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NOTICE – 14th of December 2010

CCM Investigation 005

On the 27th of July 2010, the CCM launched an investigation (INV 005) into the importation of cement and the unloading facility at the Port. This followed an allegation that Holcim (Mauritius) Ltd may have been abusing a monopoly position, within the meaning of the Competition Act 2007, by imposing a condition that it would only buy cement from the State Trading Corporation (STC) if the delivery of cement were on conventional vessels and not self-discharging pneumatic vessels.

At the time of the allegation, I had reasonable grounds to believe that imposing such a condition was likely to be an infringement of the monopoly provisions (sec 46) of the Act. It seemed that the STC had no other options than to accept Holcim's condition. The Statement of Issues sent to Holcim on 8th October 2010 stated:

“The allegation is that Holcim Mauritius is abusing its monopoly position in the downstream market for the distribution of cement by imposing a condition on the State Trading Corporation (STC) for the latter to import part of its cement consignments on conventional vessels and thereby having to use the inland cement unloading equipment (Kovako) of Holcim Mauritius.

Imposing such a condition could have the effect of preventing, restricting or distorting competition in the upstream importation of cement market. If the STC has effectively no choice but to accept that condition, because of the market position of Holcim Mauritius in the cement market, that would imply the STC must pay for unloading from conventional vessels, either directly or by requiring bidders in its tendering to deliver on conventional vessels.”

Since the publication of that Statement of Issues, the STC has requested tenders for delivery of cement for part of next year on pneumatic vessels only. On the basis of this, and a meeting and subsequent correspondence with STC, I understand that it is no longer necessarily the position that STC “has effectively no choice but to accept that condition”. Accordingly, it now seems to me that there have been material changes to the situation since July 2010, when I concluded I had reasonable grounds to investigate.

This is not to say that the outcomes if STC continues on this path will be perfect or will match those that might be expected from the workings of a competitive market. However, no perfect solution would be likely to result from any action by the Commission either. In general, the CCM takes the view that intervention by competition authorities in business negotiations is only

desirable as a last resort. In this case, it appears that negotiation is under way and it is hard to see that any intervention by the Commission (were it to find a breach of the Act), would be in the interests of consumers or the wider economy of Mauritius.

I have therefore decided to close the case without further action. We will continue with the market study MS 001, launched on 1st July 2010, which is examining the much wider issues of competition and regulation in the cement market.

John Davies

Executive Director