



DOSSIER

ON BID RIGGING IN
PUBLIC PROCUREMENT

Announcement

**8th Annual Competition
and Economic Regulation
(ACER) Week**

 **The Ravenala Attitude
Hotel, Balaclava**

 **02 – 06 OCTOBER 2023**



CCRED
CENTRE FOR COMPETITION,
REGULATION AND
ECONOMIC DEVELOPMENT

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Our Mission and Vision

The Competition Commission has a clear goal of being an impactful institution within the Mauritian economy, of working relentlessly towards enhancing market competition and ultimately creating more economic opportunities for the benefits of all Mauritians.

With the participation of all stakeholders, let's shape our business landscape and drive economic progress through the force of competition.

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Executive Director's Note



Mr Deshmuk Kowlessur, Executive Director,
Competition Commission

It is a privilege to present to you the fifth edition of the Competition Commission's publication called 'Competition News'. Previously known as 'Newsletter', we have not only revamped the title, but also revised the structure of the publication so as to be more impactful to the reader and providing a more effective advocacy tool.

Our recent enforcement works have resulted in the issue of several infringement decisions by the Commission. It is also worth highlighting that the remedy of divestment was imposed on New Goodwill Investment Company Ltd as a condition for its acquisition of the Medine Distillery Company Ltd to go ahead. This is the first case where such a remedy was adopted by the Commission.

With regards to bid rigging, it is undeniable that the support from the Procurement Policy Office and Central Procurement Board has assisted us to be more effective in detecting and putting an end to such practices in public procurement. The Competition Commission is also working in close collaboration with other public authorities in areas of regional and bilateral economic cooperation. We are actively contributing in various initiatives to open markets for competition at the continental level. At the same time, we are cooperating with sister agencies in other jurisdictions to address potential cross border anti-competitive practices that can harm competition in Mauritius. Most recently, the Competition Commission of Mauritius signed an MoU with the Competition Commission of India to enhance cooperation and competition enforcement between the two agencies. And in October 2023, in collaboration with the Centre for Competition, Regulation and Economic Development of the University of Johannesburg, the Competition Commission of Mauritius will be hosting the 8th Annual Competition and Economic Regulation (ACER) Week.

We are doubling our efforts on monitoring and screening of markets for identifying potential competition issues especially in the wake of the sharp rise in prices of a range of commodities and shortages in supplies. In such challenging times, the role of the Competition Commission becomes even more important in regulating market competition and promoting pro-competitive policies for the welfare of consumers, in particular in respect of essential commodities.

On this note, I wish you a pleasant read and thank you for your continued interest in our work.

Annual Competition and Economic Regulation (ACER) Week in Mauritius

The Competition Commission is pleased to announce the hosting of the 8th Annual Competition and Economic Regulation (ACER) Week in Mauritius, in collaboration with the Centre for Competition, Regulation and Economic Development (CRRED) of the University of Johannesburg. The event will take place from 2 to 6 October 2023.

The ACER Week, to be held in Mauritius for the very first time, provides a valuable platform for competition authorities, economic regulators and practitioners to address issues of direct interest to our geographical area, to share lessons and to stay up to date with regard to developments in competition policy and economic regulation both across the region and internationally. Thus, the ACER Week is targeted at competition and regulatory authority practitioners, government officials in the field, legal practitioners, regional and international experts, and academics in the competition and regulation fields. As such, the conference also represents a big opportunity to build networks for collaboration between agencies.

Two targeted Professional Training Programmes (PTPs) will be run simultaneously from 2 to 4 October 2023, namely "Competition Economics for Practitioners" and "Law in Competition Policy." The first named will cover topics on mergers, cartels and abuse of dominance cases, with focus on theoretical principles and their application in practice, in cases. Exceptionally this year, part of the PTP will be dedicated to lessons on undertaking impact assessments which is a topical issue for competition authorities in Africa. In light of the African Continental Free Trade Area (AfCFTA), competition enforcement will be emphasised from a regional perspective in each of these topics.

The PTP on "Law in Competition Policy" will cover legal principles in competition law and policy and the application of those principles, including issues of legal due process and decision-making relevant to competition authorities. The focus is on practical aspects of competition enforcement such as initiating investigations, commissioning market inquiries, running hearings, negotiation/settlement, and using the law to gather evidence, in addition to the role of economic evidence in deciding

on likely harm to competition. With particular attention to the overlap between law and economics as well as recent African cases, the PTP will also explore reaching, justifying and defending/appealing against the economic regulatory decisions of competition authorities. Taking the AfCFTA into consideration, emphasis will also be laid on regional competition and economic regulation dynamics, and enforcement.

The present ACER Week edition also introduces a PTP intended for judges, entitled "Key Principles for Assessing Evidence in Competition Tribunals and Courts." During this one-day workshop to be held on 4 October 2023, three main issues will be covered, namely, key principles in competition matters and the differences between legal form-based and economic approaches to competition cases; hearing economic evidence in competition matters and making decisions on it by tribunal members and judges; and lessons from experience on writing up decisions in competition cases.

The ACER week will end with a 2-day conference on 5 - 6 October 2023. In addition to panel discussions and keynote speakers, the conference will offer sessions in which selected papers will be presented and discussed.

For more information and registration, please click here:

<https://www.competition.org.za/acer-week-2023>



Dossier on Bid Rigging in Public Procurement

Governments around the world spend hefty amounts of money for the procurement of goods and services through bidding. Thus, under public procurement rules, the lowest bid from the most responsive bidder is selected for the award of the procurement contract. However, there also exists the practice – rather the malpractice – called ‘bid rigging’ whereby businesses which are expected to compete independently, instead, agree amongst themselves to collude over their responses to tender invitations. Such practices are prohibited under Section 42 of the Competition Act of 2007. And the fight against bid rigging has always been treated as a top priority of the Competition Commission.

Bid rotation where conspiring firms continue to bid, but they agree to take turns to be the lowest qualifying bidder in order to win the contracts so that all the firms involved in the conspiracy can benefit. Thus, at some point or the other, all the businesses become winners.

Market allocation where businesses divide the market amongst them, instead of bidding to win on merit. For instance, Business A would not bid to a designated group of customers or region allocated to Business B, and vice-versa.

Subsequently, collusive tendering defeats the very purpose of a bidding process which is the acquisition of value for money goods and services by the procurer. As, in the absence of competition, and in situations where suppliers engage in bid rigging, bidders secretly conspire to raise prices or lower the quality of goods or services. As a result, the projects of the public bodies exceed the estimated cost and taxpayers’ money is spent even more.

Moreover, bid rigging cartels compromise innovation as, once businesses resort to colluding among themselves, they feel no need to bring novelty in their products and services in order to stand better chances to win bids competitively.

Thus, bid rigging is harmful to competition and it constitutes a grave offence. The fact that financial penalty is applicable solely for cartels, including bid rigging, clearly highlights the seriousness of this type of conduct. Section 59 of the Competition Act stipulates that any enterprise found to have participated in such agreements is punishable by financial penalties of up to 10% of turnover of the enterprise in Mauritius during the period of the breach of the prohibition up to a maximum period of 5 years.

The spirit of Section 42(3)

As mentioned earlier, bid rigging is prohibited under Section 42 of the Competition Act. However, Section 42(3) provides that an agreement between bidders will not be captured within the prohibition on bid rigging, if the terms of the agreement have been disclosed to the person making the invitation for bids or tenders at, or before the time any bid or tender is made by a party to the agreement.



Image source: South China Morning Post

Bid rigging, also known as ‘collusive tendering’, is implemented through various schemes, the most common of which are:

Cover bidding where businesses agree to submit a bid that is higher than the bid of the designated winner, or one that is known to be too high to be accepted. They may also be submitting a bid containing special terms that are known to be unacceptable, or they may be omitting to meet some requirements. These means are used to create the illusion that the bidding exercise is competitive and to falsely give credence to the bid of the designated winner.

Bid suppression where businesses refrain from participating in a bidding exercise while they have the capacity to do so, or by withdrawing any bid. They act in this manner to enable the designated member of the bid rigging cartel to win the contract.

Section 42(3) constitutes a tool to enable the procurer to be in the presence of all necessary information to be able to determine that he/she is receiving competitive bids, and at the same time helping him/her to assess whether he/she is procuring in a competitive process. Additionally, the disclosure in itself excludes the possibility of the bid suppression scheme from the scope of Section 42(3), as such agreement cannot conceptually increase competition. As it is, a joint venture which does not demonstrate how it is bringing in efficiency and benefits to the buyer in terms of price, or the terms or conditions offered to the buyer would not benefit from the disclosure.

The disclosure should also enable the buyer to take cognisance that without the agreement, he/she would have received less bids – implying less competition in the bidding process – and that the parties involved in the disclosed collusion were indeed submitting bids that could be considered as competitive.

The spirit of the Competition Act as well as that of procurement through call for bids are both safeguarded by the above interpretation to Section 42(3).

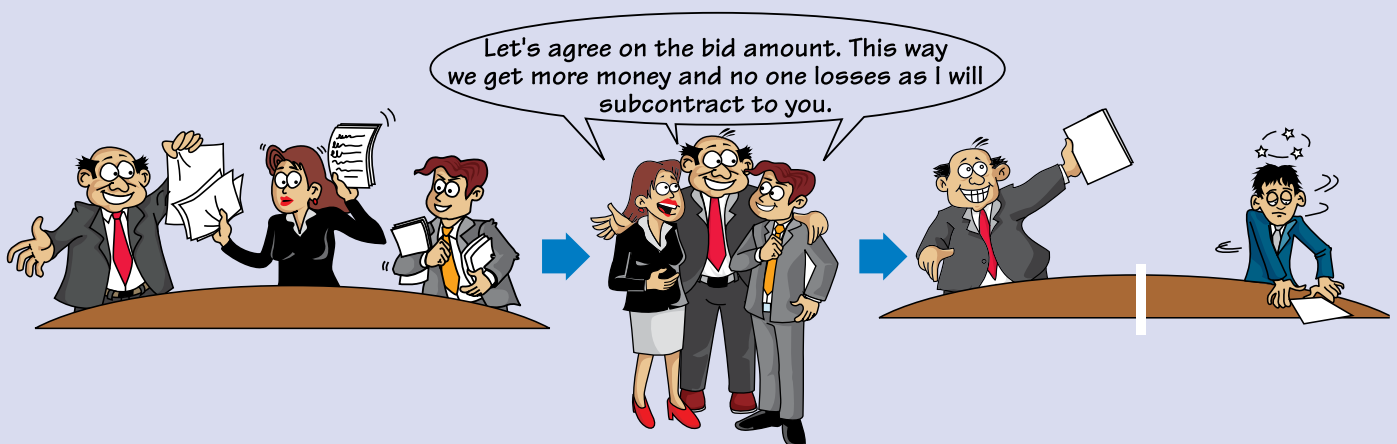
This being said, there is the possibility that the party does not disclose everything about the agreement. In this case, the disclosure would not serve the purpose of helping the procurer to make a proper assessment of the bid. The disclosure of partial information is very much likely to mislead the procurer, and consequently defeat the purpose of Section 42(3).

Be it partially or fully, upon disclosure by a party, there are two possibilities. The buyer

- either cancels the bid, deeming that same is not competitive and therefore not beneficial to him/her,
- or accepts the bid based on his/her belief that it meets the competitive criteria and is thus beneficial to him/her.

Consequently, the buyer is left with a situation where the suppliers have already resorted to collusion and, should the bid be cancelled and relaunched, there is no guarantee that they would not collude again. Nonetheless, bidders cannot simply collude and face no consequence. The proof resides in the fact that, as mentioned earlier on, the provisions on bid rigging would not apply if the terms of the agreement are disclosed to the person making the invitation for bids or tenders at, or before the time any bid or tender is made by a party to the agreement. This criteria, thus, demonstrates that Section 42(3) is not a blanket exclusion to collusive practices.

Rather, the sub-section is intended to give confidence to businesses that they may join together to create efficiencies that can be passed on to the buyer, and also help procurers to assess the genuineness of such joint offers by having access to and reviewing the terms of the agreement. As such, Section 42 (3) allows for justifications for genuine joint offers creating efficiencies, and does not provide any latitude whatsoever for collusive agreements.



Collaboration with the PPO and the CPB

Fighting bid rigging is a top priority for the Competition Commission. Throughout the years, the authority has invested much in capacity building and enforcement with the aim of raising awareness on bid rigging, namely its anti-competitive effects, and methods for detecting and deterring collusive tendering through prompt reporting. Thus, several advocacy campaigns have been conducted with ministries and public bodies, both in Mauritius and in Rodrigues.

Furthermore, the Competition Commission has also fostered strong working relations with procurement regulators, namely, the Procurement Policy Office (PPO), and the Central Procurement Board (CPB). A tripartite technical committee has been set up whereby representatives of the Competition Commission, the PPO and the CPB meet on a regular basis to discuss issues around procurement and potential issues regarding bid rigging.

Having access to a large amount of bid data from the CPB, ministries and public bodies has allowed the Competition Commission to develop its bid rigging screening mechanism for better detection of collusive practices. (see page 8)

The fight of the Competition Commission against bid rigging is uncompromising. The more so in the present times, with the purchasing power of the population is falling as a result of the COVID-19 pandemic and the Russo-Ukrainian conflict. It is all the more important for institutions to ensure that taxpayers' money is being spent diligently.

The Competition Commission is confident that with the continued and unflinching support of the PPO, the CPB and public bodies, the institution will be able to effectively enforce the provisions against bid rigging, as per the Competition Act. So far, the Competition Commission has completed two investigations on bid rigging while others have already been initiated. Some are being assessed for initiation within screening and enquiries. The completed investigations concern the supply of medical gas to the Ministry of Health and Wellness (see

page 14) and the procurement of security and camera system by the Mauritius Police Force.

Section 51(1)(e) of the PPA 2006

The collaboration between the Competition Commission and the Procurement Policy Office (PPO) is bearing fruits. Both institutions are aligned with the fact that the Competition Commission needs to have unrestricted access to bid information to be able to successfully bring to light bid rigging cases.

In 2021, an amendment was brought to Section 51(1)(e) of the Public Procurement Act (PPA) of 2006 such that, upon request, public bodies are henceforth under an obligation to disclose information "relating to procurement proceedings and to bids, including bidders' proprietary information" to "an investigatory body vested with powers of investigation, including the Independent Commission against Corruption, Competition Commission or Police."

Thus with the amendment brought to the PPA, the Competition Commission can have access to invaluable information to heighten its detection of bid rigging, to be more effective in putting an end to such collusions in public procurement, and ultimately to sanction bidders who collude and thus deter such practices. Following the amendment, on several occasions, the Office of the Executive Director has made requests for information to public bodies and the latter have been responding favourably.

The Competition Commission has embarked on the training of some 400 public procurers. They will be learning more about bid rigging and equipped with the means to detecting this restrictive business practice.

Competition Commission's Cartel Detection - Screening

There is no doubt that when it comes to anti-cartels enforcement, detection is key. Nonetheless, as collusive agreements are kept secret, their detection remains one of the great challenges faced by competition authorities worldwide. Given that consumers are not aware that they are being victims of collusive behaviour, they do not come forward to make complaints. Consequently, the number of complaints remain significantly low.

Along with the organisation of leniency programme as an efficient way of detecting collusive behaviour, screening has grown into another proactive tool for cartel detection. Various competition authorities around the world have developed screening mechanisms and so has the Competition Commission. This endeavour has required capacity building, investments in IT tools, engagement with stakeholders for better accessibility to data and also dedicated staff to carry out the screening.

Screening comprises two complementary approaches:

- the structural examination to analyse the structural aspects of markets and product characteristics that may be conducive to collusion. For example, a concentrated market having few suppliers for a homogeneous product is likely to be more prone to collusion than markets where many suppliers compete
- the behavioural approach to analyse the conduct of firms and market outcomes which does not appear to tally with competition norms. For instance, price increases which do not appear to be resulting from rise in costs could indicate possible collusion.

As such, a combination of both structural and behavioural approach is most effective for identifying anti-competitive markets.

One major aspect of screening exercises is information gathering. To this end, the Competition Commission has developed a strong collaboration with the Procurement Policy Office (PPO) and Central Procurement

Board (CPB) in view of collecting information. This collaboration has been boosted with the amendment brought to the Public Procurement Act such that the Competition Commission can now get access to information on bid proceedings.

The Competition Commission also seeks the assistance of public bodies as and when required. The institution is also set on developing effective relationship with other government institutions such as the Mauritius Revenue Authority and the Central Statistics Office which are important sources of information.

It is worth noting that the Competition Commission's screening mechanism is based on the best practices recommended by the International Competition Network (ICN) and the Organization for Economic Cooperation and Development (OECD).

The Competition Commission has also engaged in capacity building with the competition authority of Brazil, the Conselho Administrativo de Defesa Economica (CADE), which has been at the forefront of screening for detection of cartels through their adoption of the 'Cérebro' system (the "Brain"). This technique incorporates components for automated data warehousing, data mining and statistical tests.

To further improve its screening mechanism, the Competition Commission has procured and is using bespoke software for statistical tests as developed and used in Switzerland and Japan. The software contains modules on machine learning with AI capabilities. Moreover, building on learnings from Switzerland, the CADE, the OECD and the ICN, the Competition Commission is in the process of enhancing its screening mechanism with additional data mining tools to identify suspected patterns of behaviour by businesses.

Advocacy & Events

Guidance Document on Bid Rigging for Public Procurers

The Competition Commission, in collaboration with the Procurement Policy Office, has published a 'Guidance for Public Procurers on Bid Rigging', which was launched on 27 April 2022. The launch was carried out during a half-day workshop jointly organised by the two institutions, at the Caudan Arts Centre, in Port-Louis.

The publication is intended to raise awareness of procurement officials at all levels on the possible signs of bid rigging, that is, at the conception of the pre-bidding process, the bidding process and the post bidding stages. The document not only helps at identifying potential risks of collusion in bidding exercise but also gives general directions on how to deal with suspicious cases of bid rigging.

The 'Guidance for Public Procurers on Bid Rigging' is to be an integral part of public procurers' toolkit and serves as a referral point.

Networking and Outreach activities

With a view to better advocating the law on competition for compliance and to detect anti-competitive behaviours, the Competition Commission, as part of its objectives for the

current financial year, reviewed its advocacy approach favouring one-on-one sessions with selected stakeholders over group workshops or webinars.

The approach was three-phased in most cases: networking enabled the Competition Commission to obtain a contact person with whom to deal on competition matters, advocacy was carried out with a view to promote the law and expose the role of the stakeholder with regards to the importance of competition law and policy, and finally, collaboration was established so as to allow the sharing of information on competition issues or the compliance with law. During the current financial year, the Competition Commission had one-to-one engagement with several ministries, public bodies, and associations.

With regards to the ministries and public bodies engaged with, we have been able to implement working arrangements to share information on procurement exercises to screen for bid rigging and on transactions that may lead to anti-competitive situations with a few of them. With others, we have also been able to promote the importance and describe the methodology to undertake competitive assessment during policy making. Those collaborations are still ongoing and have reached different level of engagement.



Mr D Kowlessur, Mr H Rambhojun, O.S.K

Meetings were also held with consumer associations, such as Association des Consommateurs de l'Île Maurice (ACIM) and Consumer Advocacy Platform (CAP) with a bid to detect anti-competitive practices. Those engagements are continuous and regular over the year.

We networked with stakeholders involved with small and medium enterprises (SMEs), such as the Ministry of Industrial Development, SMEs and Cooperatives, as well as SME Mauritius and SME Federation. A workshop was held with the technical cadre of SME Mauritius to expose the relevance of the law to SMEs, potential competition issues faced by them, and mechanism implemented to report such issues. A workshop was held with the Association of Mauritian Manufacturers to raise awareness and compliance among its members and encourage reporting of potential competition issues.

Those one-to-one engagements have been quite fruitful, and the Competition Commission plans to pursue this route by identifying other key stakeholders for collaboration.

Promoting competition in public policy

The Competition Commission pursued its advocacy project with a view to promoting pro-competitive policy making. The Competition Commission conducted several working sessions with officials of different ministries on the importance of competition assessment in policy making.

On the 10th and 11th March 2022, it conducted two interactive sessions with officers of the Ministry of Agro Industry and Food security and the Ministry of Commerce and Consumer Protection, respectively. The session focused on empowering the senior and technical officials of these ministries for conducting competitive analysis of public policy and/or regulation. The objective of such competition assessment is to avoid unintended anticompetitive consequences of a policy or regulation for consumers, businesses, and the economy at large.

During the session, the Competition Commission also shared its "Competition assessment guideline for policy makers" to serve as a tool for assessing the potential impact of policies

and regulation on competition. The guidelines are based on international best practices, as recommended by institutions such as the OECD, International Competition Network and World Bank. The guidelines provide for the detailed procedure and methodology for undertaking a competition assessment. It seeks to identify and address potential regulatory barriers to avoid unintended consequences on market competition, to the detriment of consumers.

The Competition Commission intends to conduct similar interactive sessions with other ministries and public bodies for inculcating a culture of competition in policy decision-making in the interest of consumers and the economy in general.



ACF/SADC Cartel Training Workshop

The participation of the Competition Commission in the Cartels Workshop organised by the Southern African Development Community (SADC) in collaboration with the African Competition Forum on the 12th and 13th of September in Lusaka, has exposed the Competition Commission to presentations and discussions dispensed by experienced enforcers from the region. This forum has facilitated knowledge sharing on practical aspects of enforcement, such as planning and executing dawn raids, cartel detection, interview techniques amongst others, and also building professional relationships. Bid rigging in public procurement was a major topic on which experiences were shared by the representatives of the different participating Competition Authorities.

Participation in such workshops helps to leverage the Competition Commission as an institution in terms of capacity building and consequently contributing to making the authority body a prominent enforcer in the region.

Advocacy on bid rigging in Rodrigues

In the course of an advocacy event organised by the Public Procurement Office in August 2022, and hosted by the Rodrigues Regional Assembly (RRA), the Competition Commission got the opportunity to raise the awareness of procurement officials and suppliers in Rodrigues, on the Competition Act of 2007, collusive agreements and bid rigging in public procurement. The aim was to enable procurement officials from the five Commissions of the RRA to better detect signs of bid rigging and subsequently take pre-emptive measures to avert collusion and increase competition in procurement. Participants indeed highlighted that competition issues that may exist in Rodrigues.

Moreover, the representatives from the Competition Commission, namely, Mr. Vipin Naugah and Mr. Djameel Soreefan also met the Chief Commissioner, Mr. Johnson Roussety G.O.S.K, and the Island Chief Executive, Mr. Jean-Claude Pierre-Louis, whereby discussions revolved on potential competition issues and future collaborations.

The advocacy event laid the foundations for further collaboration with the RRA in respect of other competition issues and spurring enforcement activity in Rodrigues.



From left to right: Mr S Rameyad, Hon. Wong-So, Mr D Kowlessur, Mr V Naugah

Rodrigues Advocacy 2022

A high-level delegation consisting of the Executive Director, Mr. Deshmuk Kowlessur, and two Head Investigations, namely, Mr. Vipin Naugah and Mr. Sailesh Rameyad, proceeded to Rodrigues Island from 14-16 November 2022 for a 3-day advocacy mission. The aim being to promote the provisions of the Competition Act 2007 and the work of the Competition Commission. Working sessions were also held with the Deputy Chief-Commissioner, Honourable Franceau Grandcourt and the Commissioner for Tourism, Honourable Jean-Alain Wong So.

Newly Launched Investigations

Investigation into potential bid rigging in the procurement for track roads by Rodrigues Regional Assembly (RRA)

An investigation was initiated under Section 42 of the Competition Act 2007, into a suspected case of bid rigging in respect of the procurement for the construction of about 30km of track roads including footpath and other civil works in Rodrigues Year 2019-2020.

The parties, Transinvest Co Ltd (TCL) and Laxmanbhai & Co (Mauritius) Ltd (LCL), were individually participating in tenders for the construction of track roads. However, in 2019 they formed a joint venture to respond to a call for bids from the Rodrigues Regional Assembly. The bid amount from the joint venture was higher than the cost estimate by 49%. This together with other factors led to the start of the investigation for potential bid rigging.

Information has been gathered as part of the investigation and is being reviewed within the legal parameters of Section 42 of the Act to determine whether a breach was committed.

Supply of freight services by Betamax Ltd

An investigation was started regarding a potential abuse of a monopoly situation by the Bhunjun Group of Companies and Betamax Ltd (herein referred to as the "parties") in the supply of transportation services, by sea, of petroleum products imported into Mauritius.

The investigation aims to assess whether the parties may have engaged in conducts, which are contrary to the Competition Act and which may have the object or effect to prevent, restrict or distort competition in any markets in Mauritius or otherwise constitute an exploitation of a monopoly situation.

The parties made an application for leave in Supreme Court for judicial review of the decision to open an investigation.

On 22nd March 2022, the Supreme Court granted leave to the parties and ordered a stay of the investigation pending a determination of the merits of the judicial review application. As such, the investigation has been stayed pending the outcome of the judicial proceedings.

Motor vehicle spare parts

An investigation was launched into the potential abuse of monopoly situation in the supply of genuine automobile spare parts of the Hyundai brand in Mauritius. The investigation concerned the alleged conduct on the part of Bamyris Motors Ltd (as the sole official importer and distributor of Hyundai motor vehicles and Hyundai related products in Mauritius) for imposing a quotation fee, upon the request of price list for Hyundai spare parts by private auto repair workshops/garages.

The alleged conduct on the part of Bamyris Motors Ltd, likely in a monopoly situation in the market for the supply of genuine Hyundai spare parts, could potentially be raising the costs for the auto repair workshops/ garages

in the procurement of genuine spare parts by creating a barrier to effective competition in the repairs and maintenance market.

At this stage, the Executive Director has reasonable grounds to believe that such a conduct on the part of Bamyris Motors Ltd may constitute a restrictive business practice to the detriment of private auto repair workshops/garages and ultimately to the detriment of the end-consumers. Upon completion of the investigation, the Executive Director will report his findings to the Commission for its determination on the matter and advise on necessary remedial measures, in case of restriction, prevention or distortion of competition.



The Competition Commission is pleased to announce the appointment **Mr. Michael Lennon** as Commissioner.

Mr. Michael Lennon

Mr. Lennon holds a BA Specialisation in Economics and a BA Major in French Literature from Concordia University, Montreal, Canada as well as an MBA from the H.E.C (Hautes Études Commerciales), Montreal, Canada. He has 35 years' experience in the private sector and is currently Managing Director of Meubles X-Pert Ltée, company involved in interior design and project management. Prior to that, he has occupied several senior positions, such as General Manager at Coromad S.A, a textile factory in Madagascar and as Chief Operating Officer at Pharmacie Nouvelle Ltd.

Resale Price Maintenance on Books

The Competition Commission has determined that three importers/wholesale distributors of Secondary School Books (SSBs) namely, Editions Le Printemps Ltée, Editions de L'Océan Indien, and Edubooks Ltd have breached the prohibition in Section 43 of the Competition Act 2007 by participating in agreements which led to resale price maintenance (RPM).

It was found that the practice of concluding wholesale dealings for SSBs between distributors and retailers were based on SSB retail price. Thus, contractual agreements negotiated before peak sales between the distributors and resellers on wholesale price were linked to retail prices as set out in retail price lists issued by the distributors. The communications of retail pricing to retailers by the supplier eliminated market uncertainties at the retail level where consumers purchase SSBs. It distorted resellers' commercial

independence in setting their retail price. This conduct of setting the wholesale price based on retail price lists facilitated understanding among booksellers that retail prices in the price lists communicated by the suppliers are to be observed when retailing SSBs to consumers.

The main parties collaborated with the investigation and volunteered measures at their end to discontinue the infringing practices and they have thus offered to amend their commercial practices to become compliant with the law. This helped the Commission in setting out directions on the above companies to cease the practice of communicating retail prices during wholesale dealings. The distributors are also required to inform their respective resellers that as retailers of books, they are free to independently set their own prices when selling to customers.

Investigation into potential collusive agreements by members of the Association of Private Health Plans and Administration

The Competition Commission launched an investigation against the Association of Private Health Plans and Administrators (APHPA), a registered association. It assessed three agreements among its members and found that two of them were in breach of Section 41 of the Act, namely:

- the agreement among APHPA members on a common scale of cost regarding inpatient gynecological treatment; and
- the agreement among certain members of the APHPA on a common policy pertaining to reimbursement of overseas treatment.

The above agreements were found to be in breach of Section 41 of the Competition Act 2007 as a form of horizontal collusive agreement which is prohibited under the law. The Commission also imposed financial penalties totaling about Rs. 11.3 million on certain parties to the agreements. It is noted that the parties had collaborated with the investigation and, without admitting liability, they have accepted the findings of the Executive Director and of the Commissioners.

Medical Gases

The Competition Commission found that, Gaz Carbonique Ltd (GCL) and Les Gaz Industriels Ltd (LGI), had been involved in collusive conduct while supplying medical gases to the Ministry of Health and Wellness.

The Commission found that GCL and LGI breached the prohibition against horizontal collusive agreements when they agreed to form a joint venture known as 'Medical Gases JV' to supply to the said Ministry. The parties' interactions and joint commercial decision-making relating to their supply of medical gases, through the joint venture were found to be collusive since it involved;

- fixing of prices at which Medical Gases JV would supply medical gases,
- sharing of markets by allocating the different hospitals between GCL and LGI, and
- decisions made to restrict the supply of medical gases

The Commission imposed financial penalties of Rs 3,59 million on GCL and LGI, after leniency. The parties to the investigation have collaborated on the matter and, without admitting liability, have accepted the findings of the Commission, and agreed to pay the fines imposed.

New Goodwill Investment Co. Ltd withdraws appeal

On the 5th of April 2021, the Commission issued a decision regarding the potential acquisition of a majority stakes in Medine Distillery Company Ltd (Medine Distillery) by New Goodwill Investment Co Ltd (NGI).

The Executive Director, Mr Deshmuk Kowlessur, concluded that given NGI already has shares in Grays Distilling Ltd (Grays Distilling), the main competitor of Medine Distillery, the acquisition of a majority stakes in Medine Distillery by NGI will reduce competition in the market assessed. Therefore, the Commission directed NGI to divest all its shares and associated rights in Grays Distilling as a condition to proceed with the acquisition of an additional 33.3% shareholding in Medine Distillery.

Although it had initially appealed against the decision, NGI has decided to abide by the decision of the Commission and has withdrawn its appeal against the Commission.

In line with the direction imposed by the Commission, NGI has also divested its shares in Grays Distilling and proceeded with the merger by acquiring a majority stake in Medine Distillery.

Bagatelle Shopping Mall

On 28th July 2022, the Commission issued its decision to accept undertakings (in other words, binding commitments) submitted by Ascencia Ltd (Ascencia) to remove an exclusivity clause in its tenancy contracts that prevented tenants at Bagatelle Mall of Mauritius (Bagatelle) from owning, operating, or having any interest (financial or otherwise) in retail outlets within a distance of 5 km from the mall. The decision to accept the undertakings essentially has the same effect of binding directions imposed on Ascencia by the Commission.

With this decision, the tenants are now free to decide in which other malls they want to operate irrespective of their proximity with the mall operated by Ascencia.

This is likely to incentivize competition among shopping malls. Ultimately, consumers would benefit from the increased rivalry among shopping malls in terms of prices, choice, and mall amenities.

The Executive Director investigated the matter following complaints lodged at the Competition Commission. The investigation assessed whether the clause amounts to an abuse of monopoly situation. The concern was that the said clause allowed Bagatelle to maintain exclusiveness of its tenant mix and could therefore affect the ability of other shopping malls to attract popular retail outlets and compete on level playing field to the benefit of consumers. Thus, to address the concerns of the Executive Director, Ascencia offered undertakings under Section 63 of the Competition Act to unconditionally remove the restrictive clause and not subject any existing or new tenants to such conditions.



Image source: ascenciamall.com

Major Enquiries

Excessive pricing and anti-competitive restriction to inter-region transfers of 'Internet Number Resources' by a Regional Internet Registry.

There was an alleged excessive pricing as well as a potential restriction to inter-region transfers of number resources on the part of a Regional Internet Register. The matter was closed with no further action as it was gathered that the fees charged on the range of the allocated IP addresses were not generally higher and no grounds were identified to believe that there was an exclusionary abuse.

Bundling of broadband internet services with pay-tv content by an internet service provider in Rodrigues.

An internet service provider in Rodrigues was allegedly not offering broadband internet services on stand-alone basis but as a bundle with pay-tv content, thus restricting the choice of customers and ultimately harming competition in the premium content pay-tv market. The matter was closed with no further action as it was gathered that customers in Rodrigues had the option to purchase stand-alone broadband internet services.

Potential merger situation involving two players in the distribution of vending machines for hot beverages.

Potential merger situation involving "Lavazza" and Distribution Automatique Mauricienne Ltée (Ti- Break). This enquiry was into a potential acquisition of the Lavazza Vending Machine Business Activity by Distribution Automatique Mauricienne Ltée. However, following the enquiry, the Executive Director found no reasonable grounds to believe that the transaction may amount to a reviewable merger situation within the meaning of the Act in view of the particularities of the transaction and its rationale.

Potential horizontal or vertical overlap between activities of two merging firms providing cloud computing services in Mauritius.

The transaction between the two firms took place in France. Same was assessed for any likely anti-competitive effects in Mauritius since both firms operate in Mauritius through representative offices and were engaged in cloud computing activities. However, it was found that one of the firms did not derive turnover from cloud computing activities in Mauritius and therefore, the merging firms did not have overlapping activities in cloud computing in Mauritius. The enquiry was closed as the transaction was unlikely to lead to competition concerns in the supply of cloud computing services in Mauritius.

A transaction involving companies active in the market for the supply of vehicle financing services in the form of leasing facilities in Mauritius.

The acquiring firm did not have the required market share threshold of 30% in the defined relevant market for the supply of motor vehicle leasing facilities and for the defined relevant market for the supply of motor vehicle finance lease facilities. The target firm also had less than 30% market share in the defined relevant markets. The merged entity's market share post-merger was unlikely to be more than 30%. It was also found that there were enough leasing companies which would competitively constrain the merging firms post-merger. The enquiry was closed as the transaction was unlikely to lead to substantial lessening of competition in the defined relevant markets.

Cross-Border Cases

The Competition Commission works in close collaboration with the COMESA Competition Commission (CCC) to review mergers and anti-competitive conducts having a regional dimension and which may impact the Mauritian markets.

Some recent merger transactions reviewed in collaboration with the CCC are highlighted as follows:

Proposed acquisition of sole control by Taylor Smith Investment Ltd over Lafarge (Mauritius) Cement Ltd, Holcim Madagascar SA, Holcim Madagascar Immobilier (HMI) (SARL), Lafarge Cement Company (Seychelles) Limited and Lafarge Comores SA

In August 2021, the Competition Commission reviewed the proposed transaction in relation to the acquisition of sole control by Taylor Smith Investment (TSI) over, over Lafarge (Mauritius) Cement Ltd, Holcim Madagascar SA, Holcim Madagascar Immobilier (HMI) (SARL), Lafarge Cement Company (Seychelles) Limited and Lafarge Comores SA (together the "Target undertakings"), through its controlled subsidiaries Cementis Investment Limited and Cementis Indian Ocean Limited.

Since TSI, the acquiring firm and Lafarge (Mauritius) Cement Ltd are incorporated in Mauritius, the proposed transaction was assessed with regards to its impact on competition in the cement market in Mauritius. Lafarge (Mauritius) Cement Ltd, engaged in the importation, manufacturing, distribution, and sale of cement products, is one of the two suppliers in Mauritius. The transaction was approved in November 2021 as no competition concern was identified.

Proposed acquisition of a majority stake in Gateway Real Estate Africa Limited by Grit Real Estate Income Group Limited

The proposed transaction concerns the acquisition of a majority stake in Gateway Real Estate Africa Limited (GREA) by Grit Real

Estate Income Group Limited (GRIT).

GRIT is a pan-African property income group focusing on African real estate assets across various market segments such as office letting, accommodation, retail, industrial and hospitality. It holds assets in the Hospitality Property Market (namely, the Tamassa Resort, Mauricia Beachcomber Resort and Spa, Canonnier Beachcomber Resort and Spa and Victoria Beachcomber Resort and Spa) and the Office Property Market (namely, the ABSA House).

GREA is a private real estate development company domiciled in Mauritius. GREA's focus is on African property development across market segments such as office letting, accommodation, retail, industrial and healthcare. It has projects in the Office Property Market (namely, the Precinct) and the Healthcare Property Market (namely, the Coromandel Hospital and Ste Helene Clinic).

It was found that the proposed acquisition was unlikely to substantially lessen competition in Mauritius.



Image source: myloview.com

DESHMUK KOWLESSUR, DIRECTEUR EXÉCUTIF DE LA COMPETITION COMMISSION OF MAURITIUS :

« La restriction de l'importation parallèle peut réduire la concurrence »

■ Que pensez-vous de l'importation parallèle de médicaments ? ■ Outre le prix, dans quelle mesure cela peut-il être en faveur des consommateurs ? ■ La Competition Commission concernent la promotion de la concurrence, en enquêtant

au niveau des prix au détriment des clients. En d'autres termes, la restriction de l'importation

CONSOMMATION | Exploitation exclusive

Ascencia fait machine arrière face à la Competition Commission

■ L'opérateur de Malls imposait une clause restrictive à ses locataires de Bagatelle

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Le pacte entre distributeurs et supermarchés inquiète la CCM

■ Deshmuk Kowlessur, directeur général de la CCM: « Protéger les consommateurs de tout préjudice supplémentaire »

La Competition Commission lance une étude de marché pour évaluer les conditions de concurrence dans la distribution de produits alimentaires et

Enquête de la Competition Commission pour collusion

Deux fournisseurs de gaz médical mis à l'amende

Deux compagnies, qui fournissent du gaz médical au ministère de la Santé, devront payer une amende de Rs 3,59 millions. Elles sont accusées de collusion par la Competition Commission.

Après enquête, la commission est arrivée à la conclusion que les deux fournisseurs ont conclu un accord secret pour fixer les prix.

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