

General Notice No. 1390 of 2025



Decision of the Commission

CC/DS 0060

In the Matter of -

“INV025 – Potential Resale Price Maintenance in relation to ‘Chantecler branded chicken products’” further to Judgment delivered by the Supreme Court of Mauritius on 27 May 2024 in the appeal brought by Panagora Marketing Co Ltd

29 NOVEMBER 2024

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**Decision of the Commissioners of the Competition Commission (the 'Commission')
of 29 November 2024**

further to Judgment delivered by the Supreme Court of Mauritius on 27 May 2024 in the appeal brought by Panagora Marketing Co Ltd against the Commission's Decision referenced *CC/DS/0020* in the matter referred to as "INV025 – Potential Resale Price Maintenance in relation to 'Chantecler branded chicken'"

THE COMMISSION –

Mr. A. Mariette - Vice-Chairperson,
Mrs. V. Bikhoo - Commissioner,
Mrs. S. Dindoyal - Commissioner,
Mr. M. Lennon - Commissioner.

HAVING REGARD TO –

the Competition Act 2007 and procedural rules made thereunder,
the Judgment of the Supreme Court of Mauritius delivered on 27 May 2024 in the afore-referred appeal,
the Commission's Decision of 16 March 2017 in the INV 025 matter related to Potential Resale Price Maintenance in relation to 'Chantecler branded chickens',
the Report of Investigation dated 18 December 2015 submitted by the Executive Director to the Commission in the INV 025 matter related to Potential Resale Price Maintenance in relation to 'Chantecler branded chickens',
a correspondence dated 21 November 2024 from Panagora Marketing Co Ltd in reply to a Notice issued to it under rule 22(3) of the Competition Commission's Rules of Procedure 2009,
We, the above-named Commissioners, have accordingly determined the matter and have, on this day, proceeded to issue the following decision (hereinafter 'Decision') -

1. INTRODUCTION

1.1. The present proceedings arise further to a judgment delivered by the Supreme Court of Mauritius on 27 May 2024 (the 'Judgment') in the appeal brought by Panagora Marketing Co Ltd against the Commission's Decision referenced "CC/DS/0020" (the 'Appeal') in the matter referred to as "INV025 – Potential Resale Price Maintenance in relation to 'Chantecler branded chickens'" (the 'INV025 matter').



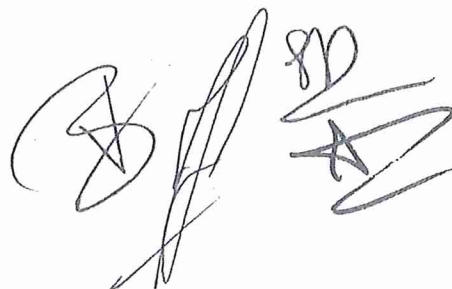
- 1.2. The Judgment annulled the Commission's Decision in the INV 025 matter in relation to the quantum of the financial penalties imposed and the case was remitted back to the Commission to assess the financial penalties anew in line with the recommendations of the Executive Director, as contained in his Report of Investigation.
- 1.3. The Commission notes that the Judgment did not challenge the Commission's determination of section 43 breach on the part of Panagora Marketing Co Ltd in this matter.
- 1.4. The present decision therefore is solely concerned with the quantum of financial penalty to be imposed upon Panagora Marketing Co Ltd **in light of** its infringement and the Executive Director's recommendations. The Commission has reassessed the matter anew **bearing in mind /** the Executive Director's recommendations.

2. BACKGROUND TO COMMISSION DECISION CC/DS/0020 IN 'INV 025 MATTER'

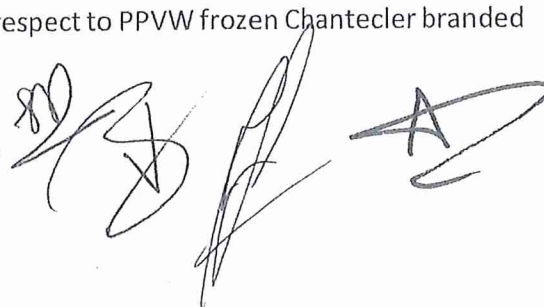
- 2.1. On 18 December 2015 and upon completion of the INV 025 – Investigation, the Executive Director submitted his Report of Investigation to the Commission pursuant to section 51(2) of the Competition Act 2007 (the 'Act') for its determination.
- 2.2. The investigation concerned potential vertical agreements involving resale price maintenance ('RPM') between Panagora Marketing Co Ltd and its resellers like supermarkets, hypermarkets, and retail outlets (hereinafter 'Dealers') in relation to Chantecler branded chicken products.
- 2.3. The Executive Director found that Panagora Marketing Co Ltd's conduct affected two sets of agreements, namely in relation to the normal sales of chicken and in relation to promotional sales of chicken respectively. Regarding the agreement on normal sales, the Executive Director split the agreement into two sets of agreements, one for chilled chicken and the other for frozen chicken as the nature of the agreements changed, especially with regards to its duration. While a single assessment was made in relation to normal sales of chilled and frozen chicken products, the Executive Director recommended different fines for normal sales of chilled and frozen chicken. For simplicity, the three sets of agreements concerned by the Investigation are:
 - 2.3.1. the normal sales of pre-packed variable weight chilled Chantecler chicken branded products ('normal sales of PPVW chilled Chantecler chicken'),
 - 2.3.2. the normal sales of pre-packed variable weight frozen Chantecler chicken branded products ('normal sales of PPVW frozen Chantecler chicken'), and
 - 2.3.3. promotional sales of Chantecler chicken branded products.

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- 2.4. In relation to the **normal sales of PPVW chilled and frozen chicken products**, the following acts and practices on the part of Panagora Marketing Co Ltd were impugned:
- 2.4.1. It determined and affixed the resale price of its Chantecler branded chicken products;
 - 2.4.2. It did not insert the words 'recommended price' next to the price it had affixed;
 - 2.4.3. It sent various price lists to the Dealers and the said lists contain a column entitled 'Retail Price' without mention made that the Retail Price is a recommended retail price;
 - 2.4.4. It sent its price list, which contained both wholesale and retail price to various Dealers in a single email wherein several Dealers were copied and could see who was copied, thereby creating an element of dissemination of sensitive information among competitors; and
 - 2.4.5. At least one Dealer has requested Panagora Marketing Co Ltd to affix its own price but was initially refused this possibility.
- 2.5. On the basis of the evidence before him, the Executive Director found that the above elements, taken together, constituted a system of arrangements amounting to an agreement having the object to fix the price at which the Dealers must resell the Chantecler branded chicken products.
- 2.6. In relation to **promotional sales of Chantecler branded chicken**, the reproach made to Panagora Marketing Co Ltd was that the deal sheets through which the offers had been made to the Dealers contained a clause that read: "*Le fournisseur se réserve le droit d'annuler le tarif promotionnel au cas ou certains produits sont vendus en dessous du prix normal*".
- 2.7. The Executive Director found that:
- 2.7.1. the above clause imposed a restriction on the dealers not to sell below the normal price, failing which the promotion would be cancelled; and
 - 2.7.2. by accepting the offer made to them, Dealers were in fact agreeing to the terms and conditions including the restriction not to sell below the normal price, thereby having the object of imposing a minimum price to be observed by the Dealers.
- 2.8. The Executive Director accordingly found that Panagora Marketing Co Ltd was in breach of section 43 of the Act in that:

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- 2.8.1. The deal sheet constituted an element of the contractual relationship between Panagora Marketing Co Ltd and the Dealers;
- 2.8.2. Repeated orders and the successive payments made without protest by the Dealers based on the deal sheets constituted a tacit acquiescence on the part of the Dealers; and
- 2.8.3. The impugned clause would by its object impose a minimum price to be observed by the Dealers.
- 2.9. In his Report of Investigation, the Executive Director recommended the imposition of directions as well as financial penalties. On the issue of financial penalties, the Executive Director recommended as follows –
- 2.9.1. Not to impose financial penalties for the RPM with regards to the normal sales of PPVW chilled chicken given that the breach was less serious. However, if the Commission considered the breach to be of a more serious nature, a penalty of Rs 281, 267 was recommended;
- 2.9.2. A symbolic financial penalty of Rs 1 with regards to the normal sales of PPVW frozen chicken considering the impugned practice was not personal to Panagora Marketing Co Ltd but rather, was prevalent in the industry wherewith suppliers of PPVW frozen products, not limited to chicken, would affix the resale price on their products without the terms “recommended price” appearing next to the price. The Executive Director reasoned that the imposition of a financial penalty upon Panagora Marketing Co Ltd, to the exclusion of other industry players engaged in similar conduct, would be unfair. Rather, it was deemed that the situation would be best addressed by putting in place an amnesty programme for RPM behaviour while imposing a symbolic penalty on Panagora Marketing Co Ltd;
- 2.9.3. A financial penalty of Rs 4,077,110 with regards to promotional sales of Chantecler branded chicken.
- 2.10. It is further recalled that the Commission had issued its decision in the INV 025 matter on 16 March 2017 further to a hearing convened on 06 February 2017. In its decision, the Commission, in addition to imposing certain directions, and considering the nature and gravity of the breach ordered Panagora Marketing Co Ltd to pay:
- 2.10.1. A financial penalty of Rs 3,656,473 in respect to PPVW chilled Chantecler branded chicken.
- 2.10.2. A financial penalty of Rs 22,198,549 in respect to PPVW frozen Chantecler branded chicken.



2.10.3. A financial penalty of Rs 4,077,110 in respect to promotional sales of Chantecler branded chicken.

3. LEGAL FRAMEWORK ON FINANCIAL PENALTY

- 3.1. Section 59(1) of the Act provides that, in relation to a restrictive agreement falling within the scope of section 43, in addition to giving directions, the Commission may make an order imposing a financial penalty on the enterprise. However, the Commission shall not impose a financial penalty unless it is satisfied that the breach of the prohibition was committed intentionally or negligently.
- 3.2. Where the Commission imposes a financial penalty on an enterprise, the financial penalty shall not exceed 10 per cent of the turnover of the enterprise in Mauritius during the period of the breach of the prohibition up to a maximum period of 5 years.¹
- 3.3. The CC 6 Guidelines on Financial Penalties and Remedies states that *'in imposing any financial penalty, the Competition Commission has the following two objectives namely, to reflect the seriousness of the breach and to deter enterprises from engaging in anti-competitive practices. The imposition of a financial penalty is discretionary. The Competition Commission will, where appropriate, impose financial penalties in respect of inter alia vertical agreements which involve resale price maintenance (Section 43) [since considered to be among] the most serious breaches of competition law... The assessment of an appropriate penalty to be imposed for all types of breaches will depend on the facts of each case'*.²

4. COMMISSION'S DETERMINATION

- 4.1. As previously mentioned, the finding of infringement is not in issue. Pursuant to the Supreme Court's Judgment, the Commission has only been called upon to assess the financial penalties anew in line with the recommendations of the Executive Director, as contained in his Report of Investigation. Each impugned agreement is considered below.
- 4.2. With respect to the first set of agreements in relation to 'normal sales of PPVW chilled Chantecler branded chicken products', the Commission has carefully considered the considerations put forth by the Executive Director in finding such agreements to be of less serious nature. The agreements did not benefit from the active participation of Dealers nor was there a monitoring mechanism put in place by Panagora Marketing Co Ltd to ensure Dealers' adherence thereto or to sanction defecting Dealers. Also, the Executive Director has established that the impugned agreement had already been altered on or about August 2011, which is further considered as having attenuated the severity of the breach. The Report also notes that Panagora Marketing Co Ltd had on at

¹ Section 59(3) of the Act

² Para. 2.2 – 2.4 of CC 6 Guidelines.



least one occasion allowed a Dealer to affix its own retail price on the product concerned prior to August 2011. For the afore reasons, the Commission is minded considering the seriousness of this set of agreements as having been significantly mitigated to warrant absolving Panagora Marketing Co Ltd from financial penalty on this count.

- 4.3. As regards to the second set of agreements, viz., 'normal sales of PPVW frozen Chantecler branded chicken products', the Commission agrees with the Executive Director that it would have been unfair to penalise Panagora Marketing Co Ltd for a conduct that has proven to be widespread in the industry at large. It is recalled that some 102 applications had been filed by suppliers, including Panagora Marketing Co Ltd, and retailers operating in various sectors in the context of the Competition Commission's RPM Amnesty Programme 2017.
- 4.4. There is nothing in the Act nor in our Guidelines, which precludes the imposition of a symbolic financial penalty if special circumstances of a case so warrant. Section 5(c) of the Act is clear in that it is up to the Commission to determine such penalty ... as it thinks fit to impose in response to an identified anti-competitive practice [Emphasis is ours]. The Commission is, on account of the above, minded to imposing a symbolic financial penalty of Rs 1, instead of full penalty, for this set of agreements.
- 4.5. With respect to the third and final set of agreements concerned namely, with promotional sales of Chantecler branded chicken products, the Commission maintains its prior conclusion on financial penalty and finds that the amount of Rs 4,077,110 is appropriate to reflect the seriousness of this breach and to adequately meet the deterrence objective of the fining policy. This is a breach characterised by the imposition of minimum price during promotional sales that was made binding upon the resellers, and which was further accompanied by threat of cancellation of the promotional offers to the defecting resellers.
- 4.6. Finally, it must be highlighted that pursuant to rule 22(3) of the Competition Commission's Rules of Procedure 2009 (the 'Notice'), the Commission, having assessed the matter anew in the light of the Judgment, had notified Panagora Marketing Co Ltd of:
- its intention to impose financial penalties, in addition to directions, as were recommended by the Executive Director in his Report of Investigation;
 - the type and terms of the sanction; and
 - the right of the enterprise to appear before the Commission for a hearing within such time as the Commission considers appropriate in the circumstances, but not exceeding 21 days from the date of the notice.

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4.7. By correspondence dated 21 November 2024, Panagora Marketing Co Ltd informed the Commission that it was agreeable to the proposed imposition of financial penalties, as outlined in the Notice, and did not wish to be heard before the Commission on this matter.

5. DECISION OF THE COMMISSION

Now Therefore,

5.1. For the reasons set out in this Decision, We, the Commission, reiterate our prior directions made against Panagora Marketing Co Ltd, pursuant to section 58 of the Act, wherewith Panagora Marketing Co Ltd is directed -

5.1.1. to continue affixing, in a conspicuous manner, the terms 'Recommended Price' next to the resale price that Panagora Marketing Ltd affixes on PPVW 'Chantecler' branded chicken products,

5.1.2. to clearly state that resale prices, as determined by Panagora Marketing Co Ltd and appearing on price lists issued to its dealers, are 'recommended prices',

5.1.3. not to communicate dealers' price lists in such a manner as to apprise them of one another's price lists,

5.1.4. in relation to PPVW chilled 'Chantecler' branded chicken, to inform all dealers of their ability to independently determine the retail price to be affixed on the label/product packaging,

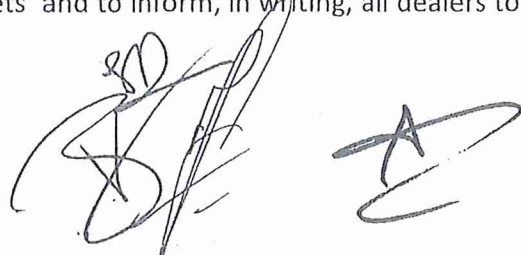
5.1.5. in relation to PPVW frozen 'Chantecler' branded chicken and within a period of 18 months from the date of the Commission's decision,

a) either to affix in a conspicuous manner the terms 'Recommended Price' next to the resale price that Panagora Marketing Ltd already affixes on its label/product packaging and inform all dealers of their commercial freedom to sell at a retail price that is different from the affixed recommended price;

b) or to propose any other suitable option to the Commission, which will satisfactorily address the identified concerns and to implement the proposed option following the Commission's approval thereof; and

c) upon the Commission's approval of any alternative option, to report on the status of its implementation every three (3) months, with supporting evidence, until such time as the option is fully implemented; and,

5.1.6. not to include, in its deal sheets, the impugned clause '*Le fournisseur se réserve le droit d'annuler le tarif promotionnel au cas ou certains produits sont vendus en dessous du prix normal*' or any like clause purporting to establish a fixed or minimum resale price in the 'deal sheets' and to inform, in writing, all dealers to



whom such deal sheets have been sent in the past that they are not bound by the said clause.

5.2. In addition to the afore-directions, We, the Commission, further impose the following financial penalties upon Panagora Marketing Co Ltd in respect of its involvement in the impugned RPM agreements, as follows –

5.2.1. a symbolic financial penalty of MUR 1 in respect of its involvement in agreements relating to normal sales of PPVW frozen Chantecler branded chicken products; and

5.2.2. a financial penalty of MUR 4,077,110 in respect of its involvement in agreements relating to promotional sales of Chantecler branded chicken products made through the 'deal sheets',

and which are to be paid **within 60 working days** from the date the Commission notifies Panagora Marketing Co Ltd of its decision on the matter.

Mr. A. Mariette
(Vice-Chairperson)

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Mrs. V. Bikhoo
(Commissioner)

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Mrs. S. Dindoyal
(Commissioner)

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Mr. M. Lennon
(Commissioner)

Made on 29 November 2024