

MEDIA RELEASE

23/11/2020

Investigation Ref: **INV 043**

THERMAL VALORISATION CO. LTD TO SUPPLY TREATED FLY-ASH TO KOLOS CEMENT LTD TO ADDRESS COMPETITION CONCERN IN THE CEMENT MARKET

In April 2018, the Executive Director of the Competition Commission ('the Executive Director') opened an investigation, *INV043 – Fly Ash*, into an exclusive sales and purchase agreement for treated fly ash between Thermal Valorisation Company Limited ('TVCL') and Lafarge (Mauritius) Cement Ltd ('Lafarge').

The demand for cement in Mauritius revolves around 600,000 tons per annum. The local cement market is highly concentrated with only two operators, namely Lafarge and Kolos Cement Ltd ('Kolos') involved at the importation and wholesale distribution levels. Treated fly ash can be used as cement additive and thus represents an important input in the supply of blended cement.

Locally available cement additives such as treated fly ash can represent potential cost-savings for the cement operators. These operators can reduce their reliance on importation of cement by partly substituting for less costly locally available cement-grade fly ash, which can be used for blending purposes. Customers can also expect to gain from the potential reduction in the costs of producing blended cement from locally available cement-grade fly ash. In addition to the economic benefits, blended fly ash cement has superior technical properties and can be used for specific purposes as compared to ordinary cement. For instance, it makes concrete stronger and reduces cracks and permeability to water.

Currently, TVCL is the only local supplier of cement-grade fly ash in Mauritius. It produces the cement-grade fly ash by processing the by-product resulting from electricity generation by thermal power plants using bagasse and coal, operated by its holding companies, namely Omnicane Limited and Terragen Ltd. This process of producing cement-grade fly ash involves burning the untreated fly ash to further reduce the residual carbon. The final product must comply with set legal norms, to be used as cement additive for purposes of blending with ordinary cement.

The competition concern identified by the Executive Director is that the exclusive agreement between TVCL and Lafarge would deny Kolos access to the locally produced cement additive. This could affect the ability of Kolos to compete on level playing field with Lafarge and consequently weaken competition in the local cement market.

During the investigation and pursuant to s.63 of the Competition Act, TVCL offered undertakings to address the competition concerns identified by the Executive Director. TVCL committed to supply to Kolos with a specified percentage of its production of the cement-grade fly ash at a price not less favourable to those offered to Lafarge.

The Executive Director assessed the efficacy of the undertakings offered by TVCL and concluded that same satisfactorily address the potential competition concern identified. With the undertakings, Kolos will now have access to locally produced cement-grade fly ash and can thus effectively compete with Lafarge in the cement market.

In pursuance to s. 63(3) of the Competition Act and on basis of the Report of Undertakings, the Commission accepted the undertakings submitted by TVCL, with a monitoring mechanism in place.

The decision can be accessed from the following link:

[Link to the decision](#)

Mr. Deshmuk Kowlessur, Executive Director of the Competition Commission, said

“It is important to ensure that market conditions are conducive for vigorous competition amongst operators for customers to reap full benefits in terms of price and product innovation. Conducive competition conditions encourage businesses to undertake risks and bring innovation on the market.

In this regard, the TVCL’s project of valorizing fly ash with high carbon content into cement-grade fly ash has its full merits. It provides cement operators with the possibility of sourcing locally fly ash to produce composite cement, which can be used for special purposes such as corrosion-resistant concrete. The potential competition issue which arises from the agreement that TVCL has with Lafarge, provides the latter with exclusive access to TVCL’s cement-grade fly ash production. This can undermine the competitive process in the cement market by denying access to locally available cement-grade fly ash to the other cement operator, namely Kolos.

TVCL has fully collaborated in the investigation and voluntarily offered undertakings to open access to Kolos and thus addressed the competition concern identified. This is likely to impact positively on competition in the market for the supply of cement. With more competition in the supply of the fly ash cement, the local construction industry is likely to benefit a lot.”

[End of Media release]

Background for editors:

The Competition Act

The Competition Act 2007 came fully into effect on 25th November 2009 and is enforced by the Competition Commission. Sub-parts II and III of Part III of the Competition Act 2007, cover restrictive practices described under 'Other restrictive agreements' and 'Monopoly situations'.

To take action, the Competition Commission must find that the conduct of an enterprise in a monopoly situation restricts, prevents, or distorts competition or otherwise exploits the monopoly situation. We refer to such conduct as 'abuse of monopoly'. Where the Executive Director has reasonable grounds to believe that abuse is occurring, or will occur, he may launch an investigation.

Abuse of monopoly situation

It is not in itself any breach of the law for an enterprise to be in a monopoly situation. However, as per Section 46(2) of the Competition Act, enterprises which hold monopoly positions may be in breach of the abuse or exploit any market power this position confers upon them. The question for the Competition Commission is whether such enterprises are engaged in conduct which restricts, prevents, or distorts competition (such as using their market position to exclude rival enterprises) or otherwise exploiting the monopoly situation.

'Anticompetitive foreclosure' is said to occur when the conduct of a monopoly enterprise restricts or eliminates the effective access of actual or potential competitors to customers or to supplies, to the detriment of consumers or the economy in general. 'Foreclosure' should be read to mean 'exclusion of competitors in a manner that damages consumers or the economy in general', not simply 'exclusion of competitors'.

The Competition Commission takes the view that, in most markets, free competition is an effective guarantor of the interests of consumers and is likely best to promote the efficiency, adaptability and competitiveness of the economy of Mauritius. Significant weakening of competition will therefore have adverse effects.

Section 63 -Undertakings:

Section 63 of Part VI of the Act states that an enterprise may offer a written undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation into a restrictive business practice.

An undertaking is a commitment which is offered by an enterprise to address the competition concerns of the CCM. The undertakings offered are assessed by the Executive Director in order to conclude whether the latter may address the competition harms.

Upon completion of the assessment of the undertakings, the Executive Director submits a Report of Undertakings which includes his recommendation on whether the undertakings may or may not be accepted by the Commission under Section 63 of the Act. If an undertaking is accepted by the Commission, it is published in the form of a decision of the Commission, and the enterprise must comply with its terms. The undertaking then operates like a direction issued by the Commission under Section 60.

Further information:

For further information see the Competition Commission's website at www.competitioncommission.mu, and the Procedural Rules and Guidelines: 'CC 1 - Procedural Rules', 'CC 2 – Market definition and the calculation of market share', Procedural Rules 'CC 4 - Monopoly situations and non-collusive agreements' all available on the web site.