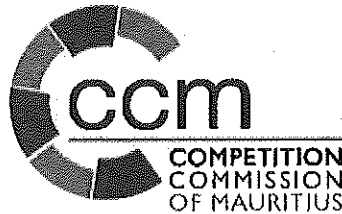


General Notice No. 155 of 2019

CCM/DS/0030/1



Decision of the Competition Commission

CCM/DS/0030/1
Non-Confidential

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

12 December 2018

CCM/DS/0030/1

**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/012 – Review of Linxia Ltd RPM Amnesty application'**

**(CCM/DS/0030/1 – Application for Immunity made by Linxia Ltd under the
Competition Commission's Amnesty Programme for Resale Price
Maintenance)**

THE COMMISSION

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 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 Linxia Ltd on 10th 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 13 September 2017 made by Linxia 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 Linxia Ltd on 10 May 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 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 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 (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 The applicant Linxia Ltd (bearing BRN C10006367), is a private company incorporated under the laws of Mauritius since 10 September 1987. [REDACTED]
- 1.6 Linxia Ltd is a distributor of IT products such as tablets, notebook and desktop PCs, mobile phone and consumer electronics such as television and air conditioners. It has an established channel [REDACTED] in Mauritius and across the other Indian Ocean Islands.

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.

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- 1.7 Linxia Ltd has made an application, in its capacity as supplier, in writing, to the CCM, through its authorised signatory on the 13th September 2017.
- 1.8 Linxia Ltd has submitted that the RPM was implemented in two ways:
 - a) Firstly, by carrying out advertising of its products without specifying that the prices, advertised by Linxia Ltd, are 'recommended retail prices', and
 - b) Secondly, by sending emails to its resellers suggesting the retail prices to be practiced when reselling to their end customers.

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 Executive Director's findings are that the application satisfies the conditions i, ii and iii set out under paragraph 5.6A(b) of CCM3 Guidelines for RPM amnesty. The Executive Director is satisfied that Linxia Ltd has admitted its participation in conduct falling within the ambit of RPM under section 43 of the Act, as supported by the documentary evidence submitted and has maintained continuous and complete co-operation from the time of its Application to the issuance of the Executive Director's Report.
- 1.12 Further to his assessment of Application, the Executive Director, in his Report, takes the view that Linxia Ltd, in its capacity as supplier, has engaged in conducts raising competition concerns under section 43 of the Act with respect to its commercial dealings with its resellers.
- 1.13 In that respect and in order to eliminate the RPM concern stemming from the advertisements in billboards and newspapers containing the retail prices, Linxia Ltd has already amended its advertisements which now clearly mentions 'Recommended Retail Price' next to the advertised price.
- 1.14 The Executive Director views that by carrying out advertising of its products without specifying that the prices advertised by Linxia Ltd were 'recommended retail prices' and the communication of retail prices to

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dealers containing resale prices for its products without mentioning the terms 'recommended price' raises a competition concern in so far such prices may be viewed as the price at which to sell the product or at least be regarded as the price being practiced by other resellers and inducing the reseller to follow that price.

1.15 The Executive Director has further assessed the Undertakings offered by Linxia Ltd pursuant to condition iv paragraph 5.6A(b) of CCM3 Guidelines. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the below-stated reasons:

- a. As a first measure, to inform all its dealers, in writing, that the prices or price levels communicated to them are 'recommended' prices or price levels, Linxia Ltd has submitted as part of its undertakings, a template letter to be sent to all its resellers. This first measure from the undertakings serves to make it clear that Linxia Ltd will not set the retail prices and that the resellers would be free to set the retail prices and thus eliminate the possibility of RPM. The undertaking addresses the competition concerns stemming from the emails:
 - i. containing lists of retail prices (price lists);
 - ii. leaflet/posters containing the retail prices issued to resellers; and
 - iii. communicating the retail prices, mark-up or margin to resellers.
- b. As a second measure, either to affix or cause to be affixed the words '*recommended price*' next to the resale price, where a minimum resale price has been recommended to dealers and the resale price appears on the goods. In that respect and in order to eliminate the RPM concern stemming from the Advertisements in billboards and newspapers containing the retail prices, Linxia Ltd has already amended its advertisements which now clearly mentions 'Recommended Retail Price' next to the advertised price. Therefore, coupled with the first measure of the undertakings of issuing letters to its resellers, the affixing of the terms 'recommended price' will effectively eliminate any RPM stemming from the advertisements. On that basis the second measure addressed the competition concern of RPM and renders the advertisements to be in line with the provisions of section 43 of the Act.

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- c. As a third measure, Linxia Ltd offered to take all appropriate measures to ensure that all its internal management, directors and employees engaged in the sales and marketing of Linxia Ltd's products are fully aware of and actively implement the present undertakings when dealing with resellers. This aims to minimise risks of RPM conduct being promoted by employees and ensuring that commercial dealings with resellers are in compliance with the Act. Furthermore, a competition training has been carried out for commercial employees for them to understand the extent and application of competition laws to them. This shows volition and actual steps taken by Linxia Ltd with the view to eliminate future RPM conduct when dealing with resellers and to remain within the legal parameters set out in section 43 of the Act. The view of the Executive Director is that this third commitment is a pro-active measure which addresses the competitive concerns of RPM observed from the reported conducts.
- d. As a fourth measure, Linxia Ltd will ensure that the undertakings are made known to and are understood by all dealers. This measure serves to buttress the third measure of the undertakings and thus both measures serve to prevent occurrence of RPM by Linxia Ltd when dealing with resellers.
- e. As a fifth measure, Linxia Ltd will submit a written report to the Commission [REDACTED] on the matter, to report on the implementation of the compliance programme, to describe the steps taken to comply with the present undertakings and to submit all amendments brought to its agreements with resellers.

1.16 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

1.17 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'.

1.18 Having regard to the conditions prescribed under the RPM Amnesty Programme, an enterprise will benefit from immunity from financial penalty

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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.

1.19 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.

1.20 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

1.21 Having regard to the Application submitted by Linxia 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) Linxia Ltd has, in its Application, admitted its participation in one or more RPM agreement(s) as enunciated in paragraph 1.7 above;
- 2) Linxia 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 Linxia Ltd satisfactorily address the Commission's concerns in so far as –
 - a. Linxia Ltd has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
 - b. Linxia Ltd has undertaken to put in place other measures as stated in section 1.15 of this document that would guarantee compliance with the Act.

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V. Decision

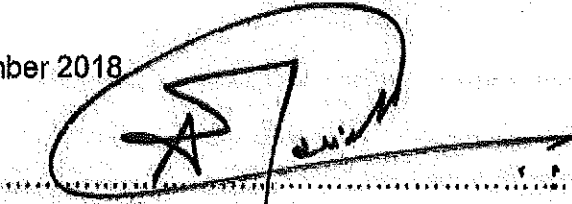
NOW THEREFORE,

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

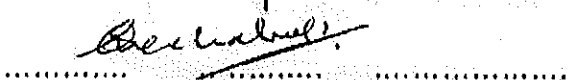
- 1) We accept that the Application made by Linxia Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements;
- 2) We accept the Undertakings offered by Linxia Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 3) The Undertakings shall be effective as from the date of this decision.
- 4) We grant immunity from financial penalty to Linxia Ltd pursuant to section 59(7) of the Act for the Reported RPM conduct;

Done at Port-Louis this 12 December 2018

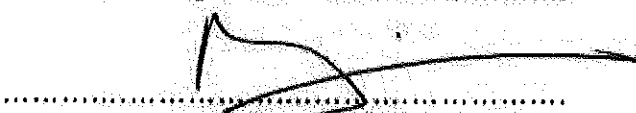
Mr. D. P. A. Marlette
(Vice-Chairperson)




Mr. C. Seebaluck
(Commissioner)



Mrs. M. B. Rajabally
(Commissioner)



Mrs. V. Bikhoo
(Commissioner)





Undertakings to the CCM

Undertakings provided by Linxia Ltd to the Competition Commission

Pursuant to an Application for Amnesty dated the 13th September 2017

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

The 10th May 2018

[Redacted]

A. Background:

1.0 By its letter dated the 13th September 2017 made pursuant to paragraph 5.6A of the 'CCM 3 Guidelines - Collusive Agreements' (amended June 2017), Linxia Ltd (hereinafter referred to as 'Linxia') 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').

2.0 Linxia Ltd is a private company incorporated under the laws of Mauritius on the 10th September 1987¹. It is a distributor of tablets, notebooks, phones, televisions and air conditioners in Mauritius.

3.0 The nature of the RPM conduct for which amnesty was applied for concerned two main issues, namely:

- (i) Communications [Redacted] to its resellers, to sell at a certain price to their end customers; and
- (ii) Advertising without mentioning any 'Recommended Retail Price' on print.

4.0 Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, Linxia is, by the presents, providing undertakings related specifically to the impugned communications and advertising and any restrictive effects they have 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.

B. Measures proposed as Undertakings

5.0 Linxia hereby undertakes to apply the following measures in its commercial dealings with all existing dealers involved in the resale of Linxia's electronic products in Mauritius.

B.1 Behavioural Undertakings

6.0 Linxia 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 Linxia.

7.0 Linxia shall clearly and unequivocally inform all dealers, in writing, that prices or price levels communicated to them by Linxia are "recommended" prices or price levels².

8.0 Linxia shall, where a minimum resale price has been recommended to dealers and the resale price appears on the goods, either affix or cause to be affixed the words "recommended price" next to the resale price³.

[Redacted]



B.2 Information Dissemination

9.0 Linxia shall take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the sales and marketing of its products with dealers (hereinafter referred to as 'commercial employees') are fully aware of and actively implement the present undertakings when designing and/or implementing the commercial policy of Linxia vis-à-vis dealers, in line with the provisions of the Act.

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

11.0 Furthermore, a competition training has been carried out for commercial employees for them to understand the extent and application of competition laws to them⁴.

B.3 Reporting

12.0 Linxia 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 its 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 Linxia's products.

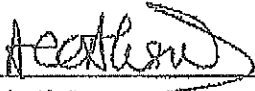
13.0 Linxia shall, [redacted]

[redacted] submit a written report to the Commission that *inter alia* -

- i. confirms that Linxia has implemented a compliance programme, details of which shall be submitted to the Commission;
- ii. describes the steps taken by Linxia to comply with the present undertakings and in particular, setting out all the appropriate measures taken by Linxia to deter on the one hand and detect and correct any deviation by Linxia's management, directors, or commercial employees from the present undertakings; and
- iii. documents all amendments brought to agreements put in place with dealers in relation to the commercialisation of Linxia's products.

C. Entry into force

14.0 The present Undertakings shall come into force on the abovementioned date.



Alain Ah-Sue

Managing Director

Duly authorised for and on behalf of:

Linxia Ltd



Christine Nguyen Thac

Chief Operating Officer

Duly authorised for and on behalf of:

Linxia Ltd

