Merchants.

3.3 These credit facilities are structured into Credit Facility Agreements, the terms and conditions which are currently aligned with the provisions of the Hire Purchase and Credit Facilities Act ('HP Act') with regards to the interest rate and other fees chargeable to the client.

3.4 The HP Act provides that:

- The maximum rate of interest (the Annual Percentage Rate 'APR') that can be charged on such credit facilities (currently pegged at 12%) shall be fixed by regulation.
- The addition fees that can be charged to the client are late payment fees, currently fixed at 2% above APR; and
- Other than the fees mentioned above, no other fees can be charged to the client.

3.5 Cim Finance Ltd currently charges users of its hire purchase facilities with an interest and late payment fees. Additionally, Cim Finance Ltd charges the Merchants who sell products for which hire purchase facility is being sought a Merchant Discount fee [redacted]. This Merchant Discount rate varies from merchant to merchant.

3.6 Cim Finance Ltd works with some 700 Merchants of white and brown goods throughout Mauritius and it services the clients of such Merchants in the following manner:

- Either at its counters on the premises of the larger Merchants; or
- By providing credit facilities over the telephone to those Merchants where it does not have a physical counter presence.

4. Details of the Competition Concerns

4.1 The Executive Director of the CCM is concerned with the difference in the current level of Merchant Discount rates charged to Merchants by Cim Finance Ltd. [redacted]

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4.2 The Executive Director of the CCM has launched an investigation on the 24th May 2016 to review the matter under the provisions of Section 46 of the Act and to assess whether the conduct of Cim Finance Ltd might:

(a) have the object or effect of preventing, restricting or distorting competition; or

(b) in any other way constitutes exploitation of the monopoly situation.

5. Undertakings offered

NOW

Pursuant to Section 63 of the Act, Cim Finance Ltd hereby gives to the Competition Commission, the following undertakings in respect of addressing the above concerns of the Executive Director of the CCM in the investigation INV035.

5.1 The Merchant Discount

5.1.1 Cim Finance Ltd undertakes to change its current mechanism used to determine and charge Merchant Discounts to Merchants ('current mechanism') such that the maximum difference between the highest level of Merchant Discount charged and the lowest level of Merchant Discount charged, net of any reduction offered to any merchant, payment made to and/or payment received from any merchant accruing because of the supply of the hire purchase services, be of a maximum [redacted] and the maximum Merchant Discount rate [redacted]

5.1.2 Cim Finance Ltd undertakes that the new pricing mechanism as listed in paragraph 5.1.1 above will:

(a) ensure that it does not result in an increase in total Merchant Discounts charged, assuming other factors remains constant; and

(b) ensure that any difference in Merchant Discount rate is based on volume of trade with the merchant; or

(c) in addition to (b) above be based to a maximum of [redacted] on negotiations outside volume of trade, but nonetheless respecting the maximum difference and Merchant Discount rate as set in paragraph 5.1.1 above.

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5.1.3 By the Full Implementation Date, Cim Finance Ltd proposes to implement the pricing mechanism for Merchant Discount rates as set in Annex 1, subject to the provisions of paragraph 5.1.2.(c) above, of these Undertakings. [Amended on 23rd February 2017]. After **three (3)** years from Effective Date Cim Finance Ltd may change this pricing mechanism so far as undertakings 5.1.1 and 5.1.2 above are respected.

5.2 The Undertakings provided are applicable to all existing and future Merchant Agreements of Cim Finance Ltd.

6. Implementation

6.1 The Undertakings will be fully implemented by the Full Implementation Date.

6.2 In implementing these Undertakings, Cim Finance Ltd undertakes to either increase or decrease its current level of Merchant Discounts to any individual merchant in a consistent manner in order to achieve the targeted discount rates.

6.3 All Merchant Agreements existing as at the Effective Date will be brought into compliance with these Undertakings.

6.4 All new Merchant Agreements entered into on or after the Effective Date will be in full compliance with these Undertakings

6.5 The implementation of these Undertakings and in particular the pricing mechanism must not give rise to further competition concerns.

7. Reporting

7.1 Cim Finance Ltd will provide a written report to the Executive Director of the CCM within **two (2)** months of the Full Implementation Date describing the steps it has taken to comply with these Undertakings.

7.2 Thereafter, Cim Finance Ltd will provide, annually, a written report to the Executive Director of the CCM providing a statement of its compliance with these Undertakings, including but not limited to the effective discount rates charged to Merchants, total revenue derived by Cim Finance Ltd from Merchant Discounts and amount of hire purchase facilities provided. Such reports will be delivered to the Executive Director of the CCM on or before 31st December each year.

8. Variation

8.1 Cim Finance Ltd shall be free to approach the CCM at any time to request the CCM to vary these Undertakings on the occurrence of inter alia, any change in the legislative framework relating to hire purchase in Mauritius or any other material change in circumstances.

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9. Other Provisions

9.1 Cim Finance Ltd understands these Undertakings, even if accepted by the Commission, does not amount to a clearance or approval of the rates or charges of Cim Finance Ltd with respect to hire purchase activities. It addresses the concern of the CCM with regard to the difference in relation to Merchant Discount rates.

9.2 These Undertakings shall be valid for a period of 6 years from the Effective Date.

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MARK VAN BEUNINGEN

Managing Director

Duly authorised and on behalf of Cim Finance Ltd.

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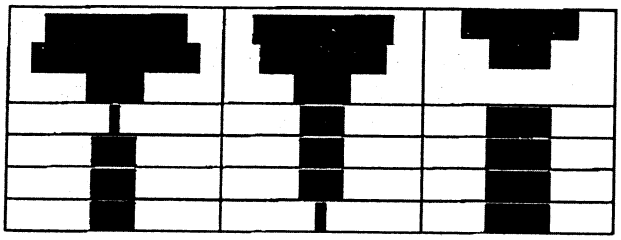
Annex 1 – Dealer Discount Rate Table