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MEDIA RELEASE		
14/07/2023	Investigation Ref:	INV 044
THE COMMISSION IMPOSES DIRECTIONS ON THREE ENTERPRISES INVOLVED IN THE SUPPLY OF MEDIA SPACE FOR HAVING PARTICIPATED IN COLLUSIVE AGREEMENTS IN BREACH OF SECTION 41 OF THE COMPETITION ACT 2007		

The Commissioners of the Competition Commission have determined that Circus Advertising Company Ltd, P&P Link Co. Ltd and Maurice Publicité Ltd have breached section 41 of the Competition Act 2007 (the Act) in respect of the supply of media space for purposes of disseminating advertising contents. The breach concerns the agreement reached by the above-mentioned main parties in respect of Touch Point Ltd which is a company jointly owned by them and which operates as a media buying company, that is, an agency specialised in negotiating and buying media space from media owners, which it then resells to advertising agencies or to client advertisers for purposes of disseminating advertising contents.

The Commissioners have thus decided to adopt the recommendations of the Executive Director to impose wide-ranging directions under section 58 of the Act on the main parties. The enterprises cooperated voluntarily with the investigation and the decision-making process at the level of the Commissioners.

The decision has been published in the Government Gazette and is also available on the website of the Competition Commission.

Background of the Investigations

The Executive Director of the Competition Commission has, pursuant to sections 30(b) and 51 of the Competition Act 2007 (the Act), opened an investigation in the supply of media space and related services by Circus Advertising Company Ltd, Maurice Publicité Ltd, and P&P Link Co. Ltd through Touch Point Ltd.

The investigation revealed that the main parties are competitors in the supply of media space. Thus, their decision to form a commercial undertaking - Touch Point Ltd – raised competition concerns especially by virtue of their joint control and involvement in the management and operations of

Touch Point Ltd in the supply of media space. The investigation has assessed the main parties' involvement and decisions in relation to Touch Point Ltd's pricing and commercial policies in the supply of media space/media buying services together with the main parties' own frequent exchanges and interactions with one another, as competitors, through the platform of Touch Point Ltd.

The findings of the investigation are that the main parties have, through Touch Point Ltd, participated in collusive conducts prohibited under section 41 of the Act. They reached an agreement having the object of restricting supply of media space by directing Touch Point Ltd not to actively sell media space to clients of other communication agencies which are members of the 'Association of Communication Agencies' (ACA), of which the main parties are also members. Furthermore, owing to their direct control and involvement in Touch Point Ltd as directors and as members of its Executive Management, the main parties have been found to have participated in concerted practices in as much that they are competitors in the supply of media space. This finding is based on the frequent contacts, communications and strategic commercial exchanges among the main parties more specifically on Touch Point Ltd's media space pricing, purchase value and purchase prices which, in the absence of adequate ring-fencing measures, artificially increase market transparency and are capable of facilitating coordination of their own commercial conduct on the market.

Considering the scope of the parties' conducts which are found to be collusive and the provisions of section 58, the Executive Director recommended the imposition of wide-ranging directions on the main parties.

The Decision of the Commission

The Commissioners have issued their decision on the matter on 29 March 2023, finding merits in the findings made by the Executive Director.

This determination is based on the evidence gathered and as set out in the final report of investigation of the Executive Director. The Commissioners reached the conclusion that the parties have acted in breach of section 41 of the Act more specifically based on the fact that, by their concerted action, the parties investigated, have availed themselves of the control they enjoy over Touch Point Ltd to restrict the supply of media space/media buying services. The Commissioners have also had regards to the fact that the findings of breach by the Executive Director were not disputed by any of the parties under investigation.

The Commission has also considered the cooperative attitude of the parties and agrees with the Executive Director's recommendation that on the facts and circumstances of the present case, no financial penalty be imposed on any of the main parties.

The Commissioners have directed the parties to forthwith end the infringement and refrain from engaging into any agreement or concerted practice with any third party, which may restrict Touch Point Ltd's and the main parties' ability to freely offer its services to any ACA members and any client advertisers. The main parties have also been directed to put in place relevant and appropriate ring-fencing measures to prevent access to each other's pricing and/or price-setting information and any other information either through Touch Point Ltd or otherwise.

Moreover, for a period of three (3) years ending on 28 March 2026, the main parties have been directed to disclose all such information which the Competition Commission may require from the parties in relation to compliance with the direction imposed by the Commission and/or their individual and collective supply (through Touch Point Ltd) of media space/media buying services in Mauritius.

Statement of the Executive Director, Mr Deshmuk Kowlessur

"The present matter concerned a joint endeavour by three competitors in the supply of media space which set up a vehicle whereby they could pool together to acquire media space from media owners for their own businesses. This in itself is not necessarily against the spirit of the Competition Act. However, the joint enterprise happened to also be a competitor as it would also be selling media space to other media agencies or directly to client advertisers. In this context, the exchange of their business sensitive information via the joint vehicle by the main parties created transparency amongst them and this is not conducive to maintaining the level of competition that ought to exist among them. They had also decided to restrict Touch Point Ltd from supplying media space to agencies which are members of the Association of Communication Agencies. This amounted to a restriction of supply as prohibited under section 41 of the Act.

Although there is no redeeming factor for cartels, the main parties have decided to cooperate on this matter and accepted the remedial measures when they decided not to dispute the findings and recommendations of the investigation. This not only expedited the administrative process but more importantly led to a swifter restoration of competition on the market.

The Commissioners have upheld the findings of the investigation, and I must say that I am pleased with the outcome of this case and for our investigative team. Since the start of the Covid-19 pandemic in March 2020, this is the 9th decision of the Commission, relating to investigations on collusive agreement carried out by my office . We remain steadfast in our fight against cartels for the benefit of Mauritian consumers."

-End of media release-