

General Notice No. 178 of 2019

CCM/DS/0030/24



## Decision of the Competition Commission

**CCM/DS/0030/24**

Non-Confidential

**Application for Immunity made by Cosmebelle  
Maurice Ltée under the Competition Commission  
Amnesty Programme for Resale Price Maintenance**

12 December 2018

CCM/DS/0030/24

**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/009 – Review of Cosmebelle Maurice Ltée RPM Amnesty  
application'**

**(CCM/DS/0030/24 – Application for Immunity made by Cosmebelle Maurice  
Ltée 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. Blkhoo - 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 Cosmebelle Maurice Ltée on 27<sup>th</sup> April 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 Cosmebelle Maurice Ltée 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 Cosmebelle Maurice Ltée on 27<sup>th</sup> April 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 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, *v/z.*, 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 The Applicant, Cosmabelle Maurice Ltée, is a private limited liability company with Business Registration Number C07024388 and has as registered address: 12, Caudan Development Building, Riche Terre. Cosmabelle Maurice Ltée is a supplier of cosmetic products to retailers and pharmacies.

<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.

CCM/DS/0030/24

- 1.6 Cosmebelle Maurice Ltée has, by way of letter dated 20<sup>th</sup> October 2017 made an application to the RPM Amnesty Programme. The reported RPM conduct to which Cosmebelle Maurice Ltée has admitted participation essentially involves Cosmebelle Maurice Ltée selling 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.

**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:
- i. The reported conduct relates to the practice of Cosmebelle Maurice Ltée whereby the resale price as determined by itself appears on the product, without affixing the words 'recommended price'. It may be considered to be a policy of Cosmebelle Maurice Ltée 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 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
  - iii. 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 Cosmebelle Maurice Ltée. The Executive Director takes the view that the proposed Undertakings satisfactorily address the concerns identified in the Report for the following reasons –

CCM/DS/0030/24

- a. Cosmabelle Maurice Ltée will amend its conduct in relation to affixation of 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. It will be ensured that where Cosmabelle Maurice Ltée 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 resale price and it will be therefore clear to both resellers and consumers that the price as affixed is merely a price recommendation;
- b. Cosmabelle Maurice Ltée will give each reseller the flexibility to determine its 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 products. This will eliminate the risk of RPM by acquiescence; and
- c. The behavioural measures undertaken by Cosmabelle Maurice Ltée shall be disseminated to its internal management and commercial employees engaged in the sales and marketing of Cosmabelle Maurice Ltée'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, the Executive Director is of the view that the undertakings will satisfactorily address the competition concerns raised by the reported conduct.

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 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 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

CCM/DS/0030/2A

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**

1.17 Having regard to the Application submitted by Cosmabelle Maurice Ltée, 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) Cosmabelle Maurice Ltée has, in its Application, admitted its participation in one or more RPM agreement(s) viz having sold products to dealers with resale prices as determined by itself pre-labelled without the words "recommended prices" appearing next to the resale prices.
- 2) Cosmabelle Maurice Ltée 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 Cosmabelle Maurice Ltée satisfactorily address the Commission's concerns in so far as –
  - a. It will ensure that Cosmabelle Maurice Ltée ceases its participation in all reported RPM agreements to which it was a party; and
  - b. The undertakings will ensure that the reported conduct is 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.

CCM/DS/0030/24

**V. Decision**

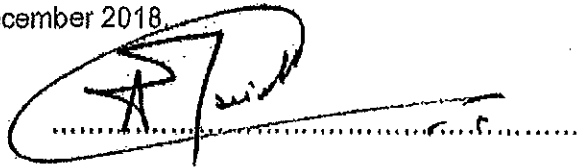
**NOW THEREFORE,**

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

- 1) We accept that the Application made by Cosmebelle Maurice Ltée 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 Cosmebelle Maurice Ltée, 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 Cosmebelle Maurice Ltée pursuant to section 59(7) of the Act for the Reported RPM conduct.

Done at Port-Louis this 12 December 2018

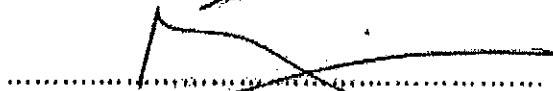
Mr. D. P. A. Mariette  
(Vice-Chairperson)



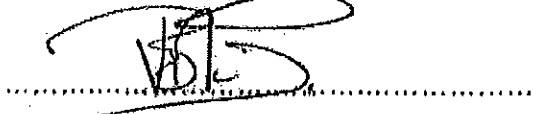
Mr. C. Seebaluck  
(Commissioner)



Mrs. M. B. Rajabally  
(Commissioner)



Mrs. V. Bikhoo  
(Commissioner)



Undertakings to the CCM

Undertakings provided by Cosmebelle Maurice Ltée 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

[Date of Undertakings] 27 April 2018



## 1. Definitions:

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

**Cosmebelle:** Cosmebelle Maurice Ltée and includes its branches, subsidiaries, or affiliates;

**Affiliate:** any enterprise directly or indirectly controlled by Cosmebelle;

**Act:** the Competition Act 2007

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

**Dealer:** any reseller, retailer, or other entity involved in the resale of Cosmebelle's goods 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:

Cosmebelle is a supplier of cosmetics products in Mauritius. It supplies cosmetic products to resellers for resale.

By 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), Cosmebelle has made an application for immunity under the CCM Amnesty Programme for Resale Price Maintenance (RPM) (the 'Application').

The conduct in relation to which the application has been made is the sale of cosmetic products by Cosmebelle in Mauritius with resale prices as determined by Cosmebelle pre-labelled on the products without the words "recommended price" appearing next to the resale prices, which may amount to RPM, in breach of 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.'

The practice of Cosmebelle to sell its products to resellers with a resale price as determined by itself pre-affixed on the products, without the terms 'recommended price' appearing next

to the resale price and the acceptance of such products by resellers may constitute an RPM within the meaning of the Act.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017), for the purpose of obtaining RPM Amnesty, Cosmebelle 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 Act 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, Cosmebelle hereby undertakes to apply the following measures within the full implementation date in its commercial dealings with all resellers involved in the resale of Cosmebelle's cosmetic products in Mauritius:

#### 3.1. Behavioural Undertakings

- a. Where Cosmebelle offers products to dealers for resale and affixes a resale price (minimum or recommended) 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 price shall not be binding on the reseller; and
- b. Cosmebelle shall give each reseller either the flexibility to determine its 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 products.

#### 3.2. Information Dissemination

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

Cosmebelle shall use its best efforts to ensure that the present undertakings are made known to and are understood by all dealers.

#### 3.3. Reporting

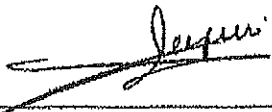
Cosmebelle shall provide the Commission with a copy of the amended price tag which is in compliance with the Act and these Undertakings as proof that Cosmebelle has irrevocably ceased the impugned resale price maintenance;

Cosmebelle 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 Cosmebelle'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 Cosmebelle's products;

Cosmebelle 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.



[Signature of Director No 1]

Name: DUPUIS SEAN LOUIS

Position: Chairman

Duly authorised for and on behalf of:

Cosmebelle Maurice Ltée

[Signature of Director No 2]

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Duly authorised for and on behalf of:

Cosmebelle Maurice Ltée