

CAUTION! ANTI-COMPETITIVE BUSINESSES ARE ON SLIPPERY GROUND



Collusive Agreements



Information for businesses: collusive agreements

Introduction

The Competition Act is now in effect. Among other things it prohibits businesses from agreeing with their competitors to:

- fix prices (cartels);
- divide customers between them (market sharing); and
- avoid competition in procurement (bid-rigging).

Furthermore, suppliers are prohibited from preventing retailers cutting the prices of their products (resale price maintenance).

Any understanding between two or more businesses with the intention or effect of restricting competition in these ways is prohibited, not just written agreements.

The Competition Commission of Mauritius (CCM) can investigate suspected agreements. If it finds one, that agreement is automatically null and void. The CCM can take action to prevent a recurrence of the offence. If the CCM believes that the agreement was concluded 'intentionally or negligently' then it can impose fines of up to 10% of the participating businesses' turnover.

The Commission has its own powers independently to take all of these actions. Failure to comply with the Commission's orders is an offence. There is a right of Appeal to the Supreme Court but no other institution can prevent the Commission taking action, or overturn its decisions.

The rest of this leaflet provides more information on the prohibition on collusive agreements. Additional information is available in the CCM's published Guidelines and the Competition Act itself, all available from our website: www.ccm.mu. This leaflet is not a substitute for the detailed Guidelines nor the Act itself.

Why are collusive agreements prohibited?

Competition keeps prices down, forces businesses to cut costs and make productivity gains and so helps the economy. However, when there are only a few firms in the market, businesses might instead agree with one another to keep prices high and not to try to win one another's customers. This can be very damaging to consumers, and results in an uncompetitive and inefficient economy.

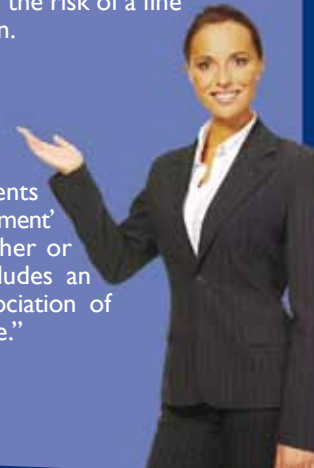
Surely a fine of up to 10% of turnover is too severe?

Collusive agreements such as price-fixing cartels are the most serious breaches of competition law and are the only type of restrictive practice for which the Commission can impose fines. Investigations in other countries have typically found that cartels result in prices 15-40% higher than they should be. Fines should reflect these costs, and should also be high enough to deter businesses from colluding at all.

Fines can only be imposed for 'intentional or negligent' breaches of the prohibition. Businesses can avoid the risk of a fine by not colluding to restrict competition.

What is an "agreement"?

It is not just formal, written agreements that the Act prohibits! In the Act, 'agreement' "means any form of agreement, whether or not legally enforceable, [...], and includes an oral agreement, a decision by an association of enterprises, and any concerted practice."



An understanding arising from a conversation could constitute an 'agreement' in this sense. People in business should be careful to avoid conversations with their competitors which could be interpreted as collusive agreements.

The CCM does not require physical evidence of the existence of an agreement to take action. In some cases, it could infer the existence of an agreement from market data.

What should a business do if it discovers that it is party to a collusive agreement?

If it maintains the agreement, then it is intentionally breaching the Competition Act and the Commission is likely to impose fines of up to 10% of turnover. Even terminating the agreement may not be enough, as the Commission can impose fines for past breaches.

Businesses should therefore inform the CCM, to take advantage of its leniency programme, as set out in the CCM Guidelines on Collusive Agreements. Under leniency, businesses can secure immunity from fines by co-operating with the investigation.



What does the prohibition on resale price maintenance cover?

Agreements through which suppliers prevent retailers from cutting prices are prohibited and fines can be imposed for an intentional or negligent breach. Agreements which prevent retailers from raising prices above specified levels are allowed. Suppliers can recommend a retail price as long as it is not binding, and must include the words 'recommended retail price' next to any printed price.

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