

General Notice No. 176 of 2019

CCM/DS/0030/22



Decision of the Competition Commission

CCM/DS/0030/22

Non-Confidential

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

12 December 2018

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**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/004 – Review of Seven Seven Co Ltd RPM Amnesty application'**

**(CCM/DS/0030/22 – Application for Immunity made by Seven Seven Co 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 Seven Seven Co Ltd on 11th May 2018,

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

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 20th October 2017 made by Seven Seven Co 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 Seven Seven Co Ltd on 11th May 2018 (the Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 29th June 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

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Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Competition Act 2007 (the 'Act').

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 Seven Seven Co Ltd is a private company limited by shares incorporated under the laws of Mauritius with Business Registration Number C07040595 and having its registered office at Royal Road Baramia, Rose-Belle and the registered nature of business being, among others, 'General Retailer - Foodstuff (excluding Liquor) and Foodstuff (Foodstuff predominant)². Seven Seven Co Ltd has 22 supermarkets across Mauritius and is a reseller of consumer goods to end consumers.

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.

² Information gathered from the website of the Registrar of Companies

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- 1.6 Seven Seven Co Ltd trades under the name of [REDACTED]
- 1.7 Seven Seven Co Ltd has made an application, in its capacity as reseller, in writing, to the CCM, through its authorised signatory on the 20th October 2017.
- 1.8 Seven Seven Co Ltd made an application for RPM Amnesty for two (2) conducts namely, for having:
- (i) entered into contractual agreements with certain suppliers, [REDACTED] and [REDACTED] in which there are clauses on the resale prices of products which may amount to RPM; and
 - (ii) accepted price lists and ordered upon the price lists of products from [REDACTED], which price lists stated the resale prices of those products as determined by the suppliers without the words "recommended price" appearing next to the resale prices on the price lists.

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 29th 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 findings of the Executive Director are that –
- (a) the reported conducts are likely to amount to RPM conducts in as much as:
 - (i) The written agreements between [REDACTED] and [REDACTED] contain clauses which set out minimum prices to be observed by Seven Seven Co Ltd when reselling the products of [REDACTED] during promotional offers.
 - (ii) The written agreement between Seven Seven Co Ltd and [REDACTED] requires Seven Seven Co Ltd not to sell the products supplied by [REDACTED] below the

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wholesale price for promotional offers and may thus establish a minimum price to be observed.

- (iii) The written agreement entered into by Seven Seven Co Ltd with [REDACTED] contains a clause which imposes an obligation on Seven Seven Co Ltd to sell the products of [REDACTED] at the pre-determined resale prices appearing on the price list communicated by [REDACTED] to Seven Seven Co Ltd or at a resale price which has been agreed upon by [REDACTED] in writing, which may establish a fixed resale price or a price level to be observed.
- (iv) The written agreement between Seven Seven Co Ltd and [REDACTED] contain price restrictions according to which, during promotional offers, Seven Seven Co Ltd is under an obligation not to sell the products of [REDACTED] below the price at which they have been bought from the latter, which may establish a minimum price to be observed.
- (v) The price list communicated by [REDACTED] to Seven Seven Co Ltd contains a clause which establishes a minimum price, to be observed when reselling a particular product, [REDACTED]
- (vi) Seven Seven Co Ltd has accepted price lists provided by its suppliers, namely, [REDACTED] which contained resale prices of products as pre-determined by them without the words "recommended price" appearing next to the resale prices on the price lists, the acceptance of which may constitute an RPM.
- (vii) Seven Seven Co Ltd has provided the CCM with all the information, documents, and evidence available to it regarding the RPM, and as required by the CCM; and
- (viii) Seven Seven Co Ltd has maintained a continuous and complete collaboration with the CCM throughout the whole amnesty process.

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

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- (a) The applicant has undertaken that it will inform the suppliers concerned that it is no longer party to the price restriction set out in the agreements to which they are party. This will ensure that the RPM conducts under these agreements and the understanding on those agreements cease. Further, the applicant will either modify or enter into new agreements which do not contain RPM clauses thus ensuring that the applicant as a reseller will be free to determine its own resale prices or promotional prices. The applicant will no longer have to abide by a fixed or minimum price or price level during promotions.
- (b) As discussed above, the acceptance of price lists from suppliers with resale prices of products predetermined by them without the words "recommended price" appearing next to the resale prices, may amount to an agreement having the object of imposing a minimum resale price. The applicant has undertaken to inform the suppliers concerned that any predetermined resale prices appearing on the price lists provided by them will be considered to be recommended prices and that the applicant is free to determine its own retail price. This will ensure that the retail price as per the price list is considered to be mere price recommendation and possibilities that the price was construed to be a fixed price cease.

1.13 The Executive Director recommends that the Commission accepts the Undertakings and grant immunity from fines to Seven Seven Co 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

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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.

1.17 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 Seven Seven Co Ltd, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by the Seven Seven Co Ltd, the Commission determines that –

- 1) Seven Seven Co Ltd has, in its Application, admitted its participation in one or more RPM agreement(s), namely, for having:
 - (a) entered into contractual agreements with certain suppliers, [REDACTED] in which there are clauses on the resale prices of products which may amount to RPM; and
 - (b) accepted price lists and ordered upon the price lists products from [REDACTED], which price lists stated the resale prices of those products as determined by the suppliers without the words "recommended price" appearing next to the resale prices on the price lists.
- 2) Seven Seven Co 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 the Seven Seven Co Ltd satisfactorily address the Commission's concerns in so far as -
 - a. Seven Seven Co Ltd ceases its participation in/terminates all RPM agreements to which it was a party, as reported in its Application; and

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- b. Seven Seven Co Ltd has undertaken to put in place other measures as stated in section 1.12 of this document that would guarantee compliance with the Act.

V. Decision

NOW THEREFORE,

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

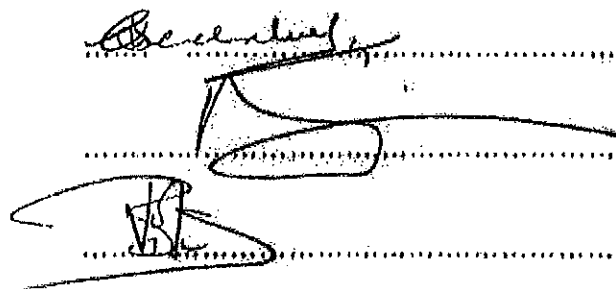
- 1) We accept that the Application made by Seven Seven Co Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements;
- 2) We accept the Undertakings offered by Seven Seven Co Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 3) The Undertakings shall be effective as from the date of this Decision; and
- 4) We grant immunity from financial penalty to Seven Seven 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)



Undertakings to the CCM

Undertakings provided by Seven Seven Co Ltd to the Competition Commission

Pursuant to an Application for Amnesty dated 20/10/2017

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

[Date of Undertakings]

1. Definitions:

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

Seven Seven: Seven Seven Co Ltd and includes its branches, subsidiaries, or affiliates;

Affiliate: any enterprise directly or indirectly controlled by Seven Seven Co Ltd;

Act: The Competition Act 2007;

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

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;

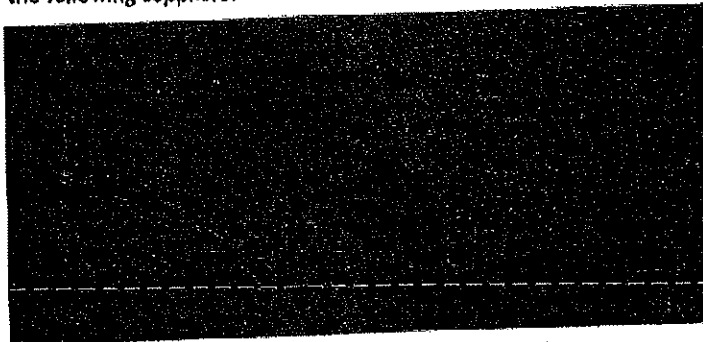
RPM: resale price maintenance.

2. Background:

Seven Seven operates in the retail sector in Mauritius. It has 22 distribution outlets (supermarkets) across Mauritius.

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

The conduct/agreements, in relation to which the application has been made is in relation to the following suppliers:



In respect of certain consumer goods supplied by the above-mentioned suppliers.

Section 43 of the Competition Act 2007 (the Act) prohibits and renders void 'any vertical' agreement between enterprises to the extent that it involves resale price maintenance.

Seven Seven has entered into contractual agreements with [REDACTED] agreements which contained clauses establishing a fixed or minimum price to be observed by Seven Seven for the sales of the goods supplied and thus constituting of an RPM. (Conduct I)

[REDACTED] have issued price lists to Seven Seven. These price lists set the resale price of the products in the price list without mentioning that the resale price as indicated in the price list is a recommended resale price. This may lead to an understanding that the resale price as indicated in the price list is a fixed price to be observed by the reseller, amounting to RPM. The price list of [REDACTED] contained a clause which set a minimum price to be observed, amounting to RPM. (Conduct II)

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining amnesty, Seven Seven 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, Seven Seven hereby undertakes to apply, by the full implementation date, the following measures in its commercial dealings with the above-mentioned suppliers in the resale of their respective goods or services in Mauritius:

3.1. Behavioural Undertakings

- (a) In relation to Conduct I, Seven Seven shall take the necessary steps required to cease the agreement and in particular, inform the above-referred suppliers that it is no longer party to the price restriction imposed by the agreement and shall enter into new agreements or modify the agreement to remove the RPM clause;
- (b) In relation to Conduct II, Seven Seven shall inform the suppliers concerned that any resale price on price lists by the suppliers will be considered to be recommended prices and that Seven Seven is free to determine its own retail price.

Seven Seven shall not, in any manner whatsoever, enter into or likewise 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.

3.2. Information Dissemination

Seven Seven 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 Seven Seven's pricing policy, in line with the provisions of the Act;

3.3. Reporting

Seven Seven shall provide the Commission with a copy of any amended agreement governing its commercial relationship with each of the above-mentioned suppliers, in relation to undertaking 3.1(a), and a copy of communication to suppliers in relation to undertaking 3.1(b) as proof that Seven Seven has irrevocably ceased the impugned resale price maintenance;

Seven Seven 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 Seven Seven's compliance with the present undertakings when reselling the above-mentioned suppliers' goods or services;

Seven Seven shall, by 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]

Name: *Salaudin Fauze*

Position: *Director*



Duly authorised for and on behalf of:

Seven Seven Co Ltd