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MEDIA RELEASE

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Investigation Ref: INV 037/041

THE COMMISSION IMPOSES FINES OF RS 5.4 MILLION ON MCFI FOR PRICE FIXING/MARKET SHARING AND FOR BID RIGGING IN THE SUPPLY OF FERTILSERS

The Commissioners of the Competition Commission have determined that Mauritius Chemical & Fertilizers Industry Ltd (now Ingenia) ('MCFI') has participated in prohibited collusive agreements with United Investments Ltd ('UIL') in the supply of chemical fertilisers in Mauritius, and it has therefore breached the Competition Act 2007 (the Act). The Commissioners have thus decided to adopt the recommendations of the Executive Director to impose reduced financial penalties of Rs. 5.4 million on MCFI for breaching the cartel provisions of the Act since MCFI had applied for and was granted partial leniency.

Background of the Investigations

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.

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 supply of fertilisers to sugar estates.

The Decision of the Commission

Following the completion of the two investigations, the Executive Director had on 29 June 2018 submitted his reports for both investigations to the Commissioners of the Competition Commission for determination of the cases. The Commissioners have endorsed the findings of the Executive Director with regards to MCFI and since MCFI had applied for leniency and satisfied the conditions for the grant of leniency, the Commissioners also endorsed the recommendations of the Executive Director with regards to the financial penalties to be imposed that is, that MCFI be granted leniency with a 90% reduction in the fines imposable on it as reward for having disclosed relevant information of the cartel and for having cooperated with the investigation. Thus, the fines for MCFI after deduction of leniency discount is Rs 5.4 million instead of Rs 54 million in the first case and full immunity from fines (zero fine) for the second case.

This decision was made after MCFI had requested the Commissioners to uphold the recommendations of the Executive Director concerning it, and that the cases against it be dealt with separately and independently of the cases against brought UIL. MCFI had prior to that already informed the Commissioners that it did not wish to make written submissions on the proposed directions and the quantum of financial penalty to be imposed and therefore did not contest the findings of the Executive Director.

The matter concerning UIL, is still at the level of the Commissioners for determination. The Executive Director has recommended the imposition of financial penalties of Rs 55.9 million and Rs 15.1 million on UIL for the two cases.

Statement of the Executive Director

"*This matter concerned a very important input product for our agricultural sector. As such putting an end to the cartel and restoring competition in the supply of fertiliser is a very positive result for us at the Competition Commission. The main parties had stopped cooperating with one another when we started to investigate them, thus restoring the level of competition for the benefit of planters and ultimately the consumers.*

The two investigations were carried out in parallel and were completed at the same time and I have recommended leniency at the rate of 90% discount for MCFI in the first investigation and full immunity from fines in the second investigation on the basis of the relevance of the information submitted by MCFI in its leniency and leniency plus applications and its collaboration in the whole investigative process.

These two investigations highlight the importance of leniency as an effective tool to bring an end to cartels.

MCFI had since the beginning of the investigation cooperated to resolve that matter and remained true to its stand which has now led to the closure of this matter as far as MCFI is concerned. Indeed, leniency and cooperation with the Commission as provided under the Competition Act remains a very attractive avenue for an enterprise which has participated in a cartel to amend its conduct.

We believe that the imposition of fines would have a major deterrent effect against collusion in any other sector or product and therefore, help in preserving the process of competition between rival firms for the benefit of consumers and the economy in general."

End of media release