

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Statement on behalf of the Prosecution

1. On the 17 December 2015, Police case file OB 120/2015 (CCID) was referred to the Office of the Director of Public Prosecutions (ODPP) following an investigation into alleged offences of Bribery of public official, forgery, conspiracy and related offences under the Prevention of Corruption Act and the Public Procurement Act. There followed several exchanges between the ODPP and the police, and a further enquiry was requested to be conducted by the Police on 03 March 2016.
2. In the above matter, the following persons were provisionally charged at the very outset of the investigation:
 - (a) Dr Navinchandra Ramgoolam, former Prime Minister of the Republic of Mauritius (Defendant No. 1)
 - (b) Anil Kumar Baichoo, former Minister of Public Infrastructure, Land, Transport and Shipping (Defendant No.2)
 - (c) Veekram Bhunjun, Company Director of Betamax Ltd (Defendant No. 3)
 - (d) Reshad Hosany, former Permanent Secretary at Ministry of Business and Enterprise (Defendant No. 4)
 - (e) Ranjit Singh Soomarooah, former General Manager of State Trading Corporation (Defendant No. 5)
 - (f) Kalindee Bhanji, Permanent Secretary at Ministry of Business and Enterprise (Defendant No. 6)
3. The case file consisting of statements and documents were duly considered by a team of three senior law officers whose findings were submitted to the DPP. Prior to the institution of criminal proceedings, the DPP has to be satisfied, in accordance with the ODPP Guidelines for Prosecutors, that the evidential test of reasonable prospects of securing a conviction be fulfilled. The assessment is based on the evidence available arising out of the investigation.

4. It is emphasised that the functions of the Office of the DPP are to decide whether evidence of criminal conduct is disclosed in the light of the police investigation and whether prosecution should be instituted. It is beyond the scope of the functions of the Office to pronounce itself on merits and demerits of governmental policy and actions.
5. After careful consideration of the evidence arising out of the investigation and in the light of the opinions of the senior officers, the DPP has decided that the case does not meet the evidential test of reasonable prospect of securing a conviction under the Guidelines for Prosecutors and has accordingly advised a no further action.
6. In view of the considerable public attention which has surrounded this matter, the DPP considers that this is a fit case for his above decision to be explained, in a spirit of public disclosure and transparency.

The salient facts as per police investigation

7. Following a feasibility study carried out by a French consulting company, Maritime Logistics and Trade Consulting (Consultants), on the acquisition of a medium sized container vessel for the carriage of petroleum products, Cabinet decided on 03 August 2007 to set up a Ministerial Committee to examine the proposals of the feasibility study. This Ministerial Committee operated under the aegis of the then Deputy Prime Minister and was constituted of the ministers responsible for Tourism, Finance, Commerce and Shipping. The Board of Investment and the representatives of the Mauritius Chamber of Commerce and Industry were also present.
8. The Ministerial Committee recommended that :
 - (a) local private companies be invited through an “Expression of Interest” to finance the purchase of a tanker;
 - (b) the State Trading Corporation (“STC”) should grant a guarantee of 7 years captive cargo to attract potential private investors and enable the company to start its operation on sound financial basis.

9. On 24 October 2007, Cabinet approved the recommendation of the Ministerial Committee. It also approved that the Mauritius Chamber of Commerce and Industry (MCCI) would launch an invitation to its members. Six companies responded to the said invitation.
10. On the 15 November 2007, the Senior Chief Executive addressed a letter to the Secretary of the Central Tender Board informing it of the recommendations of the Ministerial Committee, amongst others, that local private companies should be invited to finance the purchase of the tanker and seeking approval of the Central Tender Board to that effect. A draft Expression of Interest (“EOI”) was also submitted.
11. On 06 December 2007, the Secretary of the Central Tender Board informed the Senior Chief Executive that the said request fell outside the purview of the Central Tender Board.
12. The Public Procurement Act [Act 33/2006] (“PPA”) came into force on 17 January 2008.
13. In a letter dated 04 March 2008, the Senior Chief Executive invited the six private local companies to submit their formal Expressions of Interests. Among these companies, the Consultant found that only one company, namely Betonix Ltd, had submitted a valid EOI.
14. In a letter dated 17 April 2008, the Senior Chief Executive of the Ministry of Public Infrastructure informed the Financial Secretary of a proposal from the Consultant to consider the advisability of international tenders, with a guarantee of captive cargo.
15. On the 19 December 2008, Cabinet in its decision, (No 1482) “took note of developments in the purchase of a tanker vessel for the transportation of petroleum products with a view to stabilizing and minimising freights rates and reducing dependency on foreign operators.” It also agreed in principle to the proposal that Betonix Ltd in partnership with Executive Ship Management Private Limited of Singapore to acquire a double hull tanker vessel subject to a commercial contract being entered into between the STC and the promoters for the transportation of petroleum products for a period of 15 years.

16. On 12 January 2009, the Permanent Secretary of the Ministry of Public Infrastructure informed Betonix Ltd that Government had agreed, in principle, for Betonix Ltd, in partnership with Executive Ship Management (ESM) Private Limited of Singapore, to acquire and operate a tanker on specified terms and conditions. Through a restructuring of its shares Betonix Ltd was replaced by Betamax Ltd on 6 May 2009.
17. The STC sought legal advice from the Attorney General's Office ("AGO"), in relation to the acquisition of the said tanker. In a letter dated 21 April 2009, the AGO expressed the view that the procedures under the PPA appeared not to have been followed. In a subsequent letter dated 06 May 2009, the AGO advised, after vetting the Contract of Affreightment with Betamax Ltd, that same was legally in order, provided that procurement issues had been addressed.
18. On the 29 June 2009, the Public Procurement Regulations ("PPR") were amended to exempt the following bodies from the procedures under the PPA namely: Agricultural Marketing Board, Central Electricity Board, Outer Islands Development Corporation and State Trading Corporation, in respect of Goods purchased for resale, including services incidental to the purchase or distribution of such goods.
19. On 23 July 2009, a meeting was held between the Financial Secretary, Chairperson of the STC and the representatives of the AGO, to monitor progress on the developments relating to the signing of the contract with Betamax Ltd.
20. On the 30 July 2009, the PPA was amended by the Finance (Miscellaneous Provisions) Act 2009, to provide that the PPA shall apply to all public bodies, with the exception of those exempted in the schedule to the PPA. The law as amended is still in force.
21. On 04 September 2009, following the decision of Cabinet, another ministerial committee chaired by the then Vice Prime Minister, Minister of Tourism and External Communication and constituted of the Ministers responsible for Finance, ICT, Business and Enterprise and Public Infrastructure, Land, Transport and Shipping, was set up to examine the terms and conditions of the proposed Contract of Affreightment with Betamax Ltd.

22. On 01 October 2009, the said Ministerial Committee appointed the firm BDO/ DCDM Consulting to evaluate the advantages and disadvantages of resorting to Betamax Ltd as opposed to retaining the then vessel carriers ST Shipping and Pratibha Shipping Company Ltd.
23. In its Report dated 26 October 2009 entitled ‘Evaluation Report of Proposal of Betamax Ltd’, BDO/ DCDM Consulting concluded that “the difference between the existing contracts and the new one rests primarily on the type of vessels being used and in the portion of fixed and variable costs elements...Compared to ST Shipping, Betamax is more competitive. However, compared to Pratibha Shipping, Betamax is more costly by \$1/MT to \$1.60/MT...” In a further report submitted on 26 November 2009 entitled ‘Verification of Project Costs Proposed by Betamax Ltd’, BDO/DCDM Consulting opined that “based on our review, most of the project costs proposed by Betamax seem reasonable given the set of assumptions...”
24. On 26 November 2009, a meeting was held at the Ministry of Business, Enterprise and Cooperatives with STC and Betamax to review certain clauses of the Contract of Affreightment, following which STC was instructed to seek its Board’s approval to have the contract signed. The Minister of Business, Enterprise and Cooperatives instructed his Permanent Secretary to sign the implementation agreement once the Board of the STC had given its approval to the Contract of Affreightment.
25. The Contract of Affreightment between STC and Betamax Ltd was signed on 27 November 2009.

The complaint made to the Police

26. On 21 February 2015, the Permanent Secretary of the Ministry of Industry and Commerce reported to the Central CID on behalf of government that the procedures set out in PPA had not been followed, and that the approval of the Central Procurement Board (“CPB”) had not been sought in respect of the allocation of the contract to Betamax Ltd. He also alleged that :

- (a) the contract was awarded in breach of s 14 of the PPA and on terms substantially in favour of Betamax Ltd;
- (b) the PPR had been passed in June 2009 exempting the STC from the PPA;
- (c) STC was, pursuant to Regulation 2A of the PPR, at the time of the award of the contract in November 2009, still under the ambit of the PPA, and
- (d) Government was undergoing losses as a result of the execution of the contract.

27. In the conduct of its ensuing investigation into the above complaint, the Police interviewed several persons including Permanent Secretaries of various ministries. In a previous investigation, the Police had recovered an envelope containing a certain sum of money at the place of the Defendant No. 1 on which were written 2 “names”, bearing resemblance to the name of Defendant No. 3.

28. It is being suggested by the Police that:

- (a) Defendant No 1 has allegedly received a bribe from Defendant No 3;
- (b) Defendant No 1 has allegedly influenced a public official, namely former Minister Mahen Gowreesoo, to favour Betamax Ltd for the award of a contract;
- (c) there are possible conspiracies between (i) Defendants No 1, 2 and 3 to do a wrongful act to the prejudice of the State; (ii) between Defendants No 2 and 3 and another person to do an unlawful act (breach of section 14 of the PPA); (iii) between Defendants 2, 3 and 4 to do a wrongful act which had the consequence of causing substantial monetary loss to the State, and (iv) between Defendants No 3, 4 and 5 to do a wrongful act.
- (d) Defendant No 3 has allegedly influenced public official (Defendant No 5) in breach of section 9 of the Prevention of Corruption Act by exercising pressure upon him to deal directly with the Financial Secretary;
- (e) Defendant No 3 has allegedly breached section 14 (5) of the PPA.
- (f) Defendant No 6 allegedly fraudulently altered a Cabinet Memorandum before it was submitted to Cabinet

29. In an unsigned document submitted to the police in support of the complaint, mention is made that the STC falls within the ambit of the PPA as far as the present contract is

concerned. This is clearly wrong since the amendment made by the Finance (Miscellaneous Provisions) Act 2009 to the PPA and the amendment made to the PPR exempted a number of public bodies including STC from the procedures of the PPA in relation to contract of goods for sale.

30. Furthermore, the unsigned document misquotes the relevant Regulation 2A by omitting the proviso that the said Regulation applies only to public bodies listed, and in relation to contracts specified, in the Schedule to the PPA. Moreover, the complaint of an alleged breach of section 14 of the PPA is not borne out in evidence inasmuch as at the time of the signature of the contract, the Finance (Miscellaneous Provisions) Act [2009] had already been enacted.
31. It is noteworthy that the basis of the exemption of the STC from the tender procedures emanates from the amended PPA, as enacted by Parliament. The effect of the amendment was to exempt the STC from procedures under the PPA when entering into contracts in respect of Goods purchased for resale, including services incidental to the purchase or distribution of such goods. It is considered that the reasonableness of passing this legislation and its underlying policy cannot be subject matter of a criminal investigation
32. The evidence brought before this office discloses that STC was officially informed by way of letter dated 15 January 2009 from Ministry of Business, Enterprise and Co-operatives of the 'in principle' decision of Cabinet on the award of the contract to Betonix Ltd on 19 December 2008. No contract had been signed at that time. In June and July 2009, the PPA was amended. In November 2009, the matter went back to Cabinet, which took cognizance of the Report of BDO/DCDM. Thereupon, Cabinet formally approved the entering of the contract between STC and Betamax. Based on the above evidence, there could not have been a breach of the PPA on the part of the STC or the above-named Defendants at the time the Contract of Affreightment materialised on 27 November 2009.

The Charge of Bribery against Defendant No 1

33. The investigation was carried out on the basis of an envelope on which appeared the writings 'Vikram Bhunju' and 'V.Bhuniun' containing money, and which was secured from the safe of Defendant No 1. in the course of a separate investigation.
34. The police investigation does not disclose any evidence of the elements of the offence of bribery for the following reasons:
- a) The Forensic Document Examiner of the Police concluded that he could not attribute the authorship of the writings in the envelope to Defendant No 3; nor could same be attributed to Defendant No 1.
 - b) The 'names' appearing on the envelope are not those of Defendant No 3
 - c) No link has been established between the presence of the envelope in the safe of Defendant No 1 and the award of a contract to Betamax Ltd;
 - d) the enquiry has not revealed any link, or conversation, or overt act between Defendants No 1 and 3 with regards to the award of contract to Betamax Ltd.

Fraudulent Alteration of Cabinet Memo

35. The offence of forgery requires evidence of a criminal intent in the alteration of the document.
36. Defendant No 6 admitted having substituted the words 'meetings have been held with the State Law Office and the advice tendered on 28 April 2009 and 06 May 2009 are at Appendices II and III respectively' by the words 'The SLO has been consulted and the advice tendered taken on board' before the paper was presented to Cabinet.
37. The police investigation does not disclose any evidence of any criminal intent on the part of Defendant No 6. In addition, the altered wording does not constitute a change in the tenor of the document. It is noted that the evidence of the police investigation discloses that the said alteration was effected on a draft, prior to the Memorandum being circulated in Cabinet. It is also disclosed in the police investigation that there were many subsequent Cabinet Memos pertaining to the award of the contract.

Influencing Public Official, Defendant No 5

38. The police investigation has disclosed no evidence of threat or violence or pressure used by Defendant No 3 against Defendant No 5, as required under the law for the proof of such an offence.

39. It is also noted that the suggestion of prosecuting Defendant No 3 for influencing public official, is in contradiction with the other allegation that Defendant No 3 had agreed with Defendant No 5 to favour Betamax Ltd. Defendant No 3 could not have exercised pressure on Defendant No 5 whilst at the same time agree with him to award the contract.

Influencing Public Official, former Minister, Mahen Gowreesoo

40. Evidence in support of this charge rests on the strong and intimidating words allegedly used by Defendant No 1 towards the former Minister. He alleged that during the Cabinet meeting of 20 November 2009, he was coerced by Defendants No 1 and No 2 to give priority to have the contract of Betamax signed at the earliest.

41. The police investigation further discloses evidence to the effect that the then Vice Prime Minister, Minister of Tourism, appointed BDO/DCDM Consulting to carry out an evaluation of the proposals made by Betamax. In a statement given to the police, former Minister Mahen Gowreesoo stated that “Quand BDO fine envoye so rapport sa fine passe devant Comite Ministeriel. Nous fine trouvé ki BDO/DCDM fine trouve ban prix la bon. Et Comité la fine daccord.” Moreover, after a meeting held on 26 November 2009 at the Ministry of Business, Enterprise and Cooperatives with STC and Betamax to review certain clauses of the Contract of Affreightment, he instructed his Permanent Secretary to request STC to seek its Board’s approval to have the contract signed. He further instructed the Permanent Secretary to sign the Implementation Agreement once the Board of the STC had given its approval to the Contract of Affreightment.

42. It is therefore concluded that, as a member of the Ministerial Committee, as at 11 November 2009, former minister Gowreesoo had endorsed the Report dated 26 October 2009. It is further noted that: (i) on 13 November 2009, Cabinet had approved the proposals contained in the Cabinet Memorandum in relation to the acquisition of the

tanker vessel, and (ii) on 20 November 2009, Cabinet invited the Minister of Business, Enterprise and Co-operative to ensure that the agreement was signed within the shortest possible delay.

43. Section 9 of the Prevention of Corruption Act requires that any alleged threat or pressure or violence should be directed with view to the performance of the duty by that public official. It is concluded that, merely on the basis of the alleged words used by Defendant No 1 to the address of former Minister Gowressoo, the police investigation does not disclose any circumstances that would constitute a threat capable of adversely influencing the former Minister into signing the contract. This is supported by his own admission that he had endorsed the BDO Report in the Ministerial meeting and that subsequently Cabinet had already approved the award of the contract.

Offence of conspiracy

44. The offence of conspiracy in its simplest terms is an agreement between two or more persons to engage in a conduct which is unlawful or wrongful or harmful to another person. It also requires that the parties knew that the agreement was unlawful or harmful or wrongful to another person and intended its consequences.

The conspiracy between Defendants No 1, 2 and 3 to do a wrongful act (to favour Betamax Ltd) to the prejudice of the State

45. The police investigation does not establish any evidence of an overt act by Defendants No 1, 2 and 3, which would support the existence of an agreement (or the meeting of the minds). There is furthermore no evidence of any physical meetings or other communication between Defendant No 1 and Defendant No 3.

46. The amendment brought to the PPA to exempt the STC from going through the PPA procedures is the sole prerogative of parliament. The suggestion that there is a conspiracy underlying an amendment to the legislation is not tenable. In the absence of the evidence

of any agreement between Defendants No 1, No 2 and No 3, no offence of conspiracy is disclosed.

The conspiracy between Defendants No 2 and No 3 and another person to do an unlawful act (in breach of section 14 of the PPA)

47. Whilst there is no evidence of an agreement between Defendants No 2 and 3 that has been disclosed by the police investigation, it is also noted that the constitutive element of “unlawful act” (breach of section 14 of the PPA) is absent inasmuch as at the time of signature of the contract, the STC was exempt from the procedures prescribed by the PPA.

The conspiracy between Defendants 2, 3 and 4 to do a wrongful act which had the consequence of causing substantial monetary loss to the State

48. Defendant No 4 was the Permanent Secretary at the Ministry of Business, Enterprise and Co-operative, and as such was not working with Defendant No 2. No evidence of agreement between Defendants No 2, 3 and 4 has been disclosed by the enquiry.

The conspiracy between Defendants No 3, 4 and 5 to do a wrongful act

49. The statements given by Defendant No 5 to the effect that he had received threats from Defendant No 3 dispel any possibility that there existed an agreement between them. Besides, the police investigation does not disclose any evidence of the meeting of minds between Defendants No 3, 4 and 5 as far as the award of the contract is concerned. It is further noted that the Police had not even put a charge of conspiracy to Defendant No 4, at the time of conducting their investigation.

Office of the Director of Public Prosecutions

23 November 2016