

CAUTION! ANTI-COMPETITIVE BUSINESSES ARE ON SLIPPERY GROUND



Monopoly & Merger Situations

Information for businesses: monopoly and merger situations

Introduction

The Competition Commission of Mauritius (CCM) has the power under the Competition Act to investigate and if necessary remedy, certain restrictive practices. This leaflet is concerned with monopoly and merger situations.

A **monopoly situation** exists when one supplier has 30% or more of the sales in a market, or up to three suppliers have at least 70%. These market share figures do not act as a trigger for investigation. A monopoly situation is not in itself any breach of the Act, but companies not in a monopoly situation cannot be investigated under the monopoly provisions of the law. When the CCM investigates it considers whether the actions of a monopolist restrict, prevent or distort competition or constitute exploitation of the monopoly situation¹.

This leaflet describes the CCM's approach to investigating monopoly and merger situations. Much more 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.

How are market shares determined?

There is an internationally-established methodology for defining markets in competition cases, both by product type and geographically. CCM Guidelines 2, Market Definition, provides the details.

A **merger situation** exists when a merger results or is expected to result in a business with market shares above the monopoly thresholds. Again, this threshold is not a trigger for action. The CCM can take action only if it expects the merger to result in a substantial lessening of competition. The CCM can investigate proposed mergers or mergers that have already been completed.

The CCM has strong independent powers to remedy competition problems arising from monopoly or merger situations. It can, for example, require businesses to amend contracts, to sell assets or subsidiary businesses and to accept controls on their behavior. Businesses can appeal these decisions to the Supreme Court, but no other institution or Government can prevent or overturn a decision of the Competition Commission.

Surely the 30% threshold is too low for Mauritius?

There is no presumption that a business in a monopoly situation is in breach of the law. The 30% figure is not a threshold above which businesses will be investigated.

It is a 'safe harbour' to provide businesses with smaller market shares with absolute confidence that none of their practices can fall foul of the monopoly provisions of the law. Many countries have no such safe harbours defined in law: for them, the equivalent figure is 0%.

Can a business be fined for breaching the monopoly or merger provisions?

No. The Commission can impose fines only for breaches of the 'collusive agreements' provisions of the law (covered in a different leaflet). The Commission does have considerable powers to remedy competition problems arising from monopoly or merger situations going forward.

¹. There is a separate leaflet covering collusive agreements as these are rather different. As the most serious breaches of the Competition Act, they are the only practices for which fines can be imposed.

Is there a list of prohibited behaviour?

No. The Act requires the CCM to investigate, to determine whether a monopolist's conduct has the object or effect of restricting, preventing or distorting competition. There are some practices that are particularly likely to have such effects. Businesses or their professional advisers should read the CCM's Guidance on monopoly situations and non-collusive agreements.

Would the Commission stop a business pricing its goods too low?

Not usually: low prices are a sign of vigorous competition. In a competitive market, businesses will try to undercut each others' prices and take market share from each other. This is normal competition, which benefits consumers and the economy. In very rare cases, a large business might set prices low to create a monopolized market by eliminating competition (predatory pricing). The Commission has set out some rigorous criteria in its Guidelines that must be met before it will intervene, because it would not want to discourage businesses from cutting prices.



What is a "merger"?

CCM Guidelines 5, Mergers, explain what constitutes a merger. The concept is a broad one and is not necessarily the same as stock exchange rules on mergers. For example, partial ownership stakes and the sale of partial businesses are considered to be mergers.



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