



Decision of the Competition Commission

CCM/DS/0030/30

Non-Confidential

**Application for immunity under the Amnesty
Programme for Resale Price Maintenance**

by

Friedelsheim Ltd and Helios Distribution Ltd

21 June 2019

Competition Commission

Decision of the Competition Commission (the 'Commission') on the joint application made by Friedelsheim Ltd and Helios Distribution Ltd for immunity under the Amnesty Programme for Resale Price Maintenance

THE COMMISSION –

Mr. A. Mariette	-	Vice-Chairperson
Mrs M. Rajabally	-	Commissioner,
Mr. C. Seebaluck	-	Commissioner,
Mrs. V. Bikhoo	-	Commissioner,

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to the Undertakings given by Friedelsheim Ltd and Helios Distribution Ltd on 08 October 2018,

Having regard to a report of the Executive Director of the Commission (the 'Executor Director') dated 15 February 2019 on the Undertakings given by Friedelsheim Ltd and Helios Distribution Ltd,

We, Commissioners, decide as follows:

Introduction

- 1.0 This Decision relates to a joint application for immunity dated 20 October 2017 made by Friedelsheim Ltd (business registration number C07005355) and Helios Distribution Ltd (business registration number C07013354) (hereafter collectively referred to as 'the Applicants') pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance (RPM) prescribed under paragraph 5.6A of CCM3 Guidelines on Collusive Agreements. As part of the conditions set out thereunder, undertakings ('the Undertakings') have been offered to the Commission by the Applicants on 08 October 2018.
- 2.0 Having taken cognizance of a report (the Report) of the Executive Director dated 15 February 2019 in respect of this matter, the Commission has determined the present matter under section 59(7) of the Competition Act (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 Act.

The law

- 3.0 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 dealer when reselling a product or service to his customers'.
- 4.0 An enterprise can only benefit from immunity to financial penalty if it is involved in conduct(s) that falls within the scope of section 43 of the Act and satisfies the conditions prescribed for the RPM Amnesty Programme, that is if it -
 - 4.1 admits its participation in an agreement involving RPM;
 - 4.2 provides the Commission with all the information, documents and evidence available to it regarding its RPM conduct;
 - 4.3 maintains continuous and complete co-operation until the conclusion of any action by the Commission in relation to the matter; and
 - 4.4 offers undertakings that satisfactorily address the competition concerns of the Commission.
- 5.0 The threshold for accepting undertakings under section 63(3) is that the Commission must be satisfied that they address "all the concerns it has about any prevention, restriction [or] distortion (...) of competition".
- 6.0 Pursuant to section 59 of 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 inclusively, 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').

Facts

- 7.0 The Applicants are sister companies and are in the business of import and distribution of health products and cosmetics in Mauritius. They act as representatives and distribute products bearing brands such as Floramme and Noreva amongst others. In other words, they operate as suppliers of imported products to dealers/resellers, but they do not sell directly to end consumers.
- 8.0 The Director of Applicants, has, by way of letter dated 20 October 2017, applied for immunity under the RPM Amnesty Programme. The Applicants have admitted

having participated in and/or otherwise being party to an agreement involving RPM in connection with the supply of products to pharmacies – the resellers. It is the contention of Applicants that they have unintentionally participated in RPM conduct by issuing price lists containing retail prices without the mention of the terms ‘recommended price’. The price lists, instead, mention the terms ‘Public Rs’, ‘Rs Public’, ‘Tarif public’, and ‘Prix Public’ to denote the resale price. The Applicants have informed that their RPM conduct has been in place during the period February to October 2017.

Investigation and findings

- 9.0 Upon receipt of the Application and pursuant to section 51 of the Act, the Executive Director proceeded to investigate (INV042/RPM/023) whether the reported conduct may amount to an RPM within the ambit of section 43 of the Act.
- 10.0 The Executive Director submitted his Report on the matter to the Commission on 15th February 2019. 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.
- 11.0 The findings of the Executive Director further to the assessments carried out are that-
- 11.1 the Application satisfies the conditions set out under paragraph 5.6A of CCM3 Guidelines for RPM amnesty;
- 11.2 the Applicants in their capacity as suppliers of health products and cosmetics have engaged in a conduct that raises competition concerns under section 43 of the Act; and
- 11.3 the Undertakings offered by the Applicants satisfactorily address all the concerns he has about any prevention, restriction of competition as required under section 63 of the Act, in that the Applicants have undertaken:-
- 11.3.1 to amend and have in fact amended their existing price lists issued to resellers which henceforth expressly mention the terms ‘recommended price’ in replacement for the terms previously used namely, ‘Public Rs’, ‘Rs Public’, ‘Tarif public’, and ‘Prix Public’;
- 11.3.2 to inform all resellers, in writing and in clear and unequivocal terms, that prices or price levels communicated to them are “recommended” prices or price levels and that they are neither bound nor legally compelled to apply or comply with any recommended price or price level communicated to them;
- 11.3.3 to take all appropriate measures to ensure that all their internal management, directors, and employees engaged in the sales

and marketing of their products with dealers (hereinafter 'commercial employees') are fully aware of and actively implement the present undertakings when designing and/or implementing the Applicants' commercial policy for resellers, in line with the provisions of the Act; and

- 11.3.4 to use their best efforts to ensure that the present Undertakings are brought to the attention of all their dealers.

Executive Director's recommendations

- 12.0 The Executive Director recommends that the Commission accepts the Undertakings and grant immunity from fines to the Applicants for their participation in the reported RPM conduct.

Determination

- 13.0 Having regard to the Application submitted by the Applicants, the concerns which have been identified by the Executive Director in his Report, and the Undertakings they have offered, the Commission determines that –

13.1 the Applicants have, in their Application, admitted, in clear and unequivocal terms, its participation in one or more RPM agreement(s) *viz* admission of having participated in or otherwise having engaged in conduct in relation to the supply of health products and cosmetics to specified resellers (the pharmacies), that falls within the ambit of section 43 of the Act;

13.2 The Applicants have complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CCM 3 Guidelines, as stated in the Report; and

13.3 The Undertakings submitted by the Applicants satisfactorily address the Commission's concerns in so far as it will ensure that Applicants cease their participation in RPM agreements

Decision

- 14.0 The Commission therefore decides as follows:

14.1 We accept that the Applicants satisfy the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CCM 3 Guidelines on Collusive Agreements;

14.2 We accept the Undertakings offered by the Applicants.

14.3 The Undertakings shall be effective as from the date of this Decision.

14.4 We grant immunity from financial penalty to the Applicants, pursuant to section 59(7) of the Act for the period 01 February to 31 October 2017 only.

Mr. A. Mariette
(Vice-Chairperson)

Mr. C. Seebaluck
(Commissioner)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

21 June 2019