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## MEDIA RELEASE

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# AMNESTY PROGRAMME FOR RESALE PRICE MAINTENANCE

## Introduction

The Competition Commission of Mauritius (CCM) is embarking on a fight against resale price maintenance (RPM). RPM, also known as 'Prix de vente imposé', is an agreement between a supplier and a reseller(s) establishing a fixed or minimum resale price of a product or service, reducing the ability of the reseller to cut prices. This may in turn result in higher prices being paid by consumers, reduced competition among resellers, and make entry by new players difficult, to the detriment of consumers and the economy.

However, there may be enterprises which may have engaged in such conduct not aware that they may be in breach of the Competition Act 2007 (the Act). Nonetheless, such practice is not legal. Several enterprises may wish in all good faith to amend such conducts and be compliant with the law. As such the CCM is giving enterprises a one-off and time limited opportunity to report and amend their RPM conduct and become compliant with the Act, and in turn the CCM will offer them immunity from financial penalties. This is possible through an RPM Amnesty programme that has been put in place by the CCM and is available as from **5<sup>th</sup> June 2017** and up to **5<sup>th</sup> October 2017**.

After the expiry of the RPM Amnesty, the CCM will be more stringent towards RPM both in terms of its detection and enforcement.

## 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.

However, suppliers may recommend prices in so far that they are not binding on the resellers. Where such recommended price appears on the product, the words 'recommended price' must be affixed next to the price. However, setting of purely maximum prices to be observed by resellers does not amount to RPM.

### 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.

### Consequence of engaging in Resale Price Maintenance

Enterprises engaging in RPM may be liable to financial penalties of up to 10% of their turnover for a maximum period of 5 years of the breach. This fine can be very significant for enterprises. For example if an enterprise with an average annual turnover of Rs 50 million engages in RPM for 5 years it may be liable to fines of up to Rs 25 million.

It is widely accepted that the benefit derived from termination of collusive agreements, including RPM, is far more significant than the imposition of fines itself. In this respect several countries around the world offer leniency to enterprises who report their anticompetitive conduct to the agency and amend their conducts.

The CCM is engaging in a series of activities to reduce the prevalence of RPM in Mauritius. As a starting point the CCM is offering enterprises the possibility to amend their conduct on the market and benefit from immunity. In that respect the CCM is offering a RPM Amnesty.

### The RPM Amnesty Programme

With the RPM Amnesty programme any enterprise which has engaged in RPM may benefit from immunity under certain conditions, which among others include:

1. It has to report the RPM to the CCM;
2. It has to provide undertakings (which are binding commitments) that it will cease the RPM conduct and that address the competition concerns;
3. It must collaborate with the CCM throughout the investigation.

The CCM encourages any enterprise which has engaged in RPM to take advantage of the RPM Amnesty programme and get going afresh and in all legality.

## Collaboration with MCCI

The CCM is collaborating with The Mauritius Chamber of Commerce and Industry (MCCI) who will disseminate the RPM Amnesty programme and act as a facilitator for enterprises seeking further information on the programme and provide assistance in the application process for both its members and non-member enterprises.

However, the CCM also offers the possibility for enterprises to contact the CCM anonymously, either through a lawyer or by calling the CCM without revealing their identity or the names of their product.

Applications can only be made to the CCM, but the MCCI may assist enterprises in the process.

### **The Executive Director of the CCM said:**

*“RPM is considered as a serious breach of competition law and is sanctioned by fines in many countries including Mauritius. Such conduct may hinder the ability of resellers to compete among themselves on price to attract clients.*

*We recognise that there may be enterprises who are engaging in such conduct or have engaged in such conduct without necessarily knowing that they were in breach of the Act. Ignorance of the law is no excuse. We believe that RPM conduct is likely to be prevalent in several sectors of the economy. Prior to embarking into forceful crackdowns of these RPM, we are availing enterprises who have participated in such practices an opportunity to voluntarily amend their conducts and collaborate with the CCM. In that spirit, we encourage enterprises to benefit from the RPM Amnesty and become compliant with the Competition Act by disclosing their RPM to the CCM and undertaking to change such conduct. In turn, under the conditions prescribed in the CCM Guidelines, the applicants shall benefit from immunity from fines.*

*In this particular programme we are glad that we are having the support and collaboration of the MCCI. Enterprises who do not wish to contact the CCM directly to obtain further information on the programme may contact the MCCI to get preliminary and informal information on the programme and RPM itself.*

*The MCCI has also accepted to engage in information dissemination of the RPM Amnesty programme to assist enterprises to be compliant with the law and avoid potential financial penalties. Enterprises may also make first contact through their legal representatives to assess whether they are eligible for the RPM Amnesty, without having to disclose their identity.*

*This is a unique opportunity for enterprises to redress their RPM conduct and be immune from fines for those conducts. The RPM Amnesty offer is time limited and unlikely to be repeated. Once the RPM Amnesty offer expires the CCM will be stringent in its regards to RPM. I sincerely hope that enterprises will take full advantage of this RPM Amnesty programme and help to eradicate RPM in Mauritius for increased consumer and economic welfare.”*

**For enterprises who want further information on the Amnesty programme and on the application process, they may contact the CCM on:**

**Competition Commission of Mauritius**

10<sup>th</sup> Floor, Hennessy Court  
Corner Suffren Road and Pope Hennessy Street  
Port Louis  
T 211-2005, F 211-3107  
email: [info@ccm.mu](mailto:info@ccm.mu)

Additional information is also available on the website of the CCM at [www.ccm.mu](http://www.ccm.mu)

**Enterprises who want to get further information on the programme but do not wish to directly contact the CCM, they may contact the MCCI for preliminary informal information on the contact below:**

**Mauritius Chamber of Commerce and Industry**

2nd Floor, Anglo-Mauritius House,  
6, Adolphe de Plevitz Street, Port Louis  
T 203 4830, F 208 0076  
email: [mcci@mcci.org](mailto:mcci@mcci.org)

***End of Media Release***

**Further information for editors:**

For further information , please refer to the CCM's website at [www.ccm.mu](http://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](#)', and [RPM Amnesty programme details](#) all available on the web site.