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MEDIA RELEASE

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Investigation Ref: INV037 & INV041

THE EXECUTIVE DIRECTOR RECOMMENDS FINES OF Rs 76 MILLION, ON TWO SUPPLIERS OF CHEMICAL FERTILISERS FOR ILLEGAL CARTEL CONDUCTS IN THE FORM OF PRICE FIXING, MARKET SHARING AND BID RIGGING.

The Executive Director has completed two investigations in the supply of chemical fertilisers in Mauritius. The reports of the investigations have been submitted to the Commissioners of the Competition Commission for determination of the case. The findings of the Executive Director is that Mauritius Chemical & Fertilizers Industry Ltd ('MCFI') and United Investments Ltd ('UIL') which are two main suppliers of fertilisers in Mauritius, have operated a cartel to fix price and share the market, and they have also participated in bid rigging. Such conducts (collusive agreements) are illegal and in breach of the Competition Act 2007. The Executive Director has recommended the imposition of financial penalties totalling Rs 76.4 million on the enterprises concerned.

The Executive Director of the Competition Commission launched a first investigation in the supply of chemical fertilisers in Mauritius, referenced as 'INV037'. The competition concern was whether the two suppliers, namely MCFI and UIL through its subsidiaries [Island Fertilisers Ltd ('IFL') and Island Renewable Fertilisers Ltd ('IRFL')], have illegally agreed to fix price and share the market for the supply of chemical fertilisers to customers in Mauritius. Price fixing and market sharing agreement referred to as a cartel, are prohibited in Mauritius and such conducts are penalised with fines.

During the investigation, MCFI applied for leniency. Under the Competition Commission's leniency programme an enterprise which has participated in a collusive agreement can benefit from either full immunity from fines or up to 100% reduction in the financial penalty when it voluntarily comes forward and provides information about the cartel to the Competition Commission. MCFI, thus, cooperated with the investigation by providing information of the cartel. The leniency application of MCFI also disclosed another cartel, in the form of bid rigging,

between MCFI and UIL in the supply of chemical fertilisers by MCFI and UIL in response to calls for bids by some sugar estates for the supply of fertilisers.

Consequently, the Executive Director started a separate investigation (INV041) to assess this new issue of whether MCFI and UIL have participated in bid rigging by agreeing amongst themselves on the price, and terms and conditions to be submitted in response to the invitation for tenders issued by the sugar estates. Bid rigging occurs when suppliers, instead of submitting their offers independently and competitively, agree amongst themselves on the price or conditions they would offer, or they agree on who would submit a bid, so as to eliminate competition between tenderers. Bid rigging is prohibited and penalised by fines under the Competition Act.

The finding of the Executive Director for the first investigation (INV037) based on evidence gathered is that MCFI and UIL have participated in collusive agreements (in breach of section 41 of the Act), over a three-year period starting 2014 to 2016 in the supply of fertiliser in Mauritius. The view of the Executive Director is that price fixing and market sharing are serious breaches which warrant the imposition of financial penalty. The Executive Director has therefore recommended the imposition of financial penalty of Rs 55.9 million on UIL. The Executive Director has also recommended that MCFI be granted leniency with a 90% reduction in the fines imposed on it as reward for having disclosed vital information of the cartel and for having cooperated with the investigation. Thus, the recommended fines for MCFI after deduction of leniency discount is Rs 5.4 million instead of Rs 54 million.

In respect of the second investigation (INV041), the finding is that MCFI and UIL have participated in bid rigging agreements (in breach of section 42 of the Act). The evidence gathered showed that MCFI and UIL have agreed on the price to submit in response to calls for bids for the supply of fertilisers by sugar estates namely, Alteo Ltd, Omnicane Ltd, Compagnie de Beau Vallon Ltée, and ENL Agri Ltd. The Executive Director has recommended the Commission to impose a penalty amounting to Rs 15,1 million on UIL. And to grant full immunity from fines to MCFI for having disclosed the cartel as part of its leniency application.

The investigative function at the Competition Commission is vested in the Executive Director whilst the adjudicative function is vested in the Commissioners. The Commissioners are empowered to impose fines and directions on enterprises which are found to have participated in cartels. It has to be noted that at the moment the fines mentioned above are only recommendations from the Executive Director. It is now incumbent on the Commissioners to assess the findings of the Executive Director and determine on the breach and the fines. In its assessment and determination of the matter, the Commissioners may agree or disagree with the findings and recommendations of the investigations. The Commissioners will henceforward convene hearings for both investigations with the parties to provide them the opportunity to make submissions. After the hearing, the Commissioners will determine the cases and issue their decisions.

Statement of the Executive Director

“The two investigations were carried out in parallel into the supply of chemical fertilisers which is an important input in crop production. Both investigations were completed at the same time and I have recommended leniency at the rate 90% discount in the first investigation and full immunity from fines in the second investigation to the leniency applicant, on the basis of the relevance of the information submitted by MCFI and its collaboration in the whole investigative process.

Having submitted my Reports of investigation, it is now for the Commissioners to make a determination based on my findings and after having heard the main parties during a hearing process.

I would like to emphasise that these two investigations highlight the importance of leniency as an effective tool to detect and bring an end to cartels. The cases also show that leniency remains the only positive avenue for an enterprise which has participated in a cartel to amend its conduct. If a cartelist does not avail itself of leniency irrespective of whether the Competition Commission has started an investigation, then such enterprise lends itself to large financial penalties.

Since the matter is at the level of the Commission for determination, I would not make any comment on the fines. However, we believe that the imposition of fines would have a major deterrent effect against collusion and therefore, help in preserving the process of competition between rival firms for the benefit of the economy in general and more specifically for the benefit of the local agricultural sector. On a different note, I may add that the agricultural sector which is a founding pillar of our economy is already facing major sector-specific challenges both in the local and the international context, thus, stopping such cartels and the restoration of competition will undoubtedly benefit the sector.

Cartels are detrimental to consumers and prevent the economy from functioning at optimum efficiency. We are employing the wide powers of investigation to detect and end cartels and there are several cartel investigations that are currently ongoing, some are nearing completion. I would like to add that the Competition Commission remains resolute in the fight against cartels.”

For more information please consult CCM 3 Guidelines on Collusive Agreements and the Explanatory notes on leniency for cartel initiators and coercers available on our website www.ccm.mu.

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End of media release