



10th Floor, Hennessy Court
Corner Suffren Road and Pope
Hennessy Street
Port Louis
Tel. No. 211-2005
Fax No. 211-3107
email: info@ccm.mu

MEDIA RELEASE

Date

08 November 2017

OUTCOME OF THE RESALE PRICE MAINTENANCE AMNESTY PROGRAMME

The RPM Amnesty Programme

The Competition Commission (CCM) ran a Resale Price Maintenance (RPM) Amnesty Programme which started on 5th June 2017 and ended on 20th October 2017. The RPM Amnesty Programme provided enterprises which were engaging in RPM an opportunity to report and amend their conduct and in turn benefit from immunity from fines.

To recall, RPM is a form of price-fixing and is a hard-core prohibition under the Competition Act 2007 (the Act). It is an agreement between a supplier and a reseller, which establishes a minimum price (or fixed price or price level) at which its product must be re-sold to customers, thus impeding the discretion of resellers to cut prices. RPM conduct is illegal and parties to such an agreement may be liable to fines of up to 10% of their turnover for a maximum period of 5 years. Given its detrimental effects, RPM is generally prohibited in many jurisdictions. RPM is a per se offence under the Act.

The RPM Amnesty Programme has come to an end and has garnered much interest from economic players generating applications from more than a hundred of companies.

Outcome of the RPM Amnesty Programme

The RPM Amnesty Programme has seen a remarkable success in the history of the CCM. 102 companies operating in various sectors such as fast-moving consumer goods, construction, manufacturing, electronic goods, IT products, books, pharmaceutical and cosmetic products have applied for the RPM Amnesty. 55% of applications were from suppliers and 45% of applications were from resellers.

About half of the applications from suppliers are from suppliers of fast moving consumer goods, which include a whole range of products like detergents, spices, vegetables, frozen meat, chilled meat, dairy products, canned foods, and drinks just to mention a few. Applications from suppliers also concerned durable goods like electric and electronic appliances and construction materials. A significant number of applications received relates to pharmaceutical and healthcare products.

Applications from suppliers cover different types of suppliers like large distributors, wholesalers, importers and manufacturers.

RPM is an agreement between a supplier and a reseller, and usually both suppliers and resellers may be liable for RPM conduct. In some circumstances where the RPM is imposed by the supplier and the reseller is more like a victim, the liability is usually on the supplier.

45% of applications were from resellers, mainly large retailers of fast moving consumer goods. It is anticipated that the applications will cover more than 50% of retail distribution of fast moving consumer goods in Mauritius. Applications from resellers also concern durable products, mainly consumer electronic and electrical goods.

Although most applicants are from medium and large enterprises, the CCM has received applications from smaller enterprises also. Nearly 40% of the applications are from companies which are either in the top 100 hundred companies or otherwise structurally linked to the top 100 companies.

The nature of RPM conduct reported ranges from simple labeling issues to more complex RPM arrangements including formal clauses in contracts between suppliers and resellers setting the minimum resale price of products. The RPM Amnesty programme aimed at correcting long-standing RPM conducts and is expected to revive competition in the retail and distribution sector. The number of applications received clearly shows that RPM was pervasive in Mauritius.

Expected impact of the RPM Amnesty Programme

RPM are conducts which restrict price competition. There are different types of RPM with different gravity and effect on the markets; some restrictions by RPM can have very significant impact on the markets while the effect of other RPM can be mild. The 102 applications reported different types of RPM conducts with varying level of gravities. A few applications could also be outside the purview of the Act. However, given the scale of the applications received, even a small impact in relation to each of the applicant's market will have a cumulated large impact on the economy at large as the applications cover several thousands of products. Below are some of the qualitative impact that the elimination of the RPM will bring:

- **There will be increased competition among resellers.** RPM usually results in resellers practicing a common and fixed price, thus its elimination is likely to boost price competition.
- **Improved discounts and promotions** as RPM also restricts the ability of resellers to reduce price.
- **Increased competition among suppliers.** One of the main contention of RPM is that it softens competition among suppliers and may facilitate coordination. Thus, its elimination is likely to result in increased competition among suppliers. Further, as competition among resellers increases, there will be higher pressure on suppliers and further increasing competition.
- **Reduce barriers to entry.** RPM can usually restrict entry in markets. For example, consumers when offered the same price by a new reseller and more experienced resellers would prefer to purchase from the experienced resellers. Thus, when new resellers are prevented from

offering lower prices they face difficulty in entering the market. Elimination of the price restriction will facilitate entry by smaller players.

- **Increased innovation.** RPM can create a state of complacency, especially when at such large scale. Its elimination will reactivate market dynamics and can boost innovation both in terms of price and non-price innovation.
- **More competitive prices.** Removal of price restraint and improved competition usually results in lower prices to the benefit of consumers.
- **Contribute in economic growth.** It has been shown that competition contributes to economic growth and welfare. Thus, given the magnitude of RPM being eliminated through the RPM Amnesty Programme, it is expected to boost competition in several markets and may contribute towards increased welfare and economic growth.

The programme has also raised awareness on the RPM prohibition and other provisions of the Act. Over 200 enterprises have engaged with either the CCM or the Mauritius Chamber of Commerce and Industry (MCCI) to obtain information on the RPM Amnesty Programme. Therefore, the programme will not only eliminate the RPMs for which applications have been made but will also deter enterprises from engaging in such conduct, further boosting competition. Now that distributors and retailers have a better knowledge of RPM conduct and are aware that it is prohibited under the Act, the CCM makes an appeal to them to report such conduct to the CCM if they see them happening on the market.

The programme has also acted as a catalyst to advocate provisions of the Act and created more awareness of the Act. This in turn is likely to promote greater compliance.

Enforcement of the Act

The CCM will now assess all the applications and enterprises who have applied for the Amnesty will have to offer undertakings to the CCM on the manner in which they will amend their conduct to conform to the Act. The Executive Director will assess each application received and produce his report, which will be submitted to the Commission for their determination. More details on the conducts, products and enterprises will be provided further to the decision of the Commission on the applications at a later stage.

The RPM Amnesty Programme is an important milestone for the CCM in the enforcement side. Proper competition enforcement is important to ensure that markets operate at their optimal level for economic development and increased standard of living.

Leniency is a tool used by most competition agencies around the world to enforce competition law. The RPM Amnesty programme provides strong evidence that such tools can be an effective and efficient enforcement mechanism through a collaborative approach rather than through the use of more forceful approach.

The CCM recognizes the role of the MCCI in the success of the programme. The MCCI has assisted in disseminating the programme and has provided information to parties interested in the programme. The MCCI has facilitated several applications for RPM Amnesty and has encouraged enterprises to benefit from such programme. This programme has demonstrated that collaboration with the private sector can

bring fruitful outcome to the benefit of consumers and the economy at large and the CCM endeavors to continue such collaboration while being rigorous on the enforcement side.

Statement of CCM's Executive Director:

"Competition is important for the proper functioning of markets to the betterment of consumers and the economy at large. More effective competition means better prices, better quality and more choice, which contribute to increased consumer welfare. It also means more innovation, more investment, job creation, opportunities for new entrants, improved effectiveness and productivity, and improved competitiveness of the country, all contributing towards growth of the economy. The role of the CCM is to ensure that competition is protected on our markets so as to achieve these goals.

Resellers are important drivers of such competition. They not only compete among themselves but they can foster competition among suppliers. Agreeing on a minimum price or fixed price with resellers impede such competition.

One of the rationale for running the RPM Amnesty Programme was that the CCM had information that RPM could be widespread in Mauritius. Thus, the programme aimed at correcting such conduct in an expedited and effective manner. The number of applications has confirmed that RPM was massive in Mauritius. It concerns several thousands of products. The elimination of such restrictions on prices will result in multiple benefits to consumers and the economy at large. Resellers will be able to engage in more price competition, which will not only reduce retail price but increase competition at level of suppliers. The effects of such competition dynamics will not be overnight but once they are unleashed they would be significant, exerting downward pressure on prices of several thousands of products.

Even a minor change per product would be significant overall when applied to thousands of products.

Such RPM also create barriers to entry and freeze market share of large players. Therefore, elimination of minimum and fixed resale prices will facilitate entry in markets and enhance innovation.

The RPM Amnesty programme has brought a change in the business mindset across several industries which will foster competition culture within the business community.

The pro-activeness of enterprises which have taken steps to make their business competition compliant is commendable. The collaboration received from applicant enterprises and the MCCI during the RPM Amnesty programme is exemplary. We look forward for the continued collaboration of enterprises not only for the RPM amnesty but to adopt a competition culture and be competition compliant for the advancement of markets.

I will now assess each application and undertakings and send my report on the applications to the Commissioners for their determination.

As I said previously, we will now be more severe against RPM practices."

End of Media Release

Further information for editors:

What is Resale Price Maintenance?

RPM is illegal in Mauritius under the Competition Act. RPM exists with a supplier establishing the minimum or fixed price or price level at which the product must be re-sold to customers, thus impeding the discretion of resellers to cut prices.

It must be noted that even where a supplier 'imposes' a minimum price, fixed price or price level to be observed by the reseller it may amount to a RPM, irrespective of whether the reseller agreed under pressure.

Why is Resale Price Maintenance harmful?

Competition is important to ensure that there is efficiency in the markets to the benefit of consumers and the economy at large. Price competition is one important dimension of competition which usually leads to lower prices. Such competition at the wholesale and retail level happens both at intra-brand and inter-brand levels. Different brands of similar products compete with each other (inter-brand competition). But resellers also compete among themselves on the same brand of products (intra-brand competition).

RPM prevents resellers from setting their prices independently and from setting lower prices, and can lead to increased prices for consumers. RPM directly affects intra-brand competition but usually also affect inter-brand competition.

For further information, please refer to the CCM's website at www.ccm.mu, and to the CCM's Procedural Rules and Guidelines: '[CCM 1 - Competition Commission Rules of Procedure](#)', '[CCM 3 - Collusive agreements](#)', '[CCM 6 - Remedies and Penalties](#)', all available on the web site.

The RPM Amnesty Programme

The CCM had, on 05th June 2017, launched an amnesty programme for resale price maintenance (RPM), offering a one-off and time-limited opportunity to any enterprise involved in RPM to report such conduct and undertake to comply with the Competition Act 2007 (the Act), in exchange for immunity from financial penalties. The RPM Amnesty which was due to end on 5th October 2017 was exceptionally extended to 20th October 2017.

The Mauritius Chamber of Commerce and Industry (MCCI) had collaborated with the CCM for this RPM Amnesty Programme and had acted as facilitator for enterprises seeking further information on the programme and provided assistance in the application process for both its members and non-member enterprises.

More information on the RPM Amnesty Programme can be obtained at <http://www.ccm.mu/English/Pages/RPM.aspx>