

*General Notice No. 158 of 2019*

CCM/DS/0030/4



## Decision of the Competition Commission

**CCM/DS/0030/4**  
Non-Confidential

**Application for Immunity made by Margarine  
Industries 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/020 – Review of Margarine Industries Co Ltd  
RPM Amnesty application'**

**(CCM/DS/0030/4 – Application for Immunity made by Margarine Industries 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 Margarine Industries Co Ltd on 23<sup>rd</sup> May 2018,

Having regard to a report of the Executive Director dated 29<sup>th</sup> June 2018,

**WHEREAS:**

**I. Introduction**

- 1.1 This Decision relates to an application for immunity dated 20<sup>th</sup> October 2017 made by Margarine Industries 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 Margarine Industries Co Ltd on 23<sup>rd</sup> May 2018 (the 'Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 29<sup>th</sup> 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 05<sup>th</sup> June 2017 until 20<sup>th</sup> October 2017 inclusively<sup>1</sup>, 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 Margarine Industries Co Ltd (bearing Business Registration Number C06001524), is a public company incorporated in Mauritius since 20 April 1966. Margarine Industries Co Ltd is a manufacturer and distributor of margarine and related products in Mauritius. Margarine Industries Co Ltd supplies to around 4000 resellers in Mauritius.

1.6 Margarine Industries Co Ltd has made an application, in its capacity as supplier, in writing, to the CCM, through its authorised signatory on the 20<sup>th</sup> October 2017. The reported RPM conduct, by Margarine Industries Co Ltd,

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

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as submitted in the application, concerns, 'agreement(s) involving RPM in connection with promotional sales activities whereby important percentage discount was offered to [REDACTED] customers [REDACTED] on the condition that they do not sell the applicant's products below the wholesale 'recommended' prices. Margarine Industries Co Ltd has participated in agreements involving RPM, having a restrictive object by establishing a minimum retail price ('pricing restriction') and inducing dealers to practise its stated prices to benefit from discounts

**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 29<sup>th</sup> 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').
- 1.9 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 Margarine Industries Co 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.
- 1.10 Further to his assessment of Application, the Executive Director, in his Report, takes the view that Margarine Industries Co Ltd, in its capacity as supplier, has engaged in a conduct that raises competition concerns under section 43 of the Act with respect to its commercial dealings with the following resellers:

[REDACTED]

[REDACTED]

- 1.11 The Executive Director views that Margarine Industries Co Ltd has imposed minimum retail price onto its resellers, [REDACTED] and [REDACTED], by inducing them to apply the minimum retail price in order to benefit from discounts. The discounts were offered to the afore-

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referred resellers upon respect of the minimum retail prices communicated to them in the price list format. In so doing, Margarine Industries Co Ltd has in effect, limited retail price competition for its products.

1.12 The Executive Director has further assessed the Undertakings offered by Margarine Industries Co 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 following reasons –

- a) Margarine Industries Co Ltd has undertaken to 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 Margarine Industries Co Ltd;
- b) Margarine Industries Co Ltd has undertaken to inform all dealers, in writing, that prices or price levels communicated to them by Margarine Industries Co Ltd in relation to its products, including past stocks, are "recommended" prices or price levels;
- c) Margarine Industries Co Ltd shall, where it enters into agreements, contracts or other such express arrangements with dealers, existing and prospective, ensure that such agreement, contract or other arrangement expressly include a clause therein to the effect that dealers shall remain entirely free to fix or otherwise apply their own prices or price levels and that they are neither bound nor legally compelled to apply the prices communicated to them by Margarine Industries Co Ltd; and
- d) The behavioural measures undertaken by Margarine Industries Co Ltd shall be disseminated to its internal management and commercial employees engaged in the sales and marketing of Margarine Industries Co Ltd products, thereby minimising risks of RPM conduct being promoted by employees and ensuring that commercial dealings with resellers are in compliance with the Act.

1.13 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.

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### **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 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 Margarine Industries Co 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) Margarine Industries Co Ltd has, in its Application, admitted its participation in one or more RPM agreement(s) as per paragraph 1.6 above;
  - 2) Margarine Industries Co Ltd has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CCM 3 Guidelines, as stated in the Report; and
  - 3) The Undertakings submitted by the Margarine Industries Co Ltd satisfactorily address the Commission's concerns in so far as –

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- a) Margarine Industries Co Ltd has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
- b) Margarine Industries 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:

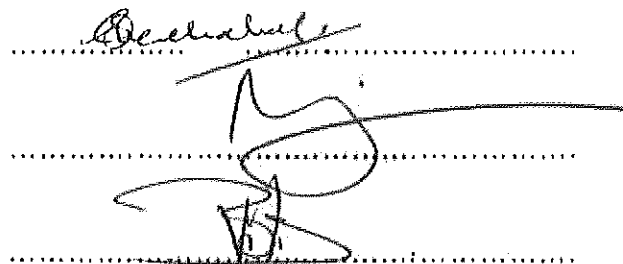
- 1) We accept that the Application made by Margarine Industries Co Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements;
- 2) We accept the Undertakings offered by Margarine Industries Co Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 3) The Undertakings shall be effective as from the date of this decision;
- 4) We grant immunity from financial penalty to Margarine Industries Co 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 in black ink, each written over a horizontal dotted line. The signatures are cursive and somewhat stylized. The first signature is at the top, the second is in the middle, and the third is at the bottom.



### Undertakings to the CCM

Undertakings provided by Margarine Industries Limited to the Competition Commission

Pursuant to an Application for Amnesty dated 20<sup>th</sup> October 2017.

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

23<sup>rd</sup> May 2018

Margarine Industries Limited

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E: millogistic@mijl.intnet.mu | W: www.margarineindustries.com  
T: +230 6509073 | F: +230 454 2345  
BRN: C06001524 | VAT: VAT20012259

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## 1. Background:

By its letter dated 20<sup>th</sup> October 2017 made pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Margarine Industries Limited 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').

The agreements were in place [REDACTED]

[REDACTED] in relation to the supply of Margarine and related products, enlisted in annex 1 of the present undertakings, wherein Margarine Industries Limited, in its capacity as a manufacturer and wholesale distributor of the said products, has been determining and communicating in advance, through a reseller price list format, the retail prices of the concerned products of [REDACTED] its resellers [REDACTED] and, the communicated prices were imposed on the dealers whereby important percentages of discounts were proposed as an incentive for them to abide by the stated minimum prices.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, Margarine Industries Limited is, by the presents, providing undertakings related specifically to the impugned agreements 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 immunity.

## 2. Definitions

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

**Margarine Industries Limited:** Margarine Industries Limited and includes its branches, subsidiaries, or affiliates;

**Affiliate:** any enterprise directly or indirectly controlled by Margarine Industries Limited;

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

**Concerned Dealers:** [REDACTED]

**Effective Date:** the date on which the Commission delivers its decision to accept these Undertakings;

**Full Implementation Date:** a maximum 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.

h. a

3. Measures proposed as Undertakings

Margarine Industries Limited hereby undertakes to apply the following measures in its commercial dealings with the concerned dealers and any distributor, reseller, retailer, or other entity involved in the resale of Margarine Industries Limited's products in Mauritius;

3.1. Behavioural Undertakings

- i. Margarine Industries Limited 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 Margarine Industries Limited;
- ii. Margarine Industries Limited shall clearly and unequivocally inform the concerned dealers, in writing, that prices or price levels communicated to them by Margarine Industries Limited in relation to its products, including past stocks, are "recommended" prices or "recommended" price levels; and
- iii. Margarine Industries Limited shall, where it enters into any agreement, contracts, or other express arrangements with dealers, existing and prospective, ensure that such agreement, contract, or other arrangement expressly include a clause therein to the effect that dealers shall remain entirely free to fix or otherwise apply their own prices or price levels and that they are neither bound nor legally compelled to apply or Margarine Industries Limited.

3.2. Information Dissemination

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

Margarine Industries Limited shall use its best efforts to ensure that the present undertaking is made known to and is understood by the concerned dealers.

3.3. Reporting

Margarine Industries Limited shall, as from the Effective Date, take all reasonable steps to ensure that all communications, negotiations, arrangements with the concerned dealers and any distributor, reseller, retailer, or other entity involved in the resale of Margarine Industries Limited products in Mauritius, are properly documented and archived to demonstrate Margarine Industries Limited'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 Margarine Industries Limited's products;

Margarine Industries Limited shall, within the Full Implementation Date, submit a written report to the Commission that *inter alia* -

- i. confirms that Margarine Industries Limited has implemented a compliance programme, details of which shall be submitted to the Commission; and
- ii. describes the steps taken by Margarine Industries Limited to comply with the present undertakings and in particular, setting out all the appropriate measures taken by Margarine Industries Limited to deter on the one hand and detect and correct on the other hand any deviation by Margarine Industries Limited's management, directors, or commercial employees from the present undertakings.

4. Entry into force

The present undertakings shall take effect upon the Effective Date.

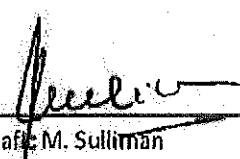
  
Raffi Currimjee

Managing Director

Duly authorised for and on behalf of:

**Margarine Industries Limited**



  
Raffi M. Sulliman

General Manager

Duly authorised for and on behalf of:

**Margarine Industries Limited**

**Annex 1: List of Products**

1. TARA SPREAD 500g
2. Butterfly 200g-Salted
3. Butterfly 200g-Unsalted
4. Tara Olive Spread 500g
5. VITA GHEE 900G
6. VITA VANASPATI 500G
7. BUTTERFLY SALTED 200G
8. TARA 1 KG
9. VITA 500 KG
10. VITA GHEE 400G

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