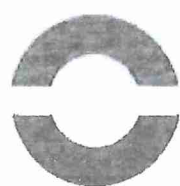


General Notice No. 368 of 2023



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Decision of the Commission

CC/DS 0052

Non-Confidential

Redactions marked as "[REDACTED]"

In the Matter of -

**Horizontal collusive agreement(s) in the supply of
deer/venison in Mauritius INV 050**

01 MARCH 2023

CC/DS 0052

**Decision of the Commissioners of the Competition Commission (the 'Commission')
of 01 March 2023**

**relating to proceedings before the Commission in the matter referred to as "INV050:
Final Report of the Executive Director on Investigation into horizontal collusive
agreement(s) in the supply of deer/venison in Mauritius"**

THE COMMISSION –

Mr. M. Bocus	-	Chairperson,
Mr. A. Mariette	-	Vice-Chairperson,
Mrs. V. Bikhoo	-	Commissioner,
Mrs. S. Dindoyal	-	Commissioner,

Having regard to-

the Competition Act 2007,

the Competition Commission Rules of Procedure 2009,

the Guidelines published under section 38 of the Competition Act 2007,

the Final Report of Investigation of the Executive Director dated the 25 May 2022 under section 51 of the Competition Act 2007 upon completion of his investigation into potential horizontal collusive agreements in the supply of deer/venison in Mauritius under section 41 of the Act.

We, the above-mentioned Commissioners have on this day proceeded to make the following determination on the above matter:

THE PARTIES SUBJECT TO INVESTIGATION (the 'PARTIES')–

1. Agria Ltd;
2. Alteo Agri Ltd;
3. Constance La Gai  te Co Ltd;
4. M  dine Ltd
5. Ferney Limited and
6. Soci  t   de Palmyre.

I. Introduction

- 1.1. The Executive Director of the Competition Commission ("Executive Director") opened an investigation bearing reference INV050 pursuant to sections 30(b) and 51 of the Competition Act 2007 (the "Act") into potential horizontal collusive agreements under section 41 of the Act, by local producers of deer/venison and through the

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operation of the Mauritius Deer Farming Cooperatives Society (the "MDFCS") in relation to the supply of deer/venison meat in Mauritius.

- 1.2. On 25 May 2022, the Executive Director submitted his Final Report of the investigation (the "Report") to the Commissioners of the Competition Commission (the "Commissioners") for determination of the matter.

II. Background to the Investigation

(a) The Parties

- 2.1. The parties to the investigation are the producers/suppliers of deer in Mauritius which are Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd, Ferney Limited and Soci  t   de Palmyre. The parties were members of MDFCS, which is a cooperative society regrouping producers/suppliers of deer. The members were commercialising deer/venison meat produced by them via MDFCS to wholesale distributors, until the year 2014 when the MDFCS was put in dormancy.
- 2.2. Agria Ltd, formerly Compagnie Sucr  re de Bel Ombre forms part of the Real Estate and Agribusiness cluster of the Rogers Group in Mauritius and was incorporated on 22 June 1910. It is situated at Coastal Road, Domaine de Bel Ombre. Agria Ltd's main sectors of operation are farming and agriculture, land management, green energy, and natural & cultural tourism. Agria Ltd's farming activities include deer, wild boar and pheasant, offering both the options of hunting and marketing to the public. Agria Ltd has been involved in the selling of venison meat for around 50 years.¹
- 2.3. Alteo Agri Ltd is a wholly owned subsidiary of the Alteo group, [REDACTED] Alteo Agri Ltd owns a total of 15,300 hectares of land in the eastern region of Mauritius. The company cultivates sugar cane but is also active in deer farming. The fenced coastal marginal land at Beau Champ [REDACTED] was transformed into an intensive deer farm (feedlot).²
- 2.4. Constance La Gai  te Co Ltd is listed as a sugar entity on the SEM having its principal line of activity, sugarcane growing. It has also diversified into the agro industry with the production of food crops, fruits and livestock. Constance La Gai  te Co Ltd has been in the deer/venison business for more than 20 years.³
- 2.5. M  dine Ltd is an asset land-based company engaged in activities ranging from agriculture to education. The Yemen reserve, a vast estate of 3,400 hectares, which is part of the M  dine group is located on the West of island and is the largest hunting ground in Mauritius. M  dine Ltd is viewed as the largest producer of deer meat on the market and in 2018, the forecasted carcass in tons from its non-gaming season (Oct – May) was estimated at [REDACTED]

¹ Paragraph 2.2 of the Final Report dated 25 May 2022

² Paragraph 2.6 of the Final Report dated 25 May 2022

³ Paragraph 2.8 of the Final Report dated 25 May 2022

⁴ Paragraph 2.12 of the Final Report dated 25 May 2022

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- 2.6. Ferney Limited is a private domain of 2800 hectares which houses a 200-ha wildlife sanctuary. Ferney Limited submitted that it owns land in the South-eastern part of Mauritius. Part of the land owned by Ferney Limited is rented and/or managed by Alteo. It is further noted that the land that is used for deer hunting and/or selling of venison meat is managed by Alteo and Alteo is responsible for the hunting grounds which includes maintenance, organisation of hunting activities and selling of meat. Ferney Limited derived revenue from the supply of meat during the period 2015 to 2019.⁵
- 2.7. As per the Report, it has been gathered that Société de Palmyre has stopped its deer farming activity in 2012.

(b) The Impugned Conducts

- 2.8. The concern raised by the Executive Director regarding the conduct of the parties under investigation is whether the said parties have participated in collusive agreements to fix the selling price of deer meat. The price fixing is in respect of the supply to Panagora Marketing Co. Ltd ("Panagora") which is an enterprise that operates as meat processor and wholesale distributor in the supply of deer meat.

III. The Legal Framework

- 3.1. The Executive Director's investigation is premised on the provisions of section 41 of the Act, which prohibits horizontal agreements which are collusive. The said provisions read as follows –

41. Horizontal agreements

(1) For the purposes of this section, an agreement, or a provision of such agreement, shall be collusive if-

(a) it exists between enterprises that supply goods or services of the same description, or acquire goods or services of the same description;

(b) it has the object or effect of, in any way–

(i) fixing the selling or purchase prices of the goods or services;

(ii) sharing markets or sources of the supply of the goods or services; or

(iii) restricting the supply of the goods or services to, or the acquisition of them from, any person; and

(c) significantly prevents, restricts, or distorts competition.

(2) Any agreement, or provision of such agreement, which is collusive under this section shall be prohibited and void.

- 3.2. Premised on the following, the hereunder main elements need to be established to find that the impugned conduct breaches section 41 of the Act, namely –

(a) the existence of an agreement

⁵ Paragraph 2.16 of the Final Report dated 25 May 2022

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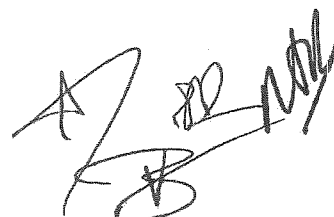
- (b) that the agreement is between enterprises that supply goods /services of the same description,
- (c) that the object or effect of the agreement satisfies the conditions listed under sections 41(1)(b) (i), (ii) and (iii) of the Act, and
- (d) that the agreement significantly prevents, restricts or distorts competition.

Agreement

- 3.3. Section 2 of the Act defines 'agreement' as "any form of agreement, whether or not legally enforceable, between enterprises which is implemented or intended to be implemented in Mauritius or in a part of Mauritius, and includes an oral agreement, a decision by an association of enterprises, and any concerted practice".
- 3.4. Section 1.9 of CC 3 Guidelines – Collusive agreements adds that "*'[a]greement' has a wide meaning and includes both legally enforceable and non-enforceable agreements, whether written or oral; it includes so-called gentlemen's agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means. All that is required is that parties arrive at a consensus, an understanding, on the actions each party will, or will not take.*"
- 3.5. The section 2 definition of agreement also embodies the concept of 'concerted practice' which captures any "*practice involving contacts or communications between competitors falling short of an actual agreement, but which nonetheless restricts competition between them*". The principle emanating from settled European Union case law on concerted practice is that the concept is intended to bring within the cartel prohibition, "*a form of coordination between undertakings which, without having reached the stage where an agreement, properly so called, has been concluded, knowingly substitutes practical co-operation between them for the risks of competition*".⁶

Qualification as 'enterprise supplying goods of same description'

- 3.6. For an agreement to be captured under section 41, such an agreement has to firstly, be between entities qualifying as 'enterprise', that is, between "*person, firm, partnership corporation, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them*". Thus, two conditions have to be met to qualify as 'enterprise'. The entity in question has to be endowed with juridical personality (legal or natural) and has to be engaged in commercial activities for gain or reward.



⁶ Case 48-69, Imperial Chemical Industries Ltd. v Commission of the EC, at para 64.

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- 3.7. Section 2 of the Act defines 'horizontal agreement' as an "agreement between enterprises which, for the purposes of that agreement operate in the same market and are actual or potential competitors in that market".

Collusive Object or effect

- 3.8. As already mentioned above, for an agreement to be in breach of section 41(1)(b) it must have the object or effect of -:

- (i) fixing the selling or purchase prices of the goods or services;
- (ii) sharing markets or sources of the supply of the goods or services; or
- (iii) restricting the supply of the goods or services to, or the acquisition of them from, any person;

- 3.9. The anti- competitive 'object or effect' of an agreement are not cumulative but alternative conditions for assessing whether such an agreement comes within the scope of the prohibition laid down in section 41 of the Act. It follows from the foregoing that if an agreement has the object to restrict competition, then it is not necessary to examine the effect of the agreement to establish a breach of section 41 of the Act.⁷

- 3.10. The CC3 Guidelines reinforces the above view, namely that "[c]ertain types of restrictive agreements are regarded as having an object which is so manifestly anti-competitive that consideration of their effects is unnecessary. These include horizontal restrictions to fix prices, share markets (territories or customers), quotas or limitation on production or sale, minimum RPM and vertical customer allocation clauses"

- 3.11. A horizontal agreement will be found to be collusive if exhibiting any one or more of the three conditions at section 41(1)(b) of the Act that is, fixing the selling or purchase prices of the goods or services; sharing markets or sources of the supply of the goods and services; or restricting the supply of the goods or services to, or the acquisition of them from, any person.

Agreement that significantly prevents, restricts or distorts competition

- 3.12. Finally, the agreement must significantly prevent, restrict or distort competition. The CC3 Guidelines⁸ provides that the Competition Commission will interpret "significant" to be "of significance" or "not significant".

Financial Penalty and Direction

- 3.13. It is apposite to refer to sections 58 and 59 of the Act which provide for directions and financial penalties that the Competition Commission may impose on enterprises where a restrictive agreement falls within the scope of section 41 of the Act.
- 3.14. Section 58 provides that when a restrictive agreement falls within the scope of section 41 of the Act, the Commission may impose a direction on an enterprise

⁷ Joined Cases 56/64 and 58/64 Consten and Grundig v Commission [1966] ECR 299, at pages 342 - 343

⁸ Para. 2.11

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requiring the latter to terminate or modify the agreement within such a period as may be specified by the Commission.

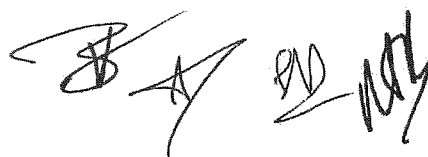
- 3.15. Section 59(1) provides that, in relation to a restrictive agreement falling within the scope of section 41, in addition to giving directions, the Commission may make an order imposing a financial penalty on the enterprise. However, the Commission shall not impose a financial penalty unless it is satisfied that the breach of the prohibition was committed intentionally or negligently.
- 3.16. It is to be highlighted that where the Commission imposes a financial penalty on an enterprise, the financial penalty shall not exceed 10 per cent of the turnover of the enterprise in Mauritius during the period of the breach of the prohibition up to a maximum period of 5 years.⁹
- 3.17. Furthermore, section 59(7) of the Act empowers the Commission to grant immunity or leniency to any person. Granting 'immunity' implies that the enterprise is totally exempted from a financial penalty while 'leniency' means a partial exemption from a financial penalty. However, immunity or leniency may be granted only in such circumstances as may be prescribed.

IV. The Executive Director's Findings and Proposed Recommendations

The Findings of the Investigation

- 4.1. The investigation focused on the supply of deer to Panagora by Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd, Ferney Limited and Soci  t   de Palmyre. The parties were members of MDFCS, which is a cooperative society regrouping producers/suppliers of deer. The members were commercialising deer/venison meat produced by them via MDFCS to wholesale distributors, until the year 2014 when the MDFCS was put in dormancy.
- 4.2. The investigation did not find evidence indicating involvement of Soci  t   de Palmyre in the impugned collusive agreement for the period 2015-2019, since it had stopped its deer farming activities in the year 2012. The Executive Director viewed that the evidentiary standard for making a finding of infringement of section 41 of the Act was met in respect of five of the six parties namely Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd and Ferney Limited. These parties will be referred to as the "main parties".
- 4.3. Moreover, since the MDFCS became dormant in 2014/2015, the Executive Director did not extend the investigation to it.
- 4.4. The Executive Director proceeded to find that the main parties are economic entities whose economic activity involves the rearing of deer through 'extensive' and 'intensive' farming, engaged in commercial activities for gain or reward in as much as they derive revenue from their respective businesses of producing and supplying deer meat to individuals, butchers, hotels and restaurants as well as meat processors such

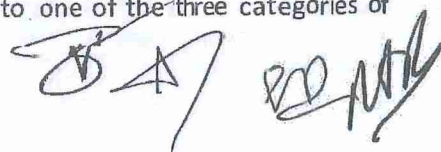
⁹ Section 59(3) of the Act



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as Panagora. The main parties therefore qualify as enterprises within the meaning of the Act.

- 4.5. The market under consideration is the market for the supply of venison (deer meat) which has an upstream and downstream market. Most of the deer produced are sold to processors such as Panagora and IBL BrandActiv, and to traditional butchers. The main parties have been identified as operating at the upstream level as producers of deer from which deer meat is derived. They operate as game venison dealers and supply deer meat to the Mauritian market in the form of the meat obtained from hunting of deer reared in their extensive farms (ranch/chasses) and from slaughter of deer reared in their feedlot farms. The Executive Director found that the main parties are competitors operating at the same level of the supply chain supplying goods of the same description, i.e., deer meat produced during game hunting and deer meat supplied from feedlot farming which constitutes the element of "goods of the same description" pursuant to section 41(1)(a) of the Act.
- 4.6. The Executive Director demonstrated how the MDFCS acted as a platform through which the main parties engaged in discussions and negotiations with Panagora for the supply of the deer they produced and that such supply which has been ongoing since 2007 was made on the basis of a common price offered to Panagora for the deer produced during hunting season and the closed season. Further to the dormancy of the MDFCS in 2014/2015 and the end of its involvement in the supply of deer, the dealings with Panagora shifted to the members of the MDFCS.
- 4.7. According to the Report since 2015, discussions had reportedly been ongoing between the main parties to agree on prices for deer supplied directly to Panagora. These discussions were evidenced by email exchanges between the main parties who communicated with each other regarding their intended submission of a common price for the supply of deer to Panagora for each hunting season and for closed seasons during the period 2015- 2019. Further evidence was adduced, as borne out in the notes of meeting where the main parties and Panagora were present, that common prices were proposed and agreed upon collectively by the main parties. As such the main parties operated in a way which eliminated competition between them in respect of the pricing of deer which they supplied to Panagora during the five-year period 2015 – 2019.
- 4.8. The Executive Director found that the agreements reached through discussions and as evidenced by communications between the main parties demonstrated the object of price fixing in respect of the supply of deer to Panagora during the hunting season and closed season for the period 2015 – 2019 and are therefore collusive in nature. Thus, the main parties have been party to collusive agreements to fix the price at which they supply Panagora over the period 2015 to 2019 and by such conduct they have been party to a common and single continuous infringement, in breach of section 41 of the Act which expressly prohibits collusive agreements.
- 4.9. The Executive Director further established that such price fixing had the object to restrict competition regarding the supply of deer to one of the three categories of



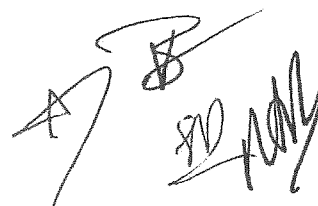
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customers, that is Panagora, over a period of five years. Furthermore, consideration has been given to the fact that the main parties are the largest producers of deer in Mauritius and the fact that the supply was to Panagora which was engaged in a new market to distribute locally produced fresh and frozen deer meat through modern trade, i.e supermarkets. Thus, the agreements reached between the main parties namely Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd and Ferney Limited to fix the price of their products (deer) therefore significantly prevented, restricted and distorted competition in the market for the supply of deer not only to Panagora but also ultimately to consumers generally.

- 4.10. The investigation did not disclose any evidence of market sharing or restriction of output between the main parties and on the basis of information gathered from the main parties through information request and leniency application, the main parties except Soci  t   de Palmyre which had exited the market, have been party to price fixing agreements in respect of their supply to Panagora over a period of five years from 2015 to 2019 both during hunting and closed seasons.

The Proposed Recommendations

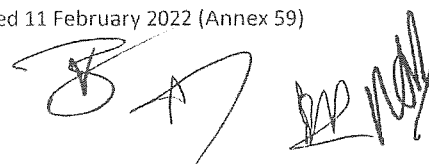
- 4.11. In light of his findings, the Executive Director has recommended that the Commission makes a finding of breach of section 41 of the Act against Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd and Ferney Limited.
- 4.12. The Executive Director has further recommended that the Commission issues directions upon all main parties, pursuant to section 58 of the Act, in addition to making an order imposing a financial penalty on each of them under section 59 of the Act.
- 4.13. As far as the directions are concerned, the Executive Director has recommended that the main parties be directed pursuant to section 58 of the Act to -
- i. to bring an end to any collaboration in respect of the supply of deer to Panagora between themselves regarding pricing so that the infringing conduct as highlighted above and as described in Chapter 5 of the Report ceases to exist; and
 - ii. to refrain from repeating any act or conduct which involves discussions on pricing or the sharing of information on pricing for the supply of deer meat to Panagora, as again described in Chapter 5 of the Report.
- 4.14. On the imposition of financial penalty and pursuant to section 59(2) of the Act, the Executive Director has considered the breach as being negligent rather than intentional.
- 4.15. The Executive Director has had further regard to the following circumstances in recommending the quantum of the financial penalty that may be imposed on the main parties, viz.,-

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- 4.15.1. The seriousness of the breach in so far as the main parties are the largest producers of deer in Mauritius supplying to a major meat processor namely Panagora which takes up about 23% of the total volume of deer meat supplied by the main parties in Mauritius balanced with the lesser impact of the infringement as it concerns only one segment of the market as opposed to the full size of the market.
- 4.15.2. The relevant turnover for each main party, namely Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd and Ferney Limited, that is the main parties' value of sales realised for the supply of deer for the business years starting 2015, 2016, 2017, 2018 and 2019 (inclusively) (net of discounts and taxes).
- 4.15.3. The duration of the agreement, which was viewed as being a single and continuous agreement from 2015 to 2019 inclusively.
- 4.15.4. The presence of mitigating factors having regard to the main parties' cooperation to assist in the quick resolution of the investigation.
- 4.15.5. The presence of aggravating factors as constituted by the involvement of top and/ or senior management of the main parties in the said collusive conduct. It is to be noted that on the basis of evidence gathered during the investigation, it was not possible to determine clearly who of all of the main parties was or were the instigator or instigators of the infringement.
- 4.16. The Executive Director also had regard to the submissions¹⁰ of Constance La Gai  te Co Ltd that there were no sales to Panagora made during the year 2015 and 2016 in as much as Constance La Gai  te Co Ltd had reviewed its market strategy and considered selling livestock instead of meat, and had for year 2015 and 2016, reduced its overall sales by supplying only to butchers and individuals, whilst increasing its overall live heard stock. The prevailing foot and mouth disease at the material time was another reason given by Constance La Gai  te Co Ltd for not considering sales to Panagora during that period. The investigation did not find any involvement of Constance La Gai  te Co Ltd during the period 2015 to 2016 in the discussions with the other main parties regarding supply to Panagora. In that respect, the relevant turnover for Constance La Gai  te Co Ltd would be the sales made in 2017 to 2019.
- 4.17. In light of the above circumstances, the Executive Director has recommended that the following financial penalties be imposed on the main parties for their participation in the infringement of section 41 of the Act:
- i. MUR 213, 542 on Agria Ltd;
 - ii. MUR 81, 716 on Alteo Agri Ltd;
 - iii. MUR 86, 460 on Constance La Gai  te Co Ltd;

¹⁰ Information from the cooperation letter from Constance La Gai  te Ltd dated 11 February 2022 (Annex 59)

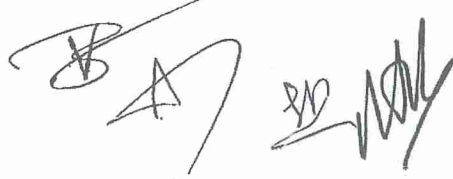


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- iv. MUR 116, 117 on Ferney Limited; and
- v. MUR 947, 570 on Médine Ltd.

V. The Parties' Submissions

- 5.1. The main parties have cooperated throughout the investigation and expressed their willingness to implement any measures that may be imposed by the Commission to remedy the situation. They have further individually informed the Executive Director that they have ended arrangements between themselves regarding the supply of deer to Panagora. Their responses and comments to the Preliminary report and recommendations on directions and financial penalty are set out below
- 5.1.1. By letter dated 31 January 2022 Agria Ltd formally expressed its willingness to collaborate fully with the Competition Commission to ensure quick and effective resolution of the investigation. By letter dated 08 April 2022, Agria Ltd further informed that it has not been conducting any negotiations on price with Panagora along with other members of the now dormant MDFCS since 2020 and that it is acquiescent to the recommended directions and accepted the quantum of the financial penalties recommended by the Executive Director.
- 5.1.2. By letter dated 31 January 2022 Alteo Agri Ltd expressed formally that it has fully collaborated with the Competition Commission throughout the investigation through its application for a marker and provision of evidence of high probative value to the investigation. By letter dated 07 April 2022, Alteo Agri Ltd stated that it had no comments to make on the proposed recommendations of the Executive Director regarding remedial measures. Further, by email dated 26 April 2022, Alteo Agri Ltd confirmed that its cooperation would extend to proceedings before the Commission so as to enable a prompt and efficient conclusion of the process and that *"On the understanding that the Commission is minded to adopt the recommendations of the Executive Director, Alteo Agri Ltd does not plan to make any further submissions."*
- 5.1.3. By letter dated 11 February 2022, Constance La Gaiète Co Ltd stated that it remains 'in the spirit of collaboration' with the Commission and that it would set out to resolve matters as per paragraph 2.43 of the Provisional findings report which informed that the legal advisors of the five concerned main parties have offered to cooperate further with the investigation with the aim to benefit from a reduction in the level of fines imposable. Further by letter dated 08 April 2022, Constance La Gaiète Co Ltd informed that it has no objections regarding the findings and recommendations of the Executive Director and indicated that it *'is agreeable of the provisional report as provided to comply with the directions and settle financial penalties as mentioned in*



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chapter 7 as provided within the time to be allocated by the Commission and there are no further comments on this aspect.'

5.1.4. By letter dated 31 January 2022, Ferney Limited has formally expressed that it would be willing to accept the findings at part 6 of the Provisional findings report in view of settling this investigation. In its submissions, Ferney explained that it has *'fully collaborated with the Executive Director during this investigation, not least by readily seeking to apply for a marker and by providing all information sought by the investigative team within the minimum delay possible'*. By letter dated 08 April 2022, Ferney Limited submitted it *'does not have any objection to the recommendations'* made in respect of directions and fines by the Executive Director. Ferney Limited further informed that it *'will not object any decision making the alleged agreement between Constance, Ferney, Medine, Agria and Alteo prohibited and void under section 41(2) of the Competition Act.'* and added that it is agreeable to the *'recommendations to the Commission on a without prejudice basis and strictly in a view to putting an end to this investigation, as well as any forthcoming proceeding before the Commission.'*

5.1.5. By letter dated 31 January 2022, Médine Ltd formally expressed that it would be willing to accept the findings at part 6 of the Provisional findings report in view of settling this investigation. In its submissions, Médine Ltd explained that it has *'fully collaborated with the Executive Director during this investigation, not least by readily seeking to apply for a marker and by providing all information sought by the investigative team within the minimum delay possible'*. By letter dated 07 April 2022, Médine Ltd stated that that it *'does not have any objection to the recommendations'* made in respect of directions and fines by the Executive Director. In addition, Médine Ltd informed that it *'will not object any decision making the alleged agreement between Constance, Ferney, Medine, Agria and Alteo prohibited and void under section 41(2) of the Competition Act.'* and agreed to the *'recommendations to the Commission on a without prejudice basis and strictly in a view to putting an end to this investigation, as well as any forthcoming proceeding before the Commission.'*

VI. Commission's Determination

- 6.1. The Commission has given due consideration to the Report of the Executive Director in the INV 050 matter, the evidence adduced in the Report in support of his findings of section 41-breach against the main parties, the cooperation letters submitted by the main parties and the proposed recommendations for imposition of directions and fines against the main parties.
- 6.2. The Commission has further considered the stand adopted by the main parties before the Commission for not making submissions to dispute the findings and recommendations on directions and fines of the Executive Director as set out in the

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Report. The Commission, therefore, finds no reason to depart from the Executive Director's findings and conclusions as to breach under section 41 of the Act.

- 6.3. It is not disputed that the main parties are economic entities engaged in commercial activities for gain or reward in as much as they derive revenue from their respective businesses of producing and supplying of deer meat to individuals, butchers, hotels and restaurants and meat processors and as such qualify as enterprises within the meaning of the Act. Further, the main parties operate at the same level of the supply chain supplying goods of the same description, i.e., deer meat produced during game hunting and deer meat supplied from feedlot farming which meets the element of "goods of the same description" pursuant to section 41(1)(a) of the Act.
- 6.4. The Commission notes that the findings of the Executive Director did not show evidence indicating involvement of Société de Palmyre in the collusive agreement for the period 2015-2019, since it has stopped its deer farming activities in the year 2012. Moreover, since the MDFCS became dormant in 2014/2015, the Executive Director did not extend the investigation to it for the reasons that the MDFCS has stopped its activity.
- 6.5. Taking into account all the facts of the case and on a balance of probabilities, the Commission finds that Agria Ltd, Alteo Agri Ltd, Constance La Gaiète Co Ltd, Médine Ltd and Ferney Limited have been party to prohibited collusive agreements, in breach of section 41 of the Act. The Commission finds that -
- 6.5.1. The Report demonstrates that the business relationship between MDFCS and Panagora started in 2017 in as much as MDFCS provided support for the creation of a platform to engage in discussions and negotiations for the supply of deer with Panagora for the benefit of the main parties as members of the MDFCS. It has further been established that the MDFCS became dormant in 2014; hence the MDFCS would no longer be involved in the supply of deer to Panagora and the main parties would be dealing directly with Panagora.
- 6.5.2. As from 2015, the main parties did not appear to deal individually with Panagora but a common price for the supply of deer meat was decided amongst them in advance of submitting a proposal to and/or meeting with Panagora;
- 6.5.3. Fixing of the common prices took place through punctuated contacts and communications between the main parties whereby they were directly involved in discussions and negotiations as to a common pricing for deer being supplied to Panagora as borne out by the evidence contained in the Report at paragraphs 5.35, 5.37, 5.39, 5.41 and 5.43 relating to price fixing in 2015, 2016, 2017, 2018 and 2019 respectively.
- 6.5.4. Such communications demonstrate the existence of agreements between Agria Ltd, Alteo Agri Ltd, Constance La Gaiète Co Ltd, Médine Ltd and Ferney Limited which have as object the fixing of common price for the supply of deer to Panagora for each hunting and closed season during the period 2015- 2019.

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- 6.6. The Commission is of the considered view that the documentary evidence on record, as set out in paragraph 6.5 above, fully supports the Executive Director's case that agreements have been reached among the main parties on a common price for the supply of deer via anticompetitive information exchange and collaborations. Thus, the main parties have participated in price fixing agreements in breach of section 41(1)(b)(i) of the Act.
- 6.7. The said agreement among the main parties are deemed to significantly prevent, restrict or distort competition considering its collusive objects, its sizeable operators/actors in the market concerned and the absence of sufficient competitive/entry constraints.
- 6.8. For all the above reasons, the Commission is of the view that the Executive Director's recommendations for the imposition of directions is reasonable. The Commission further finds that the directions, as proposed, are appropriate to ensure that the enterprise ceases to be a party to any restrictive agreement, in accordance with the requirements of section 58 of the Act.
- 6.9. Bearing in mind the fact that all the main parties to the investigation have unequivocally stated that they do not dispute the findings of the Executive Director including his recommendation on fines and taking into account the cooperative attitude adopted by the main parties, the Commission finds it appropriate to impose financial penalties under section 59 of the Act as per the recommendations of the Executive Director as follows-
- i. MUR 213, 542 on Agria Ltd;
 - ii. MUR 81, 716 on Alteo Agri Ltd;
 - iii. MUR 86, 460 on Constance La Gai  te Co Ltd;
 - iv. MUR 116, 117 on Ferney Limited; and
 - v. MUR 947, 570 on M  dine Ltd.
- 6.10. The Commission accordingly determines that the recommendations regarding directives and fines, as set out in the Report, be upheld *in toto*.

VII. Commission's Decision

Now Therefore,

- 7.1. For the reasons set out in this Decision, We, the Commission, hold as follows:
- 1) The main parties, namely Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd and Ferney Limited between 2015 and 2019, participated in horizontal collusive agreements in breach of section 41 of the Act;

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- 2) the horizontal collusive agreements to which Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd and Ferney Limited were parties to are prohibited and void under the Act.

7.2. Having determined that Agria Ltd, Alteo Agri Ltd, Constance La Gai  te Co Ltd, M  dine Ltd and Ferney Limited have breached the provisions of section 41 of the Act and pursuant to section 58 of the Act, We hereby direct the aforementioned main parties to:

- 1) to bring an end forthwith to any collaboration among themselves or between any of them in respect of pricing for the supply of deer to Panagora or to any other party;
- 2) to refrain from repeating or engaging in any act or conduct which involves discussions on pricing or the sharing of information on pricing for the supply of deer meat to Panagora, or to any other party

7.3. Pursuant to section 59 of the Act, we further impose a financial penalty on each of the main parties and accordingly order

- i) Agria Ltd to pay a fine of MUR 213,542;
- ii) Alteo Agri Ltd to pay a fine of MUR 81,716;
- iii) Constance La Gai  te Co Ltd to pay a fine of MUR 86,460;
- iv) Ferney Limited to pay a fine of MUR 116,117; and
- v) M  dine Ltd to pay a fine of MUR 947,570

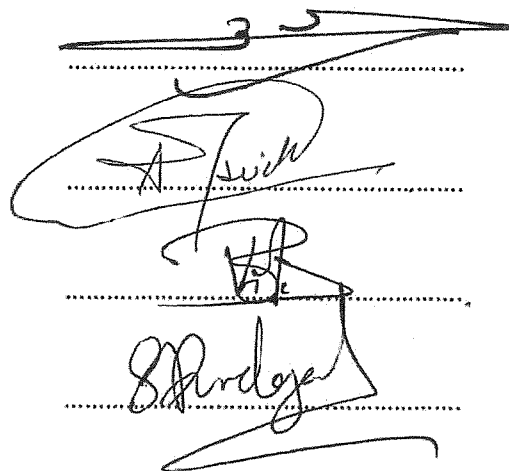
within 60 working days from the date of the present Decision.

Mr. M. Bocus
(Chairperson)

Mr. A. Mariette
(Vice-Chairperson)

Mrs. V. Bikhoo
(Commissioner)

Mrs. S. Dindoyal
(Commissioner)



Made on 01 March 2023.