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Decision of the Competition
Commission

CC/DS/0048

**In respect of the investigation into the potential
collusive agreements into the supply of medical
gases to the Ministry of Health & Quality of life
(INV022)**

24 NOVEMBER 2021

Decision of the Commissioners of the Competition Commission (the "Commission") on the investigation into the potential collusive agreements in the supply of medical gases to the Ministry of Health & Quality of Life

THE COMMISSION

Mr. M.A. Bocus	-	Chairperson
Mr. A. Mariette	-	Vice-Chairperson
Mrs. V. Bikhoo	-	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 28 June 2021 under sections 30(b) and 51 of the Competition Act 2007 upon completion of his investigation into the suspected existence of collusive agreements between Gaz Carbonique Ltee and Les Gaz Industriels Ltd in the supply of medical gases to the Ministry of Health and Quality of Life (now referred to as Ministry of Health and Wellness) (hereinafter "MOHQL"), referenced INV 022.

the Notices under Rule 22 of the Competition Commission Rules of Procedure 2009 issued to Gaz Carbonique Ltee ("GCL") and Les Gaz Industriels Ltd ("LGI") (hereinafter the "main parties") on 06th August 2021,

the response from the main parties to afore-referred Notices, from LGI on 17th August 2021 and GCL on 24th August 2021, communicated by letter respectively,

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

I INTRODUCTION

1. This decision relates to an investigation (the "Investigation") completed by the Executive Director of the Competition Commission (the "Executive Director") pursuant to sections 30(b) and 51 of the Competition Act 2007 (the "Act") upon reasonable grounds to believe the existence of a suspected collusion in relation to MOHQL's procurement exercise for its medical gases requirements.

2. On 28 June 2021 and upon completion of his investigation, the Executive Director submitted his Final Report of the Investigation (the "Final report") to the Commissioners of the Competition Commission (the "Commissioners") for determination of the matter as per section 5 of the Act.

II BACKGROUND

(i) The Parties

3. The main parties to the investigation are Les Gaz Carbonique Limitée ('GCL') and Les Gaz Industriels Ltd ('LGI').
4. GCL, also trading under the name of Oxy-weld Suppliers, is a private company limited by shares incorporated on 10th December 1959. GCL is a manufacturer, importer, and distributor of a range of industrial gases, principally food-grade carbon dioxide, as well as medical gases.
5. LGI is a domestic, public listed company founded on 01st April 1952. LGI principally manufactures and distributes medical and industrial gases (in bulk and in cylinders) and welding electrodes. LGI also supplies welding and cutting equipment and accessories and undertakes installation services for gas reticulation systems for both industrial and medical requirements.

(ii) The Impugned Conducts

6. The matter investigated by the Executive Director and subject of this decision pertains to whether the main parties, GCL and LGI, have participated to collusive agreement(s) in the supply of medical gases to the MOHQL between 2009 to 2020 in breach of section 41 and 42 of the Act, viz –
 - a. bid rigging agreement(s) under section 42 of the Act with respect to two calls for bids made by the MOHQL.
 - b. the existence of one or more horizontal collusive agreement(s) between the main parties, under section 41 of the Act, implemented through Medical Gases JV.
7. Medical Gases JV was created by GCL and LGI in 2012 as an unincorporated structure in the form of a joint venture. The joint venture was undertaken through a contractual agreement which was officially registered on 13 September 2013. The operation of the JV was jointly controlled by GCL and LGI, with set terms and conditions, regarding the supply of medical gases to the MOHQL, the resources allocation, the invoicing amongst others.



8. The investigation was launched by the Executive Director on the basis of a suspected case of collusion in relation to MOHQL's 2012 procurement exercise for its annual medical gases requirements for the years 2013 and 2014, bearing reference MHPQ/MDIS/2012/Q13, carried out via restricted bidding to GCL and LGI respectively, where a single bid was received from Medical Gases JV.

III LEGAL FRAMEWORK

9. To determine whether the above-mentioned impugned conducts are in breach of the sections 41 and 42 of the Act, it is apposite to reproduce the relevant provisions of the law.
10. Section 41 of the Act sets out the prohibition against horizontal collusive agreements whereby an agreement, or a provision of such agreement, shall be collusive if -
 - (1) (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.
11. It follows from the above that, for an impugned conduct to be in breach of the prohibition on horizontal agreement under section 41 of the Act, the following elements ought to be established:
 - (i) the existence of an agreement including a concerted practice between enterprises;
 - (ii) the object or effect of the agreement are as listed in under Section 41 (a) and 41 (b) and
 - (iii) the agreement significantly prevents, restricts, or distorts competition.
12. Section 42 of the Act sets out the prohibition against bid rigging whereby:
 - (1) For the purposes of this section, an agreement, or a provision of such agreement, shall be collusive if one party to the agreement -
 - (a) agrees not to submit a bid or tender in response to an invitation for bids or tenders; or

(b) agrees upon the price, terms, or conditions of a bid or tender to be submitted in response to such a call or request.

13. Section 42 of the Act requires the existence of an agreement between two or more enterprises made in response to an invitation to bid where a party either accords not to submit a bid and/or pre-arranges on the price, terms, and conditions of the bid to be submitted and where the said agreement is not made known to the procurer at or before the time when a bid is made. Section 42 applies with respect to bid rigging conduct occurring either in governmental or private calls for bids/tenders.
14. In addition to the Sections 41 and 42, the Section 58 and Section 59 of the Act are also relevant for the purpose of the decision. The aforementioned sections provide for directions and penalties that the Competition Commission may impose on enterprises which are found to infringe sections 41 and/or 42 of the Act.
15. Section 58 of the Act specifically provides that where a restrictive agreement falls within the scope of sections 41 or 42, the Commission may impose a direction which it considers appropriate on the enterprise requiring the latter to terminate or modify the agreement within such a period as may be specified by the Commission.
16. Section 59 of the Act provides that the Commission may, in relation to a restrictive agreement falling within the scope of sections 41 and 42, in addition to giving directions, may make an order imposing a financial penalty on the enterprise after having identified an intentional or negligent breach of the Act.
17. It is to be highlighted that where the Commission imposes a financial penalty on an enterprise, as per section 59(3) of the Act, the financial penalty shall not exceed 10 per cent if the turnover of the enterprise in Mauritius during the period of the breach of the prohibition up to a maximum period of 5 years.
18. Furthermore, section 59(7) of the Act empowers the Commission to grant immunity or leniency to any person. The granting of "immunity" implies that the enterprise is totally exempted from a financial penalty while "leniency" means partial exemption from a financial penalty.

IV THE INVESTIGATION, FINDINGS AND RECOMMENDATIONS OF THE EXECUTIVE DIRECTOR

19. The Executive Director has carried out the investigation, pursuant to section 51 of the Act, in respect of the Impugned Conducts to determine whether the parties are in breach of sections 41 and 42 of the Act.
20. The investigation covered tender biddings for two distinct periods, Period 1 from 2009 – 2012 and Period 2 from 2012 – 2020, viz., -

Under Period 1:

a. bid rigging agreement(s) under section 42 of the Act, with respect to two calls for bids made by the MOHQL bearing bid references 'MHPQ/MDIS/08-09/Q9' and 'MHPQ/MDIS/2010/Q21' between 2009 and 2012. The agreement(s) was/were in relation to the price, terms, and conditions to be submitted by GCL and LGI in response to the calls for bid; and

Under Period 2:

b. in relation to the existence of one or more horizontal collusive agreement(s) under section 41 of the Act, between the main parties, implemented through Medical Gases JV, which had the object of fixing the prices of medical gases, sharing the market for, and restricting the supply of medical gases to the MOHQL between 2012 and 2020 in respect of the following 9 calls for bid:

- (i) MHPQ/MDIS/2012/Q13 (cancelled),
- (ii) MHPQ/MDIS/2012/Q26,
- (iii) MHPQ/MDIS/2013/Q12,
- (iv) MHPQ/MDIS/2014/Q13,
- (v) MHPQ/MDIS/2015/Q5,
- (vi) MHPQ/MDIS/15-16/Q15 (emergency procurement),
- (vii) MHPQ/MDIS/2015-2016/Q9,
- (viii) MHPQ/MDIS/2015-2016/Q21,
- (ix) MHPQ/MDIS/2016-2017/Q22

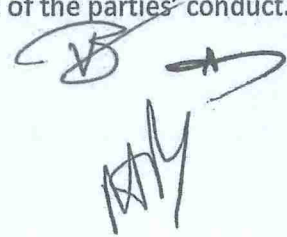
21. The Executive Director proceeded to gather evidentiary information to assess whether the main parties participated in collusive agreement(s) in the supply of medical gases to the MOHQL between 2009 to 2020 and has conducted his assessment, as per the provisions of sections 41 and 42 of the Act.
22. A Statement of Issues Report (the 'SOI') was issued to each main party on 29th June 2017 and upon which, each party was invited to provide its views to the Executive Director on the preliminary issues and concerns identified in the SOI. GCL and LGI respectively submitted their written views to the Executive Director on 22nd November 2017.
23. For an impugned conduct to be in breach of the sections 41 and 42, the parties must foremostly qualify as enterprises as per section 2 of the Act. Section 2 of the Act qualifies an enterprise as a juridical person engaged in commercial activities for gain or reward.
24. During his investigation, the Executive Director gathered that both GCL and LGI respectively qualified as enterprises, operating at the manufacturing and/or importation, and distribution levels within the market for the supply of medical gases to MOHQL and were deriving revenue therefrom.



25. The Executive Director proceeded to assess the impugned conducts of the parties as follows in accordance to the provisions of sections 41 and 42:

Under Period 1: Big rigging as per section 42

- (i) Section 42 of the Act requires the existence of an agreement between two or more enterprises made in response to an invitation to bid where a party either accords not to submit a bid and/or pre-arranges on the price, terms, and conditions of the bid to be submitted and where the said agreement is not made known to the procurer at or before the time when a bid is made.
- (ii) The Executive Director evaluated the information gathered in the course of the investigation in accordance with section 42 of the Act with respect to possible bid-rigging concerns pre-dating the existence of Medical Gases JV.
- (iii) The Executive Director did not find evidence showing the existence of direct and explicit agreement between GCL and LGI on bid prices for the two bids, 'MHPQ/MDIS/0809/Q9' and 'MHPQ/MDIS/2010/Q21', submitted to the MOHQL for the period 2009 until 2012. The information did not point towards firm evidence of contacts/communications/information exchange between the parties coinciding with the MOHQL's bid invitations and/or their respective tender submissions for these bids to permit an inference that such contacts/communications/information exchange allowed the parties knowingly to substitute practical co-operation between them for the risks of competition, in such a manner as to remove all reasonable likelihood of their bid prices having been reached independently.
- (iv) Upon assessment of the information before the Executive Director and having considered the submissions of the main parties, the Executive Director did not establish the existence of bid rigging agreements between GCL and LGI in breach of section 42 of the Act in respect of the two invitations for bids made by the MOHQL bearing bid references 'MHPQ/MDIS/0809/Q9' and 'MHPQ/MDIS/2010/Q21'.
- (v) The Executive Director therefore found no infringement, under the Period 1 under section 42, on the part of GCL or LGI in respect of the parties' conduct.

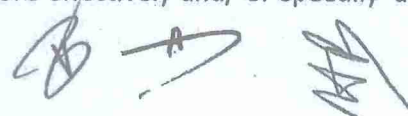


Under Period 2 and in respect of MOHQL medical gas supply contracts as per section 41:

- (i) Having established the qualification of GCL and LGI as enterprises, the Executive Director proceeded to evaluate the likely breach by the main parties relative to horizontal agreements as per section 41 as per the following three elements prescribed by section 41:
- a. the existence of an agreement including a concerted practice between enterprises;
 - b. the object or effect of the agreement 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; and
 - c. the agreement significantly prevents, restricts, or distorts competition.
- (ii) The Executive Director evaluated on the facts before him that:
- a. LGI and GCL supplied goods of the same description, namely medical gases and are actual competitors in the supply of medical gases to the MOHQL;
 - b. for the purposes of MOHQL restricted bidding exercise, MHPQ/MDIS/2012/Q13, MOHQL had respectively issued its bid invitation to GCL and LGI respectively and thus viewed them as potential, competing bidders likely to fulfil the requirements of its bidding documents;
 - c. the agreement between GCL and LGI to set up an unincorporated cooperative joint venture, namely Medical Gases JV (the 'Principal JV agreement') through which to jointly supply and commercialise medical gases to MOHQL under MHPQ/MDIS/2012/Q13 and all subsequent agreements that renewed and ultimately, entrenched their cooperation indefinitely under this Period, through the Amended and Restated Joint Venture Agreement of 04 September 2015, amount to a single and continuous infringement under section 41 on the basis that the commercialization agreement had the object of:
 1. fixing the prices of the medical gases sold to MOHQL,
 2. sharing the market between GCL and LGI by dividing the supply of medical gases to MOHQL along geographical lines and allocating respective hospitals to each party under a 50:50 volume and profit-sharing objective, which was strictly monitored through periodic information exchanges on actual volumes sold and revenue generated by the parties, and

3. restricting the supply of goods to MOHQL on two occasions with a view to forcing MOHQL to accept Medical Gases JV as supplier following the cancellation of the MHPQ/MDIS/2012/Q13 procurement offer and pending the award of MHPQ/MDIS/2012/Q26 offer and
 4. forcing the MOHQL to extend their supply contract under MHPQ/MDIS/2012/Q26 for a full-year period January 2015 – December 2015.
- d. the hard-core price-fixing, market-sharing and output-restriction objects, the Principal JV agreement and all subsequent amended agreements significantly prevented, restricted and distorted competition between GCL and LGI during the period under investigation (Period 2), in breach of section 41 (1)(c) of the Act. The JV arrangement not only served to eliminate all actual competition between the JV partners at that time but effectively deprived the MOHQL of the possibility of choosing between the only feasible and alternative sources of supply and to benefit from true, undistorted price competition and service level.
- (iii) The Executive Director found that the parties' horizontal commercialisation agreement, in its form and manner and regard had to the prevailing terms and conditions under which GCL and LGI have jointly supplied medical gases to the MOHQL between 2012 until such time in 2020 as the parties were effectively prohibited from participating in and/or supplying MOHQL's procurement exercise for medical gases as Medical Gases JV, is prohibited and void under section 41 (2) of the Act.
- (iv) For the period 2, the Executive Director thus made a finding of infringement under section 41 of the Act against GCL and LGI respectively, in respect of their participation in the Principal JV agreement and all amendments brought thereto, as consolidated through the Amended and Restated Joint Venture Agreement of 04 September 2015.
26. Further to the SOI stage, applications for leniency were submitted respectively by each main party. Upon perfecting its marker, LGI submitted its leniency application on 04th July 2018. GCL submitted its leniency application on 11th July 2018.
27. Considering the parties' leniency information and information gathered by the Executive Director, the Executive Director notified his Provisional Findings Report (the 'Provisional Report') to each main party on 07th June 2019.

28. The Provisional Report contained the Executive Director's provisional findings on infringement, together with his proposed recommendations to the Commissioners on directions, leniency discounts, and financial penalty.
29. Having duly considered the facts of the case, the Executive Director accordingly recommends, in addition to giving directions pursuant to section 58, the imposition of financial penalties upon LGI and GCL respectively for the infringement of the Act under section 41. The Executive Director assessed the factors which may be appropriate to consider in the determination of the amount of any applicable financial penalty and recommended indicative figures for the financial penalties as well as directions for the Commission's determination.
30. Following the issuance of the Provisional Report to the main parties but pending the Executive Director's finalisation thereof, certain procedural developments occurred; including LGI's request for disclosure of information to enable it to exercise its right of defense and accordingly file its written replies to the Provisional Report. Although these procedural developments had initially extended the investigative process, it is important to note that thereafter both GCL and LGI volunteered further cooperation with the process in view of expediting completion of the INV022 matter at both Executive Director and Commission levels.
31. GCL and LGI respectively submitted a formal cooperation proposal with corresponding respective requests that such cooperation be favourably considered in view of mitigating the financial penalty, which was initially recommended by the Executive Director in his Provisional Report of investigation.
32. LGI and GCL have, in their respective proposal for further cooperation, further expressly set out, without admitting liability, that they are not resisting the case of the Executive Director, are not disputing the Executive Director's findings of the case – including his findings on infringement under section 41, and are not insisting on their written replies previously filed in respect of the Provisional Report of investigation in the event that the Commission accepts their respective cooperation proposal and determines the Executive Director's new recommendations on mitigated financial penalty and remedial measures to be appropriate to the present case.
33. After assessing the terms of GCL and LGI's respective proposal of further cooperation and their individual leniency applications in accordance with the provisions of section 59 of the Act, section 5 of the Act, the principles contained in CC 6 Guidelines on determination of financial penalty and in CC 3 Guidelines on leniency, the Executive Director further recommends:
- a. acceptance of LGI and GCL's respective submissions on further cooperation post-Provisional Findings stage as 'co-operation which enables the enforcement process to be concluded more effectively and/ or speedily' and



qualifying for additional mitigation of their penalty under paragraph 2.16(e) of CC 6 Guidelines.

- b. acceptance of each party's respective leniency applications filed with the Competition Commission as qualifying for leniency discount in accordance with Section 5 of CC 3 Guidelines and considers granting respective levels of leniency discount to the amount of 65% for LGI and 45% for GCL, on the basis of the overall value added by each party's respective leniency to the Executive Director's investigation.

34. The Executive Director therefore proceeded to finalise his Provisional Report of investigation into the Final Report, which subsequently contained his assessment on each main party's proposal of further cooperation and his new recommendations on financial penalty reflecting the added mitigation.

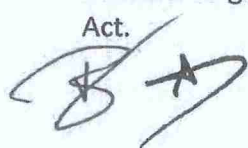
35. On 28th June 2021, pursuant to section 51(2) of the Act and upon completion of his investigation, the Executive Director had produced his Final Report with his assessment on the afore-referred investigated agreements and his findings on the matter, considering the facts before him and the parties' written submissions during investigation.

36. In light of the findings of the investigation, which LGI and GCL are not disputing, the Executive Director recommends:

- a. pursuant to Section 58 of the Act, that the Commission to impose the following directions respectively upon GCL and LGI requiring each -

1. to immediately bring to an end their infringements insofar as they have not already done so;
2. to refrain from repeating any such infringing act or conduct subject to his findings in the Report, and from adopting any measure having equivalent effect; and
3. for a period of three years from the date the Commissioners notify the parties of their infringement decision, if any, to disclose all such information which the Competition Commission may periodically require from the parties in relation to the supply of medical gases in Mauritius.

- b. Pursuant to section 59 of the Act, that the Commission, where it is satisfied that the infringement of section 41 of the Act was at a minimum negligent, to make an order imposing a financial penalty on LGI and GCL respectively, in addition to giving the afore-recommended directions under section 58 of the Act.



37. The Executive Director also recommends the Commission to favourably consider and accept all the different steps volunteered as 'further cooperation' by LGI and GCL, in the form and manner spelt out by the parties in their respective submissions, as qualifying for further mitigation on account of 'cooperation' which, enables the enforcement process to be concluded more effectively and/ or speedily within the scope of paragraph 2.16(e) of the CC 6 Guidelines.
38. Having regard to the above, the Executive Director accordingly recommended that the Commission makes an order imposing a financial penalty under section 59 of the Act of:
- a. MUR 1,501,435 on LGI for its participation in serious breaches of the Act; and
 - b. MUR 2,089,068 on GCL for its participation in serious breaches of the Act.

V THE STAND OF THE PARTY

39. Pursuant to their respective submissions on further cooperation and without admitting liability, none of the main parties disputed the Executive Director's findings on the Investigation, including the findings of infringement under section 41.
40. By virtue of Rule 22 of the Rules of Procedure 2009, a notice dated 06 August 2021 was served on the main parties informing them of the directions and penalties that the Commissioners intend to impose on them and the provisions relating to the convening of hearing before the Commission where it intends to impose directions and/or financial penalty.
41. By way of a letter dated 17th August 2021 and 24th August 2021 respectively, LGI and GCL respectively, informed the Commission that it is not disputing the directions and financial penalties intended to be imposed on it under sections 58 and 59 of the Act. The parties also respectively informed the Commission that they are electing not to attend the hearing before the Commissioners.

VI DETERMINATION

42. The Commission has given due consideration to:
- a. the Final Report of the Executive Director including his assessment, evidentiary information, findings, and recommendations in terms of directions and financial penalties;
 - b. the main parties leniency applications;
 - c. the mitigating factors identified in the Final Report of the Executive Director as to the (i) existence of genuine uncertainty on the part of GCL and LGI, (ii) the adequate steps taken on the part of the main parties in view of complying with



Section 41 and (iii) cooperation on the part of the main parties pre-and post-provisional finding stage;

- d. parties submissions on further cooperation via respective Cooperation letters from LGI dated 05th February 2021 and GCL dated 08th February 2021; and
- e. the letter from LGI dated 17th August 2021 and GCL dated 24th August 2021 whereby the latter informed the Commission of their stand on the directions and financial penalties intended to be imposed by the Commissioners under sections 58 and 59 of the Act and of their respective decisions not to attend a hearing before the Commissioners.

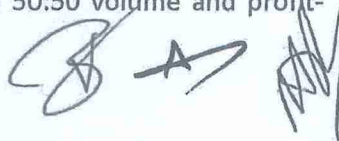
43. The Commission, for all the reasons laid out in the Final Report, agrees with the recommendations of the Executive Director in so far that:

(I) Under Period 1:

- (a) No evidentiary information was found to prove the existence of bid rigging agreements between GCL and LGI in breach of section 42 of the Act in respect of the two invitations for bids made by the MOHQL bearing bid references 'MHPQ/MDIS/08-09/Q9' and 'MHPQ/MDIS/2010/Q21'.
- (b) therefore, no finding of infringement against either GCL or LGI in respect of the parties' conduct under Period 1 was identified.

(II) Under Period 2:

- (a) the decision of GCL and LGI to set up Medical Gases JV, through which to jointly commercialise medical gases to the MOHQL under 'MHPQ/MDIS/2012/Q13', as followed by further collaborations and as subsequently consolidated and indefinitely extended since 2015, amount to a horizontal commercialization agreement that was collusive in nature pursuant to section 41 of the Act.
- (b) The said agreement, as actually implemented by the parties, and later amended and ultimately consolidated, amounted to a single and continuous infringement of section 41 on the basis that the agreement had the object of—
 - I. fixing the prices of the medical gases sold to MOHQL,
 - II. sharing the market between GCL and LGI by dividing the supply of medical gases to MOHQL along geographical lines and allocating respective hospitals to each party under a 50:50 volume and profit-



sharing objective, which was strictly monitored through periodic information exchanges on actual volumes sold and revenue generated by the parties, and

- III. restricting the supply of goods to MOHQL on two occasions with a view to (i) forcing MOHQL to accept Medical Gases JV as supplier following the cancellation of the MHPQ/MDIS/2012/Q13 procurement offer and pending the award of MHPQ/MDIS/2012/Q26 offer and (ii) forcing the MOHQL to extend their supply contract under MHPQ/MDIS/2012/Q26 for a full-year period January 2015 – December 2015.
- IV. the Principal JV agreement and all amendments brought thereto, in their form and manner and regard had to the prevailing terms and conditions under which GCL and LGI have jointly supplied medical gases to the MOHQL between 2012 until such time in 2020 as the parties were effectively prohibited from participating in and/or supplying MOHQL's procurement exercise for medical gases as Medical Gases JV, are thus prohibited and void under section 41 (2) of the Act.

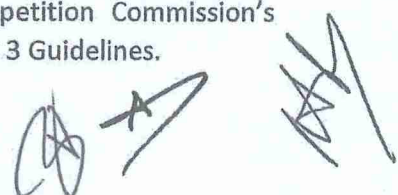
44. The Commission, taking into account the reasons and evidence adduced by the Executive Director in his Final Report as from page 92 and the stand of the main parties as far as Period 2 is concerned, in respect to the participation of GCL and LGI in the Principal JV agreement and all amendments brought thereto, as consolidated through the Amended and Restated Joint Venture Agreement of 04 September 2015 is in infringement under section 41 of the Act.

45. The Commission, having had regards to the mitigating factors, the leniency applications and further cooperation on the part of the main parties and the recommendations of the Executive Directors, agrees and hereby accepts the recommended directions and financial penalties of the Executive Director for the infringement of section 41 of the Act.

46. The Commission thereby favourably considers and accepts all the different steps volunteered as 'further cooperation' by LGI and GCL, in the form and manner spelt out in their respective Cooperation Letter, as qualifying for further mitigation on account of 'cooperation which enables the enforcement process to be concluded more effectively and/ or speedily' within the scope of paragraph 2.16(e) of the CC 6 Guidelines.

47. The Commission, pursuant to section 59(7) of the Act:

- I. accepts the leniency applications respectively made by each party in the course of the investigation pursuant to the Competition Commission's Leniency Programme, as prescribed in Section 5 of CC 3 Guidelines.



- II. grants respective levels of leniency discount to the amount of 65% to LGI and 45% to GCL, on the basis of the overall value added by each party's respective leniency to the Executive Director's investigation.

48. The Commission is satisfied that the infringement of section 41 of the Act was at a minimum negligent and make an order of imposing a financial penalty on LGI and GCL respectively under section 59, in addition to giving the afore-recommended directions under section 58 of the Act.

49. For all the reasons established in this decision and considering the continued cooperation of the main parties, the Commission is satisfied that the directions and financial penalties, recommended by the Executive Director in his Final Report, would ensure that GCL and LGI cease to be party to the impugned/infringing agreement.

VII DECISION

50. Considering the above and pursuant to sections 58 and 59 of the Act, We the Commissioners:

- (i) In so far as the directions under Section 58 are concerned, hereby direct LGI and GCL respectively:

- (a) to immediately bring to an end the infringing prohibited conducts of price fixing, market sharing and restriction of supply in relation to medical gases insofar as they have not already done so;

- (b) to refrain from repeating the above-referred acts or conducts and from adopting any measure having equivalent effect; and

- (c) for a period of three (3) years from the date the Commissioners notify the parties of their infringement decision, if any, to disclose all such information which the Competition Commission may periodically require from the parties in relation to the supply of medical gases in Mauritius.

- (ii) In so far as the financial penalties under Section 59 are concerned and being satisfied that the said infringement was at a minimum negligent, hereby direct:

- (a) LGI to pay financial penalty totaling MUR 1,501,435 for its participation in serious breaches of the Act. LGI is further ordered to pay the financial penalty in 2 tranches, namely a first tranche payable within 6 months of the date of the present Decision and a second tranche payable within 1 year thereof; and

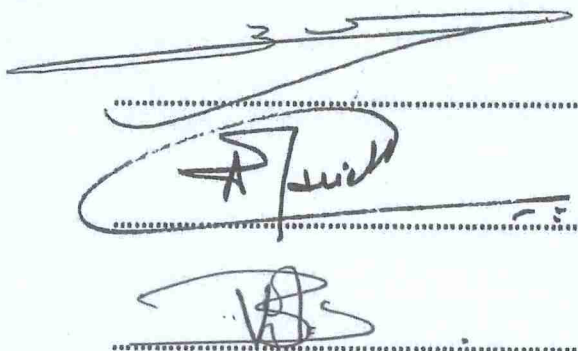
- (b) GCL to pay financial penalty totaling MUR 2,089,068 for its participation in serious breaches of the Act. GCL is further ordered to pay the financial penalty in four tranches of MUR 522,267. The first two tranches payable until December 2021 and the remaining last two tranches payable between January and June of the year 2022.

Done at Port-Louis this 24 November 2021

Mr. M.A Bocus
(Chairperson)

Mr. D.P.A. Mariette
(Vice-Chairperson)

Mrs. V. Bikhoo
(Commissioner)



The image shows three handwritten signatures in black ink. The first signature is a long, sweeping horizontal stroke. The second signature is more complex, with a large loop and a vertical stroke. The third signature is a stylized, compact mark. Each signature is followed by a horizontal dotted line, likely intended for a stamp or official seal.