



John Davies, Executive Director

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Workshop in Rodrigues

15th December 2010

Plan



- Overview of competition law
- The Competition Commission's work in practice
- Application to Rodrigues
- Focus on bid-rigging in public procurement

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- **Overview of competition law**
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Competition Policy



- Beginning in US around 1900, increasingly adopted world-wide
- Promote free markets through legal action against anti-competitive behaviour, and advice to Governments
- Institutional structures vary – but requires some independent investigative body

Competition Policy

Competition Commission of Jersey action over liquid waste

Competition Commission of Singapore investigating bid-rigging in public procurement

Visa and Mastercard paid \$3bn to settle dispute over forcing customers to accept all cards

Price-fixing among cement companies in South Africa

Autorité de la Concurrence investigation of price fixing of aviation fuel in Réunion

Competition Act 2007



- Defines *restrictive practices*:
 - Collusive agreements
 - Non-collusive agreements
 - Abuse of monopoly
 - Anticompetitive mergers
- Establishes Competition Commission
 - Powers to compel production of information
 - Strong powers to remedy

Collusive agreements



Collusive agreements



- Cartels, market-sharing or bid-rigging
 - “Agreement” (which need not be written or explicit) not to compete
 - Absolutely prohibited with no exceptions
- Financial penalties of up to 10% of turnover, over the period of the breach to a maximum of five years

Abuse of monopoly



Collusive agreements



- Actions by a firm with over 30% of the market (or three or fewer firms with 70%) that:
 - Has the object or effect of distorting preventing or restricting competition; or
 - In any way exploits the monopoly situation
- No financial penalties, but Commission has strong powers to remedy

Merger control



Merger control



Mergers



- Can be reviewed when they would create a monopoly situation
- Commission examines to see whether merger would result in a “Substantial Lessening of Competition”
- Can block the merger or impose conditions, if so

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Competition Commission



- Appointed 4th June 2009
- Independent powers to intervene against enterprises engaged in *restrictive practices*:
 - *Investigate*
 - *Decide*
 - *Remedy*
- Advisory role for policy decisions

Investigation process

Third parties:
Businesses, members of public, consumer organisations, etc...

Acquire evidence



Provide evidence and submit views



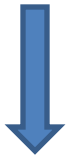
Staff of Competition Commission:
Executive Director
Investigative staff
Administrative staff



Commission:
Chairman
Vice-Chairman
Three commissioners

Report:
Findings and possible remedies

State case, acquire evidence

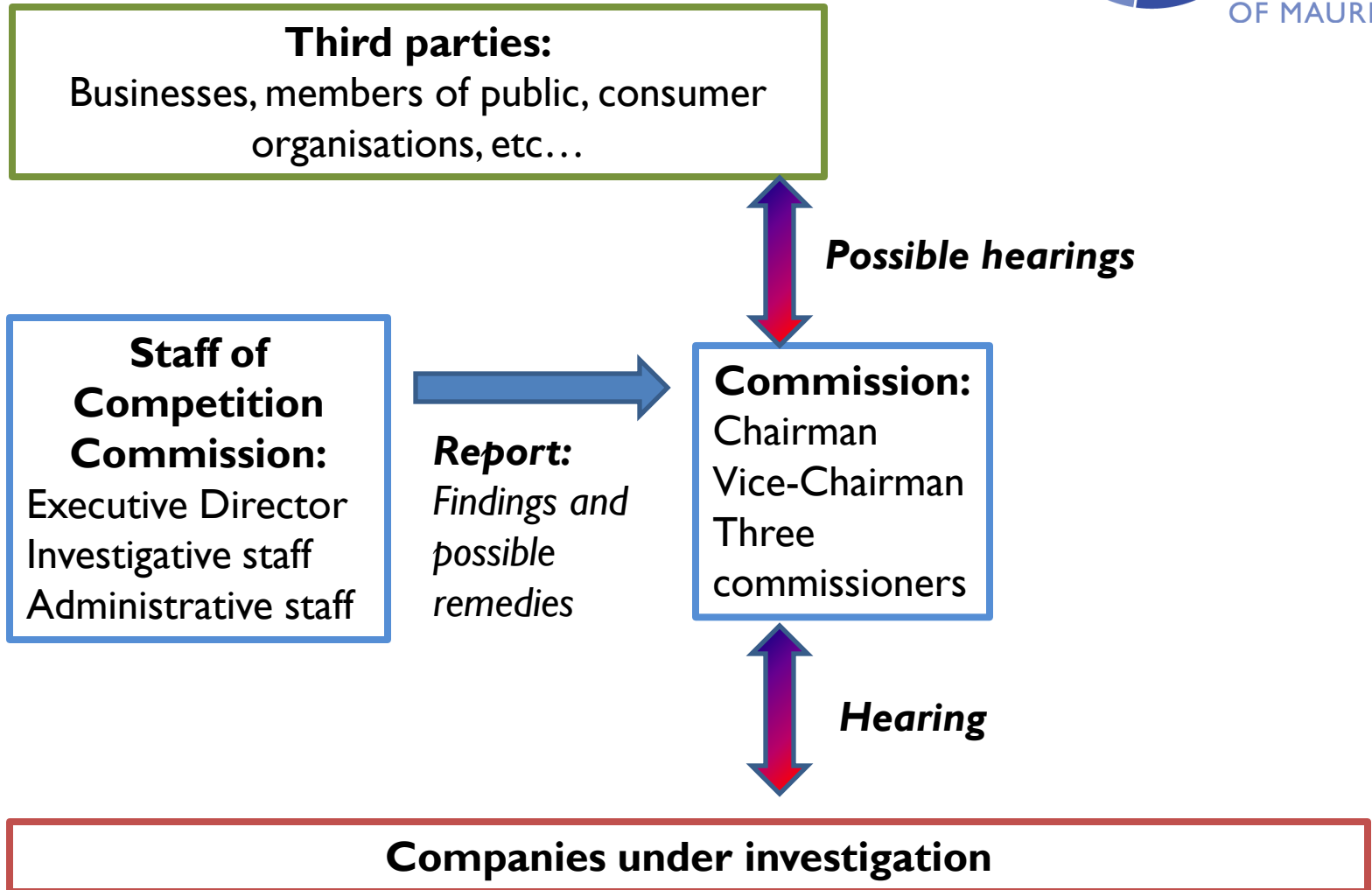


Provide evidence and submit views



Companies under investigation

Right to hearing with decision-makers



Transparency: a published decision with reasons



***Publish final report:
Decision with reasons***



**Staff of
Competition
Commission:**
Executive Director
Investigative staff
Administrative staff



***Decision:
Findings and
remedies***

Commission:
Chairman
Vice-Chairman
Three
commissioners

Companies under investigation

Right of appeal



Supreme Court



Appeal

Companies under investigation

Independence



37. Powers of Minister

(1) The Minister may give written directions of a general character to the Commission relating to any additional public policy factors to which he wishes the Commission to have regard in reaching its determinations.

(2) The Commission may, upon receipt of directions by the Minister under subsection (1), issue a written reply to the Minister.

(3) The directions given by the Minister under subsection (1) and the reply by the Commission, if any, under subsection (2) shall be published in the *Gazette*.

Key principles



- Not a 'regulator' of competition
- Transparency, fairness and natural justice in decision-making
- Independence – and therefore narrow focus on powers defined in the Competition Act
- Protect competition, not competitors

Regulated sectors



- CCM has powers over *enterprises* found to have engaged in *restrictive practices*
- But only advisory with regard to policy
- Including decisions of independent regulators

- Grey area where companies are engaged in actions at the behest of a regulator
- Guidelines CCM 7 refers

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Application to Rodrigues



- Competition Act applies in Rodrigues as elsewhere in Mauritius
- Cartels (price-fixing) are prohibited absolutely, with no exceptions
- Monopoly abuse more difficult to assess, as many businesses will (quite legitimately) be monopolists in a small market
- Bid rigging in public procurement may be an important area of focus

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Bid-rigging



- CCM has been working jointly with PPO to raise awareness of bid-rigging
- This is a specific offence under the Competition Act, as a “collusive agreement”
- Financial penalty up to 10% of turnover
- Different from corruption. Corruption is conspiracy between the buyer and the seller. Collusion is conspiracy between sellers (against the buyer).

Bid-rigging



- Occurs when bidders in a tender work together:
 - Agreeing a price below which they will not bid
 - Fixing in advance who will win the bid
 - Eg through “taking turns” or agreeing that the winner will compensate the losers
- Procurement officers especially need to be aware (and we are working with PPO to help)



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