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EXTRAORDINARY

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TABLE OF CONTENTS

GENERAL NOTICES

- 1182 — Legal Supplement
- 1183 — The Customs Tariff Act
- 1184 — Decision of the Competition Commission – CC/DS/0030/69
- 1185 — Decision of the Competition Commission – CC/DS/0030/70
- 1186 — Decision of the Competition Commission – CC/DS/0030/71
- 1187 — Decision of the Competition Commission – CC/DS/0030/72
- 1188 — Decision of the Competition Commission – CC/DS/0030/73
- 1189 — Decision of the Competition Commission – CC/DS/0030/74
- 1190 — Decision of the Competition Commission – CC/DS/0030/75

General Notice No. 1182 of 2020

LEGAL SUPPLEMENT

The undermentioned Government Notices are published in the Legal Supplement to this number of the *Government Gazette*:

The Chemical Weapons Convention (Amendment of Schedule) Regulations 2020.
(Government Notice No. 187 of 2020)

The Legal Aid and Legal Assistance (Fees) (Amendment No. 2) Rules 2020.
(Government Notice No. 188 of 2020)

Prime Minister's Office,
Port Louis.

This 20th August, 2020.

*General Notice No. 1183 of 2020***THE CUSTOMS TARIFF ACT, 1969***(Act No. 59 of 1969)*

Notice is hereby given that the Director-General has by virtue of the power conferred upon him by Section 7 of the Customs Tariff Act, 1969 as amended by the Finance Act 2006, fixed with effect from Monday 24th August, 2020 the following rates of exchange with regard to the value of goods imported for the purpose of levying ad valorem duty thereon.

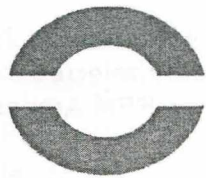
2. The General Notice No. 1151 of 2020 is hereby cancelled.

Mauritius Revenue Authority
Port Louis

20th August 2020

<i>Country</i>	<i>Currency</i>	<i>Code</i>	<i>Value in Rupees as at 19.08.2020</i>	<i>Country</i>	<i>Currency</i>	<i>Code</i>	<i>Value in Rupees as at 19.08.2020</i>
Argentina	... Peso	... ARS	0.5437	Myanmar	... Kyat	... MMK	0.0294
Australia	... Dollar	... AUD	28.8752	New Zealand	... Dollar	... NZD	26.4085
Bahrain	... Dinar	... BHD	105.8462	Norway	... Krone	... NOK	4.5161
Brazil	... Real	... BRL	7.2989	Oman	... Omani Rial	... OMR	103.6468
Canada	... Dollar	... CAD	30.5556	Pakistan	... Rupee	... PKR	0.2382
China	... Yuan	... CNY	5.9300	Saudi Arabia	... Riyal	... SAR	10.6399
COMESA	... Comesa Dollar	... CMD	39.9040	Seychelles	... Rupee	... SCR	2.2468
Czech Republic	... Koruna	... CZK	1.8266	Singapore	... Dollar	... SGD	29.2444
Democratic Republic of Congo	Congo Franc	... CDF	0.0204	South Africa	... Rand	... ZAR	2.3025
Denmark	... Krone	... DKK	6.3986	Sri Lanka	... Rupee	... LKR	0.2165
Egypt	... Pound	... EGP	2.5128	Sweden	... Krona	... SEK	4.6212
EMU	... Euro	... EUR	47.5822	Switzerland	... Franc	... CHF	44.3747
Hong Kong	... Dollar	... HKD	5.1489	Taiwan	... New Taiwan Dollar	TWD	1.3575
Hungary	... Forint	... HUF	0.1366	Tanzania	... Shilling	... TZS	0.0172
India	... Rupee	... INR	0.5375	Thailand	... Baht	... THB	1.2802
Indonesia	... 100 Rupiah	... IDR	0.2704	Tunisia	... Tunisia Dinar	... TND	14.7046
Israel	... Shekel	... ILS	11.7320	Turkey	... Turkish Lira	... TRY	5.4123
Japan	... 100 Yen	... JPY	37.8900	UA Emirates	... Dirham	... AED	10.8647
Jordan	... Dinar	... JOD	56.3616	U.S.A.	... Dollar	... USD	39.9040
Kenya	... Shilling	... KES	0.3683	Uganda	... Shilling	... UGX	0.0109
Korea	... Won	... KRW	0.0338	United Kingdom	... Pound Sterling	... GBP	52.6229
Kuwait	... Dinar	... KWD	130.7899	Uruguay	... Peso Uruguayo	... UYU	0.9341
Malagasy Republic	100 Ariary	... MGA	1.0585	Vietnam	... 100 Vietnam Dong	VND	0.1722
Malawi	... Kwacha	... MWK	0.0539	Zambia	... Kwacha	... ZMW	2.1427
Malaysia	... Ringitt	... MYR	9.5464				
Mexico	... Peso	... MXN	1.8009				

General Notice No. 1184 of 2020



**competition
commission**

shaping markets, furthering progress

**Decision of the Competition
Commission**

CC/DS/0030/69

Non Confidential

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

29 June 2020

Decision of the Commissioners of the Competition Commission
of 29 June 2020

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/016– Review of Topodom Distribution Ltée RPM Amnesty
application'

(CC/DS/0030/69 – Application for Immunity made by Topodom Distribution
Ltée under the Competition Commission's Amnesty Programme for Resale
Price Maintenance)

THE COMMISSION

Mr. M. A. Bocus - Chairperson
Mrs. M. B. Rajabally - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of Competition Commission Guidelines 3 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 Topodom Distribution Ltée on 25 May
2018,

Having regard to a report of the Executive Director dated 29 June 2018,

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 20 October 2017 made by Topodom Distribution Ltée pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of Competition Commission Guidelines 3 on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings have been offered to the Commission by Topodom Distribution Ltée on 25 May 2018 ('the Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 29th June 2018 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of the Competition Act 2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of CC3

Handwritten signatures and initials in black ink, including a large stylized signature, a signature with a vertical line, and the initials 'RK'.

Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

II. Background

i. Competition Commission's RPM Amnesty Programme

1.3 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 05 June 2017 until 20 October 2017 inclusively¹, the Commission put in place a one-off, time-limited amnesty programme for any enterprise involved in resale price maintenance (RPM) by waiving the restriction at paragraph 5.3 of CC3 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').

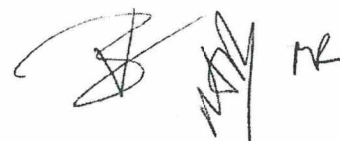
1.4 The conditions prescribed under the RPM Amnesty Programme for providing immunity from financial penalties to any enterprise applying for RPM Amnesty are that the applicant -

- i. admits its participation in an agreement involving RPM,
- ii. provides the Competition Commission with all the information, documents and evidence available to it regarding the RPM, and as required by the Competition Commission,
- iii. maintains continuous and complete co-operation until the conclusion of any action by the Competition Commission in relation to the matter, and
- iv. offers undertakings that satisfactorily address the competition concerns of the Competition Commission.

ii. The Applicant and the Application

1.5 The Applicant, Topodom Distribution Ltée (bearing Business Registration Number C07016757), is a private company incorporated in Mauritius since 18 July 1996. Topodom Distribution Ltée is a supplier of Fast Moving Consumer Goods (FMCGs) in Mauritius. FMCGs are products that are sold quickly and at relatively low cost. Topodom Distribution Ltée supplies its products to supermarkets, hypermarkets, shops and general stores. The company has a portfolio of around 661 resellers around the island.

¹ The Commission had extended the validity of the RPM Amnesty (CC 3 Guidelines - Amended 3rd October 2017) from 05 October 2017 to 20 October 2017.

Handwritten signature and initials, possibly 'MR' or 'NR', in black ink.

- 1.6 The Managing Director of Topodom Distribution Ltée, acting on behalf of the company, has, by way of letter dated 20th October 2017, applied for immunity under the RPM Amnesty programme.
- 1.7 Topodom Distribution Ltée applied for RPM Amnesty for the following conducts:
 - (i) For having, since November 2009, determined and communicated in advance, through reseller price lists, the retail price of the concerned products to dealers without mentioning that the prices communicated therein are 'recommended prices'; and
 - (j) For having accepted and filled up deal sheets containing a retail price column where some of the deal sheets contained a minimum retail price column.

iii. The Investigation

- 1.8 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.
- 1.9 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 29 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').
- 1.10 The Executive Director's findings are that: -
- 1.11
 - a. Topodom Distribution Ltée has participated in agreements involving RPM, having a restrictive object viz. directly establishing a fixed retail price through the circulation of price lists to be practised by dealers when reselling its products and by accepting to fill up deal sheets from resellers with retail prices and minimum retail prices for its products;
 - b. Topodom Distribution Ltée has admitted being a party to transactions involving RPM conduct as a supplier of FMCGs; and
 - c. Topodom Distribution Ltée has maintained continuous cooperation with the Competition Commission by responding to the Competition Commission's information request and submitting all additional information documents, and evidence required from it in a timely manner.

1.12 The Executive Director has further assessed the Undertakings offered by Topodom Distribution Ltée. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the following reasons –

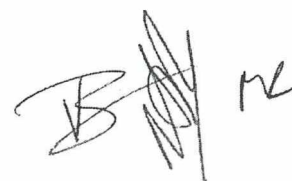
- a. Topodom Distribution Ltée has undertaken to inform all its dealers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by Topodom Distribution Ltée, including for past stock of unsold goods;
- b. Topodom Distribution Ltée has already amended its product price list replacing the terms 'Public Price' by 'Recommended Public Price' such that resellers are clearly informed upon receiving the price list;
- c. Topodom Distribution Ltée has undertaken to inform its dealers, as far as the deal sheets are concerned, to remove the minimum resale price column and include the terms 'recommended price' to the retail price column therein; and
- d. Topodom Distribution Ltée has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of Topodom Distribution Ltée's products of the behavioural measures it has adopted, 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 accepts the Undertakings and grants immunity from fines to the Topodom Distribution Ltée for its participation in the reported RPM conduct.

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.

Handwritten signature and initials, possibly 'B' and '12', in the bottom right corner.

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 CC 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 Topodom Distribution 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) Topodom Distribution Ltée has, in its Application, admitted its participation in one or more RPM agreement(s) viz:-
 - a. for having, since November 2009, determined and communicated in advance, through reseller price lists, the retail price of the concerned products to dealers without mentioning whether the prices communicated therein are 'recommended prices'; and
 - b. for having accepted and filled up deal sheets containing a retail price column where some of the deal sheets contained a minimum retail price column.
- 2) Topodom Distribution Ltée has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC3 Guidelines, as stated in the Report;
- 3) The Undertakings submitted by the Topodom Distribution Ltée satisfactorily address the Commission's concerns in so far as –
 - a. Topodom Distribution Ltée has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;

- b. Topodom Distribution Ltée has undertaken to inform all its dealers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them including for past stock of unsold goods;
- c. Topodom Distribution Ltée has its product price list replacing the terms 'Public Price' by 'Recommended Public Price';
- d. Topodom Distribution Ltée has undertaken to inform its dealers, as far as the deal sheets are concerned, to remove the minimum resale price column and include the terms 'recommended price' to the retail price column therein; and
- e. Topodom Distribution Ltée has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of Topodom Distribution Ltée's products, of the behavioural measures it has adopted.

V. Decision

NOW THEREFORE,

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

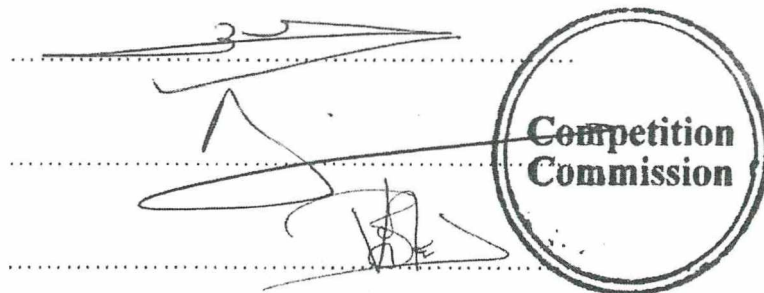
- 1) We accept that the Application made by Topodom Distribution Ltée satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to Topodom Distribution Ltée pursuant to section 59(7) of the Act for the Reported RPM conduct;
- 3) We accept the Undertakings offered by Topodom Distribution Ltée, which are being published as per section 63(4) of the Act (see Annex); and
- 4) The Undertakings shall be effective as from the date of this decision.

Done at Port-Louis this 29 June 2020.

Mr. M. A. Bocus
(Chairperson)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

The block contains three horizontal dotted lines, each with a handwritten signature. To the right of these signatures is a circular official seal. The seal has a double-lined border. Inside the border, the words "Competition" and "Commission" are written in a bold, sans-serif font, one above the other.

Annex: Undertakings dated 25th May 2018 offered by Topodom Distribution
Ltée



Handwritten signature and initials, possibly reading 'B' and 'ME'.



M2, Trunk Road, Belle Village, Phoenix

Tel : 465-9888

Fax : 465-5782

Email : topodom@intnet.mu

Undertakings to the CCM

Undertakings provided by Topodom Distribution Ltée to the Competition Commission

Pursuant to an Application for Amnesty dated 20th October 2017.

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

25th May 2018

1. Background:

By its letter dated 20th October 2017 made pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Topodom Distribution Ltée 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 agreement, in place since November 2009, is in relation to the supply of Fast Moving Consumer Goods ('FMCG'), brands enlisted in annex 1 of the present undertakings, wherein Topodom Distribution Ltée explicitly determined the retail price of the products on its price lists which were circulated to resellers. The circulated price lists made no mention of whether the retail prices are "Recommended Prices". Nonetheless Topodom Distribution Ltée informs the CCM that it has ceased this impugned conduct by including the terms "Recommended Public Price" in its price lists circulated to its resellers (template produced in annex 2). Topodom Distribution Ltée also accepted offer deal sheets from its resellers which included a retail price column and some of which contained a minimum price column which were to be filled by Topodom Distribution Ltée.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, Topodom Distribution Ltée is, by the presents, providing undertakings related specifically to the impugned agreement 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:

TDL: Topodom Distribution Ltée and includes its branches, subsidiaries, or affiliates;

Affiliate: any enterprise directly or indirectly controlled by Topodom Distribution Ltée;

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

Dealer: any distributor, reseller, retailer, or other entity involved in the resale of TDL's goods or services in Mauritius;

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.

3. Measures proposed as Undertakings

TDL hereby undertakes to apply the following measures in its commercial dealings with all existing dealers involved in the resale of TDL's products in Mauritius;

3.1. Behavioural Undertakings

- i. TDL 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 by TDL;
- ii. TDL shall clearly and unequivocally inform all dealers, in writing, that prices or price levels communicated to them by TDL in relation to its products, including past stocks, are "recommended" prices or "recommended" price levels;
- iii. TDL undertakes that in the future it will, with regards to the deal sheets circulated to TDL by its resellers, inform them to remove the minimum resale price column and include the terms 'recommended price' to the retail price column therein.
- iv. TDL 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 comply with any recommended price or price level communicated to them by TDL; and

3.2. Information Dissemination

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

TDL shall use its best efforts to ensure that the present undertaking is made known to and is understood by all dealers.

3.3. Reporting

TDL shall, as from the Effective Date, take all reasonable steps to ensure that all communications, negotiations, arrangements with dealers are properly documented and archived to demonstrate TDL'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 TDL's products;

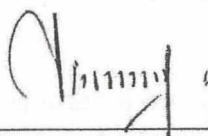
TDL shall, within the Full Implementation Date, submit a written report to the Commission that *inter alia* -

- i. confirms that TDL has implemented a compliance programme, details of which shall be submitted to the Commission; and

- ii. describes the steps taken by TDL to comply with the present undertakings and in particular, setting out all the appropriate measures taken by TDL to deter on the one hand and detect and correct on the other hand any deviation by TDL's management, directors, or commercial employees from the present undertakings.

4. Entry into force

The present undertakings shall take effect upon the Effective Date.



Jean Dominique To-Pow-Wan

Managing Director

Duly authorised for and on behalf of:

Topodom Distribution Ltée



Jean Noel To-Pow-Man

Sales Director

Duly authorised for and on behalf of:

Topodom Distribution Ltée

Annex 1

Sunshine Javel	Fix Ego Roll-on Men
S.Shine L.Valselle	Fix Ego Roll-On Women
S.Shine Toilet (Fresh & other varieties)	Fix Ego Shampoo
S.Shine Toilet Liquid	Fix Ego Style Gel
Aleda Paris Deo Spray	Fix Ego Shower Gel
L'Carina Hair Mousse Extra Hold 225ml	Fix Egoiste Deo Men
G.W Eco Clean Air Freshner	Alten
Fresh Room Air Freshner	SoftSub Hair Relaxer R.Strength
G.World Fresh & Roll	Touchcolor Hair Straightener
Joker Instant Killer	Freshine BAD
Joker Insect killer	Freshine Dentifrice
Joker Foaming Wheel Cleaning	Safari Women
Joker Foaming Tyre Cleaning & Shine	Safari Men
Joker Auto Silicone Perfume	Aqua Bath Ball
Lady Bella Body Lotion	Bath Ball Free Gift
G.W Auto Diff	Bath Ball
G.World A/Fresh	Perfex Bathroom Tissue
G.World Auto Refill	Perfex Kitchen Towel
Aleda Set	Perfex Napkin
Beauteen Deo	Dolphin Binder Clips
Cool Breeze Deo	Dolphin Ex Book Cover
Colere (Edp+Deo)	Dolphin Metal Clips
G.World Elite Pump	Omniwell Correction Tape
Girly Talk (Edt+Deo)	Textmark White Board Marker
G.World Micro Refill	Yoyo Color Binder Clips
Cool Breeze Men Deo	Ex-Polymer Lead
Majix Deo	Safari W. Sandals Coastline
G.World Reed Diffuseur	Safari Star Sandals for Girls
Star Antidust	Safari Slippers Kids
Green World Furniture Polish	Safari HV Sandal Women
Star Furniture Polish	Safari HV Slippers Men
Star Oven Cleaner	Safari HV Slippers Women
Star Bathroom Cleaner	Safari Men Slippers
Star Carpet & Fabric Cleaner	CLEAN PLUS WASHING POWDER 2.5KG
Star Glass Cleaner	OTENTIS DEO MEN MUSK
Majix After Shave	OTENTIS DEO MEN CLASSIC
Majix Shaving Foam	OTENTIS SHAMPOO
Majix Shaving Gel	S.SHINE SOFTENER
A.Vera Shower Gel	S.SHINE WASH.POWDER
Aqua V.Hand Liq.Soap	San-A Elasticity
Aqua Vera Shower Gel	Senior Adult Diapers
Aqua Vera Shampoo	Jaba Chicken
Aqua Vera Conditioner	Jaba Shrimp

Aqua Vera Baby Hair&Body Shampoo	Amila Mixed Berries
Aqua Vera Hand Sanitizer Gel	Amila Orange
Aqua Vera Glass Cleaner	Amila Strawberry/Banana
Aqua Vera Intimate Wash With Pump	Amila Apple Pear
Aqua Vera Liquid Hand Soap	Amila Mango Apricot
Aqua Vera Body Lotion	Amila Fruit Cocktail
A.Vera Edt+ Rasage+G.Dou	Caline Diapers
A.Vera Chenille Cof EDT+ Body Splash/Lotion	Casino Extra Dry
Aqua Vera EDT Femme	Bebedou Diapers
Aqua Vera EDT Homme	LITTLE ANGELS
Aqua Vera L. Vaisselle	Smile Junior
Mop Holder Spare Parts	Talia Sanitary pads & Panty Liners
Sunshine Lingettes	Bebedou Baby Wipes
Sunshine M.Mop+2 Ref Free Red & Yellow	Bebedou New Born
Sunshine W.Powder	Little Angels Baby Wipes
Fix Ego After Shave Balm	Sweet Baby Wipes
Fix Ego After. Shave Cologne	Smile Midi x 60
Fix Ego Deo Men Africa	
Fix Ego Gum Gel	
Fix Ego Hair Wax	

Annex 2



M2, Trunk Road, Belle Village, Phoenix, Mauritius
Tel : 465-9888 Fax : 465-5782 Email : topodom@intnet.mu

PRICE LIST

Date : 20th June 2017

EFFECTIVE AS FROM 10TH JULY 2017

PRODUCTS	U.P.C	U.P.O	Unit Price (vat excl)	Recommended Public Price (vat Incl)	EAN CODES
Aqua Vera Liquide Vaisselle Concentré 750 ml					
Pomme	12	12	37.05	49.00	8699415020721
Umon	12	12	37.05	49.00	8699415020226
Aloe Vera	12	12	40.00	52.90	8699415020738
Aqua Vera Hand Liquid Soap 500 ml					
Jasmin	12	12	47.23	67.90	8699415020011
Rose	12	12	47.23	67.90	8699415020028
Lilac	12	12	47.23	67.90	8699415020035
Deep Ocean	12	12	47.23	67.90	8699415020042
Aloe Vera	12	12	47.23	67.90	8699415020059
Pomegranate	12	12	47.23	67.90	8699415020066
Mango & Melon	12	12	47.23	67.90	8699415020068
Mix Fruit	12	12	47.23	67.90	86994150200615
Soft Coral	12	12	47.23	67.90	86994150200677
Bamboo Forest	12	12	47.23	67.90	86994150200684
Spring Flowers	12	12	47.23	67.90	86994150200691
Cucumber	12	12	47.23	67.90	8699415022091
Lemon	12	12	47.23	67.90	8699415022107
Coffee	12	12	47.23	67.90	8699415022114
Oriental Oud	12	12	47.23	67.90	8699415022145
Aqua Vera Hand Liquid Soap 2.5 Litre					
Lilac	12	12	156.52	225.00	8699415020813
Aloe Vera	12	12	156.52	225.00	8699415020820
Deep Ocean	12	12	156.52	225.00	8699415020837
Pomegranate	12	12	156.52	225.00	8699415020844
Aqua Vera Shower Gel 315 ml					
Pomegranate	12	12	49.74	71.50	8699415020156
Deep Ocean	12	12	49.74	71.50	8699415020165
Yang Yang	12	12	49.74	71.50	8699415020172
Aloe Vera	12	12	49.74	71.50	8699415020189
Orchid	12	12	49.74	71.50	8699415020745
Blue Breeze	12	12	49.74	71.50	8699415020752
Poppy Flowers	12	12	49.74	71.50	8699415020769
Aqua Vera Shower Gel 500 ml					
Pink Orchid	12	12	68.17	98.00	8699415021506
Rosemary	12	12	68.17	98.00	8699415021513
Lavender	12	12	68.17	98.00	8699415021520
Grapefruit	12	12	68.17	98.00	8699415021537
Aqua Vera Shampoo 400 ml					
All Hair Types	12	12	67.48	97.00	8699415020097
Anti-Drandruff	12	12	67.48	97.00	8699415020103
Dyed & Dry Hair	12	12	67.48	97.00	8699415020110
Aqua Vera 2in1 Shampoo & Conditioner 400 ml					
Normal Hair	12	12	67.48	97.00	8699415020288
Dry & Damaged Hair	12	12	67.48	97.00	8699415020295
Oily Hair	12	12	67.48	97.00	8699415020301
Dyed Hair	12	12	67.48	97.00	8699415020318
Anti-Drandruff	12	12	67.48	97.00	8699415020325
Anti Hair Fall	12	12	67.48	97.00	8699415020332
Aqua Vera Conditioner 400 ml					
All Hair Types	12	12	67.48	97.00	8699415020073
Normal Hair	12	12	67.48	97.00	8699415020349
Dyed & Dry Hair	12	12	67.48	97.00	8699415020356
Oily Hair	12	12	67.48	97.00	8699415020363
Aqua Vera Shampoo 750 ml					
All Hair Types	12	12	103.65	149.00	8699415020127
Anti-Drandruff	12	12	103.65	149.00	8699415020134
Dyed & Dry Hair	12	12	103.65	149.00	8699415020141
Aqua Vera Conditioner All Hair Types 750 ml	12	12	103.65	149.00	8699415020080
Aqua Vera Baby Hair & Body Shampoo 315 ml	12	12	48.00	69.00	8699415020219
Aqua Vera Intimate Wash 250 ml	24	24	68.86	99.00	8699415020776
Aqua Vera Hand Sanitizer Gel 50 ml	50	50	20.17	29.00	8699415020196
Aqua Vera Hand Sanitizer Gel 100 ml	24	24	29.84	42.90	8699415020202
Aqua Vera Hand Sanitizer Gel 500 ml	12	12	80.00	115.00	8699415020592
Aqua Vera Glass Cleaner Blue 500 ml	12	12	38.26	55.00	8699415020233
Aqua Vera Glass Cleaner Green 500 ml	12	12	38.26	55.00	8699415020622

N : New Product

N.P : New Price

N.R : New Reference

Please note our prices are subject to change without prior notice.

General Notice No. 1185 of 2020

CC/DS/0030/70



shaping markets, furthering progress

Decision of the Competition
Commission

CC/DS/0030/70

Non Confidential

**Application for Immunity made by Tridem Marketing
Ltd under the Competition Commission Amnesty
Programme for Resale Price Maintenance**

29 June 2020



CC/DS/0030/70

**Decision of the Commissioners of the Competition Commission
of 29 June 2020**

**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/017 – Review of Tridem Marketing Ltd's Resale Price
Maintenance Amnesty application'**

**(CC/DS/0030/70 – Application for Immunity made by Tridem Marketing Ltd
under the Competition Commission's Amnesty Programme for Resale Price
Maintenance)**

THE COMMISSION

Mr. M. A. Bocus - Chairperson,
Mrs. M. B. Rajabally - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of Competition Commission Guidelines 3 on Collusive Agreements regarding the Competition Commission's Amnesty Programme for Resale Price Maintenance,

Having regard to the Competition Commission Rules of Procedure 2009,

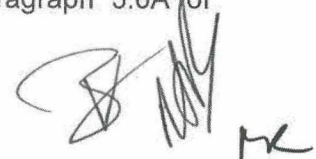
Having regard to the undertakings dated 08 February 2018 offered by Tridem Marketing Ltd

Having regard to a report of the Executive Director dated 29 June 2018,

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 17 October 2017 made by Tridem Marketing Ltd pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of the Competition Commission Guidelines 3 on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings dated 08 February 2018 have been offered to the Commission by Tridem Marketing Ltd ('the Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 29 June 2018 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of the Competition Act 2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of



CC/DS/0030/70

Competition Commission Guidelines 3 on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

II. Background

i. Competition Commission's RPM Amnesty Programme

1.3 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 05 June 2017 until 20 October 2017 inclusively¹, 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 CC3 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 with all the information, documents and evidence available to it regarding the RPM, and as required by the CC,
- iii. maintains continuous and complete co-operation until the conclusion of any action by the CC in relation to the matter, and
- iv. offers undertakings that satisfactorily address the competition concerns of the CC.

ii. The Applicant and the Application

1.5 The applicant, Tridem Marketing Ltd (bearing BRN C07075886), is a private company incorporated in Mauritius since 19 November 2007. Tridem Marketing Ltd is a supplier of para-pharmaceuticals products and consumer goods ('the concerned products') in Mauritius. Unlike licensed pharmaceutical products, para-pharmaceutical products are products that may be dispensed without pharmaceutical supervision for example

¹ The Commission had extended the validity of the RPM Amnesty (CC 3 Guidelines - Amended 3rd October 2017) from 05 October 2017 to 20 October 2017.

CC/DS/0030/70

emulsion syrup, multivitamin syrup and dry skin lotion. Tridem Marketing Ltd supplies its products to pharmacies, shops and supermarkets

- 1.6 The Sales Manager of Tridem Marketing Ltd, as authorised by the director of the company, applied for immunity under the Competition Commission's Amnesty Programme by way of letter dated 17 October 2017.
- 1.7 Tridem Marketing Ltd applied RPM Amnesty for the following conducts:
 - a. For having, between the year 2009 and September 2017, been determining and communicating in advance, through the reseller price list, the retail prices of the concerned products to dealers and made no mention of whether the prices communicated therein are 'recommended prices' or not and;
 - b. For having fixed the retail prices on the concerned products without making it clear to its resellers that such prices are 'recommended prices'.

iii. The Investigation

- 1.8 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.
- 1.9 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 29 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').

The Executive Director's findings are that:

- a. Tridem Marketing Ltd has participated in agreements involving RPM, having a restrictive object viz by directly establishing a fixed retail price ('price restriction') through the circulation of price lists to be practised by dealers when reselling Tridem Marketing Ltd's products;
- b. Tridem Marketing Ltd has participated in agreements involving RPM, having a restrictive object viz by directly establishing a fixed retail price ('pricing restriction') by affixing the final price of the products without making it clear that such prices are 'recommended' thereby restricting dealers' freedom to independently decide their own pricing policy at retail level and compete among themselves when supplying Tridem Marketing Ltd's products;

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CC/DS/0030/70

- c. Tridem Marketing Ltd had admitted participation in the reported RPM conduct and maintained complete and continuous collaboration with the Competition Commission by responding to the Competition Commission's meeting request and submitting all additional information, documents, and evidence required from it in a timely manner.

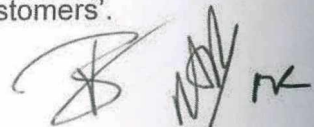
1.10 The Executive Director has further assessed the Undertakings offered by Tridem Marketing Ltd. The Executive Director takes the view that the proposed Undertakings satisfactorily address the concerns identified in the Report for the following reasons –

- a. Tridem Marketing Ltd has ceased the reported RPM conduct and undertaken to inform all resellers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by Tridem Marketing Ltd, including for past stock of unsold products;
- b. Tridem Marketing Ltd has already amended its product price list replacing the terms 'Retail price' by 'Recommended Retail Price' such that resellers are clearly informed, upon receiving the price list, that the retail prices contained therein are non-binding pricing recommendations. Tridem Marketing Ltd has further undertaken not to implement any direct or indirect measure, whatever its form, that compels or induces resellers to apply or practise retail prices/price levels communicated to them; and
- c. Tridem Marketing Ltd has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of Tridem Marketing Ltd's products of the behavioural measures it has adopted, thereby minimising risks of RPM conduct being perpetuated by employees and ensuring that commercial dealings with resellers are in compliance with the Act;

1.11 The Executive Director recommends that the Commission accepts the Undertakings and grants immunity from fines to Tridem Marketing Ltd for its participation in the reported RPM conduct.

III. Legal Framework

1.12 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'.



CC/DS/0030/70

1.13 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.

1.14 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 CC on the matter, including by securing the cooperation of its directors, officers and employees in view of effectively and expeditiously concluding the assessment process.

1.15 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

1.16 Having regard to the Application submitted by Tridem Marketing 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) Tridem Marketing Ltd has, in its Application, admitted its participation in one or more RPM agreement(s) viz
 - a. For having, between the years 2009 and September 2017, been determining and communicating in advance, through the reseller price list, the retail prices of the concerned products to dealers and made no mention of whether the prices communicated therein are 'recommended prices' or not; and
 - b. For having fixed the retail prices on the recommended products without making it clear to its resellers that such prices are 'recommended prices'.
- 2) Tridem Marketing Ltd has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC 3 Guidelines, as stated in the Report;
- 3) The Undertakings submitted by the Tridem Marketing Ltd satisfactorily address the Commission's concerns in so far as –



CC/DS/0030/70

- a. Tridem Marketing Ltd has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
- b. Tridem Marketing Ltd has undertaken to inform all resellers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by Tridem Marketing Ltd, including for past stock of unsold products;
- c. Tridem Marketing Ltd has already amended its product price list replacing the terms 'Retail price' by 'Recommended Retail Price'. The Applicant has further undertaken not to implement any direct or indirect measure, whatever its form, that compels or induces resellers to apply or practise retail prices/price levels communicated to them; and
- d. Tridem Marketing Ltd has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of Tridem Marketing Ltd's products of the behavioural measures it has adopted.

Decision

NOW THEREFORE,

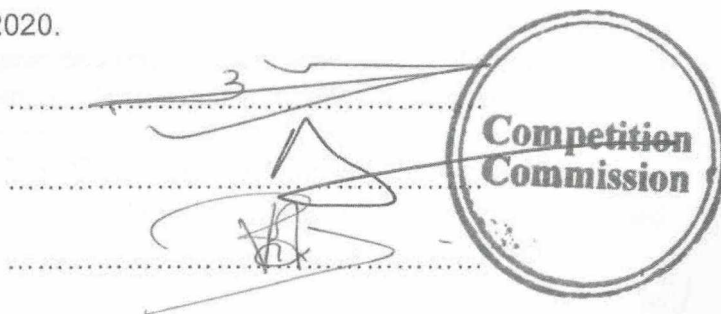
For the reasons set out in this Decision, the Commission decides as follows:

- 1) We accept that the Application made by Tridem Marketing Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC 3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to Tridem Marketing Ltd pursuant to section 59(7) of the Act for the Reported RPM conduct;
- 3) We accept the Undertakings offered by Tridem Marketing Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.

Done at Port-Louis this 29 June 2020.

Mr. M. A. Bocus
(Chairperson)
Mrs. M. B. Rajabally
(Commissioner)
Mrs. V. Bikhoo
(Commissioner)

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The image shows a handwritten signature in black ink, which appears to be 'M. A. Bocus', written over a series of horizontal dotted lines. To the right of the signature is a circular stamp with a double border. Inside the stamp, the words 'Competition' and 'Commission' are written in a bold, sans-serif font, one above the other.

CC/DS/0030/70

Annex 1: Undertakings dated 08 February 2018 offered by Tridem Marketing Ltd

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Undertakings to the CCM

Undertakings provided by **Tridem Marketing Ltd** to the Competition Commission

Pursuant to an Application for Amnesty dated 17 October 2017

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

08 February 2018

1. Background:

By its letter dated 17 October 2017 made pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Tridem Marketing Ltd 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 agreement, in place since around 2009 to October 2017, is in relation to the supply of para-pharmaceutical products and consumer goods (hereinafter 'the products') enlisted in annex I of the present undertaking, wherein Tridem Marketing Ltd determined the retail price of the products and affixed the price thereon without the terms 'recommended price.' The retail price, as determined by Tridem Marketing Ltd, was communicated to dealers (annex II) through price lists and appeared on the invoices charged to dealers as well as price labels of the products supplied to dealers.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, Tridem Marketing Ltd is, by the presents, providing undertakings related specifically to the impugned agreement 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:

TML: Tridem Marketing Ltd and includes its branches, subsidiaries, or affiliates;

Affiliate: any enterprise directly or indirectly controlled by Tridem Marketing Ltd;

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

Dealer: pharmacies, shops, supermarkets and any other distributor, reseller, retailer, or entity involved in the resale of Tridem Marketing Ltd's goods or services in Mauritius;

3. Measures proposed as Undertakings

TML hereby undertakes to apply the following measures in its commercial dealings with all existing dealers involved in the resale of TML's products in Mauritius.

3.1. Behavioural Undertakings

TML 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 by TML;

TML shall clearly and unequivocally inform all dealers, in writing, that prices affixed by TML on products supplied to dealers, including past stock of unsold products, and/or prices or price levels communicated to them by TML are recommended prices and that dealers 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 comply with any recommended price or price level communicated to them by TML and,

TML shall, where a minimum resale price has been recommended to dealers and the resale price appears on the goods, affix the words "recommended price" next to the resale price; and

TML shall, where it enters into any agreement, contract, or other express arrangement with dealers, existing and prospective, ensure that such agreement, contract, or other express 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 comply with any recommended price or price level communicated to them by TML;

3.2. Information Dissemination

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

TML shall use its best efforts to ensure that the present undertaking is made known to and is understood by all dealers.

3.3. Reporting

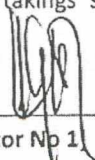
TML shall, as from the date of the present undertakings, take all reasonable steps to ensure that all communications, negotiations, arrangements with dealers are properly documented and archived to demonstrate TML's compliance with the present undertakings and a general understanding among dealers of their freedom and ability to fix or otherwise apply their own prices or price levels when reselling TML's products;

TML shall, within 3 months from the date of acceptance of the present undertakings by the Commission, submit a written report to the Commission that *inter alia* -

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

4. Entry into force

The present undertakings shall take effect upon the date of their acceptance by the Commission.



[Signature of Director No 1]

Mr Robert CHENG

Managing Director

Duly authorised for and on behalf of:

Tridem Marketing Ltd


[Signature of Director No 2]

Mr Cyril AFOKE

Director

Duly authorised for and on behalf of:

Tridem Marketing Ltd



ANNEX I: List of products of Tridem Marketing Ltd

Delrosa- Orange & Rosehip 375ml	Heel Cushion 1 Pair Size 43-47 5225/47
BIO-OIL 60ml	Insoles Classic size 34-41 5350/41, 42-47 5350/47
Clinomyn Smokers Toothpaste/ Sensitive Toothpaste	Insoles Comfort Size 34-41 5360/41, 42-47 5360/47
Disp. Syringe KD 1305 5ml x 100 pcs /1310 10ml x 100 pcs/1330 30ml x 25 pcs/1303 3ml x 100 pcs	Insoles Deo-Balance 34-41 5363/41, 42-47 5363/47
Ultra 3 in 1/ Ultra Delay/ Ultra Dotted/ Ultra Ribbed condoms x 3	Instant Polsher Quick Shine 1200 B
Lancets 28g x 100 pcs	Lufa Bath and massage pad/ 7100
Control Plus - Skin Care Medium x 10/ Large x 10/ OverNite Medium x 10/ OverNite Large x 10	Lufa Massage Glove 7250
TENA PLUS Large x 12 /Medium x 12	Massage Mitt Unicolor 9100
TENA VALUE (AV) Large x 10/ Medium x 10	Nail Buffer SURFACES (Polisher)/1047B
Drypantz Large x 3's/ Medium x 4's/ Xtra Large x 3's	Nail cutter for baby 1052/7
Buddies 24 strips	Nail Cutter Small W, Chain 1052 / 1 k
Dentalloss 50m blue waxed D. Floss/ mint waxed dental floss	Nail cutters big 1052/2
Eezi Flossers disposable dent. Floss	Nail Cutters small 1052/1
Periomints mouthfreshners 50 pastilles	Nail Nipper 10.5CM Hardened 1056
Periotape 20m/30m mint dental flossing tape	Nail Ointment 10 ml in box
Pathol Antiseptic Germicidal 250ml/750ml	Nail Scissors Stainless 1050/16N, 1050/1N
Pathol Antiseptic Spray 75 ml	Plantar Cushions 2 pcs 5207
Pathol Antiseptic Soap 125g	Pumice Sponge 2034/A8 Antibacterial, standard 3000
May SOAP Green tea/ Lavender Oil/ Milk cream 1/ Vitamin C x 100g	Shoe Pads 1 Pair ref 5230
Dentiplus breathfreshner 25ml	Soft touch double foot file 3041B
Dentiplus m/ wash 500ml Freshmint /Original 500ml white/totalcare 500ml red /whitening & anti tartar	Solingen Sapphire Nail Files/ 1040/5"
Dentiplus Cool Burst Strength 500ml/ Sensitive and Whitening 500ml	Solingen tweezer slanted 1074
Dentiplus Alcohol Free Breathfreshner	Spare blades foot slicer 1 X10
Swirl germicidal toilet flush x 2 x 50g	Toe nail cutter gold PLAQ/ 1057
Gel Air freshner peach 130G / Lavender	Tweezer Narrow, Straight, Bent 1064/ Scissors 1069
Active Anti-Bac Hand Wash 500ml Citrus/ 500ml Original	Tweezers straight 1060/A
Hygienics Anti-Bacterial Hand Gel 500ml/100ml	Tweezers with handle Slanted 1061/B
Nuage Advanced Shaving oil for men 20ml	Deodorising Shoe Spray 200ml 5330
Eva 10 Sanitary Pads Wing Regular/ Maxi Slim/ Wingless Slim	Dry foot spray 200ml/ 5332
Blackhead Patches 10 pcs Ref: FC01005	Ear cleaners Plastic/ 6000B
Eye Contour Hydrogel 6x2 pieces Ref: FC01004	Emery Nail Files 10 pcs - card 1042/ 10A
Cuticle Cutter and Pusher Ref: 1045/46 B	Extra hard pumice glass foam 3000/ 3GS
Tweezer Inox 1076	Foot Deospray 200ml/ 5331
Nail Hardener 10ml 1105B	Foot File double sided -3011/S
Antislip ref 5226 Genuine leather 1 Pair	Foot File Pumice Emery 3032/ Mirror 3033
Athlete's Foot protector spray 5333	Foot File Stainless steel/ 3010
Bandages for bunions 8pcs/ 5210	Formed foot file /3014
Beard Scissors Ref 1050/9	Glas Nail File Double Sided 1250 B
Blackhead remover/ 1023	Corn-Plasters Great Surface 5201
Coil-Spring Toe-nail Nipper 1090/80	Cracked Heel Balm 75ml Ref 5309 + Urea
Corn cutter stainless steel -3035/M	

ANNEX II : List of Dealers

LIST OF PHARMACIES-SEPTEMBER 2017

	Pharmacies
1	ALL IN ONE
2	AL IKSEER PHARMACY
3	ARGIS (Chummun)
4	BARACHOIS
5	BARAMIA
6	BLUE BAY (BB Ph)
7	BM PLUS (PH DODO)
8	CARELINE
9	CHATTAROO
10	CHEMIN GRENIER
11	D'ESNY
12	ZEENPHARMA
13	DOORGA
14	DOORGAKANT
15	DU SUD
16	FLIC EN FLAC
17	GRAND BOIS
18	INTERCARE PHARMACY
19	JEETPHARM
20	KAUROO
21	LA GAULETTE
22	L' ESCALIER
23	L'OCCIDENT
24	MARE D'ALBERT
25	MAHEBOURG
26	MED TRADING CASCABELLE
27	CAMP FOUQUEREAUX
28	MED TRADING ROSE BELLE
29	NAUTICA PHCY
30	NOUVELLE FRANCE
31	PHARMA + Mahebourg
32	PHARMACITY MAHEBOURG
33	PLAINE MAGNIEN
34	RAJARAM PHARMACY
35	R.A.R
36	SQUILLAC (SWAT LTD)
37	TAMARIN
38	TOORABALLY
39	WELLCARE
40	WINPHARMA
41	MAUREE PHARMACY
42	D'ARCY
43	AL-SHAFA

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	Pharmacies
44	ALBA PHARMACY
45	ALL CURE PHARMACY
46	ARSENAL
47	ALOES
48	AZURI
49	BASIC Pharmacy
50	BARODA
51	BIOMED
52	BU PHARMA
53	CAP MALHEUREUX PHCY
54	CENTRAL
55	D'Espagnac P. aux cannoniers
56	DEVIKA CO. LTD
57	EBRAHIM
58	FOR ME Riviere du Rempart
59	FOR ME LA CROISETTE
60	FLORIDA c/o Pharmagold Co. Ltd
61	FIRST AID
62	GOODLANDS
63	GRAND BAY
64	GRAND GAUBE
65	GYANEE
66	HEALTH ONE PHCY
67	KADRESS
68	LA PLAINE PHCY
69	LA FONTAINE PHCY
70	LE HOCHET
71	MEDPHARM
72	MEGA HEALTH PHCY
73	LO
74	MEGA LIFE PHARMACY
75	MEDICINE EXPRESS
76	NEWPHARM
77	NORTHERN
78	OORIAH
79	PAMPLEMOUSSES
80	PEREYBERE
81	PHARMACLINIX
82	PHARMAWELL
83	PILLAY
84	PLATINUM FOND DU SAC
85	RAMBURN
86	REMPART
87	ROSE BEAUTY & HEALTH
88	SANTE PLUS
89	SCORE
90	SUN

91	SUNRISE
92	TAPOSSEA
93	TERRE ROUGE
94	THE MEDICINE SHOP
95	TRIOLET
96	TROIS BRAS
97	TROU AUX BICHES
98	UNICARE
99	UNUTH
100	UNICHEM
101	WELLKNOWN
102	ABERCROMBIE
103	AJMEERI
104	ALLOMED
105	AN NOOR
106	ATCHIA
107	BELL VILLAGE
108	CAPITAL
109	CITY CARE PHARMACY
110	COROMANDEL
111	DAUHOO
112	DESFORGES
113	D'HOTMAN A
114	DILMAR
115	DU CENTRE
116	DU PORT
117	DU QUAI
118	EIMAN
119	FARQUAR
120	FAMILY PHCY
121	GET WELL PHARMA
122	GREENFIELD
123	GOOD HEART PHCY
124	HEALTH & BEAUTY PHARMA
125	HWA YEN
126	KENTISH
127	LA PAIX
128	LAI FAT
129	LE SANTE
130	LINK
131	LIFE CARE
132	MEDCITY
133	Medical Trading (Cassis)
134	Medical Trading (Chaussee)
135	MEDICOURT
136	MEDICAL CARE
137	NEW BURTALLY
138	NEWTON
139	NICOLAY PHARMACY

140	OMEGA
141	PATEL
142	PHARMA CARE
143	PHARMALINK
144	PLAINE VERTE
145	PLANET
146	PORT-LOUIS
147	RAMDANEE P-LOUIS
148	RENAISSANCE
149	RIGEL PHARMACY
150	ST CROIX PHARMACY
151	THERAPHARM
152	UNILINK
153	UNIPHARM
154	Medi- Shifa Pharmacy
155	PORT-MATHURIN
156	VALLEE PITOT
157	VICTORIA
158	PRIMECARE
159	FOR ME BAGATELLE
160	CIRCONSTANCE
161	AD PHARMA LTD (Inderjeet)
162	HELVETIA
163	MOKA
164	MONTAGNE BLANCHE
165	PETIT VERGER
166	PHARMABEST
167	PHARMACHIC
168	PHARMEXCEL
169	PHARMEXPERT
170	QUARTIER MILITAIRE
171	SEBASTOPOL
172	SEEBUN
173	BELVEDERE (EX- The Vale Ph)
174	ST PIERRE
175	ST PIERROISE
176	ASHPHARMA
177	ANIPHARM
178	AVI PHARM LTD
179	BALLOO
180	BEL AIR
181	BELLE MARE
182	BRAMSTHAN PHARMACY
183	COSMED PHARMACY
184	DAGOTIERE
185	DE BRISEE VERDIERE
186	D'ESPAGNAC BELLE MARE
187	FLACQ DRUG HOUSE

188	HARRIS
189	HEALTH LINK
190	A.D Pharma c/o Inderjeet
191	IDAMED
192	JHUMUN
193	LOTUS
194	ROSHNI
195	NEW VOGUE
196	NISHCHEM PHCY
197	NOOR PHARMA
198	NORI PHARM
199	PYRAMID PHARMACARE
200	ROSE PHARMACY 2
201	SEWPAUL
202	TEELUCK
203	VINCA PHARM
204	VIAL
205	VIKASH
206	AHSEN
207	ARTHEMIDOR
208	AZM
209	BAMBOUS
210	BEAU-BASSIN (Pranush)
211	BIOPHARM
212	BUCKINGHAM
213	D'ANTELME
214	DU BIEN ETRE PHCIE
215	EDWARD VII
216	HEALTHCARE
217	HEALTHMART
218	HEALTHPOINT
219	HIBISCUS c/o Pharma Ecolife Ltd
220	HUGNIN
221	IMPERIALE
222	JAULIMSING
223	LA CONFIANCE
224	Là PHCIE
225	MAUNAPHARM
226	MED TRADING EBENE
227	MEDICHEM
228	MODERNE
229	MONT ROCHES BRUNES
230	NATIONAL
231	NEW STANLEY
232	PHARMAVISION RETAIL LTD
233	NUPHARM
234	PHARM ACCESS
235	PHARMA-SPA LTD
236	PHARMEXPRESS

237	PLAZA
238	POPE HENESSY
239	ROSE HILL
240	SAMINA
241	PETITE RIVIERE
242	STANDARD
243	ADAM
244	BASSIN
245	CAMBRIDGE
246	CAPUCINES
247	GLAIEUL
248	MedActive Ideale
249	K & I
250	LA LOUISE
251	LOVE LIFE
252	MAYFIELD
253	MEDI HEALTH
254	Medical Trading (Trianon)
255	OLLIER
256	ORCHIDEES
257	OXYPHARM
258	PERI-PHARMA
259	PHARMALEAD
260	PHARMAK
261	PHARMAPLUS
262	PHARMASAVE
263	PHARMAVATAR (MTIUS) Ltd
264	PRO-CARE
265	ST JEAN
266	ST LOUIS
267	BOUNDARY
268	SUPERPHARM LTD
269	LUMINA PHARMA (Ex Tropicale
270	AHMUD
271	ACTIVE CARE PHCY
272	BENOIT
273	BERTHAUD PHCY
274	BILADAMS
275	BILADROSS PHARMACY
276	CARE 4 U
277	CHARLES REGNAUD
278	CUREPIPE DRUG HOUSE
279	D'ARIFAT
280	D'ARIGNAC
281	DE LA GARE
282	D'EPINAY
283	D'ESPAGNAC
284	EAU COULEE
285	ESPACE SANTE

286	GERVAL
287	HERMES PHCY
288	HEALTH STAR PHY
289	INNOPHARMA
290	JHUGROO
291	KHUSH
292	LOPHARMA
293	L' APOTHICAIRE
294	MAURITIUS
295	MG PHARMA. FLOREAL
296	MESNIL
297	NOEL
298	NUCLIPHARM
299	PATHER
300	PHARMACIE DU JARDIN
301	PIONEERS (TULSIDAS)
302	RAAZA
303	SAFEWAY
304	SALAFFA
305	SANTE VILLE
306	SHAHBEEN
307	SHIFAPHARM
308	ST PAUL c/o Highlands Medical Dispensing
309	ULTRAPHARM
310	WELLPHARM c/o Pharma Choice
311	WHITEROSE PHARMACY
312	ZENQUIL PHCY
	Pharmacies
313	ALPHA -2
314	BAPPOO
315	BEEHARRY
316	BONNE TERRE
317	CENTRALE
318	DHUNNY
319	DOOK'S PHARMACY
320	FAMILY CARE
321	J & A
322	JHUGROO Brothers
323	LIFE GUARD
324	ARVIND MAYARAM (ex LUXMI)
325	MED TRADING GALIEN
326	MED TRADING VACOAS
327	MEDPLUS
328	MIOPHARM
329	MORABY
330	NEW VACOAS
331	NOUSH PHARMA
332	ONEA PHCIE VACOAS
333	PHARMAPOINT Pharmacy

334	PHARMWAY
335	PHOENIX
336	QUINZE CANTONS
337	ROYALE
338	SNK (CARE PLUS)
339	SOLFERINO
340	SOMEDICO
341	TROCHETIA
342	PROMEDPLUS
343	VISITATION

LIST OF SHOPS & SUPERMARKETS

1	SOMAGS (JUMBO & SPAR GROUPS)
2	WINNERS GROUP
3	TANG WAI
4	CHAN KWON CHIN
5	INTERMART
6	UDIS (SUPER U)
7	LAM CHEE FONG
8	LAM SI KONG (TAMARIN STORE)
9	SUPER UNIC
10	LONDONS
11	SOCIETE KAN WAH & CIE
12	RAYMABAI
13	SIK YUEN LTD
14	PRISUNIC
15	SAVEMARTS
16	S.F LO YEUNG CO LTD
17	ANTOINE STORE
18	KONG
19	MACOONA SHOP
20	FAMILY SUPERMARKETS
21	CARE PERFECT
22	LE NENARD STORE
23	BENI STORE
24	SUKAI
25	POPO
26	CHEZ MOMO
27	CHAY LOONG CO LTD
28	STORE 2000
29	M.BACHOO CO LTD
30	WONG MIN
31	WONG AH FAT & CO LTD
32	SOCIETE WONG LUN SANG

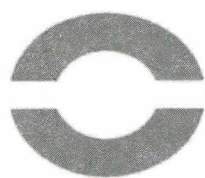
33	SOCIETE TOO HENG KWEE
34	BILAAL BEST PRICE
35	SOO HON WAH
36	GOLDEN HILL
37	MAGASIN SIGNALE (Y.F.F)
38	IBRAHIM EDOO
39	S.CHUI HOM LAP
40	JET TRADING
41	NEW LIGHT STORE
42	DAZZLING STAR
43	AH FOCK & CO LTD
44	SHOPRITE
45	GAMI LTD
46	VILLANO
47	A.RAHMAN ALI STORE
48	ARTIC STORE
49	B.N.V TRADING LTD
50	BASING HILL LTD
51	CENTRAL MARKET STORE
52	ST ESPRIT STORE
53	CITY WAY
54	DYWADA WORLDWIDE CO LTD
55	STAR DISCOUNT
56	KING'S STORE
57	KINGS TOWN
58	LANG PING NAM & CO
59	LARAMAE CO LTD
60	LEW YAN VOON
61	LSK DISTRIBUTORS LTD
62	M.SAVERS
63	MAGASIN GEORGES
64	MAGASIN ROND POINT



65	MAGASIN GORAH
66	MAGASIN STE MARY'S
67	MAGASIN MANORY STORE
68	MOTA
69	PALTONI
70	PICADILLY
71	ROYALE SUPERMARKET
72	SAM YUE & CO
73	SHERIDAN
74	SOCIETE K.S LEUNG FOOK CHEONG
75	SOCIETE CHONG SEE HANG & CO
76	YUE HWA CO LTD
77	YEE TRADING

General Notice No. 1186 of 2020

CC/DS/0030/71



**competition
commission**

shaping markets, furthering progress

**Decision of the Competition
Commission**

CC/DS/0030/71

Non-Confidential Version

**Application for Immunity made by Mauritius Oil
Refineries Ltd under the Competition Commission
Amnesty Programme for Resale Price Maintenance**

29 June 2020

CC/DS/0030/71

**Decision of the Commissioners of the Competition Commission
of 29 June 2020**

**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/021- Review of Mauritius Oil Refineries Ltd RPM Amnesty
application'**

**(CC/DS/0030/71 – Application for Immunity made by Mauritius Oil Refineries
Ltd under the Competition Commission's Amnesty Programme for Resale
Price Maintenance)**

THE COMMISSION

Mr. M. A. Bocus - Chairperson,
Mrs. M. B. Rajabally - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of CC3 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 Mauritius Oil Refineries Ltd on 01 June
2018,

Having regard to a report of the Executive Director dated 29 June 2018,

WHEREAS:

I. Introduction

1.1 This Decision relates to an application for immunity dated 02 October 2017
made by Mauritius Oil Refineries Ltd pursuant to the Competition
Commission's Amnesty Programme for Resale Price Maintenance
prescribed under paragraph 5.6A of CC3 Guidelines on Collusive
Agreements (the 'Application'). As part of the conditions set out thereunder,
undertakings have been offered to the Commission by Mauritius Oil
Refineries Ltd on 01 June 2018 ('the Undertakings').

1.2 Having taken cognizance of a report of the Executive Director dated 29
June 2018 on the matter, the Commission has determined the present

CC/DS/0030/71

matter on the basis of the provisions of section 59(7) of the Competition Act 2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

II. Background

i. Competition Commission's RPM Amnesty Programme

1.3 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 05 June 2017 until 20 October 2017 inclusively¹, the Commission put in place a one-off, time-limited amnesty programme for any enterprise involved in resale price maintenance (RPM) by waiving the restriction at paragraph 5.3 of CC3 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 with all the information, documents and evidence available to it regarding the RPM, and as required by the Competition Commission,
- iii. maintains continuous and complete co-operation until the conclusion of any action by the Competition Commission in relation to the matter, and
- iv. offers undertakings that satisfactorily address the competition concerns of the Competition Commission.

ii. The Applicant and the Application

1.5 The Applicant, Mauritius Oil Refineries Ltd (bearing BRN C09001521), started its commercial operations in 1968. Mauritius Oil Refineries Ltd.'s core business is the refining and marketing of edible oil. Mauritius Oil

¹ The Commission had extended the validity of the RPM Amnesty (CC 3 Guidelines - Amended 3rd October 2017) from 05 October 2017 to 20 October 2017.



Refineries Ltd is also active as a wholesale supplier of crude oil and its by-products and markets a selected range of food products.

- 1.6 Mauritius Oil Refineries Ltd is a supplier of edible oil and other food products ('the concerned products') in Mauritius. Amongst the various brands marketed by Mauritius Oil Refineries Ltd, there are Rani vegetable oil, MOROIL Soja, MOROIL Sunflower, Olivor, Lesieur, Puget, Amadora, Attianese and Fragata. Mauritius Oil Refineries Ltd supplies its products to retailers and supermarkets. The company has a portfolio of [REDACTED] resellers around the island.
- 1.7 The Managing Director of Mauritius Oil Refineries Ltd applied for immunity under the RPM Amnesty Programme by way of letter dated 2nd October 2017.
- 1.8 Mauritius Oil Refineries Ltd applied for RPM Amnesty for being party to an agreement involving RPM in connection with the sale of refined and packed edible oils in Mauritius. The agreement related to promotional prices circulated to three of its retail customers. The impugned conduct of Mauritius Oil Refineries Ltd are as follows:
- a. In an agreement [REDACTED], a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' which related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. It was also stipulated that Mauritius Oil Refineries Ltd reserves the right to cancel the promotional offer in case of non-conformity. [REDACTED]
- b. In an agreement [REDACTED], a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' which related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. [REDACTED]

CC/DS/0030/71

[REDACTED]

c. In an agreement [REDACTED], a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' which related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iii. The Investigation

- 1.9 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.
- 1.10 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 29 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').
- 1.11 The Executive Director's findings are that:-
- a. Mauritius Oil Refineries Ltd has participated in agreements involving RPM within the ambit of section 43 of the Act, by entering into agreements with three of its resellers with the object of directly establishing retail prices/price level to be observed by the respective dealers when reselling the products to final customers.

b. Mauritius Oil Refineries Ltd has admitted having participated in an RPM conduct as a supplier of edible oil products and other foodstuffs.

c. Mauritius Oil Refineries Ltd has maintained continuous cooperation with the Competition Commission by responding to the Competition Commission's information request and submitting all additional information documents, and evidence required from it in a timely manner.

1.12 The Executive Director has further assessed the Undertakings offered by Mauritius Oil Refineries Ltd. The Executive Director takes the view that the proposed Undertakings satisfactorily address the concerns identified in the Report for the following reasons –

a. Mauritius Oil Refineries Ltd has ceased the reported RPM conduct and undertaken to remove all commercial clauses in any agreement, contracts or other express arrangements with dealers, existing and prospective, relating to promotional offers being granted to the reseller subject to an agreement on the retail price of its products that must be respected by concerned resellers; and

b. Mauritius Oil Refineries Ltd shall not, in any manner whatsoever implement or cause to be implemented any measure, having the object or effect of compelling, inducing or attempting to compel or induce dealers to apply the retail prices or retail price levels communicated to them by Mauritius Oil Refineries Ltd.

1.13 The Executive Director recommends that the Commission accepts the Undertakings and grants immunity from fines to Mauritius Oil Refineries Ltd for its participation in the reported RPM conduct.

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.

cc/bs/0030/71

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 CC 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 Mauritius Oil Refineries 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) Mauritius Oil Refineries Ltd has, in its Application, admitted its participation in one or more RPM agreement(s) viz :-
 - a. For having been party to an agreement involving RPM in connection with the sale of refined and packed edible oils in Mauritius. The agreement related to promotional prices circulated to three of its retail customers;
 - b. For having entered into an agreement [REDACTED] where a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. It was also stipulated that Mauritius Oil Refineries Ltd reserved the right to cancel the promotional offer in case of non-conformity.
 - c. For having entered into an agreement [REDACTED] where a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' related to promotional offers, stipulated that promotional products

CC/DS/0030/71

will be subject to an agreement on the retail price and that it must be respected by all stores.

- d. For having entered into an agreement [REDACTED] where a specific commercial clause of that agreement entitled 'Conditions Générales de Vente applicables 1 Janvier - 31 Décembre 2017' related to promotional offers, stipulated that promotional products will be subject to an agreement on the retail price and that it must be respected by all stores. [REDACTED]

- 2) Mauritius Oil Refineries Ltd has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC 3 Guidelines, as stated in the Report.

- 3) The Undertakings submitted by the Mauritius Oil Refineries Ltd satisfactorily address the Commission's concerns in so far as –

- a. Mauritius Oil Refineries Ltd has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
- b. Mauritius Oil Refineries Ltd has ceased the reported RPM conduct and undertaken to remove all commercial clauses in any agreement, contracts or other express arrangements with dealers, existing and prospective, relating to promotional offers being granted to the reseller subject to an agreement on the retail price of its products that must be respected by concerned resellers; and
- a. Mauritius Oil Refineries Ltd shall not, in any manner whatsoever implement or cause to be implemented any measure, having the object or effect of compelling, inducing or attempting to compel or induce dealers to apply the retail prices or retail price levels communicated to them by Mauritius Oil Refineries Ltd.

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 Mauritius Oil Refineries Ltd satisfies the conditions prescribed under the RPM Amnesty



CC/DS/0030/71

Programme as set out in paragraph 5.6A of the CC 3 Guidelines on Collusive Agreements;

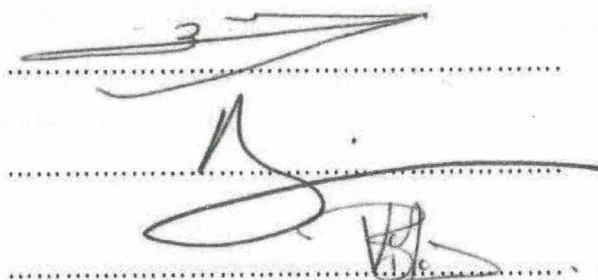
- 2) We grant immunity from financial penalty to Mauritius Oil Refineries Ltd pursuant to section 59(7) of the Act for the Reported RPM conduct;
- 3) We accept the Undertakings offered by Mauritius Oil Refineries Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.

Done at Port-Louis this 29 June 2020

Mr. M. A. Bocus
(Chairperson)

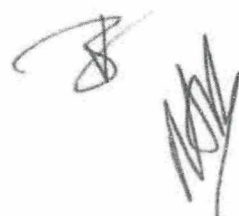
Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

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CC/DS/0030/71

Annex: Undertakings offered by Mauritius Oil Refineries Ltd on 01 June 2018



Undertakings to the CCM

Undertakings provided by Mauritius Oil Refineries Ltd to the Competition Commission

Pursuant to an Application for Amnesty dated 2nd October 2017.

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

DATE: 1st June 2018






1. Background:

By its letter dated 2nd October 2017 made pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Mauritius Oil Refineries Ltd 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 [REDACTED] for the period 1 January 2017 to 31 December 2017 in relation to the supply of edible oil products and other foodstuffs, wherein Mauritius Oil Refineries Ltd stated a commercial clause relating to promotional offers being granted to the reseller subject to an agreement on the retail price that must be respected by the concerned resellers.

In its agreement [REDACTED] Mauritius Oil Refineries Ltd also stipulated that it reserves the right to cancel the promotional offer in case of non-conformity.

[REDACTED]

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, Mauritius Oil Refineries Ltd is, by the presents, providing undertakings related specifically to the impugned agreement 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:

MOROIL: Mauritius Oil Refineries Ltd

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

[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;

RPIM: resale price maintenance.

3. Measures proposed as Undertakings

MOROIL 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 MOROIL's products in Mauritius;

3.1. Behavioural Undertakings

- i. MOROIL 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 by MOROIL;
- ii. MOROIL shall remove all commercial clauses in any agreement, contracts, or other express arrangements with dealers, existing and prospective, relating to promotional offers being granted to the reseller subject to an agreement on the retail price of its products that must be respected by concerned resellers; and

3.2. Information Dissemination

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

MOROIL 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

MOROIL shall, as from the Effective Date, take all reasonable steps to ensure that all communications, negotiations, arrangements with dealers are properly documented and archived to demonstrate MOROIL'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 MOROIL's products;

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

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

4. Entry into force

The present undertakings shall take effect upon the Effective Date.

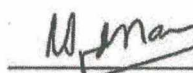


André Esptaller Noël

Managing Director

Duly authorised for and on behalf of:

Mauritius Oil Refineries Ltd



Rehaç Sayed Hassen

Financial Manager

Duly authorised for and on behalf of:

Mauritius Oil Refineries Ltd



General Notice No. 1187 of 2020

CC/DS/0030/72



shaping markets, furthering progress

Decision of the Competition Commission

CC/DS/0030/72

Non-Confidential

**Application for Immunity made by Fast Foods
Limited under the Competition Commission
Amnesty Programme for Resale Price
Maintenance**

29 June 2020

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CC/DS/0030/72

**Decision of the Commissioners of the Competition Commission
of 29 June 2020**

**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/013 – Review of Fast Foods Limited RPM Amnesty application'**

**(CC/DS/0030/72 – Application for Immunity made by Fast Foods Limited under
the Competition Commission's Amnesty Programme for Resale Price
Maintenance)**

THE COMMISSION

Mr. M.A. Bocus - Chairperson,
Mrs. M. B. Rajabally - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of CC3 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 Fast Foods Limited, dated 30th January 2018 and submitted to the Competition Commission on 2nd February 2018,

Having regard to a report of the Executive Director dated 29th June 2018,

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 24 August 2017 made by Fast Foods Limited pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings have been offered to the Commission by Fast Foods Limited dated 30 January 2018 and submitted to the Competition Commission on 02 February 2018. ('the Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 29 June 2018 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of the Competition Act 2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of CC3



CC/DS/0030/72

Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

II. Background

i. *Competition Commission's RPM Amnesty Programme*

1.3 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 05 June 2017 until 20 October 2017 inclusively¹, the Commission put in place a one-off, time-limited amnesty programme for any enterprise involved in resale price maintenance (RPM) by waiving the restriction at paragraph 5.3 of CC3 Guidelines on Collusive Agreements, viz., 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 with all the information, documents and evidence available to it regarding the RPM, and as required by the Competition Commission,
- iii. maintains continuous and complete co-operation until the conclusion of any action by the Competition Commission in relation to the matter, and
- iv. offers undertakings that satisfactorily address the competition concerns of the Competition Commission.

ii. *The Applicant and the Application*

1.5 The Applicant, Fast Foods Limited (bearing Business Registration Number C06004240), is a private company incorporated in Mauritius since 13 March 1984. Fast Foods Ltd, which trades as Charcuterie Isle de France, is a supplier of variable weight, chilled and frozen processed meat products. Resellers of Fast Foods Ltd include grocery stores, supermarkets, and hypermarkets. Around 356 resellers around the island were purchasing Fast Foods Ltd's products for resale.

¹ The Commission had extended the validity of the RPM Amnesty (CC 3 Guidelines - Amended 3rd October 2017) from 05 October 2017 to 20 October 2017.



cc/DS/0030/72

- 1.6 The director of Fast Foods Ltd, acting on behalf of the company, has, by way of letter dated 24th August 2017, applied for immunity under the RPM Amnesty Programme.
- 1.7 Fast Foods Limited applied RPM Amnesty for being party to an agreement involving RPM in connection to the sale of pre-packed food items with weight and price information but excluding the words 'recommended' (the reported activity). Between November 2009 and July 2017, Fast Foods Ltd was involved in an RPM conduct where it determined and communicated in advance and through the reseller price list the retail price of the said products to dealers. Dealers would subsequently order their stock based on the price list and take delivery of Fast Foods Ltd's products on which the retail price, as determined by Fast Foods Ltd, was affixed without the words "recommended price" appearing next to the retail price.

iii. The Investigation

- 1.8 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.
- 1.9 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 29th 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').
- 1.10 The Executive Director's findings are that :
- a. Fast Foods Limited has participated in agreement(s) involving RPM, as described above at paragraph 1.7, having a restrictive object or effect viz., directly establishing a fixed retail price ('pricing restriction') to be practised by dealers when reselling Fast Foods Ltd's products and affixing the retail price thereof without the terms 'recommended price' appearing next to the retail price.
 - b. there remained a possibility that the reported activity has continued in terms of its anticompetitive effects, even after the reported duration of the said RPM conduct. The Executive Director however believes that an assessment of any continuing effect of the reported activity is not warranted insofar as such effect, being directly linked and confined to the reported activity, is covered under the application and can be satisfactorily addressed either by affirmative acts already taken by Fast Foods Ltd to remedy the reported RPM conducts and/or the Undertakings submitted by Fast Foods Ltd and which are intended to be implemented upon their acceptance by the Commission.



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c. Fast Foods Limited has admitted having participated in an RPM conduct as a supplier of prepacked food item.

d. Fast Foods Limited has maintained continuous cooperation with the Competition Commission by responding to the Competition Commission's information request and submitted all additional documents, and evidence required from it in a timely manner.

1.11 The Executive Director has further assessed the Undertakings offered by Fast Foods Limited. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the following reasons –

- a. Fast Foods Limited has ceased the reported RPM conduct and undertaken to inform all resellers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by Fast Foods Ltd, including for past stock of unsold products;
- b. Fast Foods Ltd has already amended its product price list replacing the terms 'Retail price' by 'prix recommandé de vente' such that resellers are clearly informed, upon receiving the price list, that the retail prices contained therein are non-binding pricing recommendations. It has, in this vein, further undertaken not to implement any direct or indirect measure, whatever its form, that compels or induces resellers to apply or practise retail prices/price levels communicated to them;
- c. Fast Foods Ltd has, since July 2017, been supplying its products in an amended packaging, which though affixing the weighted retail price, includes the terms 'prix recommandé'. In so doing, resellers retain the possibility of practising their own retail price, including discounting the price affixed on the products purchased from Fast Foods Ltd;
- d. Fast Foods Limited has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of Fast Foods Ltd's products of the behavioural measures it has adopted, thereby minimising risks of RPM conduct being promoted by employees and ensuring that commercial dealings with resellers are in compliance with the Act.

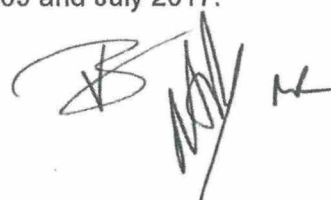
- 1.12 The Executive Director recommends that the Commission accepts the Undertakings and grants immunity from fines to the Applicant for its participation in the reported RPM conduct.

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 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'.
- 1.14 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.
- 1.15 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 CC 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 Fast Foods Limited, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by Fast Foods Limited, the Commission determines that –
- 1) Fast Foods Limited has, in its Application, admitted its participation in one or more RPM agreement(s) viz for having been party to an agreement involving RPM in connection with the sale of pre-packed food items with weight and price information but excluding the words 'recommended retail price' between November 2009 and July 2017.



CC/DS/0030/72

- 2) Fast Foods Limited has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC 3 Guidelines, as stated in the Report;
- 3) The Undertakings submitted by the Fast Foods Limited satisfactorily address the Commission's concerns in so far as –
 - a. Fast Foods Limited has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
 - b. Fast Foods Limited has ceased the reported RPM conduct and undertaken to inform all resellers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by Fast Foods Ltd, including for past stock of unsold products;
 - c. Fast Foods Ltd has already amended its product price list replacing the terms 'Retail price' by 'prix recommandé de vente' such that resellers are clearly informed, upon receiving the price list, that the retail prices contained therein are non-binding pricing recommendations. It has, in this vein, further undertaken not to implement any direct or indirect measure, whatever its form, that compels or induces resellers to apply or practise retail prices/price levels communicated to them;
 - e. Fast Foods Ltd has, since July 2017, been supplying its products in an amended packaging, which though affixing the weighted retail price, includes the terms 'prix recommandé'. In so doing, resellers retain the possibility of practising their own retail price, including discounting the price affixed on the products purchased from Fast Foods Ltd; and
 - f. Fast Foods Limited has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of Fast Foods Ltd's products of the behavioural measures it has adopted, thereby minimising risks of RPM conduct being promoted by employees and ensuring that commercial dealings with resellers are in compliance with the Act.

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CC/DS/0030/72

Decision**NOW THEREFORE,**

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

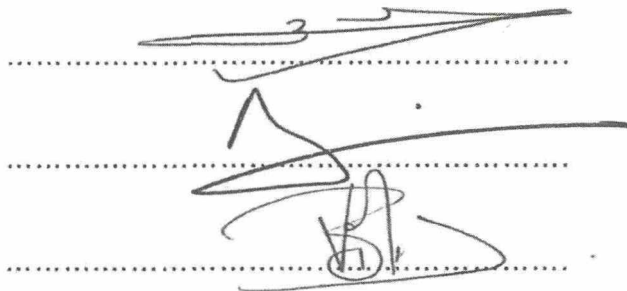
- 1) We accept that the Application made by Fast Foods Limited satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to Fast Foods Limited pursuant to section 59(7) of the Act for the Reported RPM conduct;
- 3) We accept the Undertakings offered by, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.

Done at Port-Louis this 29 June 2020.

Mr.M. A. Bocus
(Chairperson)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

Three handwritten signatures are present on dotted lines. The first signature is at the top, the second in the middle, and the third at the bottom. The third signature appears to be a circular stamp or seal.

CC/DS/0030/72

**Annex: Undertakings offered by Fast Foods Limited, dated 30th January 2018
and submitted to the Competition Commission on 2nd February 2018**


B M

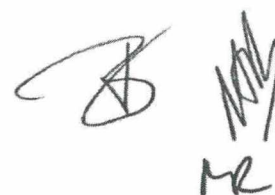
Undertakings to the CCM

Undertakings provided by Fast Foods Ltd to the Competition Commission

Pursuant to an Application for Amnesty dated 24th August 2017

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

30th January 2018



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1. Background:

By its letter dated 24th August 2017 made pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Fast Foods Ltd 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 RPM agreement, in place since November 2009, is in relation to the supply of prepacked variable-weight food items by Fast Foods Ltd to its dealers whereby Fast Foods Ltd would determine and communicate, in advance, the retail price of the said products to dealers. Dealers would subsequently order their stock based on the price list and take delivery of Fast Foods Ltd's products on which the retail price, as determined by Fast Foods Ltd, was affixed without the words "recommended price" appearing next to the retail price.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, Fast Foods Ltd is, by the presents, providing undertakings related specifically to the impugned conduct 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:

FFL: Fast Foods Ltd and includes its branches, subsidiaries, or affiliates;

Act: the Competition Act 2007, any amendment brought thereto and any regulations made thereunder;

Affiliate: any enterprise directly or indirectly controlled by FFL;

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

Dealer: any distributor, reseller, retailer, or other entity involved in the resale of FFL's goods or services in Mauritius;

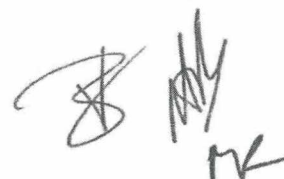
3. Measures proposed as Undertakings

FFL hereby undertakes to apply the following measures in its commercial dealings with all existing dealers involved in the resale of FFL's products in Mauritius;

3.1. Behavioural Undertakings

FFL 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 price(s) or retail price level(s) or retail price component(s) communicated to them by FFL;

FFL shall clearly and unequivocally inform all dealers, in writing, that prices affixed by FFL on products supplied to dealers, including past stock of unsold products, and/or prices or price levels communicated to them by FFL are recommended prices and that dealers 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 comply with any recommended price or price-level communicated to them by FFL;

FFL undertakes that it has, since August 2017, ceased the impugned conduct by conspicuously affixing the terms 'prix recommandé' and/or 'prix recommandé de vente' on all product price lists communicated to and all products supplied to dealers, in accordance with the 'Amended reseller price list' (Annex 1) and 'Amended scale label' (Annex 2) respectively annexed to the present Undertakings;

FFL shall, where it recommends a retail price that appears on the products supplied to dealers, continue to affix the terms 'prix recommandé' and/or 'prix recommandé de vente' in a conspicuous place on all products supplied to them, and undertakes to promptly notify the Commission of any change in its product packaging and/or labelling that is likely to affect FFL's obligations under the present Undertakings;

FFL shall, where it enters into any agreement, contract, or other express arrangement with dealers, existing and prospective, ensure that such agreement, contract, or other express 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 comply with any recommended price or price level communicated to them by FFL;

3.2. Information Dissemination

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

FFL shall use its best efforts to ensure that the present undertaking is made known to and is understood by all dealers;

3.3. Reporting

FFL 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 FFL'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 FFL's products;

FFL shall, within 3 months from the date of acceptance of the present undertakings by the Commission, submit a written report to the Commission that *inter alia* -

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

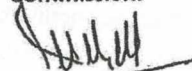
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4. Scope of Application

FFL shall be bound by the present undertakings and shall be responsible for ensuring its compliance therewith.

5. Entry into force

The present undertakings shall take effect upon the date of their acceptance by the Commission.

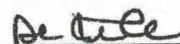


Jacques Chan

Director

Duly authorised for and on behalf of:

Fast Foods Ltd



Benoit Bundhoo

Director

Duly authorised for and on behalf of:

Fast Foods Ltd

FAST FOODS LIMITED
2nd FLOOR, S.I.P.F BLDG., P.O. BOX 887
NELSON MANDELA SQUARE
PORT LOUIS 11328 - MAURITIUS
TEL: (230) 212 0211 / 208 9924
FAX: (230) 208 2913 / 208 9789
EMAIL: jack@orange.mu
BRN: C08C04240 VAT: 20040052

Annex 1

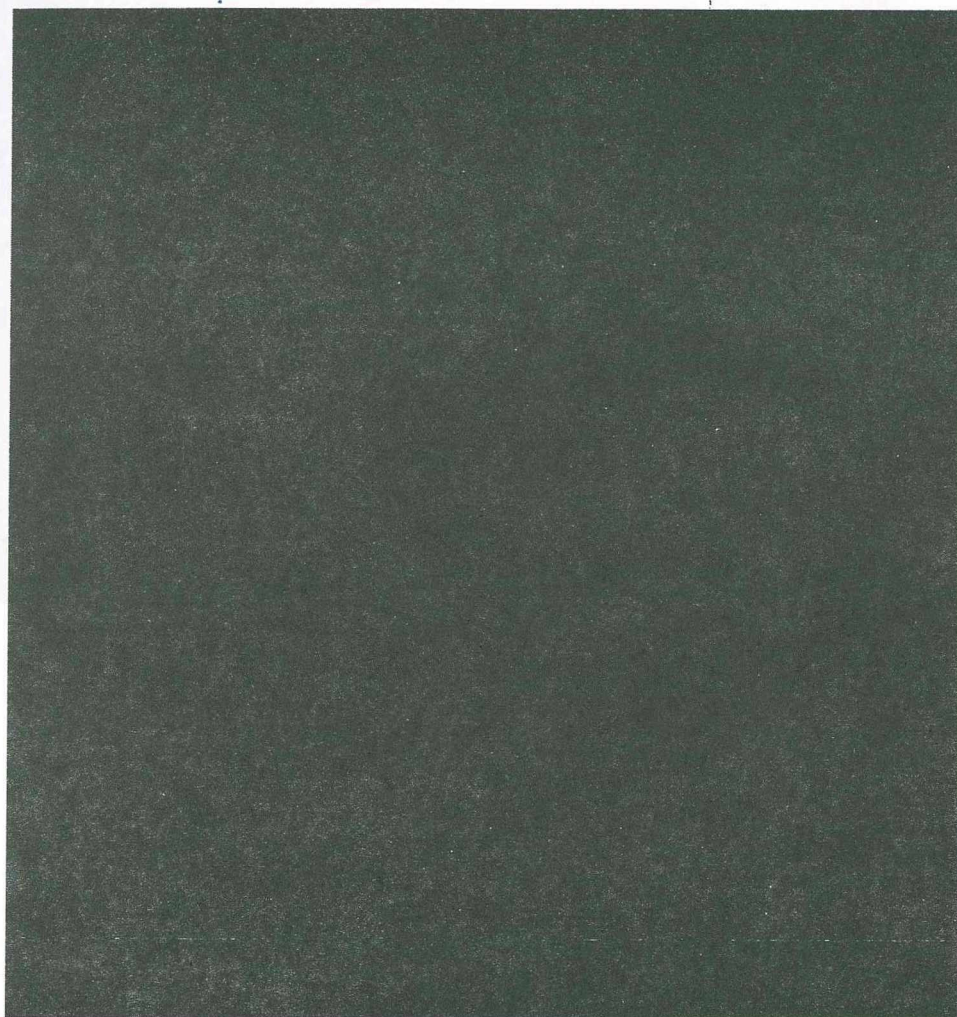


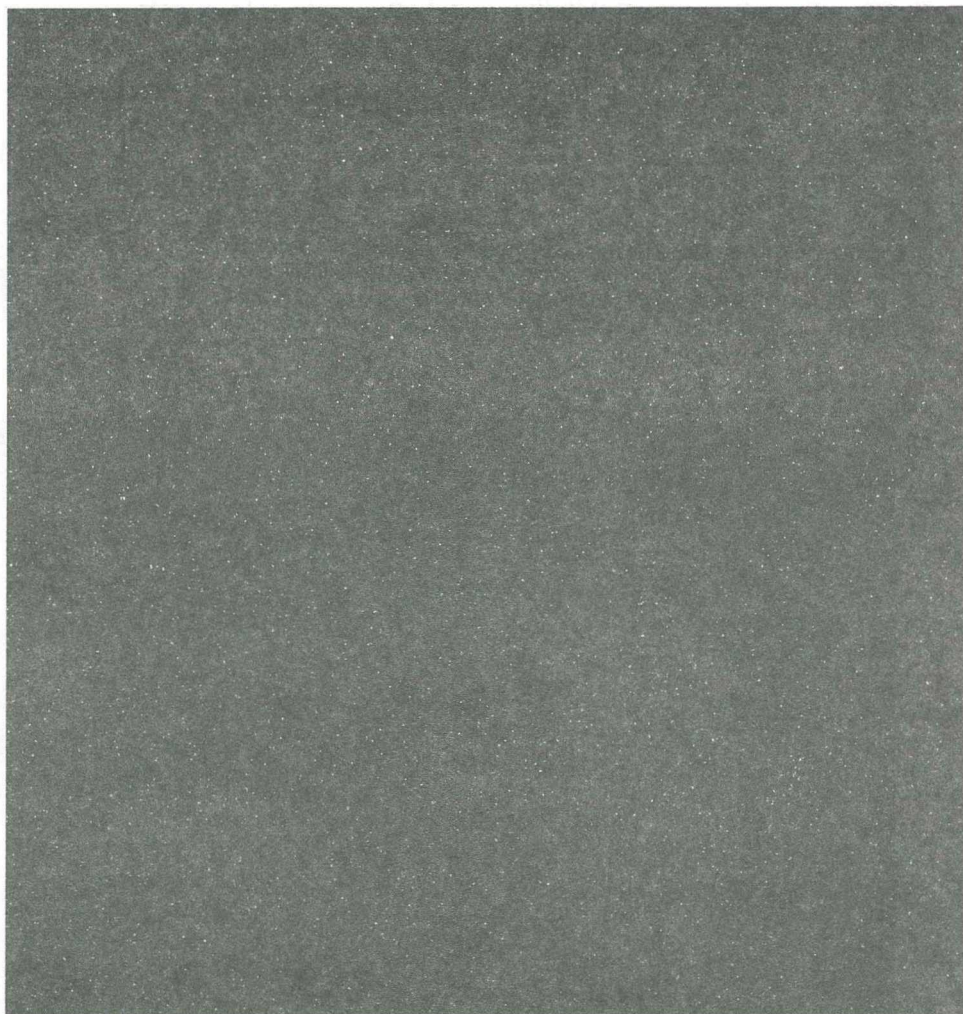
Fast Foods Limited
TRADING AS

Charcuterie Isle de France

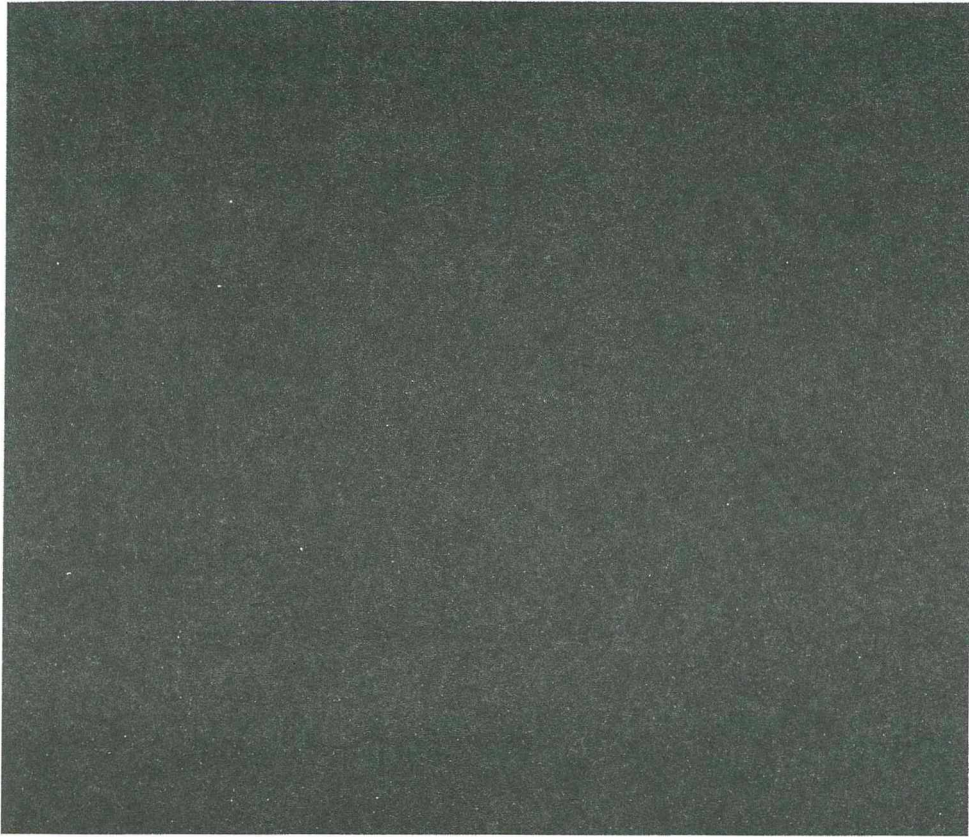
Processing Plant & Cold Storage: Roundabout Cocoterie Road,
Northern Motorway, Roche Bois, Port Louis, Mauritius

Tel: (230) 242 0530 / 241 5807 / 218 0320 Fax: (230) 242 3581 / 241 0624
BRN: C06004240 VAT No: VAT20040052 Email: cldfrance@orange.mu





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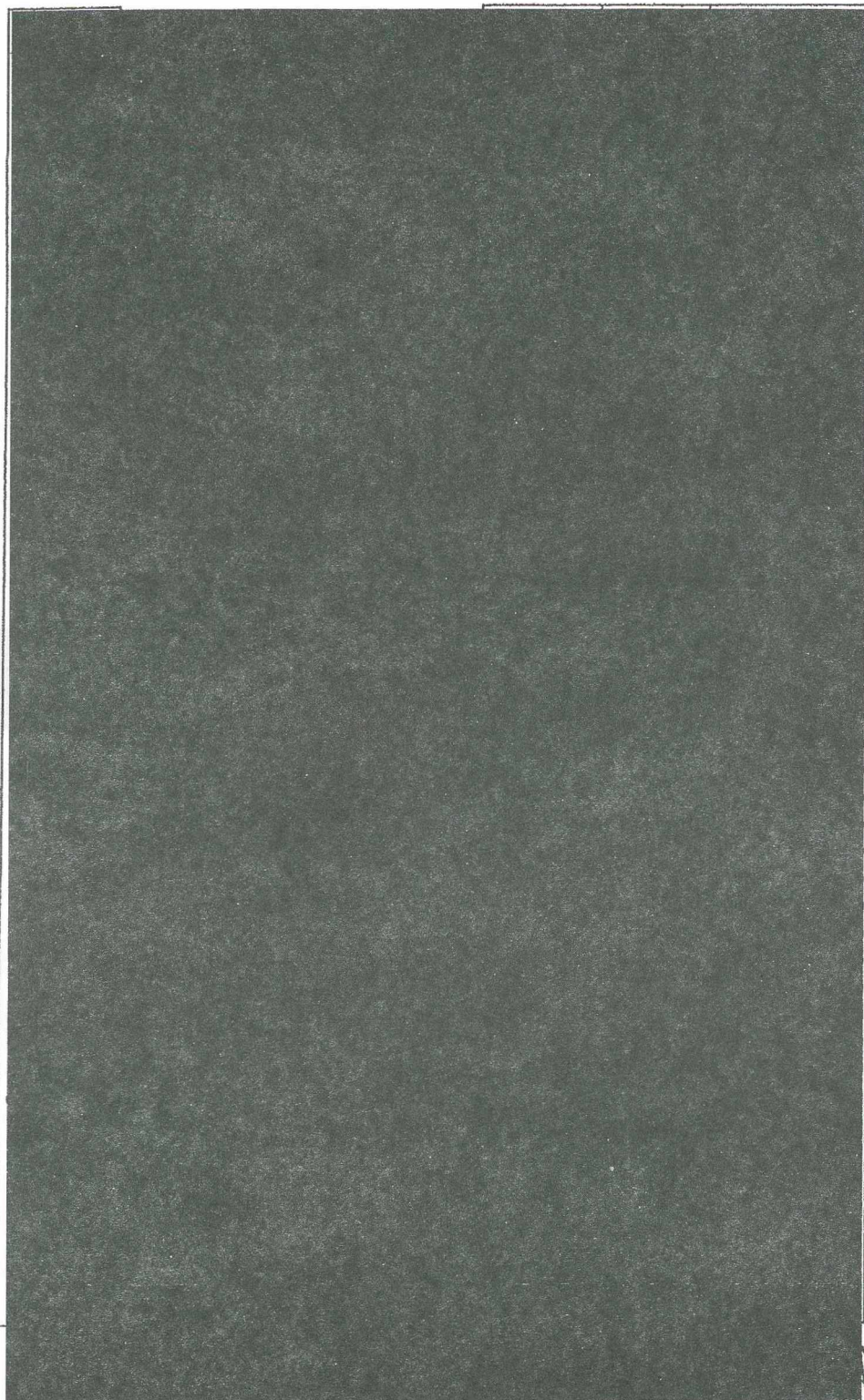
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Annex 2



Date
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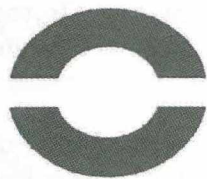
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VAT Zero
R.P.
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General Notice No. 1188 of 2020

CC/DS/0030/73



**competition
commission**

shaping markets, furthering progress

**Decision of the Competition
Commission**

CC/DS/0030/73

Non- Confidential

**Application for Immunity made by Ramdenee Edible
Oil Products Limited under the Competition
Commission Amnesty Programme for Resale Price
Maintenance**

29 June 2020

CC/DS/0030/73

**Decision of the Commissioners of the Competition Commission
of 29 June 2020**

**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/019 – Review of Ramdenee Edible Oil Products Limited RPM
Amnesty application'**

**(CC/DS/0030/73 – Application for Immunity made by Ramdenee Edible Oil
Products Limited under the Competition Commission's Amnesty Programme
for Resale Price Maintenance)**

THE COMMISSION

Mr. M. A. Bocus - Chairperson,
Mr. C. Seebaluck - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of CC3 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 Ramdenee Edible Oil Products Limited
on 08 August 2017,

Having regard to a report of the Executive Director dated 26 December 2018,

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 08 August 2017 made by Ramdenee Edible Oil Products Limited (hereinafter 'REOP Ltd') pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings have been offered to the Commission by REOP Ltd on 08 August 2017 ('the Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 26 December 2018 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of the Competition Act 2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of CC3

Signature
Signature

CC/DS/0030/73

Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

II. Background

i. Competition Commission's RPM Amnesty Programme

1.3 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 05 June 2017 until 20 October 2017 inclusively¹, the Commission put in place a one-off, time-limited amnesty programme for any enterprise involved in resale price maintenance (RPM) by waiving the restriction at paragraph 5.3 of CC3 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').

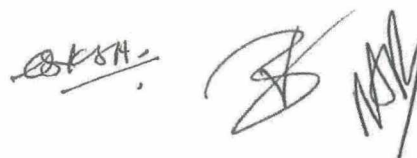
1.4 The conditions prescribed under the RPM Amnesty Programme for providing immunity from financial penalties to any enterprise applying for RPM Amnesty are that the applicant -

- i. admits its participation in an agreement involving RPM,
- ii. provides the Competition Commission with all the information, documents and evidence available to it regarding the RPM, and as required by the Competition Commission,
- iii. maintains continuous and complete co-operation until the conclusion of any action by the Competition Commission in relation to the matter, and
- iv. offers undertakings that satisfactorily address the competition concerns of the Competition Commission.

ii. The Applicant and the Application

1.5 The applicant, REOP Ltd (bearing Business Registration Number C07006019), is a private company incorporated in Mauritius since 24 April 1987. REOP Ltd is a supplier of edible oil products that are sold to resellers across Mauritius. The application made does not relate to all of the resellers of REOP Ltd, it is rather in relation to one particular reseller named Masters Express. REOP Ltd deals in "Rajah" branded edible oil products

¹ The Commission had extended the validity of the RPM Amnesty (CC 3 Guidelines - Amended 3rd October 2017) from 05 October 2017 to 20 October 2017.



CC/DS/0030/73

which are available in different varieties such as soya oil, palm oil, sunflower oil and vegetable oil.

- 1.6 The Marketing Executive of REOP Ltd and the Finance Manager, respectively having duly been authorised by the director of REOP Ltd to apply for immunity under the RPM Amnesty programme by way of letter dated 08 August 2017.

REOP Ltd applied RPM Amnesty for having been party to an agreement involving RPM in connection with the sale of edible oil products of the brand "Rajah" by indirectly imposing a minimum price in its email and communications involving Masters Express (the reported activity). Since January 2013 to December 2014, REOP Ltd had indirectly placed a pricing restriction on the reseller, through the use of supportive measures of granting rebates if the minimum price contained in the email and communications is respected. Extracts of the email and communications dated 16 September 2013 and 25 June 2014 containing RPM clauses are reproduced below, respectively:

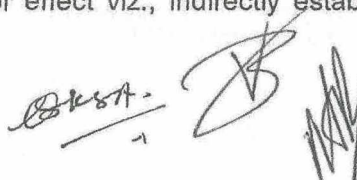
(i) *"For masters express, tell Kiran to inform S.M that the deal Ive done with them for this month is the best deal we can give, i.e, invoice price rs170 plus a refund of rs2 for 20000 boxes and rs3 for 30000boxes. But the refund applies only if their selling price is not below than rs168.50 per box."*

(ii) *"For rajah pouchs there will be a refund of 3 rupees per box if target sales of 20000 boxes achieved and if selling price on brochure is not less than rs163 per box."*

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 26th December 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 :-

a. REOP Ltd has participated in agreement(s) involving RPM, as described above, having a restrictive object or effect viz., indirectly establishing a



minimum resale price ('pricing restriction') to be practised by Masters Express when reselling REOP Ltd's products.

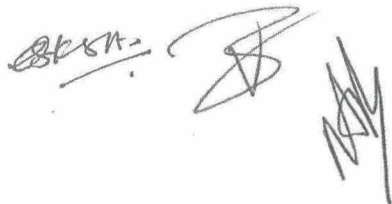
- b. REOP Ltd has admitted being a party to transactions involving RPM conduct as a supplier of edible oil products.
- c. REOP Ltd has maintained continuous cooperation with the Competition Commission by responding to the Competition Commission's information request and submitting all additional information documents, and evidence required from it in a timely manner

The Executive Director has further assessed the Undertakings offered by REOP Ltd. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the following reasons –

- a. REOP Ltd has undertaken to cease the reported RPM conduct and has undertaken to inform all dealers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by REOP Ltd;
- b. REOP Ltd has undertaken not to 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 REOP Ltd;
- c. REOP Ltd has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of REOP Ltd's products of the behavioural measures it has adopted, thereby minimising risks of RPM conduct being promoted by employees and ensuring that commercial dealings with resellers are in compliance with the Act;
- d. REOP Ltd has also undertaken to affix or cause to be affixed the words "recommended price" next to the resale price where a minimum resale price has been recommended to dealers.

1.10 The Executive Director recommends that the Commission accepts the Undertakings and grants immunity from fines to the Applicant for its participation in the reported RPM conduct.

III. Legal Framework

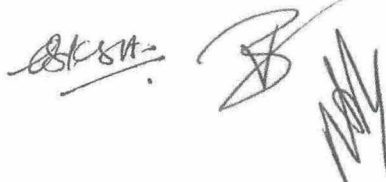


CC/DS/0030/73

- 1.11 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'.
- 1.12 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.
- 1.13 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 CC on the matter, including by securing the cooperation of its directors, officers and employees in view of effectively and expeditiously concluding the assessment process.
- 1.14 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

- 1.15 Having regard to the Application submitted by REOP Ltd, the concerns which have been identified by the Executive Director in his Report, and the Undertakings offered by REOP Ltd, the Commission determines that –
- 1) REOP Ltd has, in its Application, admitted its participation in one or more RPM agreement(s) viz :-
 - a. For having been party to an agreement involving RPM in connection with the sale of edible oil products of the brand "Rajah" by indirectly imposing a minimum price in its email and communications involving Masters Express; and
 - b. For having, since January 2013 to December 2014, indirectly placed a pricing restriction on the reseller through the use of supportive measures of granting rebates if the minimum price contained in the email and communications is respected.



- 2) REOP Ltd has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC 3 Guidelines, as stated in the Report;
- 3) The Undertakings submitted by the REOP Ltd satisfactorily address the Commission's concerns in so far as –
 - a. REOP Ltd has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
 - b. REOP Ltd has undertaken to cease the reported RPM conduct and has undertaken to inform all dealers, in writing, that they are free to apply or practise their own retail prices for all products supplied to them by REOP Ltd;
 - c. REOP Ltd has undertaken not to 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 REOP Ltd;

REOP Ltd has undertaken to inform its internal management and commercial employees engaged in the sales and marketing of REOP Ltd's products, of the behavioural measures it has adopted; and

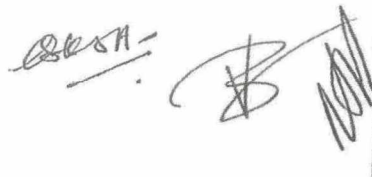
- d. REOP Ltd has also undertaken to affix or cause to be affixed the words "recommended price" next to the resale price where a minimum resale price has been recommended to dealers.

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 REOP Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC 3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to REOP Ltd pursuant to section 59(7) of the Act for the Reported RPM conduct;



CC/DS/0030/73

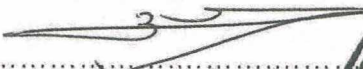
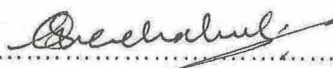
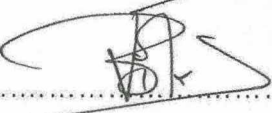
- 3) We accept the Undertakings offered by REOP Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.


Done at Port-Louis this 29 June 2020.

Mr. M. A. Bocus
(Chairperson)

Mr. C. Seebaluck
(Commissioner)

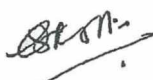
Mrs. V. Bikhoo
(Commissioner)


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CC/DS/0030/73

Annex: Undertakings offered by Ramdenee Edible Oil Products Limited on 08 August 2017





RAMDENEEDIBLE OIL PRODUCTS LIMITED

MEMBER OF RAMDENEED GROUP

Registered Office :
Industrial Zone
Phoenix
Rep. of Mauritius
Tel : 696 7954 / 697 9876
698 8128 / 8533 / 8389
Fax : (230) 698 8360
Email : edible@intnet.mu

Undertakings to the CCM

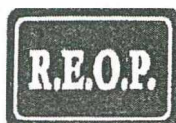
Undertakings provided by RAMDENEEDIBLE OIL PRODUCTS LIMITED to the Competition Commission

Pursuant to an Application for Amnesty dated 08th of August, 2017

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

08th of August, 2017

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**RAMDENEE EDIBLE OIL PRODUCTS LIMITED**

MEMBER OF RAMDENEE GROUP

Registered Office :

Industrial Zone

Phoenix

Rep. of Mauritius

Tel : 696 7954, 697 9876

698 8128 / 8533 / 8389

Fax : (230) 698 8360

Email : edible@intnet.mu

1. Background:

By its letter dated 08th of August, 2017, RAMDENEE EDIBLE OIL PRODUCTS 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 agreement has been in place since or around January 2013 to December 2014 was intended to be implemented during that same period and concerns the following: MASTERS EXPRESS located at Buchoo Building (opposite Bus Terminal), Saint Pierre. The agreement involves resale price maintenance in connection with the sales of its products whereby a minimum selling price was advised to the dealer. There was no binding contract. The agreement has the object to advise Masters Express's stakeholders to tap on bulk purchase discount with no intention to prevent, restrict or distort competition.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining immunity, RAMDENEE EDIBLE OIL PRODUCTS LIMITED is, by the presents, providing undertakings related specifically to the impugned agreement 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:

"REOP LTD" or "TheCompany": RAMDENEE EDIBLE OIL PRODUCTS LIMITED

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

Dealer: any distributor, reseller, retailer, or other entity involved in the resale of REOP LTD's goods or services in Mauritius.

**RAMDENEE EDIBLE OIL PRODUCTS LIMITED**

MEMBER OF RAMDENEE GROUP

Registered Office :

Industrial Zone

Phoenix

Rep. of Mauritius

Tel : 696 7954, 697 9876

698 8128 / 8533 / 8389

Fax : (230) 698 8360

Email : edible@intnet.mu

3. Measures proposed as Undertakings

REOP LTD hereby undertakes to apply the following measures in its commercial dealings with all existing dealers involved in the resale of REOP LTD's goods or services in Mauritius;

3.1. Behavioural Undertakings

REOP LTD 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 by REOP LTD;

REOP LTD shall clearly and unequivocally inform all dealers, in writing, that resale prices or resale price levels communicated to them by REOP LTD are non-binding "recommended" prices or price levels and they can freely decide their resale price;

REOP LTD shall, where a minimum resale price has been recommended to dealers and the resale price appears on the goods, either affix or cause to be affixed the words "recommended price" next to the resale price;

3.2 Information Dissemination

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

REOP LTD shall use its best efforts to ensure that the present Undertaking is made known to and is understood by all dealers.

3.3. Reporting

REOP LTD shall, as from the date of this Undertaking, take all reasonable steps to ensure that all communications, negotiations, arrangements with dealers are properly documented and archived to demonstrate REOP LTD'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 REOP LTD's products;

REOP LTD shall submit a written report to the Commission within 5 months from the acceptance of these Undertakings by the Commission, detailing how the Undertakings have been implemented.



RAMDENEEDIBLE OIL PRODUCTS LIMITED
MEMBER OF RAMDENEED GROUP

Registered Office :
Industrial Zone
Phoenix
Rep. of Mauritius
Tel : 696 7954, 697 9876
698 8128 / 8533 / 8389
Fax : (230) 698 8360
Email : edible@intnet.mu

4. Entry into force

These Undertakings shall be implemented within 3 months from the date it is accepted by the Commission.

Signature of Authorised Signatory

Name of Authorised Signatory

Position occupied


: Mr Toolseeram Sabhi Appanna (Rajesh)
: Marketing Executive

Duly authorised for and on behalf of:

Name of Enterprise

Address of Enterprise

Telephone number

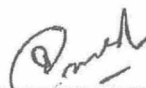
Email address

: RAMDENEEDIBLE OIL PRODUCT LIMITED
: Industrial Zone, Pont Fer, Phoenix
: 698 8389
: reop58@intnet.mu

Signature of Authorised Signatory

Name of Authorised Signatory

Position occupied


: Mr Pravesh Toolsee
: Finance Manager

Duly authorised for and on behalf of:

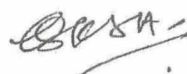
Name of Enterprise


Address of Enterprise

Telephone number

Email address

: RAMDENEEDIBLE OIL PRODUCT LIMITED
: Industrial Zone, Pont Fer, Phoenix
: 698 8389
: reop58@intnet.mu





General Notice No. 1189 of 2020

CC/DS/0030/74



shaping markets, furthering progress

Decision of the Competition Commission

CC/DS/0030/74

NON CONFIDENTIAL

**Application for Immunity made by Pharmacie Nouvelle
Ltd under the Competition Commission Amnesty
Programme for Resale Price Maintenance**

29 June 2020

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CC/DS/0030/74

**Decision of the Commissioners of the Competition Commission
of 29 June 2020**

**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/059 – Review of Pharmacie Nouvelle Ltd RPM Amnesty
application'**

**(CC/DS/0030/74 – Application for Immunity made by Pharmacie Nouvelle Ltd
under the Competition Commission's Amnesty Programme for Resale Price
Maintenance)**

THE COMMISSION

Mr. M. A. Bocus	-	Chairperson,
Mr. C. Seebaluck	-	Commissioner,
Mrs. V. Bikhoo	-	Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of CC3 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 Pharmacie Nouvelle Ltd on 11 December 2018,

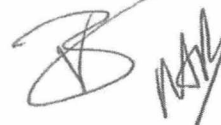
Having regard to a report of the Executive Director dated 26 December 2018,

WHEREAS:

I. Introduction

1.1 This Decision relates to an application for immunity dated 20 October 2017 made by Pharmacie Nouvelle Ltd (hereinafter referred to as 'PNL' or the 'Applicant') pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings have been offered to the Commission by PNL on 11 December 2018 ('the Undertakings').

1.2 Having taken cognizance of a report of the Executive Director dated 26 December 2018 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of the Competition Act



CC/DS/0030/74

2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.

II. Background

i. Competition Commission's RPM Amnesty Programme

1.3 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 inclusively¹, 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 CC3 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 -


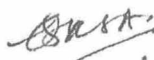
- i. admits its participation in an agreement involving RPM,
- ii. provides the Competition Commission ('CC') with all the information, documents and evidence available to it regarding the RPM, and as required by CC,
- iii. maintains continuous and complete co-operation until the conclusion of any action by the CC in relation to the matter, and
- iv. offers undertakings that satisfactorily address the competition concerns of the CC.

ii. The Applicant and the Application

1.5 The Applicant, PNL, operates as a distributor of pharmaceuticals, general goods, dyestuffs and chemical auxiliaries in Mauritius and bears the following Business Registration Number C07001598.

1.6 On 20th October 2017, the Head of Commercial Operations at PNL, made an application under the RPM Amnesty Programme to the CC, through its legal advisors, in its capacity as supplier.

¹ The Commission had extended the validity of the RPM Amnesty (CC3 Guidelines - Amended 3rd October 2017) from 05th October 2017 to 20th October 2017.



CC/DS/0030/74

1.7 PNL applied for immunity under the RPM Amnesty for the following conducts (the 'reported conducts'):-

- (a) For having provided price lists with pre-determined resale prices for specified products (as listed in corresponding Annexure to its Application) to its resellers (as specified in its Application) without the words "recommended price"; and
- (b) For having affixed price tags on pharmaceutical products, it supplies to pharmacies, without the mention of 'Recommended price'. As part of its application, PNL submitted information and evidence in support of the reported conducts viz., list of PNL resellers, its price lists without mentioning the words 'recommended price' and examples of VAT invoices issued by PNL.


iii. The Investigation

1.8 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.

1.9 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 26 December 2018 (the 'Report'). 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.

1.10 The Executive Director's findings are that PNL -

- (a) qualifies as enterprise engaged in commercial activities for gain or reward in the supply of pharmaceuticals, general goods, dyestuffs and chemical auxiliaries as a supplier in the upstream market;
- (b) is in a vertical business relationship with the resellers in as much as it is a wholesale supplier selling pharmaceuticals, general goods, dyestuffs and chemical auxiliaries to its resellers;
- (c) has admitted having participated in or otherwise having engaged in a conduct which falls within the ambit of section 43 of the Act in so far as the pharmaceutical products (excluding medicines), para pharmaceutical and other products are concerned viz., price lists provided by PNL, with regards to resale prices without the mention of 'recommended' price; and the affixing of price labels by PNL, without the mention of 'recommended' price on products; and



CC/BS/0030/74

- (d) has maintained continuous and complete cooperation with the Competition Commission from the time of its Application to the present Report.

1.11 The Executive Director has further assessed the Undertakings offered by PNL. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the following reasons –

- a. PNL has undertaken that it shall, where it affixes price tags on its products which are distributed to its resellers, state clearly that the resale price is a recommended price, and in relation to price list to include a clause which clearly states that the recommended price is not binding on the resellers and the resellers are free to determine their own resale prices. PNL has to this effect submitted a template of its new proposed price list; and
- b. PNL has undertaken that it shall not, in any manner whatsoever, enter into or otherwise facilitate, either explicitly or implicitly, the implementation of any agreement with the above-mentioned resellers and/or any other reseller that involves resale price maintenance.

1.12 The Executive Director recommends that the Commission accept the Undertakings and grant immunity from financial penalty 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 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'.

1.14 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.

1.15 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

BCN

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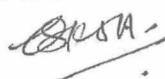
application until the conclusion of any action by the CC on the matter, including by securing the cooperation of its directors, officers and employees in view of effectively and expeditiously concluding the assessment process.

- 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 PNL, 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) PNL has, in its Application, admitted its participation in specified reported conducts which fall within the ambit of section 43 of the Act viz., -
 - (a) for having provided price lists with pre-determined resale prices for specified products (as listed in the corresponding Annexure to its Application) to its specified resellers without the words "recommended price"; and
 - (b) for having affixed price tags on the products it supplies to resellers, without the mention of "recommended price".
- 2) PNL has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC 3 Guidelines, as stated in the Report;
- 3) The Undertakings submitted by PNL satisfactorily address the Commission's concerns in so far as –
 - a. PNL has ceased its participation in/terminated all RPM agreements to which it was a party, as reported in its Application;
 - b. PNL has undertaken that it shall, where it affixes price tags on its products which are distributed to its resellers, state clearly that the resale price is a recommended price, and in relation to price list to include a clause which clearly states that the recommended price is not binding on the resellers and the resellers are free to determine their own resale prices. PNL has to this effect submitted a template of its new proposed price list; and



CC/DS/0030/74

- c. PNL has undertaken that it shall not, in any manner whatsoever, enter into or otherwise facilitate, either explicitly or implicitly, the implementation of any agreement with the above-mentioned resellers and/or any other reseller that involves resale price maintenance.

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 Pharmacie Nouvelle Ltd satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC 3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to Pharmacie Nouvelle Ltd pursuant to section 59(7) of the Act for the reported RPM conducts;
- 3) We accept the Undertakings offered by Pharmacie Nouvelle Ltd, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.


Done at Port-Louis this 29 June 2020

Mr. M. A. Bocus
(Chairperson)

Mr. C. Seebaluck
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

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The image shows three handwritten signatures, each followed by a dotted line for a name. To the right of these is a circular stamp with the words "Competition Commission" inside.

CC/DS/0030/74

ANNEX: Undertakings offered by Pharmacie Nouvelle Ltd under section 63 of the Competition Act 2007 pursuant to paragraph 5.6A of the CC 3 Guidelines – Collusive Agreements (RPM Amnesty Programme)



Pharmacie Nouvelle Ltd

Confidential version

Undertakings to the CCM

Undertakings provided by Pharmacie Nouvelle Ltd to the Competition Commission

Pursuant to an Application for Amnesty dated 18th October 2017

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

11th December 2018

Page 1 of 5



Pharmacie Nouvelle Ltd

Definitions:

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

Pharmacy Nouvelle Ltd (herein 'Pharmacie Nouvelle') : Pharmacy Nouvelle includes its branches, subsidiaries, or affiliates;

Affiliate: any enterprise directly or indirectly controlled by Pharmacie Nouvelle;

Act: the Competition Act 2007;

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

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.

2. Background:

The Pharmacie Nouvelle is a distributor of pharmaceuticals, general goods, dyestuffs and chemical auxiliaries in Mauritius.

By its letter dated 18th October 2017 addressed to the Competition Commission and pursuant to paragraph 5.6A of the 'CCM 3 Guidelines – Collusive Agreements' (amended June 2017), Pharmacie Nouvelle has made an application for amnesty under the CCM Amnesty Programme for Resale Price Maintenance (RPM) (the 'Application').

The reported activity involves the following practices whereby Pharmacie Nouvelle has:

- (i) In its own name, sent an email to a reseller, which contain possible Resale Price Maintenance practice; (the 'Practice I');
- (ii) Affixed price tags on pharmaceutical products it supplies to pharmacies as per The Consumer Protection (Consumer Goods) (Maximum Mark-up) Regulations 1998 GN 150/1998. However, the price tags did not contain the terms "recommended price"; (the 'Practice II'); and
- (iii) Communicated its price lists and invoices, for its various products, to its dealers without mentioning the terms "recommended price"; (the 'Practice III').

BASA

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Member of Leal Group

Pharmacie Nouvelle Ltd

By virtue of Section 30 and 31 of the Competition Commission Rules of procedure 2009, Pharmacie Nouvelle is hereby submitting the following documents, with the heading "restriction of publication claimed" and "confidential", in relation to:

- i. Practice I, the email sent to its dealer, which is herewith annexed as Annex A;
- ii. Practice II, the lists of pharmaceutical products whereby price tags have been affixed and the name of the relevant dealers, which is herewith annexed as Annexes B and C respectively;
- iii. Practice III, a list of distributors to which a price list has been communicated, including the price lists for years 2009 to 2016 and a sample of invoices, which is herewith annexed as Annexes D, E, F and G1 to G8.

The identified pharmacies and dealers/distributors shall altogether herein after be referred to as 'the Resellers' and are provided in Annexures C & D.

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.'

With reference to Practices I to III above, Pharmacie Nouvelle verily believes that it has made a full and frank disclosure of all its commercial practices that might be in contravention of Section 43 of the Act, either directly or indirectly, and may therefore pose a concern in respect to the application of same.

With regards to the above reported activities and/or any similar commercial dealings which might have RPM concerns, Pharmacie Nouvelle avers that it have occurred during the period of the year 2009 to 20th October 2017 and is therefore claiming full immunity in regards of same.

The products supplied by Pharmacie Nouvelle, being pharmaceutical products, infant milk powder, para pharmaceutical and other products, have been classified in three categories:

- i. Medicines, which fall within the definition of 'Pharmaceutical products' under The Pharmacy Act 1983 and subject to the Consumer Protection (Price and Supplies Control) Act 1998 and Consumer Protection (Consumer Goods) Maximum Mark-Up Regulations 1998 and to which reg. 9 of the latter Regulations applies;
- ii. Pharmaceutical products (excluding medicines) and infant milk powder which are subject to the Consumer Protection (Price and Supplies Control) Act 1998 and Consumer Protection (Consumer Goods) Maximum Mark-Up Regulations 1998 and to which reg. 9 of the latter Regulations does not apply; and
- iii. Para pharmaceutical and other products not subject any of the aforementioned regulations.

RD, Box 444, PORT LOUIS, MICHAEL LEAL AVENUE, LES PARLIS, MAURITIUS
TEL : (230) 206 4500 - FAX : (230) 206 4501 - EMAIL : pnl@pnl.mu - WEBSITE : www.pnl.mu

Signature

Signature



Pharmacie Nouvelle Ltd

With reference to Practices III and IV, Pharmacie Nouvelle is given to understand that these agreements may be in contravention of Section 43 of the Competition Act 2007, excluding its application or parts thereof which relate to the practice of affixing maximum prices on medicine, and may therefore pose as concerns which have arisen during an investigation in respect to the application.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017), for the purpose of obtaining RPM Amnesty, Pharmacie Nouvelle is, by the present, providing undertakings, for the other products excluding medicines (as Annex H), related specifically to the impugned agreement and any restrictive effects it has had on competition under section 63 of the Competition Act 2007 with a view to allaying any possible concerns of the Competition Commission in relation thereto and obtaining the requested amnesty.

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017), for the purpose of obtaining RPM Amnesty, Pharmacie Nouvelle is, by the present, without prejudice, providing undertakings to the above reported activities and/or any similar commercial dealings and any restrictive effects it has had on competition under section 63 of the Competition Act 2007 with a view to allaying any possible 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, Pharmacie Nouvelle hereby, undertakes to apply, by the full implementation date, the following measures in its commercial dealings with the above-mentioned resellers, in the resale of their respective goods or services in Mauritius:

3.1. Behavioural Undertakings

In relation to Practices II and III, where Pharmacie Nouvelle affixes price tags and/or issues a price list to resellers which contains a resale price as determined by Pharmacie Nouvelle, it undertakes to state clearly that the resale price is a recommended price, and in relation to price list it undertakes to include a clause which clearly states that the recommended price is not binding on the retailers and the retailers are free to determine their own resale prices (as Annex I).

In relation to Practices I, Pharmacie Nouvelle undertakes not, in any manner whatsoever, enter into or otherwise facilitate, either explicitly or implicitly, the implementation of any agreement with the above-mentioned resellers and/or any other reseller that involves resale price maintenance;

BCST

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Pharmacie Nouvelle Ltd

3.2. Information Dissemination

Pharmacie Nouvelle shall take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the purchase and/or resale of goods and/or services are fully aware of and actively implement the present undertakings when implementing Pharmacie Nouvelle pricing policy, in line with the provisions of the Act.

3.3. Reporting

Pharmacie Nouvelle shall provide the Commission with a copy of any amended price lists governing its commercial relationship with each of the above-mentioned retailers as proof that Pharmacie Nouvelle has irrevocably ceased the impugned resale price maintenance;

Pharmacie Nouvelle shall, as from the effective date, take all reasonable steps to ensure that all communications, negotiations, arrangements with the above-mentioned resellers are properly documented and archived to demonstrate compliance with the present undertakings when selling goods to the above-mentioned resellers;

Pharmacie Nouvelle shall, by the full implementation date, submit a written report to the Commission detailing the implementation of this undertaking.

For the avoidance of doubt, the above undertakings do not preclude Pharmacie Nouvelle from continuing to price competitively, and in so doing increase or decrease its prices and/or volumes and/or market shares (in compliance with the "Act"), in any market in which it participates currently or which it may enter into in the future.

Finally, all the documents that the Pharmacie Nouvelle has produced and all the information that Pharmacie Nouvelle has revealed to the CCM are strictly confidential and LMC is therefore formally informing the Commission not to divulge, reveal or disclose in full or in part, those documents and any information contained therein, to any third party without Pharmacie Nouvelle's prior written authorization.

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: MR DANIEL D'ARIFAT

Position: CHIEF EXECUTIVE OFFICER

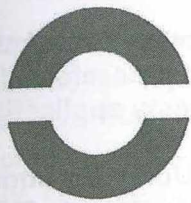
Duly authorised for and on behalf of:
Pharmacie Nouvelle Ltd

[Signature of Director No 2]

Name: MR JEAN-NOEL LENNON

Position: CHIEF OPERATING OFFICER

Duly authorised for and on behalf of:
Pharmacie Nouvelle Ltd



competition commission

shaping markets, furthering progress

Decision of the Competition Commission

CC/DS/0030/75

Non Confidential

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

29 June 2020

**Decision of the Commissioners of the Competition Commission
of 29 June 2020**

**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/069 – Review of Udis Ltée RPM Amnesty application'**

**(CC/DS/0030/75 – Application for Immunity made by Udis Ltée under the
Competition Commission's Amnesty Programme for Resale Price
Maintenance)**

THE COMMISSION

Mr. M. A. Bocus - Chairperson,
Mrs. M. B. Rajabally - Commissioner,
Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to paragraph 5.6A of CC3 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 Udis Ltée on 05 March 2019,

Having regard to a report of the Executive Director dated 30 April 2019,

WHEREAS:

I. Introduction

- 1.1 This Decision relates to an application for immunity dated 20 October 2017 made by Udis Ltée pursuant to the Competition Commission's Amnesty Programme for Resale Price Maintenance prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements (the 'Application'). As part of the conditions set out thereunder, undertakings have been offered to the Commission by Udis Ltée on 05 March 2019 ('the Undertakings').
- 1.2 Having taken cognizance of a report of the Executive Director dated 30 April 2019 on the matter, the Commission has determined the present matter on the basis of the provisions of section 59(7) of the Competition Act 2007 (the 'Act'), the conditions prescribed under paragraph 5.6A of CC3 Guidelines on Collusive Agreements and considering in particular, the Undertakings offered pursuant to section 63(3) of the Act.



II. Background

i. Competition Commission's RPM Amnesty Programme

- 1.3 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 inclusively¹, 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 CC3 Guidelines on Collusive Agreements, viz., 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 (CC) with all the information, documents and evidence available to it regarding the RPM, and as required by the CC,
 - iii. maintains continuous and complete co-operation until the conclusion of any action by the CC in relation to the matter, and
 - iv. offers undertakings that satisfactorily address the competition concerns of the CC.

ii. The Applicant and the Application

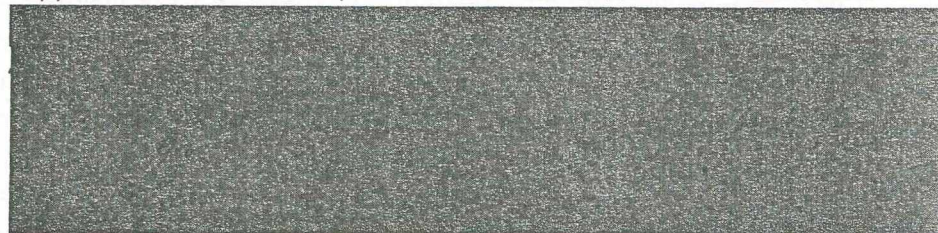
- 1.5 The Applicant, Udis Ltée, is a private company limited by shares incorporated under the laws of Mauritius with Business Registration Number (BRN) C8088 and the registered nature of its respective business being, among others, 'Hypermarket carrying a general line of goods'. The applicant owns the 'Super U' chain of hypermarkets. Super U is a hypermarket carrying a general line of consumer goods and was incorporated in 1989. It has 3 distribution outlets in Mauritius respectively located in Flacq, Belle Rose and Grand Bay.
- 1.6 The Applicant has, by way of a letter dated 20 October 2017, applied for immunity under the RPM Amnesty.

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



1.7 Udis Ltée applied for RPM Amnesty for the following conducts (the 'reported conducts'):

- a. for having accepted products with a resale price as determined by the supplier affixed on those products, [REDACTED]



[REDACTED] and

- b. for having entered into a written agreement with [REDACTED] suppliers [REDACTED]
[REDACTED] containing a clause on the resale prices of products which may amount to an RPM conduct.

iii. The Investigation

1.8 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.

1.9 Upon completion of his investigation, the Executive Director submitted a report on the matter to the Commission on 30 April 2019 (the 'Report'). 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.

1.10 The Executive Director's findings are that -

- (a) Udis Ltee, to the extent that it operates supermarkets/hypermarkets around the island and is engaged in the resale of consumer goods at retail level, qualifies as an 'enterprise';
- (b) Insofar as Udis Ltee, through its retail outlets, supplies consumer goods to end customers, it operates in the downstream level of the supply chain and the Applicant is thus in a vertical relationship with its suppliers;
- (c) The Application meets all the requirements as set out under paragraph 5.6A of the CC3 Guidelines in as much as:
- (ii) Udis Ltée has admitted having participated and/or being party to the following reported conducts, namely: for having accepted

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products with a resale price as determined by the supplier affixed on those products, with [REDACTED] suppliers who deliver pre-price labelled products, and for contracting commercial agreements with a minimum price/fixed price restriction clause with [REDACTED] suppliers;

- (iii) Udis Ltée has provided the Competition Commission with all the information, documents and evidence available to it regarding the reported conducts, and as required by the Competition Commission;
- (iv) Udis Ltée has maintained continuous and complete collaboration with the Competition Commission throughout the whole amnesty process until the submission of undertakings; and
- (v) Udis Ltée has offered undertakings that satisfactorily address the competition concerns of the Competition Commission.

1.11 The Executive Director has further assessed the Undertakings offered by Udis Ltée. The Executive Director takes the view that the proposed Undertakings satisfactorily addresses the concerns identified in the Report for the following reasons –

- a. Udis Ltée has undertaken to inform its [REDACTED] suppliers

[REDACTED] that it is no longer party to the restrictive clause constituting RPM in the written agreements entered into with the said suppliers (as mentioned at paragraph 1.7b above) and that it shall either modify the agreement or enter into a new agreement that does not contain RPM clauses with the suppliers. This will ensure that the applicant as reseller will be free to determine its own resale prices or promotional prices;

- b. With respect to accepting products with a resale price as determined by the suppliers [REDACTED]

[REDACTED] Udis Ltée has undertaken to ensure that the words 'recommended price' appear next to the resale price and that it will not accept such products



from suppliers unless the words 'Recommended price' are duly fixed;

- c. The implementation of such undertakings will therefore ensure that Udis Ltée is no longer party to the RPM clause contained in the agreements and/or dealings between the Applicant and the above-mentioned suppliers; and
- d. The undertakings provide for a reporting mechanism through which the Competition Commission will be able to monitor its implementation.

1.12 The Executive Director recommends that the Commission accept the Undertakings and grant immunity from financial penalty 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 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'.

1.14 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.

1.15 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 CC 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.

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IV. Determination under sections 59(7) and 63 of the Act

1.17 Having regard to the Application submitted by Udis 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) Udis Ltée has, in its Application, admitted its participation in one or more RPM agreement(s) viz., -

a. for having accepted products with a resale price as determined by the supplier affixed on those products, with [redacted] suppliers who deliver pre-price labelled products. [redacted]

[redacted]

[redacted] and

b. for having entered into respective written agreement with [redacted] suppliers: [redacted]

[redacted] containing a clause on the resale prices of products which may amount to an RPM conduct.

2) Udis Ltée has complied with requirements (ii) and (iii) of paragraph 5.6A(b) of the CC3 Guidelines, as stated in the Report;

3) The Undertakings submitted by the Udis Ltée satisfactorily address the Commission's concerns in so far as –

a. the implementation of such undertakings will therefore ensure that Udis Ltée is no longer party to the RPM clause contained in the agreements and/or dealings with the suppliers concerned;

b. Udis Ltée has undertaken to inform all suppliers concerned that it is no longer party to the price restriction imposed upon it through the written agreements with them; and

c. Udis Ltée has, with respect to accepting products with a resale price as determined by the suppliers, undertaken to ensure that the words 'recommended price' appear next to any pre-printed resale price and that it will not accept products from suppliers containing pricing unless the words 'Recommended price' are duly fixed.

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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 Udis Ltée satisfies the conditions prescribed under the RPM Amnesty Programme as set out in paragraph 5.6A of the CC3 Guidelines on Collusive Agreements;
- 2) We grant immunity from financial penalty to Udis Ltée pursuant to section 59(7) of the Act for the reported RPM conducts;
- 3) We accept the Undertakings offered by Udis Ltée, which are being published as per section 63(4) of the Act (see Annex);
- 4) The Undertakings shall be effective as from the date of this decision.

Done at Port-Louis this 29 June 2020.

Mr. M. A. Bocus
(Chairperson)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)



**ANNEX: Undertakings offered by Udis Ltee under section 63 of the
Competition Act 2007 pursuant to paragraph 5.6A of the CC 3 Guidelines –
Collusive Agreements (RPM Amnesty Programme)**

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Undertakings to the CCM

Undertakings provided by Udis-Ltee to the Competition Commission

Pursuant to an Application for Amnesty dated 20th October 2017

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

5 March 2019



Page 1 of 4



1. Definitions:

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

Udis Ltee: Udis Ltee and includes its branches, subsidiaries, or affiliates;

Affiliate: any enterprise directly or indirectly controlled by Udis Ltee;

Act: the Competition Act 2007;

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

Dealer: any distributor, reseller, retailer, or other entity involved in the resale of Udis Ltee's goods or services 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:

Incorporated in 1989, Udis Ltee owns the 'Super U' chain of hypermarkets. Super U is a hypermarket carrying a general line of consumer goods and has 3 outlets, namely located in Flacq, Belle Rose and Grand Bay.

By its letter dated 20th October 2017 addressed to the Competition Commission and pursuant to paragraph 5.6A of the CCM 3 Guidelines-Collusive Agreements (amended June 2017), Udis Ltee has made an application for amnesty under the CCM Amnesty Programme for Resale Price Maintenance (the 'Application').

The reported activity involves two practices whereby Udis Ltee has:

- (i) Accepted products with resale prices pre-determined and pre-labelled on the products by its suppliers without the words "recommended price" appearing next to the resale prices; (the "Practice I"); and
- (ii) Entered, in its own name, into contractual agreements with suppliers, which contain minimum price restriction clauses on the resale prices of products (the "Practice II").

Practice I is in relation to the following suppliers:

[REDACTED]

[Signature]

[Signature]

[Signature]

The agreement with respect to Practice II is in relation to the following suppliers:



The identified suppliers for Practice I and II shall altogether herein after be referred to as 'the Suppliers'.

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.'

Pursuant to the conditions laid down in the CCM 3 Guidelines (amended June 2017) for the purpose of obtaining amnesty, Udis Ltee 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 Competition Act 2007 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, Udis Ltee hereby undertakes to apply the following measures by the implementation date in its commercial dealings with the above-mentioned suppliers, in the resale of their respective goods or services in Mauritius:

3.1. Behavioural Undertaking

Udis Ltee shall inform the suppliers in relation to Practice II that it is no longer party to the restrictive clause constituting RPM and shall either modify the agreement or enter into a new agreement which does not contain RPM clauses with the suppliers;

Udis Ltee shall not, in any manner whatsoever, enter into or otherwise facilitate either explicitly or implicitly, the implementation of any agreement with the above-mentioned suppliers and/or any other supplier that involves resale price maintenance;

Udis Ltee shall, where any of the above-mentioned suppliers and/or any other supplier has recommended a minimum resale price for its goods and the resale price appears on the goods, inform the supplier, in writing, that it shall make sure that the words 'recommended price' appear next to the resale price, and shall not accept/offer for sales such products.

3.2. Information Dissemination

Udis Ltee shall take all appropriate measures to ensure that all its internal management, directors, and employees engaged in the purchase and/or resale of goods and/or services are fully aware of

and actively implement the present undertakings when designing and/or implementing Udis Ltee pricing policy, in line with the provisions of the Act.

3.3. Reporting

Udis Ltee shall immediately inform the Commission, in writing, of any attempt on the part of the above-mentioned suppliers to implement or otherwise coerce or induce the implementation of resale price maintenance to be observed by Udis Ltee reselling the supplier's goods and shall provide the Commission with all documents, information, and evidence available to it in support thereof;

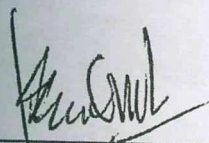
Udis Ltee shall provide the Commission with a copy of any amended agreement governing its commercial relationship with each of the above-mentioned suppliers as proof that Udis Ltee has irrevocably ceased the impugned resale price maintenance;

Udis Ltee shall, as from the effective date, take all reasonable steps to ensure that all communications, negotiations, arrangements with the above-mentioned suppliers are properly documented and archived to demonstrate compliance with the present undertakings when reselling the above-mentioned suppliers' goods;

Udis Ltee 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.



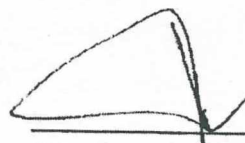
[Signature of Director No 1]

Pascal Tsin Sa Ah Vi

CEO

Duly authorised for and on behalf of:

Udis Ltee



[Signature of Director No 2]

Patrick Tsin Sa Ah Vi

Director

Duly authorised for and on behalf of:

Udis Ltee