



Decision of the Competition Commission

CCM/DS/0033

Non - Confidential

Import quota on processing-grade pork

25 February 2019

**Decision of the Commissioners of the Competition Commission
of 25 February 2019**

**relating to a proceeding under section 19 of the Competition Act 2007 further
to an enquiry by the Executive Director into the matter referred to as 'Import
quota on processing-grade pork'**

(CCM/DS/0033 – Import quota on processing-grade pork)

THE COMMISSION

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

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to the guidelines published under section 38 of the Competition Act 2007,

Having regard to a Report of the Executive Director dated 18th January 2019,

WHEREAS:

I. Introduction

1.1 This Decision relates to an enquiry made by the Executive Director, pursuant to r. 5 of the Competition Commission Rules of Procedure 2009, into complaints filed by two local pork-processors namely – *Complainant A*¹ and *Complainant B*², on 25 October 2017. The complainants have raised concerns regarding a policy implemented by the Ministry of Agro Industry and Food Security ('MAIFS') on the importation of frozen/chilled pork meat and which was codified in the form of guidelines and published in or around June 2017 (the 'Guidelines'). The Guidelines *inter alia* state that:

¹This information has been excised from the Non-confidential version of the Decision for confidentiality purposes, wherever it appears in the Decision.

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“Food processors using pork as an input will be authorised to import pork from abroad subject to their purchasing 50 percent of their meat requirement on the local market.

Import permits for importation of pork will be issued in accordance with the above policy.”³

- 1.2 The complainants have essentially submitted that the MAIFS is applying the afore-referred Guidelines discriminately by allowing one pork processor, *the market leader*⁴, to import its pork meat without sourcing any of its requirements from local pork breeders while refusing to grant import permits to remaining pork processors unless they source an equal amount of pork locally. Additionally, retailers and distributors, which allegedly compete with pork processors for the supply of processed pork in Mauritius do not have to abide to the 50:50 policy.

II. Background

a. MAIFS

- 1.3 The MAIFS, as part of the Executive arm of Government, aims to further develop agriculture and promote the agro-industry by focusing on safety, supply, quality, innovation, and new technology through its service providing institutions, and with stakeholders of the region.⁵

b. Procedure

- 1.4 The Executive Director received two related complaints on 06 September and 16 November 2017 respectively, from local pork processors concerning a regulatory measure instituted by the MAIFS on the importation of pork meat and pursuant to which, their applications to import frozen raw pork for processing have constantly been refused. On 25 October 2017, the Executive Director initiated an enquiry into the said complaints.
- 1.5 The Executive Director has conducted his enquiry to assess whether the action taken by the MAIFS has or may have adversely affected competition in the supply of goods and services within one or more relevant market(s) whereupon a recommendation could be put to the Commission for advising the Minister in accordance with section 19 of the Competition Act 2007 (the ‘Act’).

³Guidelines, paragraph 12 published on MAIFS website, < <http://agriculture.govmu.org/English//DOCUMENTS/GUIDELINES%20IMPORT%20OF%20FROZEN%20MEAT%20-%20APRIL17.PDF> >, accessed 28 January 2019.

⁴This information has been excised from the Non-confidential version of the Decision for confidentiality purposes, wherever it appears in the Decision.

⁵MAIFS website, ‘Vision and Mission’ < <http://agriculture.govmu.org/English/AboutUs/Pages/Mission-and-Vision.aspx> >, accessed 28 January 2019.

- 1.6 On 09 August 2018, an intermediary report containing the Executive Director's provisional findings made following enquiry was issued to the MAIFS and inviting its views thereupon. The MAIFS submitted its views on 05 September 2018, whereupon the Executive Director proceeded to finalise his assessment and findings.
- 1.7 Upon completion of his enquiry, the Executive Director submitted his Report dated 18 January 2019 to the Commission containing his assessment of the regulatory measure, together with his findings and recommendation (the 'Report'). In his Report, the Executive Director recommends that the Commission considers advising the Minister of Financial Services and Good Governance (the Competition Commission's parent Ministry and hereinafter the 'Minister') on the adverse effects which the contested policy has on competition, with a further recommendation that the said policy be discontinued.

c. Impugned action

- 1.8 The Guidelines issued by the MAIFS impose a 50:50 policy, which conditions the grant of import permits for frozen pork to pork processors upon the latter showing that they sourced the required volume of pork meat locally. This measure has been contested on two main grounds *viz.*, firstly, that it is indirectly acting as an import quota and secondly, that it is being applied in a discriminatory manner favouring one local pork processor while putting others at a competitive disadvantage despite the fact that the policy is intended to apply to all pork processors in Mauritius.

III. Legal Framework

- 1.9 The Executive Director conducted his assessment of the impugned action with a view to recommend that the Commission issues an advice to the Minister under section 19 of the Act on the adverse competitive effects of the said action.

a. Action defined

- 1.10 Section 19 of the Act empowers the Commission to advise "*on any action taken or proposed to be taken*". The term 'action' evokes a broad range of measures, including policy directives. That the said 'action' has not yet been given effect to is immaterial in so far as section 19 of the Act extends both to actions that have already been taken and prospective actions.

b. State or any public body

- 1.11 Measures taken by "*the State or any public body*" may form the basis of an advice from the Commission. The statutory terms used clearly cover action/intended action taken by any arm of Government, including Ministries and statutory bodies.

c. Adverse effect on competition

1.12 Only those actions which “*may adversely affect competition in the supply of goods and services*” may be subject to advice by the Commission. However, the rendering of an advice does not require that the impugned action leads to actual effects on competition. Likely adverse effects also fall within the scope of the provision. The Commission, in its advice, must however identify the relevant market(s) in which such anticompetitive effects may be felt. This calls for a market definition exercise focusing on the product and geographical areas being impacted by the contested action.

d. Advice

1.13 Where the Commission finds actual or likely adverse effects resulting from the impugned action, it “*may advise the Minister*”. Such advice is given by way of a decision of the Commission.

IV. Findings of the Executive Director

1.14 The Commission has had regard to the Report of the Executive Director containing the competitive analysis that has been carried out together with his findings and recommendation made to the Commission.

a. Information gathered by the Executive Director

1.15 Pork processing consists in modifying raw pork into processed form by altering its taste or extending its shelf-life. The end-products, of which the most popular include ham, bacon and sausage, are then sold to hotels, retailers and caterers, among others. There are currently three pork processors which operate in Mauritius: Fast Foods Ltd, Prime Products Ltd and De Lapeyre Ltd.

1.16 The main input used by local pork processors is referred to as primal pork or wholesale cuts, which are cuts of meat separated from the carcass of a pig during butchering. Because primal cuts of adequate quality (HACCP compliant) are not available locally (mainly due to low breeding standards), pork processors import their raw materials (in the form of frozen raw pork) mainly from foreign sources – France, Brazil, Spain and South Africa. Other players in the wholesale importation/distribution of pork products include on the one hand, distributors which import canned and ready-to-eat processed pork products for sale to retail outlets, hotels and caterers and on the other hand, importers of premium frozen raw pork meat, which are only supplied to high-end hotels.

1.17 Prior to 2014, pork processors did not purchase pork bred in Mauritius for their processing business. Since the implementation of the 50:50 policy in 2014, the MAIFS now requires local pork processors to purchase pork

locally. Depending on the volume sourced from local purchase, they may then apply for an import permit for an equivalent volume of imported pork. Out of the 9,000 pigs slaughtered in Mauritius (for a resulting 606 tonnes of pig carcass) in 2017, 35% were meant for use by pork processors. It is noted that the contested measure does not compel pork processors to use the local pork meat for processing but only to purchase same to meet their import quotas, which they then sell back on the local market.

- 1.18 The MAIFS avers that its policy is intended to sustain local pig breeders from an underprivileged context having regard to the adverse impact of imported frozen raw pork on local production. There are presently 280 pig breeders on the island, which breed their animals from small farms rather than large commercial farms or livestock breeding stations.
- 1.19 Comparing data on the volume of locally sourced pork against imports across pork processors for the period 2014 - 2017, the Executive Director has found that *the market leader* accounted for the highest volume of imported meat without any local purchase. Thus, the conditions attached to MAIFS' 50:50 policy do not appear to have been applied to *the market leader* when issuing import permits to the latter. Rather, out of the import permits totalling 1,125 tonnes issued by the MAIFS, [REDACTED] tonnes ([REDACTED]%) were imported by *the market leader* alone and the remaining is shared across competing processors. MAIFS is reported to have rejected import applications from other pork processors if the volume slaughtered on a quarterly basis did not tally with the imported volume. For instance, the Report notes that *Complainant A's* applications were systematically rejected in 2017 and more than half of its applications were refused in 2016. Based on his analysis, the Executive Director takes the view that the alleged discriminatory application of the policy appears grounded.
- 1.20 The Executive Director has, based on information gathered from market players, also confirmed the complainants' allegation in respect to the asymmetric application of the 50:50 policy. The reason being that retailers and distributors which compete with pork processors for the supply of processed pork in Mauritius are not required to abide by the 50:50 policy while some importers of specialty frozen, raw pork are able to resell their imports, without further processing, to high-end customers on the market.
- 1.21 For the purposes of carrying out his competitive assessment, the Executive Director has focused on two defined markets: (a) the wholesale supply/importation of processed pork to retailers/restaurants in and into Mauritius; and (b) the wholesale supply of selected secondary cuts and processed pork to hotels in Mauritius. Having regard to the respective trends in market concentration across the relevant markets, the Executive Director finds that both markets are characterised by moderate to high

concentration levels and both have witnessed the exit of two pork processors since 2014 namely, [REDACTED] and [REDACTED]. In either market, [REDACTED] remains the market leader even if its market shares have fluctuated over time.

- 1.22 As at 2017, it is estimated that *the market leader* held [REDACTED]% of the market for the wholesale supply to retailers/restaurants. The second largest competitor only held 12% market share, having displaced *Complainant A* which saw its market share fall considerably since 2014. The market for wholesale supply to hotels displays a higher concentration level with *the market leader* having dominated the market between 2005 – 2017 with an average [REDACTED]% share of the market. *Complainant A* held around [REDACTED]% of the market between 2005 – 2013 but has seen a rapid decline in its market position such that it held negligible market share as at 2017. Even if *Complainant B* and [REDACTED] have entered the markets under consideration, such entry is at best described as small-scale without real prospect for expansion capable of providing an effective competitive constraint to *the market leader* in the future.
- 1.23 Having regard to the observed structural changes in the relevant markets, the Executive Director has proceeded to examine whether these could be attributed to the contested measure by way of a counterfactual assessment. In other words, the Executive Director has sought to establish whether the developments which occurred in the market structure and likely adverse harm to competition post-implementation of the 50:50 policy would still have happened without the policy. If not, then a link can reasonably be established and the contested measure can be the subject of an advice from the Commission.
- 1.24 From his assessment, the Executive Director has found in favour of a link between the contested measure and the adverse anti-competitive effects on competition. The 50:50 policy is viewed as having resulted in the highlighted changes in the market structure by foreclosing some pork processors' access to input ('input foreclosure') and resulting in reduced production and eventually sales of processed pork products on their part despite a growing demand for these products.
- 1.25 It is estimated that the 50:50 policy may have led to a minimum loss of 90 tonnes of processed pork output per year in the market for the wholesale supply of processed pork to retailers/restaurants. Between 2014 – 2016, [REDACTED] output fell by [REDACTED]% before it exited and that of *Complainant A* fell by [REDACTED]%. [REDACTED] exited the market by 2015, prior to which it had an annual production volume of [REDACTED] tonnes. By contrast, the growth in output from *the market leader* during the same interval provides an interesting case in point. While *the market leader's*

output varied between approximately [REDACTED] tonnes to [REDACTED] tonnes from 2010 to 2014, its output increased sharply by around [REDACTED]% within a two-year time period post-2014.

1.26 A similar trend is observed with regards to the evolution of suppliers within the market for wholesale supply of processed pork to hotels. Prior to 2014, *the market leader's* annual output ranged between [REDACTED] – [REDACTED] tonnes. Since 2014, its output has grown by more than [REDACTED]% and reached around [REDACTED] tonnes. The output of *Complainant A* has fallen by around [REDACTED]% from [REDACTED] to [REDACTED] tonnes while two other competitors exited the market.

1.27 In light of his assessment, the Executive is thus of the view that the 50:50 policy has foreclosed some pork processors in the relevant markets and in so doing, has caused Fast Foods Ltd to further strengthen its market position. Instead of securing a supply channel for local breeders' excess production, the contested measure seems to have had the reverse effect by provoking the exit/partial foreclosure of those pork processors which were expected to provide that security. The Executive Director has found the averments made by the complainants to the effect that the contested measure leads to anti-competitive outcomes to be verified and has concluded that the said measure has indeed led to an "*adverse effect on competition*" in the relevant markets.

b. Recommendation of the Executive Director

1.28 The Executive Director has recommended that the Commission advise the MAIFS that the 50:50 policy be abolished and that instead the MAIFS considers other alternative regulatory options to achieve the social or public policy objectives pursued.

V. Assessment of the Commission

1.29 The 50:50 policy devised by the MAIFS and codified through Guidelines issued by it regarding the import quota for frozen/chilled pork meat clearly constitutes a policy directive enforced by the MAIFS and directed at a sector which it is mandated to regulate. We find no contention as to whether section 19 of the Act extends to the impugned action. Although the MAIFS has submitted that it is in the process of revising its policy and possibly enacting a new policy, this measure is still in force and the provision of section 19 therefore applies.

1.30 The impugned action having been taken by the MAIFS, it thus meets the second statutory requirement of "*action taken by the State*" to fall within the ambit of section 19.

1.31 The Executive Director has identified two relevant markets for the purposes of assessing and likely adverse competitive effects: (1) the wholesale

supply/importation of processed pork to retailers/restaurants in and into Mauritius; and (2) the wholesale supply of selected secondary cuts and processed pork to hotels in Mauritius. Due regard had to the principles followed and the demand-side and supply-side considerations applied by the Executive Director when carrying out the market definition exercise, we find no issue with the relevant markets as defined in the Report.

- 1.32 There is little room for arguing that the MAIFS 50:50 policy imposes an indirect quantitative restriction on the volume of imported pork meat, *that is* an import quota, by conditioning the grant of import permits/authorizations to a defined volume for local purchases. It is also undisputed that this measure serves to protect local pig breeders by securing an outlet for their local productions. Whereas this measure was, at least in its formulation, intended to apply indiscriminately to all pork processors; it has, for whatever reason, been applied in such a manner as to put one local player – *the marker leader* – in a competitive advantage vis-à-vis rival importers on the market. We do not find fault with the comparative analysis of volume of local purchase against imports relied upon by the Executive Director in advancing that the MAIFS may have acted in a discriminatory manner by not imposing the 50:50 policy upon *the marker leader* while stringently refusing other processors' applications for import permits when their local purchase volumes did not tally with the amount to be imported.
- 1.33 Although the MAIFS policy is targeted at the level of primary inputs (primary cuts of frozen, raw pork meat), the effects thereof have been felt at the level of wholesale supply of processed pork products. In assessing the actual or potential existence of "adverse effects on competition" resulting from the contested action within the relevant markets, we find the changes brought about in the market concentration and structure as well as the counterfactual analysis to be particularly pertinent. In ascertaining whether the adverse anti-competitive effects can be attributed to the contested measure, the Commission agrees with the Executive Director's view that *the marker leader's* evolution is highly relevant because it is the only pork processor on which the contested measure has not been imposed and its evolution is likely to reveal an appropriate and realistic counterfactual scenario of the trends which would have been followed by other pork processors had they not been discriminated against.
- 1.34 Having regard to the comparison between the actual evolution of the relevant markets and the counterfactual shows that the likely effects of the 50:50 policy, we therefore agree with the Executive Director's findings that the contested measure and its discriminate application may have caused two local processors to exit the market while partially foreclosing the main competitor to the market leader. Subsequent entrants are also likely to be constrained in their future expansion. In so doing, the measure is likely to

mandated to consider the factors which led to the implementation of the policy nor competent to decide upon how to weigh non-competition considerations in its assessment of the competitive framework. The Commission considers it best to leave it to the MAIFS to balance out the different objectives behind any action proposed to be taken for the purposes of regulating importation of processed pork – either when revising the existing policy or if it is enacting a new policy to this effect – so long as the resulting policy is tailored in such a way as to avoid anti-competitive effects as far as possible.

1.35 In light of the above, we are consequently of the view that the recommendation of the Executive Director is well-founded and meets the legal requirements for giving an advice to the Minister in accordance with section 19 of the Act.

VI. Advice of the Commission to the Minister

NOW THEREFORE,

For the reasons set out in this Decision and pursuant to section 19 of the Act, the Commission advises the Minister as follows:

That the Ministry of Agro Industry and Food Security considers rescinding the import quota imposed on pork processors, by way of the 50:50 policy codified in its Guidelines, with respect to importation of frozen/chilled pork meat, which is likely to have artificially distorted the conditions of competition in the markets for the wholesale supply of processed pork products to retailers and restaurants as well as to hotels and that the said policy is likely to continue doing so, to the detriment of end-consumers.

Done at Port-Louis this ^{25th}..... February 2019.

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

Mr. C. Seebaluck
(Commissioner)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

The image shows four handwritten signatures in blue ink, each placed over a horizontal dotted line. The signatures are: 1) A signature that appears to be 'D. A. P. Mariette' with a large flourish. 2) A signature that appears to be 'C. Seebaluck'. 3) A signature that appears to be 'M. B. Rajabally'. 4) A signature that appears to be 'V. Bikhoo'. Overlapping these signatures is a large blue circular stamp. The stamp contains the text 'Competition Commission' at the top and 'Mauritius' at the bottom, with a central emblem. The stamp is partially obscured by the signatures.