

COMPETITION NEWS



Dear Readers,

It is with immense pleasure that I present to you the third edition of the Competition Commission's newsletter which is a special one given that it is being issued firstly at a time where the Mauritian economy is trying to recover after having been hit by the Covid-19 pandemic and secondly after a decade of existence of the Competition Commission. The Covid-19 pandemic is changing market dynamics across the world thereby posing new challenges to enterprises and competition authorities alike.



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Yours sincerely

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Dear Readers,

It is with immense pleasure that I present to you the third edition of the Competition Commission's newsletter which is a special one given that it is being issued firstly at a time

where the Mauritian economy is trying to recover after having been hit by the Covid-19 pandemic and secondly after a decade of existence of the Competition Commission.

The Covid-19 pandemic is changing market dynamics across the world thereby posing new challenges to enterprises and competition authorities alike. As the world is battling the "invisible enemy" called the Coronavirus and the ensuing economic crisis, the role of competition agencies have become more critical. Certain enterprises may find in this crisis, an opportunity to exploit consumers by engaging in abusive pricing. Some firms may see the demand of their products decreasing and may be in a weaker position. Markets may become more concentrated. While we highlight that the goal of competition law is not to protect competitors, we cannot allow stronger players to abuse of their position to foreclose weaker players. We must ensure that while battling this shock we do not leave long term damages on markets.

For this reason, competition agencies around the world have put in place measures to dampen the pernicious effects of the crisis and ensure that markets are functioning to deliver their best outcomes for consumers. The Competition Commission has in the same spirit, put in place a temporary "guidance to business on proposed Covid19-related collaboration". Under this guidance programme, businesses will, upon request made, be provided with non-binding guidance on the compatibility of their proposed Covid-19-related collaborations with the Competition Act 2007 on a fast track basis within a maximum period of 21 days.

I am pleased to highlight that the Competition Commission now has a decade of existence. This newsletter features the events which marked our tenth anniversary, including the unveiling in October 2019, of a "Competition Commission-rebranded with a new website and corporate logo. To commemorate our ten year anniversary, the Competition Commission organised a series of workshops with the participation of renowned competition experts for the business and legal community. A series of radio spots were also aired as part of our advocacy programme. After a decade of competition enforcement, the Competition Commission now aims to step into its next era of competition enforcement with renewed purpose and vigour. To this end, new mission and vision statements have been devised.

We have also reached near finalisation stage of the review exercise of the Competition Act. Pending our law review exercise, to enhance the effective enforcement of the merger control provisions of the Competition Act, the Competition Commission is proposing amendments to two sections of the Guidelines on Mergers, namely on the control and failing firm provisions. A public consultation was launched by the Competition Commission on the proposed amendments and this newsletter details the amendments being proposed.

To further enhance our operations we have put in place a Case Management System to improve the investigation processes and the management of cases.

We have also welcomed during the last financial year, the Government's decision to assign competition matters to the Minister of Commerce and Consumer Protection. While the Competition Commission remains independent and impartial, we believe that working under the aegis of the Minister of Commerce and Consumer Protection will generate synergies to align policies which will contribute to enhancing the welfare of Mauritian consumers.

The foregoing financial year has been opulent in terms of our enforcement track record. We assessed the application for guidance made on the proposed acquisition of a majority stake in The General Construction Company Ltd by IBL Ltd, as well as the joint application made by Mauritian Eagle Insurance Co. Ltd and Medscheme (Mtius) Ltd into the notified acquisition of 30% of the shares of Medscheme (Mtius) Ltd by Mauritian Eagle Insurance Co. Ltd. The Competition Commission also assessed, through an enquiry, an allegation into whether late and inadequate disclosure of syllabi for Grades 7-9 by the Mauritius Institute of Education was preventing local publishers and authors from publishing and supplying school textbooks. We issued an advice to the Minister under section 19 of the Competition Act to remove import restriction on pork. The Competition Commission has for the year ending 30th June 2020, reviewed 30 merger notifications in collaboration with the COMESA Competition Commission and which had an impact on markets in Mauritius. We have also continued our advocacy efforts to create awareness on the Competition Act and the activities of the Competition Commission. The following pages provide more information on the enforcement and advocacy matters of the Competition Commission.

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

Deshmukh Kowlessur
Executive Director

Our initiatives

As invisible as it was to the naked eye, the effects of the Covid-19 outbreak have been vividly felt the world over. Covid-19 has certainly rocked the boat and countries, one after the other, were given no other choice than to respond with critical measures in the fight against Coronavirus. Mauritius caught up very quickly and echoed strict containment and sanitary measures: travel bans, closing of borders, national lockdown, quarantine and self-isolation measures, compulsory use of masks in public areas and social distancing, among others. In line with the measures announced by Government, the Competition Commission was confronted with one of the toughest challenges to its operations and enforcement activities to-date: ensuring business continuity, reprioritizing certain operations, while safeguarding the health and safety of its personnel. The announcement of a national confinement on 20th March 2020 called for necessary adjustments in minimising disruptions to the existing case load. The Competition Commission proactively moved to a virtual setting with team/staff meetings and case work taking place online with the occasional call to office under work permits, whenever deemed necessary. With the phased reopening of our national economic activities since 15th May 2020, the Competition Commission has been operating a Covid-19 ‘work-from-home’ policy with most staff operating on a roster basis and it now has about 60% of its personnel working daily in office while the rest connect virtually.

In the wake of the Covid-19 crisis and the mismatch between market demand and supply, the Competition Commission has had to adopt targeted initiatives. The core concern has been to assist businesses in lawfully navigating the

Covid-19 aftermath through advocacy initiatives and Covid-19 related programmes. On 09th April 2020, the Competition Commission issued a press release to provide assurance to businesses seeking to collaborate with one another for the continued supply of essential products and services to consumers, to remind dominant enterprises against opportunistic exploitative conducts during the crisis situation, and to clarify communication channels for directing complaints or queries relating to ongoing enquiries and investigations. This was followed by the issuance and web-publication of short caution notes and best practice documents to businesses and trade associations respectively to help them avoid the pitfalls of anti-competitive behaviour in the search for economic recovery post Covid-19. Following in the footsteps of sister agencies in other jurisdictions, the Executive Director has put in place a temporary ‘guidance to business on proposed Covid-19-related collaboration’ through which businesses have the opportunity, upon request made, to have their proposed collaborations reviewed on a fast-track basis before implementation in order to ensure that their activities remain within the remit of the Competition Act 2007 and thus, avoid unwanted enforcement against illegal agreements.

The Covid-19 pandemic has left a lasting imprint and brought about fundamental changes in the way we live our lives and how we connect with the world around us. With the slowdown in globalisation, disruption in supply chains, evolving business landscape, and shifting consumer attitudes, we, at the Competition Commission, will continue dedicating ourselves to enhancing market competition and creating more economic opportunities for the benefit of all

Guidance for Competitor Collaboration

The Executive Director has initiated a temporary Guidance Programme (Guidance to business on proposed Covid-19-related collaboration) under which businesses will – upon request made to the Executive Director – be provided with guidance on their proposed Covid19-related collaborations.

The Guidance Programme has been adopted in the context of the current Covid-19 situation affecting businesses and with the view to spur recovery of the economy in general and to ensure that markets continue to deliver for consumers.

The Executive Director will provide non-binding guidance as to whether the proposed collaboration (agreement) may be pursued or whether it is likely to be contrary to the prohibition on cartels under sub part I of Part III of the Competition Act 2007. The Guidance Programme thus offers

businesses with an opportunity to have their proposed collaborations reviewed before they implement it therefore assuring that their activities remain within the remit of the Competition Act.

The main conditions of the Programme are that the collaboration must be in response to the Covid-19 situation and secondly, the collaboration is only at proposal stage and has not yet been implemented.

Applicants may submit their application by post or despatch to the office of the Executive Director, by fax (2113107), and by email (info@competitioncommission.mu) with the subject line – “Application for Guidance”.

More information on the guidance programme is available on our website www.competitioncommission.mu

Memorandum of Understanding with the Utility Regulatory Authority

On 26th June 2020, the Competition Commission, pursuant to Section 66 of the Competition Act 2007 (the 'Competition Act'), signed a Memorandum of Understanding ('MOU') with the Utility Regulatory Authority. The formalisation of the cooperation between the two agencies through the MOU is the result of proactive engagement between the two institutions to better enforce provisions in relation to competition in their respective enabling legislations.



By virtue of the Competition Act and the Utility Regulatory Act 2004 (the 'URA Act'), both agencies have the common objective of promoting competition in the utility services industry. The Competition Commission has a broader competition law enforcement mandate which covers the various sectors of the economy, including the utility services industry. For its part, the Utility Regulatory Authority is responsible to, inter alia, ensure the sustainability and viability in the provision of utility services, protect the interests of consumers, promote competition within the industry and to ensure that its licensees do not engage in anti-competitive practices.

The MOU is thus intended to provide for a framework of cooperation between the two institutions in the common pursuit of promoting competition in the utility services in-

dustry. It sets out the practical mechanism to facilitate the treatment of anti-competitive cases within the industry. It provides for, inter alia, the exchange of information and sharing of technical expertise so as to ensure effective, efficient and adequate enforcement of competition policy in the utility services industry.

According to Mr. Deshmuk Kowlessur, Executive Director, *"the utility services industry is key to households as well as businesses. It is important to ensure that competition prevails in the industry so that users can reap the maximum benefits in terms of price and service level. This MOU sets out the cooperation framework for the Competition Commission and the URA to work together to ensure that rules of competition are not flouted, and that business compete on efficiency ground to offer better services."*

The MOU with the Utility Regulatory Authority complements the existing ones which Competition Commission has with other sector regulators, such as the Bank of Mauritius, Information and Communication Technologies Authority and Financial Services Commission, to better regulate competition in the various sectors of the economy.



Explanatory Session with the Mauritius Chamber of Commerce and Industry

A presentation was conducted with the Mauritius Chamber of Commerce and Industry (“MCCI”) and its members on 20th July 2020. During the session, the Competition Commission explained its programme on temporary Guidance to businesses on proposed Covid-19-related collaboration and the proposed amendments to the Competition Commission’s Merger Guidelines.



The session was opened by the Secretary General of the MCCI, Dr Yousouf Ismael who highlighted the importance of competition law within the Mauritian economy and emphasised on the frequent pro-active collaboration between the MCCI and the Competition Commission. In his opening remarks, Mr. Deshmuk Kowlessur, the Executive Director of the Competition Commission, welcomed the interaction between the Competition Commission and private enterprises as facilitated by the MCCI. The Executive Director highlighted that the MCCI had a particularly important role during the Covid-19 lockdown in ensuring the maintenance of the supply of essential products.

He further explained that the purpose of the workshop was two-fold. Firstly, cognisant of the fact that the Covid-19 crisis

has disrupted markets and certain types of collaborations may be essential for the proper functioning of markets, the Competition Commission has introduced a programme through which it will provide guidance to businesses on possible Covid-19 related collaborations. Secondly, the Competition Commission is proposing to amend its Merger Guidelines to bring more clarity on the meaning of control and the treatment of failing firms, and on which a public consultation was being conducted. These two initiatives were elaborated during the workshop.

The session on the Competition Commission’s Guidance programme on proposed Covid-19-related collaboration was facilitated by Mr. Vipin Naugah, Head Investigations, who highlighted the purpose of the programme and explained at length the conditions which enterprises have to follow to avail of the Guidance of the Competition Commission on their proposed collaborations. Mr. Sailesh Ramyeed, Head Investigations, facilitated the session on the proposed amendments to the Merger Guidelines. He emphasised on the three levels of control prescribed under the Competition Act and explained that the amendments being proposed to the Merger Guidelines are to clarify those levels of control. He also highlighted the amendment being proposed to clarify the failing firm provision in the Merger Guidelines.

The session ended with interactive questions and answers. To close the session, Mr. Ismael reiterated the importance of collaboration between the two institutions and that these initiatives are welcomed and are indeed very important, especially during the current economic context. Present issues being faced by the business community and which may relate to competition were also highlighted.

Appointment of Chairperson

The beginning of the 2020 has been marked with the appointment of the Chairperson of the Competition Commission, namely Me Mahmad Aleem Bocus, with effect from 25 February 2020.

Mr Bocus is a Barrister at Law currently in private practice. Prior to joining the Competition Commission, Mr Bocus was the Chairperson of the Information and Communication Technologies Authority (ICTA) and Board Member of the Independent Broadcasting Authority. He previously served as a District Magistrate/Senior District Magistrate. He also acted as Temporary State Counsel.



New blood at the Competition Commission

The Competition Commission has always strived to recruit a team of investigators and administrators of high calibre committed to delivering high-quality work in an efficient and effective manner. The team is comprised of a small pool of twenty-five officers for both investigative and administrative cadres. It is thus important that vacant positions are filled expeditiously with the best candidates to ensure the Competition Commission operates at its optimum capacity.

Over the recent months, several professionals have joined the Competition Commission. In particular, the position of Legal Secretary, which plays a key role by providing necessary legal and administrative assistance to the Commissioners in the delivery of their duties, was filled by Mrs Bhugun-Tetarie, Barrister at Law, had been selected for this post and she joined in February 2020. Prior to joining the Competition Commission, she was at the Supreme Court of Mauri-

tius for more than five years as Judicial Research Officer and has worked under different Judges.

New recruitments in the investigative cadre have also been made, with the appointment of four new investigators, that is, one Trainee Investigation Officer (Economics) and three Research Assistants, one from economics and two from legal background. These positions are entry level in the investigative cadre with the minimum qualifications being Master and Bachelor's Degree respectively, but most of the new recruits have higher qualifications. One of the Research Assistants is a lawyer, while the Trainee Investigation Officer has embarked in a PhD in Applied Econometrics.

The COMESA Competition Commission (“CCC”) is mandated to review mergers having a regional dimension across the COMESA markets; and for that purpose, it seeks the views of affected Member States. Mauritius being a Member State of the COMESA, the Competition Commission works in close collaboration with the CCC to review mergers having a regional dimension, but which may impact on Mauritian markets.

Since the beginning of the collaboration with the CCC, the Competition Commission has reviewed at least 115 mergers having a regional dimension and notified by the CCC. The merger transactions notified involved markets in a range of sectors including healthcare, retail, automotive, logistics and agro-industry sectors, amongst others. During the financial year ending June 2020, the Competition Commission, in collaboration with the COMESA Competition Commission, has reviewed 30 of such merger notifications, which had an impact on markets in Mauritius.

Some of these transactions are described below.

Merger involving Akzo Nobel Coatings International B.V. and Mauvilac Industries Limited

The AkzoNobel group, a global manufacturer and distributor of paint which is active in over 150 countries, including Mauritius, had proposed to acquire Mauvilac Industries Limited, through Akzo Nobel Coatings International B.V. The AkzoNobel group is among the largest paints and related products manufacturer and supplier in the world and supplies brands like Dulux and International. Mauvilac Industries Limited is a locally incorporated company involved in the manufacture and supply of paints and related products at local and regional level, including Mauvilac branded paints.

During the review of the transaction, certain players on the market expressed some concerns with the transaction. Although the AkzoNobel group was active in Mauritius before the transaction, it had a relatively low market share in Mauritius. As such, the transaction is unlikely in itself to significantly increase the market concentration in supply of paints in Mauritius. However, concerns were expressed that the transaction may increase the incentive of the acquirer to engage in tying and bundling to the detriment of competition. Concerns were also expressed that it may shift its production to other countries to the detriment of the local economy and public benefit.

Akzo Nobel Coatings International B.V offered undertakings

(commitments) that it will not condition the supply of Mauvilac paints on a requirement or obligation for the retailers to also purchase Dulux/International paint brands. It further committed that production of paints in Mauritius by Mauvilac will be continued. These undertakings are valid for a period of 3 and 10 years respectively. These undertakings addressed the competition concerns and as such, the transaction was approved subject to the undertakings.

Merger involving Groupe Bernard Hayot and Vindemia S.A.S

The Groupe Bernard Hayot proposed to acquire all the issued share capital of Vindémia Group S.A.S, from Casino group.

In Mauritius, Groupe Bernard Hayot distributes motor vehicles of the brand “Hyundai” through Bamyris Motors Ltd. It is also present through Global Business Companies incorporated in Mauritius.

Vindémia Group S.A.S, is a leading food retailer with hypermarkets, supermarkets and convenience stores. In Mauritius, it mainly owns and operates Somags Ltée which trades as “Jumbo Score” hypermarkets, “Jumbo Express” supermarkets and “Vival” convenience stores, and Distrilog Ltd.

No competition issues were found, and the transaction was approved.

Merger involving Pioneer Food Group Limited by PepsiCo, Inc

Another cross-border transaction affecting Mauritius is the acquisition of Pioneer Food Group Limited by PepsiCo, Inc. The latter is an American company which supplies international brands such as Pepsi, Doritos, Lay’s, Quaker Oats and Tropicana. Pioneer Food Group Limited is a South African company, which also supplies well-known brands, including Ceres Juice, Fruitree and Liqui-fruits and a variety of breakfast cereals of the brand Bokomo. Several of the products of the parties are supplied in Mauritius through different distributors.

Certain products supplied by these two parties were competing in Mauritius and some players expressed certain potential competition issues. However, following additional clarifications from the parties, the Competition Commission found no competition issues. The transaction was approved.

The Competition Commission is mandated by the Competition Act to review merger situations and is empowered to impose appropriate remedies or block mergers which substantially lessen competition, after factoring any offsetting public benefit that they may have. The analytical framework used to conduct the substantive assessment in relation to merger reviews is laid down in Guidelines on Mergers (“Merger Guidelines”) published under section 38 of the Act. The application of the Merger Guidelines revealed certain inconsistencies in relation to the interpretation of “control”, which may lead to ambiguities and erroneous decisions. Mauritius has a voluntary merger notification regime, whereby parties are not under an obligation to seek the approval of the Commission with respect to their mergers and acquisitions. They often self-assess such transactions. Thus it is important to have clear guidelines which enterprises can use to make sound decisions.

To this end, the Competition Commission is considering amendments to the latter section of the Merger Guidelines. A public consultation was held, whereby views and comments of interested parties on the proposed amendments were invited. To facilitate the understanding of the business community on the proposed amendments, a workshop was held in collaboration with the Mauritius Chamber of Commerce and Industry on 20th July 2020. The public consultation has been completed and the submissions received are now being assessed. The amendments proposed are explained below.

Control

Three levels of controls have been provided at section 47(3) of the Act namely “material influence”, “control without controlling interest”, also known as “de facto control”, and “control with controlling interest”. The Merger Guidelines as presently couched do not clearly explain these three types of control and thus may lead to ambiguity in their interpretations. They may further, in some instances be erroneous and

contrary to the provisions of the Act.

It is thus proposed to replace the section of the Merger Guidelines on control with a new section which clearly explains that there are three levels of controls, and any increase from one level to another may also be considered as an acquisition of control. It has also been explained how these levels of control will be assessed.

In brief, material influence will occur where a person can materially influence the policy of an enterprise. He does not need to be in a position to control that policy, but it suffices that he is able to materially influence such policy, for instance through board representation or rights to veto or block certain decisions.

De facto control occurs where a person without having the majority of voting rights in an enterprise is in a position to control the policy of that enterprise, for instance by being able to cast a majority of votes at shareholders’ meetings. Controlling interest in turn is generally shareholding which confers more than 50% of voting rights.

Failing firms

The Merger Guidelines provide the main criteria in assessing the effect on competition when a merger transaction involves a failing firm at paragraph 3.20.

However, another prior paragraph of the Merger Guidelines may give rise to two possible interpretations, one being that when the target is a failing firm, **that suffice in itself to conclude** that there will be no loss in competition. In fact, the mere fact that the target is a failing firm does not suffice to conclude that the transaction will not result in substantial lessening of competition, but must be assessed taking into account the subsequent provisions of the Merger Guidelines. A minor amendment is being proposed to clarify that paragraph.

The Merger Guidelines will be amended after factoring the views expressed by parties and is expected to be amended in the coming months.

Ten years of Competition Enforcement in Mauritius

The year 2019 marked the tenth year of presence of the Competition Commission in the Mauritian economy. A series of activities were organised in this context, starting with the launch of a new corporate identity. Beginning September 2019, the new vision, mission, logo and website were presented during an official event. A series of radio spots were aired over a period of two weeks, aiming at increasing the awareness of the general public and businesses on the role of the Competition Commission.



A “*Marketing and sales within the boundaries of competition law*” workshop was held for managers and professionals dealing with marketing and sales decisions, and aimed at informing them against commercial decisions which may be anticompetitive and thus, promoting compliance. The main facilitators of this workshop were Ms. Anne Riley, independent antitrust compliance consultant and expert in competition, and Mr. John Davies, Executive Vice President of Compass Lexecon, and mostly known in Mauritius as the first Executive Director of the Competition Commission.



A “Competition Week” was held at the start of October. It started with a workshop on cartels with delegates from competition authorities from ten countries. The workshop was hosted by the Competition Commission, facilitated by the Southern African Development Community (SADC) and the African Competition Forum (ACF). The workshop aimed at building the capacity of delegates to investigate and better fight cartels, as well as dealing with bid rigging.

The day ended with a panel of experts from Competition Commission South Africa, the University of Mauritius, the legal community and the Mauritius Chamber of Commerce and Industry (MCCI).



Ten years of Competition Enforcement in Mauritius

A workshop dedicated to legal professionals, was held at the Institute of Judicial and Legal Studies of Mauritius (IJLS) and was led by Prof. Richard Whish, Emeritus Professor of Law at King's College London, a legal academic and author. He was also a non-executive director of the Office of Fair Trading.



Mr. Davies concluded the conference with a panel discussion to explain how government decisions can have adverse effects on competition, and how to ensure that businesses, competition institutions and policy makers can work together to promote competition.



A “**Competition Law and Policy Conference 2019**” was organised to bring together specialists in the field of competition law and economics, representatives of the business community and public officials to share their perspectives on the various competition related matters. The experts, Ms. Riley, Mr. Davies, and Prof. Richard Whish discussed on the topic of disruptive technology and its effects on small emerging economies. Professor Whish explained to the audience how the impact of disruptive technologies affected the business world and the application of competition law.

A dinner was hosted on 8th October 2019 at L’Aventure du Sucre, Beau Plan, to commemorate its ten-year presence in Mauritius. On this occasion, the Competition Commission launched a ten-year review book and a video clip.

More details on these events can be accessed on our website www.competitioncommission.mu.



Ms. Riley, joined by a panel consisting of Mr. Davies and Mr. George Lipimile, CEO of the COMESA Competition Commission, demonstrated the benefits of competition in the business world.

Supreme Court to hear the appeals against the decision of the Commissioners to impose direction on VISA and MasterCard to reduce interchange fees

On 04th June 2019, the Commissioners of the Competition Commission issued a direction on VISA and MasterCard to limit the Issuer Interchange Fee (IIF) on locally issued credit and debit cards at a maximum of 0.5% on Point of Sales (POS) transactions effected in Mauritius for a period of five years.

In reaching its decision, the Commissioners had regard to the findings and recommendations of the Executive Director contained in the report of investigation as well as the submissions of the parties during the determination process.

The Investigation was concerned with the set of agreements that VISA and MasterCard respectively concluded with 13 local banking and non-banking financial institutions participating in their respective payment networks. More specifically, the competition concern was in relation to the level of the IIF set by VISA and MasterCard under their respective agreements with banking and non-banking institutions for card transactions at the POS.

The Executive Director found that the levels of IIF set by VISA and MasterCard for local POS transactions constituted

a major component of the Merchant Service Charge (MSC), which were in turn inflating the base on which merchant-banks set the MSC. Thus, those IIF levels were preventing, restricting or distorting competition in the market for card-acceptance facilities. This was because some banks had both a large pool of cardholders and card-accepting merchants. Because of their larger cardholder base, the majority of card transactions processed at their local POS terminals were on the cards issued by them. They were therefore in a position to offer better MSC rates than small merchant banks as they could recoup a significant proportion of the IIF paid by their card acquiring business through their issuing business. This, in turn, limited the ability of small players to offer competitive MSC rates and compete more effectively.

Both VISA and MasterCard, as well as one local commercial bank, namely the BCP Bank (Mauritius) Limited, previously known as Banque des Mascareignes Ltee, have appealed against the decision of the Commission. Hearings by the Judges of the Supreme Court are scheduled for October 2020.

Abandoned acquisition of The General Construction Company Ltd by IBL Ltd, together with a financial partner

On 6th September 2019, The General Construction Company Ltd (“GCC”) and IBL Ltd (“IBL”) made a joint application for the guidance of the Competition Commission on the proposed acquisition of a majority stake in GCC by IBL (the “proposed transaction”).

IBL is a conglomerate group and public company, present in various business clusters including the construction industry. Manser Saxon Contracting Limited (“MSCL”), a subsidiary of IBL is registered as a “Grade A” building construction works contractor and a “Grade A” Mechanical, Electrical and Plumbing (“MEP”) works contractor.

GCC, a public company limited by shares, is registered as a ‘Grade A’ local contractor with the Construction Industry Development Board (“CIDB”) for (i) building construction works, and (ii) civil engineering construction works.

Given the MEP and building construction works markets are closely related and that the parties have important market shares in both, the Executive Director had some competition concerns with the transaction. The competition concerns related to potential creation of market transparency and leveraging of market power.

To address the competition concerns, IBL offered behavioural undertakings to the Competition Commission on behalf of MSCL and GCC.

Following assessment of those undertakings, the Executive Director produced his Final Report of Undertakings in February 2020, recommending the Commissioners to accept the proposed undertakings.

On the 19th March 2020, the Commissioners issued their Decision (Ref: DS/0042: Proposed acquisition of The General Construction Co Ltd by IBL Ltd), whereby they determined that as per sec 63(3) of the Act, the behavioural undertakings satisfactorily addressed all the concerns and as such, cleared the proposed acquisition subject to the undertakings.

However, on the 15th April 2020, the parties informed the Competition Commission that due to the uncertainties created by the COVID-19 pandemic, IBL has decided not to proceed with the proposed acquisition. Consequently, the Commissioners issued a second decision (Ref: DS/0043) cancelling the first decision and released IBL from the Undertakings.

Investigation into potential collusive agreements by the Association of Freight Forwarders

An investigation was launched by the Executive Director with respect to a potential collusive agreement that may exist among certain members of the Association Professionnelle des Transitaires de l'Île Maurice (APT), an association in the logistics sector.

The Executive Director was concerned that the Standard Trading Conditions of the association had clauses which fixed an interest rate applicable to clients of the members of the association on overdue amounts and set the maximum liability of the members. The Executive Director was further concerned that the APT may have in the past agreed on co-loading rates (co-loading refers to arrangements, normally in one container, of group shipments of two or more clients or freight forwarders).

The APT, on behalf of its members, submitted undertakings

under section 63 of the Act to resolve the arising competition concerns of the investigation. The Executive Director recommended that in this particular case financial penalties were not warranted and that the matter could be resolved on the basis of undertakings. This was mainly because the conduct pertaining to co-loading rates ceased long back and that the contested clauses of the Standard Trading Condition were not very serious breaches.

The Commissioners delivered their decision on this investigation on 20th February 2020 determining that the conducts being investigated amounted to a breach of section 41 but financial penalties were not warranted, and directed the members of the APT to implement the undertakings submitted.

Investigation into the conduct of two trade associations in the freight & logistics sector

An investigation was launched by the Executive Director with respect to a potential collusive agreement that may exist among certain members of Association of Customs House Brokers (CHBA), an association in the logistics sector through the Standard Trading Conditions of the association.

The Executive Director was concerned that the Standard Trading Conditions of the CHBA had clauses which fixed an interest rate on overdue amounts and a disbursement fee applicable to clients of the members of the CHBA and set the maximum liability of the members. The Executive Director was also concerned that the CHBA had in the past set a minimum pricing policy for its members.

The CHBA, on behalf of its members, submitted undertakings under section 63 of the Act to resolve the arising competition concerns of the investigation. The Executive Director recommended that in this particular case, financial penalties were not warranted and that the matter could be resolved on the basis of undertakings. This was mainly because the conduct happened long ago.

The Commissioners delivered their decision on this investigation on 20th February 2020 determining that the conducts being investigated amounted to a breach of section 41 but did not warrant financial penalties, and directed the members of the CHBA to implement the undertakings submitted.

Acquisition of 30% of Medscheme (Mtius) Ltd by Mauritian Eagle Insurance Co Ltd

On 21st December 2018, Mauritian Eagle Insurance Co. Ltd and Medscheme (Mtius) Ltd made a joint application for the guidance of the Competition Commission on the proposed acquisition of 30% of the shares of Medscheme (Mtius) Ltd by Mauritian Eagle Insurance Co. Ltd.

The acquirer, Mauritian Eagle Insurance Co. Ltd, operates in all classes of business within the short-term (general) insurance in Mauritius. Its activities consist of claims handling and monitoring, claims recovery, corporate and marine insurance, motor insurance, health insurance and personal lines insurance, reinsurance and international market, and business development.

The target firm, Medscheme (Mtius) Ltd, is engaged in the provision of membership management and claims administration of health policyholders. Medscheme (Mtius) Ltd is a medical insurance and provident fund administrator. In that perspective, Medscheme (Mtius) Ltd essentially manages healthcare insurance claims and associated processes of local client portfolios, employer medical aids and a number of provident fund associations.

Following a preliminary analysis of the matter, some competition concerns were identified. Both Mauritian Eagle Insurance Co. Ltd and Medscheme (Mtius) Ltd offered undertakings to the Competition Commission in

February 2019 to address those concerns.

The Executive Director was mainly concerned that if Mauritian Eagle Insurance Co. Ltd was able to access data on clients of Medscheme (Mtius) Ltd, such data may be used to the detriment of competition and lead to market transparency. However, the parties have taken different measures to ensure that there is proper ring fencing of such data. Further, it should be recalled that Mauritian Eagle Insurance Co. Ltd and Medscheme (Mtius) Ltd will continue to remain two distinct companies and would be bound by laws of conduct in line.

In April 2019 the Executive Director submitted his Report on the Undertaking to the Commission for its determination on the matter. In June 2019, the Commissioners issued their decision on the matter, whereby they accepted the undertakings offered by the parties, after securing two additional undertakings relating to ring fencing of the data of Medscheme (Mtius) Ltd and providing the Competition Commission with the possibility to inspect relevant documents. As such, the transaction was cleared subject to the undertakings.

Supply of lower grade secondary schoolbooks

Three local publishers and an independent author submitted complaints to the Competition Commission, that late and inadequate disclosure of syllabi for Grades 7-9 (lower secondary grades) by the Mauritius Institute of Education (MIE) was preventing them from publishing and supplying school textbooks. The Executive Director launched an enquiry into the matter and in the course of information gathering, the publishers also submitted that the Ministry of Education was influencing secondary schools in their choice of textbooks in favour of MIE textbooks.

The Executive Director gathered that in the context of the education reform (Nine Year Continuous Basic Education), the MIE was entrusted with the responsibility for the development and publishing of the National Curriculum Framework (NCF), syllabi and textbooks for lower secondary grades. In this regard, the MIE published the syllabi for the lower secondary grades in around August

2017. The Executive Director concluded that this could have had a short term effect of foreclosing private authors and publishers from publishing and supplying grade 7 textbooks for January 2018. However, the issue was unlikely to arise onwards. Based on a benchmarking exercise, he however concluded that the syllabi were adequately disclosed for the purpose of publishing the textbooks by the private publishers.

In relation to the issue of choice of lower secondary textbooks at schools, no evidence of coercion on the part of Ministry of Education to exclusively prescribe MIE textbooks were found. The Ministry of Education submitted that it had only recommended schools to prescribe the MIE textbooks. Schools were free to prescribe any textbooks as long as they met the objectives of the NCF and were in line with the syllabi.

Advice on removal of pork import restriction

Following complaints by pork processors regarding a regulatory measure of the Ministry of Agro Industry and Food Security, the Executive Director of the Competition Commission launched an enquiry in relation to pork processors being granted import permits for processing-grade pork only if they purchased an equivalent volume of slaughtered pig from local breeders.

The complainants denounced that the regulatory measure was being implemented in a discriminatory manner whereby one pork processor, the leading one, was being granted import permits without having to purchase locally slaughtered pigs. The Executive Director found that the policy of the Ministry of Agro Industry and Food Security (MAIFS) had resulted in anti-competitive effects in the supply of secondary cuts and processed pork to retailers, restaurants and hotels. The enquiry revealed that the policy had reduced the ability of pork processors (except the leading one) to compete in the supply of processed pork in Mauritius and some had even exited the market.

The Executive Director gathered that the objective of regula-

tory measure of the Ministry of Agro Industry and Food Security was to protect local breeders and to secure an outlet for them to sell excess produce. It was, however, gathered that locally produced pig meat did not meet HACCP standards and therefore could not be used as a raw material for further processing. With the exit of some local pork processors, local breeders could no longer rely on them to absorb their excess produce, thereby rendering the regulatory measure of the MAIFS ineffective and eventually not for the benefit of local pig breeders.

The Commission, agreeing with the findings of the Executive Director, issued an advice on the matter in February 2019 pursuant to section 19 of the Competition Act 2007 and in which it recommended that the policy be abolished and that other regulatory measures to protect local pig breeders be considered.

Takeover of activities of Shoprite (Mtius) Ltd by Pick and Buy Ltd (Winner's)

In July 2018, the Competition Commission was informed that Shoprite (Mtius) Ltd intended to cease its supermarket activities in Mauritius and that Pick and Buy Ltd intended to acquire the supermarkets of Shoprite (Mtius) Ltd located at Port-Louis and Tamarin. Later during the assessment, the parties submitted that the transaction with respect to Tamarin will not proceed and as such, is limited to the acquisition of the supermarket located in Port-Louis.

Pick and Buy Ltd owns the supermarket chain Winner's, and is 100% owned by IBL. There were 21 Winner's supermarkets across the country. Further, the group previously operated Monoprix supermarkets.

Shoprite and Winner's were two main supermarkets in central Port-Louis and were closely located. Consequently, the Executive Director was concerned that following the transaction, consumer choice may be reduced and that Pick and Buy Ltd would have an incentive to close one of the two supermarkets, further restricting choice and increasing shopping costs. The Executive Director was also concerned that the market power of Pick and Buy Ltd would increase in central Port-Louis as compared to the wider market of Mauritius.

As such, the Executive Director expressed concerns with the transaction. Shoprite (Mtius) Ltd tried to find alternate buyers but was unsuccessful. Pick and Buy Ltd proposed to divest its existing supermarket to another operator to ensure that there remains two different supermarkets in that region. However, this initiative also was not successful due to a third-party issue, which appeared to be reasonable.

As such, Pick and Buy Ltd offered the Competition Commission with behavioural undertakings to address those concerns. It committed that it will not close its existing supermarket in Port Louis prior to the expiry of its lease agreement, that it will align pricing of its Port-Louis supermarkets to those at national level and gave commitments on level of services.

Given the circumstances of the case and considering the counterfactual if the transaction is blocked, the Executive Director recommended the Commission to clear the transaction subject to the undertakings of Pick and Buy Ltd. On 24th October 2018, the Commission issued its decision to clear the transaction subject to the undertakings.

Other Merger Reviews

Mergers and acquisitions can change market structures on a lasting basis, and thus, it is important to ensure that anti-competitive mergers are remedied promptly. This warrants close scrutiny of transactions that may affect control of enterprises and the state of competition. In that endeavour, the Executive Director has scrutinised more than five hundred transactions over the last year, and various enquiries were conducted, some of which are described below.

Amalgamation of ENL Limited, ENL Land Ltd, ENL Commercial Ltd and ENL Finance Ltd with and into La Sablonnière Limited

The Competition Commission was informed of the proposed restructuring of ENL Group and the amalgamation of ENL Limited, ENL Land Ltd, ENL Commercial Ltd and ENL Finance Ltd with and into La Sablonnière Limited.

An assessment of the transaction was conducted by the Executive Director. It was concluded that the transaction was not resulting into change in control within the meaning of the Act and as such did not qualify as a merger situation. The transaction was a restructuring rather than a merger situation within the meaning of competition law.

Acquisition of Archemics Ltd and Suchem Ltd by Mauritius Chemical and Fertilizer Ltd

An application for guidance of the Competition Commission was made by Mauritius Chemical and Fertilizer Ltd into its proposed acquisition of 100% of the shares of Archemics Ltd and Suchem Ltd from Harel Mallac & Co Ltd.

Mauritius Chemical and Fertilizer Ltd, Archemics Ltd and Suchem Ltd form part of the Harel Mallac Group where Harel Mallac & Co Ltd owned 70.4% of Mauritius Chemical and Fertilizer Ltd and 100% of both Archemics Ltd and Suchem Ltd.

The assessment was closed with no further action as based on the assessment conducted, there were no grounds to believe that the transaction would give rise to a merger situation within the meaning of the Act.

Amalgamation of Cim Finance Ltd, Cim Agencies Ltd, Cim Management Services Ltd, Cim Shared Services Ltd and Mauritian Eagle Leasing Co Ltd with and into Cim Financial Services Ltd

An application for guidance of the Competition Commission was made by Cim Financial Services Ltd into the proposed amalgamation of Cim Finance Ltd, Cim Agencies Ltd, Cim Management Services Ltd, Cim Shared Services Ltd and Mauritian Eagle Leasing Co Ltd with and into Cim Financial Services Ltd. Through the transaction, Cim Finance Ltd, Cim Agencies Ltd, Mauritian Eagle Leasing Co Ltd, Cim Management Services Ltd and Cim Shared Services Ltd in which Cim Financial Services Ltd holds 100% shareholding will amalgamate into Cim Financial Services Ltd and the surviving entity will be Cim Financial Services Ltd.

The assessment was closed with no further action as based on the assessment conducted, there were no grounds to believe that the transaction would give rise to a merger situation within the meaning of the Act.

Acquisition of Le Warehouse Limited by HV Home Equipment Ltd

The Executive Director had conducted an enquiry into the acquisition of 100% of shares in Le Warehouse Limited, which trades under the name of "361", by HV Home Equipment Ltd. The latter is related to AURS & Co. Limited and Megacosmos Ltd. Le Warehouse Limited operated both as a distributor and retailer of consumer electronics, while AURS & Co. Limited and Megacosmos Ltd operated as distributor and retailer of consumer electronics, respectively.

Following the assessment conducted, it was concluded that the transaction would unlikely lead to substantial lessening of competition in Mauritius.

Other transactions

In addition to the above, the Competition Commission also assessed the merger transactions involving Standard Labels Ltd and Mauriflex (Flexo Printing & Packaging) Ltd; Le Tamarinier Ltée and Biolink Limited; MS Warehousing & Logistics Ltd, Mauritius Freezone Logistics Ltd and Espace Transport Logistique Ltée; Launderers (Hotels and Restaurants) Limited and Dry Cleaning Services Ltd; and Velogic Ltd and Global Air Cargo Services Ltd. Following assessment the Executive Director found no grounds to believe that these transactions would result in substantial lessening of competition in Mauritius.

Our International and Regional presence

Mauritius has endorsed the economic principle of open markets for competition in order to reap the benefits of competition and thus enhance consumer welfare. It is strengthening its economic cooperation on both regional and international fronts. In this regard, the Competition Commission is actively contributing in the process of promoting competition across borders and making markets work better for all.

Its contribution can be viewed in terms of its collaboration in capacity building for effective cross border competition law enforcement and providing technical inputs for formulating competition policy with other countries or regional economic communities.

Regarding capacity building in the field of competition law enforcement, the Competition Commission is fully involved at the level of the African Competition Forum (ACF), where it occupies the Co-Chair with the Competition Commission of South Africa (CCSA). It hosted several ACF workshops and webinars on various topics, including cartel detection and prosecution as well as agency effectiveness. It has also been contributing in the ACF market study capacity project most notably, the cross-country construction study earlier in 2017 and currently the airline study.

While the Competition Commission has received technical assistance from various competition authorities such as the CCSA and the Consumer and Market Authority of UK, it has also shared its expertise with other sister agencies. For instance, it has extended technical assistance in the form of training programmes to agencies such as the Conseil de la Concurrence de Madagascar, the Trade Competition and Consumer Protection of Ethiopia and the Democratic Republic of Congo. The training programmes covered the various aspects of competition law enforcement (i.e. abuse of dominance, collusive agreements and mergers) as well as the

institutional structure and operating procedures. It also shared its experience in conducting market studies and advocating for competitive markets with those agencies.

The Competition Commission is also actively contributing in formulating regional and bilateral competition policy. It is fully involved in the preparation for negotiations at the level of the Tripartite FTA (that is COMESA-SADC-EAC) and the CFTA (Continental Free Trade Area). It has contributed in the drafting of the competition policy and expert report on the status of competition law adoption within the Tripartite FTA and provided inputs on the draft protocol for CFTA.

At the bilateral and multilateral economic cooperation level, the Competition Commission has provided inputs on the competition chapter related to the various trade policy agreements aimed at boosting trade and investment flows among the parties. These initiatives include:

- the proposed Comprehensive Economic Cooperation Partnership Agreement with India and Free Trade Area with China.
- the deepening of the interim Economic Partnership Agreement between the European Union (EU) and Eastern and Southern Africa (ESA).
- the Post Cotonou EU-ACP Partnership Agreement.

The Competition Commission is currently involved with the Trade Policy Review (TPR) exercise, which aims at assessing compliance of member states with respect to commitments undertaken under the World Trade Organisation Agreement. It will be contributing to the competition chapter of the TPR report.

In conclusion, the Competition Commission is fully engaged with the various stakeholders, be it at national, regional and international levels to make market works well in the interest of all Mauritians.

ACF/SADC 2019 Capacity Building Workshop on Cartel Investigation Skills'

Within the African region, the ACF and the SADC Cartel Working Group have been teaming up on an annual basis to bring together enforcers from Africa with the objective of learning from and sharing with their peers their experience on cartel detection and anti-cartel enforcement tools and best practices.

The Competition Commission, as ACF Vice-Chair, hosted the 4th ACF/SADC Cartels Workshop on 07th and 08th October 2019. Regrouping enforcers from a dozen countries as well as public procurement officials from Zambia and Mauritius, the Workshop encouraged contributions from members led by resource persons from Botswana, Mauritius, South Africa and Zambia. Participants interacted with accomplished competition experts *Prof. Richard Whish*, Emeritus Professor of Law at King's College London, and

Ms Anne Riley, independent antitrust compliance consultant.

The strategic and efficient use of cartel investigation powers and tools for evidence-gathering was discussed, followed by country-specific presentations of their relevant cartel laws, enforcement regime, and successful cartel prosecutions. Also discussed were bid-rigging conducts and the increasing use of cartel screens to detect such practices.

