

Non-Confidential Version

REVIEW OF COMPLETED MERGER OF
EVENT STRATEGY LTD
&
LC EVENTS Co LTD

FINAL REPORT

25th February 2011



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I. Summary

1.1 Following a complaint made by LC Events Co Ltd and by virtue of the powers conferred upon the Executive Director of the Competition Commission (CCM), under Section 51 of the Competition Act (the Act), the CCM launched an Investigation on the 19th October 2010. This relates to the potential merger situation produced by the purchase of 33% of shares in LC Events Co Ltd (LCE) by Event Strategy Ltd (ESL) and whether this has resulted in, or is likely to result in, a substantial lessening of competition in a market in Mauritius, reviewable under Section 47 and Section 48 of the Act.

1.2 This report is in pursuance with Section 51(2) of The Act, which stipulates that “upon completion of an investigation, the Executive Director shall submit his report on the investigation to the Commission.”

1.3 The CCM produced a Statement of Issues on the 12th November 2010, which explained the main concerns of the CCM in relation to this Investigation. The parties were given the opportunity to comment and information gathering continued after the issue of the Statement of Issues.

1.4 Responding to the Statement of Issues ESL claimed that it does not have control over LCE.

1.5 Pursuant to Section 14 of CCM1 - Guidelines on Rules of Procedures and the timetable for this Investigation, a Provisional Findings Report (PF) was issued on 21st January 2011, to which the parties were given the opportunity to comment by the 11th February 2011 at the latest. The CCM did not receive any response from the parties in relation to the PF by the said deadline and proceeded with the Final Report.

1.6 During the Investigation, we requested information mainly from event services providers and corporate users of event services, who are customers to the event services providers.

1.7 On the basis of the evidence, the Executive Director finds that the merger is likely to lead to an immediate loss of competition, through harm to LCE as an independent competitor to ESL. Competition lost through the merger is likely to be restored through entry and expansion of competitors in the industry. The Executive Director therefore recommends the clearance of this merger, with no action by the Commission. However, it is for the Commissioners to exercise their own judgment as to whether the merger will result in a substantial lessening of competition, and if so how to remedy the situation.

1.8 The following Chapter gives an introduction to the situation. Chapters 3 and 4 of this report discuss the legal framework around the merger and how it results to a merger situation as per the Act. Chapters 5 and 6 lay out the economic rationale of mergers, the theories of harm and define the relevant market. Chapter 7 assesses the likely effect of the merger. Chapter 8 deals with the potential remedies; Chapter 9 concludes the Investigation and Chapter 10 lays out the next steps.

2. Introduction

The Situation

2.1 LC Events Co Ltd (LCE) alleged that Event Strategy Ltd (ESL) and “the Manneback companies”¹ (Impact Production Group) are in monopoly situations and the purchase of shares by ESL in LCE is subject to review under Sections 47 and 48 of the Act. LCE also requested interim measures under Section 62 of the Act.

Brief on the Merger

2.2 On the 13th April 2010, ESL bought 165 shares of LCE, which represents 33% of the total shares of the latter.

Event Strategy Ltd

2.3 ESL having its office at 57 Royal Road, Coromandel in Mauritius, supplies and operates “any equipment in the field of sound, light, video, staging, rigging and outdoor roof systems for events ranging from 15 to 15 000 peoples.”²

2.4 Being one of the first local companies to provide such event services of “new technology” in the Mauritian territory, ESL has been granted a Pioneer Status Certificate from the Government of Mauritius.

Impact Group

2.5 ESL forms part of the Impact Production Group (Impact). Impact “specializes in the fields of events.” The six “departments” of Impact are:

*Figure 1 - Departments of Impact*³

Company	Main Area(s) of Activity
Impact Production Ltd	Production of events, bringing of artists and installation of equipment

¹ Mr. Manneback is the Director of Event Strategy Ltd. He is also Director of other companies in the Event services. With the Exception of Aquavision Ltd, the companies referred to as Manneback companies fall under the Impact Production Group. Aquavision Ltd, since not operational has not been considered and when Impact Production Group is referred it excludes Aquavision Ltd.

² Source: brochure of Impact Production Group – handed to CCM by ESL

³ INV008 – INT01 – Meeting with ESL

Mille FeuxLtee	Design and Production of firework shows
eMage Lab Ltd	Multimedia, Branding, Logo, Photo, Camera, Visuals, Web Site, transmission of visual information multimedia interactive conceptual systems
Marquee Design Ltd	Offers tents, crystal marquee, décor, furnishing, carpet, air conditioning, lycra, tables, flower and chairs in relation to tent and marquee
Event Strategy Ltd	Supply and operate equipment in field of sound, light, video, staging, rigging and outdoor roof system
Aquavision Ltd	Provision of aquatic effects like water screens, water curtains, musical fountains and fog effects

2.6 AquaVision Ltd was created jointly by ESL and LCE. However later on there were disputes among these two collaborators and the matter was referred to Court. This company is not operational as such and has not been considered for this investigation.

2.7 Impact “is managed by a board of four directors....this structure allows a coordination of all services provided by each department.”⁴ These companies referred to as “departments”⁴ have different fields of activities but form part of Impact. ESL is marketed under Impact. Mr. Manneback who is the owner and director of ESL is also the majority shareholder of the other companies under the ‘Impact’ brand. This may imply that Mr. Manneback’s decision pertaining to ESL will be related to those of Impact. ESL and the other companies under Impact are branded as ‘Impact’.

2.8 It can be read from the brochure ⁴ of Impact Production Group that it “comprises six distinct business departments working together to supply all relevant services....” Thus ESL forms part of these departments. Therefore where appropriate to consider ESL in that particular dimension of an entity forming part of Impact and working together with the other companies we will refer to “ESL/Impact.”

LC Events Co Ltd

2.9 LCE is a Private Company Limited by Shares, having its office at No 120, Morcellement Ramdhenee, Trou Aux Biches. LCE acts “as an integrator in the events market...it provides

⁴ Source: brochure of Impact Production Group – handed to CCM by ESL

turnkey services which it sometimes outsources to other companies...LCE itself has capacity in-house for sound, light, water effects, video and décor equipment..."⁵

Background to the Merger

2.10 It has been brought to the attention of the CCM that there were several conflicts between Impact and associated companies on the one hand and LCE and associated companies on the other hand. There have also been cases running at the Court concerning these issues.

2.11 We understand that the legality of the acquisition of the shares has also been challenged in the Court. However this forms no part of the CCM's investigation.

2.12 The merger is more like a takeover of part of LCE through the purchase of shares and less collaborative by nature.

2.13 Given that the transfer of shares did occur and unless the Court nullifies or modifies this transfer it is appropriate for the CCM to consider that the transfer has occurred and to investigate the potential merger situation under the provisions of the Competition Act 2007.

2.14 The CCM has therefore investigated whether there has been a merger situation as per the Act and whether it has resulted or is likely to result in substantial lessening of competition within a market in Mauritius regardless of the background.

2.15 LCE has also put forward that ESL has been using its rights as share owner to obtain certain information from LCE, which LCE believes will lessen competition. LCE has also shown concern that the merger may weaken the competitive position of LCE in other ways. The effect of all these is likely to be very similar: that as a result of the merger, Impact and LCE cease to act as distinct entities, possibly through LCE ceasing to exist and ESL/Impact acting on its behalf.

2.16 ESL told the CCM that the rationale behind the purchase of the shares was to get information pertaining to AquaVision Ltd (a company jointly created by ESL and LCE) and transactions done on behalf of the latter by LCE.

Consideration of Interim Measures

2.17 The Act provides in Section 62 for possibilities of interim measures, for example to prevent irreversible damage to competition. Competition authorities in other jurisdictions frequently make use of similar powers when investigating completed mergers, to prevent integration between the merging parties from proceeding so fast and so far as to make it impossible for a competition authority subsequently to restore competition. Interim measures

⁵ Source: Complaint letter from LCE

were requested in this case by LCE. On consideration of the grounds advanced, the Executive Director concluded that the conditions as set in the Act for Interim measures were not met and did not believe to see reasonable grounds to report to the Commission recommending they consider interim measures.

2.18 The Executive Director did not believe that there was *prima facie* evidence of Substantial Lessening of Competition (SLC) as set up in Section 62(1)(b)(i). At that early stage of the Investigation the question as to whether the merger is likely to result or have resulted in SLC seemed open.

2.19 The second condition for interim measures is set in Section 62(1)(b)(ii) of the Act which “relates primarily to the ability of the Commission, in the event it were to rule against the merger, effectively to remedy the SLC by restoring the pre-merger conditions of competition... The focus is solely on irreversible effects on the competitive position of the acquired entity, not on the damage caused to anyone.” For this case the Executive Director did not see evidence on how the merger may “pre-empt remedial action being taken by the Commission, were it to reach an SLC finding.”

2.20 Therefore consideration for interim measures was not put forward to the Commission. LCE was informed of this decision and did not challenge it. Consequently no interim measures are in place and there is nothing (from a competition law perspective) to prevent ESL exercising the normal rights possessed by a shareholder of LCE.

3. The Legal Framework

The Competition Act 2007 and CCM Guidelines

3.1 Sub-Part IV of Part III of the Act deals with the control of merger situations. Section 47 of the Act stipulates the criteria for existence of a merger situation and Section 48 of the Act describes merger situations that may be subject to review.

3.2 The definition of merger as per the Act is quite broad defining a merger situation as “the bringing together under common ownership and control of 2 or more enterprises of which one at least carries its activities, in Mauritius, or through a company incorporated in Mauritius.”⁶

3.3 Section 47(2) of the Act specifies that *enterprises shall be regarded as being under common control where they are –*

(a) enterprises of interconnected bodies corporate;

(b) enterprises carried on by 2 or more bodies corporate of which one person has or groups of persons have control; or

(c) 2 distinct enterprises, one carried on by a body corporate and the other carried on by a person having control of that body corporate.

3.4 Section 47(3) of the Act stipulates that *any person may be treated as bringing an enterprise under his control where –*

(a) he becomes able to control or materially to influence the policy of the enterprise, but without having a controlling interest in it;

(b) being already able to control or materially to influence the policy of the enterprise, he acquires a controlling interest in it; or

(c) being already able materially to influence the policy of the enterprise, he becomes able to control that policy.

3.5 Thus existence of control or material influence may result to merger situations.

3.6 The Guidelines give guidance on the meaning of control: “*The CCM considers that controlling interest is generally deemed to exist where a person holds:*

⁶ Section 47(1) of the Act

(a) ownership of at least 30% or more of the voting rights;

(b) is able to control the composition of the board;

(c) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company; or

(d) holds 30% or more of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital.”⁷

3.7 The Guidelines also give guidance on the meaning of “material influence” or de facto control, which is less than legal control but still allows the acquirer to influence the decisions or policies of the enterprise.⁸

3.8 There are no precise criteria for determining when a merger gives a party material influence, however some guidance from international precedents on the concept is helpful.

3.9 As specified in Section 48 of the Act, mergers are subject to review by the CCM where:

(a) all the parties to the merger, supply or acquire goods or services of any description, and will following the merger, together supply or acquire 30 per cent or more of all those goods or services on the market; or

(b) one of the parties to the merger alone supplies or acquires prior to the merger, 30 per cent or more of goods or services of any description on the market; and

(c) the Commission has reasonable grounds to believe that the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.

3.10 The 30% market share is a threshold for further assessment and does not by itself imply that a merger will lessen competition.

3.11 The CCM Guidelines on Merger highlights that not all mergers give rise to competition issues and that some mergers may be “pro-competitive.” “Some mergers may lessen competition but not substantially, because sufficient post-merger competitive constraints exist

⁷ Section 2.10 of CCM5 – Guidelines on mergers

⁸ Section 2.12-16 of CCM 5

to ensure that competition (or the process of rivalry) continues to discipline the commercial behaviour of the merged entity.”⁹

3.12 “Only mergers that substantially, or are likely to substantially, lessen competition will be subject to remedy under the Act. The focus of the CCM is therefore solely on the effects of a merger on competition.”¹⁰

3.13 “Merger analysis is inherently forward-looking (even for completed mergers) and necessarily involves predictions to be made about the future. The CCM will form an expectation using all the available relevant evidence it can reasonably obtain.”¹¹

3.14 Substantial Lessening of Competition “would be assessed by considering how competitive the market was/is before the merger, and what is likely to happen after the merger.”¹²

3.15 “Even if a merger would result in one or more suppliers having the ability to raise prices, a merger might still be allowed if the Commission believes that entry is sufficiently timely, likely and effective that no long-term damage to competition will result.”¹³

3.16 Thus, some mergers may eliminate a competitor or lessen competition among the merging entities, but, if after the merger there continue to exist sufficient other entities offering similar products/services there may continue to exist competition in the market and competitive pressure may continue on the merging firms. This will mean continued rivalry in the market possibly preventing the merging firm from using market power to the detriment of consumers, as the consumers will have the alternative to shift to the other firms providing similar products/services at more competitive offer.

3.17 Section 61 of the Act deals with potential remedies that may be adopted in merger control and is as below:

3.18 (1) *Where the Commission determines, after investigation that –*

(a) an enterprise is a party to a merger situation; and

⁹ Section 3.3 of CCM5 – Guidelines on mergers

¹⁰ Section 3.4 of CCM5 – Guidelines on mergers

¹¹ Section 3.11 of CCM5 – Guidelines on mergers

¹² Section 3.16 of CCM5 – Guidelines on mergers

¹³ Section 3.21 of CCM5 – Guidelines on mergers

(b) the creation of the merger situation has resulted, or is likely to result, in a substantial lessening of competition within a market for goods or services, the Commission may give the enterprise such directions as it considers necessary, reasonable and practicable to –

(i) remedy, mitigate or prevent the substantial lessening of competition; and

(ii) remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition....

3.19 *(3) In the case of a completed merger, a direction may require an enterprise to –*

(a) divest itself of such assets as are specified in the direction within the period so specified in the direction;

(b) adopt, or to desist from, such conduct, including conduct in relation to prices, as is specified in the direction as a condition of maintaining or proceeding with the merger.

Experience of other Competition Authorities

3.20 Prohibition of mergers that may substantially lessen competition is a common feature of many countries adopting competition laws. In many countries notification of mergers to the competition authority is mandatory. In Mauritius it is optional for merging parties to notify the CCM.

3.21 Competition authorities abroad have in many instances reviewed completed mergers and in many cases have concluded that these companies must divest from assets acquired as the merger may lessen competition. The CCM also has the power to do this under Section 61 of the Act.

3.22 In the year 2006, in the UK, English Welsh & Scottish Railway Holdings Limited (EWS) purchased Marcroft Holding Limited (Marcroft). The Competition Commission concluded that this merger may result in substantial lessening of competition in various markets. For instance, it was concluded that the merger “gave EWS the ability and incentive to lower service quality and / or raise prices to its competitors in the haulage market...” and required EWS to divest part of Marcroft.¹⁴

3.23 In the UK, the Competition Commission decided that the acquisition by British Sky Broadcasting Group plc (BSkyB) of 17.9% of the shares in ITV plc was likely to lead to a substantial lessening of competition. The Commission concluded that although the 17.9% share

¹⁴http://www.competition-commission.org.uk/rep_pub/reports/2006/fulltext/515.pdf

was not enough to block a resolution of the company and would not allow BSkyB to affect the day to day running of ITV, it would allow it to influence ITV's key strategic decisions, particularly in relation to investment, content, capacity and new technology. This was considered to be a measure of material influence over ITV¹⁵.

3.24 The Commission also considered that BSkyB's industry knowledge and standing in the market would add to its influence on other shareholders and give it the ability to block special resolutions, which require 25% of the vote.

3.25 This decision was appealed to the Competition Appeal Tribunal, which upheld the finding on material influence.

¹⁵http://www.catribunal.org.uk/files/1095_Sky_1096_Virgin_CoA_Judgment_21.01.10.pdf

4. The Merger Situation

4.1 “As a general matter, merger review statutes and regulations are directed at business transactions in which two or more previously independent economic undertakings are combined in some fashion that involves a lasting change in the structure or ownership of one or more of the undertakings concerned.”¹⁶

4.2 In Mauritius also, the Act requires that certain elements be met before a transaction can qualify as a merger situation. Section 47 of the Act sets out the elements that must be present to consist of a merger situation, as per the Act. This section of the Report assesses the existence of a merger situation as set up in the Act.

Requirements under Section 47(1) of the Act:

4.3 Section 47(1) of the Act describes, subject to Section 47(2) of the Act, that the merger means “the bringing together under common ownership and control of 2 or more enterprises of which one at least carries its activities, in Mauritius, or through a company incorporated in Mauritius.”

‘Enterprises’

4.4 The definition of merger requires the merging parties to be “enterprises.” Enterprise is defined in the act as “any person, firm, partnership, corporation, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them.”

4.5 Both ESL and LCE are registered as private companies with the Registrar of Companies and have their registered office in Mauritius (company number C24454 and C57377 respectively). They are both engaged in commercial activities for the supply of event related services for gain.

‘Carrying activities in Mauritius’

4.6 Both ESL and LCE carry commercial activities in Mauritius. From the list of clients provided by the merging parties several local customers have been identified and services to them were delivered in Mauritius.

¹⁶<http://www.internationalcompetitionnetwork.org/uploads/library/doc327.pdf>

4.7 The element of control and material influence is dealt in the latter section. The rest of the criteria set by this part of the Act, to qualify for a merger situation are met.

Method of Acquiring Control

4.8 The most common methods by which enterprises can be brought under common ownership or common control are through the acquisition of share capital. This will allow effective control of an enterprise through the associated influence on the governance of the business.

4.9 Mr. Manneback is a shareholder of ESL, Impact Production Ltd., Marquee Design Ltd., Mille Feux Ltee and Emage Lab Ltd and also director of these companies. ESL, as represented by Mr. Manneback has acquired 165 ordinary shares in LCE, from its previous shareholder Mr. Simard. LCE has an issued capital of 500 ordinary shares of Rs 100 each divided as follows:

Figure 2 – Shareholding Structure of LCE

Shareholders	No of Issued Shares
Mr. Lala	165
Mrs. Lala	170
ESL	165

4.10 By virtue of this acquisition, ESL as represented by Mr. Manneback holds 33% of the issued shares of LCE.

Common Ownership or Common Control

4.11 Section 47(1) refers to two separate concepts of ‘ownership’ and ‘control’. However, international experience, up to date has ‘taught that there is no effective distinction to be drawn between them. The former term implying possession of 100 percent of an enterprise – is considered merely a special case of the latter.’¹⁷

¹⁷ Andrew Scott, Morten HVIID, Bruce Lyons : *Merger Control in the United Kingdom*, (Oxford University Press 2006) PP 28-29

4.12 Moreover section 47(2) gives a clear scenario in which enterprises are to be treated as being under common control. First it envisages ‘enterprises of interconnected bodies corporate.’ Bodies corporate are considered to be ‘interconnected’ if one of the subsidiary of the other, or if they are both subsidiaries of the same holding company.¹⁸ Secondly it refers to enterprises carried on by two or more bodies corporate which are both under the control of the same person (or groups of persons). Finally it conceives of ‘an enterprise carried on by a body corporate and an enterprise carried on by a person having control of that body corporate’. These scenarios are illustrations of being under common control and are not exhaustive.

4.13 The concept of control trifurcates in section 47(3) into three possible degrees: the ability to control or materially influence the enterprise but without having a controlling interest in it (*de facto* control); the acquisition of a controlling interest (*de jure* control); the ability to control a policy which already could be materially influenced.

The Ability Materially to Influence Policy

4.14 Where a transaction involves acquisition of shares, as is presently the case, a small but significant holding may be sufficient to achieve material influence. The CCM Guidelines on Mergers specify in Section 2.9 that “assessment of whether material influence is capable of being exercised requires a case-by-case analysis of the entire relationship between the merging parties. In making this assessment, the CCM will have regard to all the circumstances of the case.”

4.15 The Office of Fair Trading in UK has suggested that a holding of 25% of voting rights in a company is likely to be presumed to confer material influence, given that this will normally attribute the ability to block shareholders’ special resolutions.¹⁹ In the case of *Emap plc/Scottish Radio Holdings plc*, the purchase of a 27.8 per cent shareholding was deemed by the Office of Fair Trading sufficient to secure the ability to materially influence the policy of the target company.²⁰ This finding was irrespective of the fact that the acquiring firm would not be granted any voting rights or any rights beyond what the statute provides, nor any

¹⁸ By virtue of section 3 of the Companies Act, a company shall be the subsidiary of another company where the other company or corporation referred to as the parent- controls the composition of the Board of the Company; is in a position to exercise or control the exercise of more than one half the maximum number of votes that can be exercised at a meeting of the company; holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in the distribution of either profits or capital; or is entitled to receive more than one-half of every dividend paid on shares issued by the company other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or the company is a subsidiary of a company that is the parent’s subsidiary.

¹⁹ Office of Fair Trading, Mergers: Substantive Assessment Guidance (OFT 516, London:OFT, 2003), para 2.10

²⁰ OFT, 13 May 2004

representation on board. A similar finding was reached in the case of BAE Systems plc/Alvis plc.²¹

4.16 By virtue of the acquisition of 33% of LCE shares, ESL has therefore the ability to materially influence the policy of LCE.

Possession of special voting or veto rights

4.17 Possession of special voting or veto rights, will also amount to the ability to materially influence, the existence of special voting rights or veto rights. ESL holds 33% of shares in LCE and by virtue of this shareholding, it will have the right to veto major transactions as per Section 105 of the Mauritian Companies Act 2001.

4.18 The Companies Act 2001 (Companies Act) provides that for certain decisions of the company a special resolution is required. A special resolution according to Section 2 of the Companies Act “means a resolution approved by a majority of 75 per cent or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question”.

4.19 This implies that a minimal of 75% votes is required for special resolutions.

4.20 Subject to the company’s own Constitution the Companies Act stipulates that special resolution, or minimum of 75% votes, is required for certain decisions like change of company name, alteration of the Constitution of the Company and so on.

4.21 Section 105 of the Companies Act states that:(1) *Notwithstanding the constitution of a company, where the shareholders exercise a power to -*

(a) adopt a constitution or, if it has one, to alter or revoke the company's constitution;

(b) reduce the stated capital of the company under section 62;

(c) approve a major transaction;

(d) approve an amalgamation of the company under section 246;

(e) put the company into liquidation,

the power shall be exercised by special resolution.

²¹ OFT, 21 November 2003

(2) A special resolution pursuant to (1)(a) to (d) may be rescinded only by a special resolution

(3) A special resolution pursuant to subsection (1)(e) shall not be rescinded in any circumstances.

(4) At any meeting at which a special resolution is passed, a declaration of the Chairperson that the resolution is so passed, shall, unless a poll is demanded, be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

4.22 Hence existing shareholders, excluding ESL need 75% of the shareholding to be able to enter into major transactions or exercise the powers specified in Section 105. With 33% shares, ESL is able to veto all transactions specified in Section 105 and consequently it is opined that ESL has the power to materially influence the policy of LCE.

Conclusion

4.23 As described above, both parties (LCE and ESL) to the transaction, have registered offices in Mauritius, have operation in Mauritius, qualify as enterprises and the acquisition of 33% of the shares gives Mr. Manneback, through ESL, the ability to materially influence and control the policy of the LCE, thus qualifying the transaction as a ‘merger situation’ as defined under the Competition Act.

5. Approach to assessment of competitive effects

5.1 Mergers may enhance, weaken or have a neutral effect on competition.

5.2 Mergers themselves may take various forms such as consolidation of assets, common management or acquisition, amongst others. The merger being considered in this Investigation relates to a partial acquisition.

5.3 As set out in the previous section, by acquiring 33% of shares in LCE, ESL may be able to materially influence its competitive behaviour. If LCE is a competitor to ESL (ESL/Impact), then the merger might result in reduced competition.

5.4 There are various ways in which mergers may lessen competition. In this section, we set out the theories of harm that we investigated in this case.

5.5 In addition to these theories of the harm, the CCM considered the prospect of entry and expansion within the industry that may restore any loss of competition.

Theories of Harm

5.6 For this investigation three theories of harm were considered in assessing whether there has been or there can be substantial lessening of competition after the merger. These theories of harm are explained below.

Unilateral Effects

5.7 If two important and main suppliers in a market merge, they can gain or reinforce a dominant position and competitive constraints may be reduced. Post-merger, the merging parties will face weaker competitive constraints and as such will be able to engage in exploitative conducts like increasing prices or decreasing quality.

5.8 The key question is therefore the degree to which LCE acted as an effective competitor to ESL (ESL/Impact) prior to the merger.

5.9 If the merger does result in an immediate loss of competition, then the next question is whether the market might rapidly evolve to restore competition, for example by entry from new competitors or increased competition from existing competitors.

5.10 In assessing this theory of harm the following need to be established:

- Are ESL, ESL/Impact, and LCE head to head competitors?

- Are they the major suppliers – in other words are there no or only few alternatives to ESL, ESL/Impact and LCE?
- In the absence of other major competitors, the timeliness and likelihood of new entrants (or expansion by existing smaller players) to reinstitute competition

Coordinated effects

5.11 “Mergers might also result in an SLC by reducing the intensity of rivalry between the remaining suppliers in the market. This is termed coordinated effects. This describes a situation in which suppliers choose to compete less fiercely against one another, for example by not reducing prices even though they could profitably increase sales by doing so, because they are aware that their rivals might respond to the price reduction.”^{22/23}

5.12 If post-merger, it is easier for ESL/Impact to coordinate price and lessen competition with the remaining competitors, there may be a substantial lessening of competition.

Foreclosure

5.13 Some mergers may give the merging parties market power over purchase of particular products / services and thereby create the potential for the merged firm to damage competitors by withholding supplies, or closing off access to customers.

5.14 For this Investigation, we examined whether other competitors are likely to be harmed by the combined ESL/Impact/LCE refusing to buy their services, to allow the merged firm further to strengthen its position in the market.

5.15 The following factors must be considered in assessing any substantial lessening of competition that may happen through foreclosure:

- Whether ESL has the ability to damage competitors by refusing to buy services from them, without substantially damaging its own business; and
- Whether its incentive and ability to do this is materially affected by the removal of LCE from the market.

²² Section 3.39 of CCM5 – Guidelines on mergers

²³ SLC means Substantial Lessening of Competition

6. The Market Definition and Structure

6.1 Definition of the relevant market is important to establish the market share of the merging parties. The relevant market is defined as a set of products or services within a geographical area within which competition occurs²⁴. Markets may be broad or narrow; the narrower it is the smaller will be the number of suppliers that compete in that market.

6.2 The merging parties operate in the broad market of ‘events’. The market within which these companies operate and competition occurs needs to be established. If they compete in different markets, it will imply that they do not compete with each other. If they compete in the same market, that is they compete to obtain sales from the same range of customers for the same type of product / services, it will mean the two companies are two competitors.

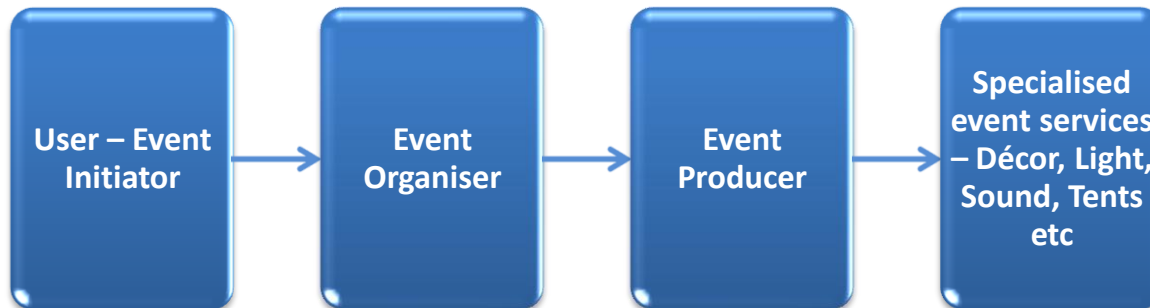
6.3 There are two main dimensions that must be considered in defining the market, namely the product dimension and the geographical dimension. Other functional aspects of the market may also be taken into consideration.

6.4 Events are services with distinct characteristics as compared to products or other services. No two events are identical, even if produced by the same company. So, there are no standard sets of events. Events are also intangible by nature and are consumed at the time of production. This implies that the measure of event services tend to be perceptual in the mind of users. Users tend to have their own perception on who delivers what type and quality of services. So the event services are closely linked to the service providers, as is the case for most services.

6.5 The non-standardized and intangible nature of event services makes use of quantitative techniques difficult. For instance it is difficult to compare price and quantity, to measure the change in demand as a result of a change in price and so on. Qualitative methods may however give some insights.

6.6 The diagram below gives an illustration of the process in the event sector:

²⁴ Section 2.1 of CCM2 – Guidelines on market definition and calculation of market shares

Figure 3 - Event Process flow

6.7 Event initiators are the users (not necessarily consumers) who prompt the organization of the event. Event organisers are those who coordinate the various aspects of the event. Event producers are the ones coordinating the physical and technical aspects and delivery of the events. In certain circumstances, the role of event initiators, organizers and producers tend to intertwine or be the same person/ company. However, in most cases the users are companies not in the event services market.

6.8 Specialised event services are specific items of the event like sound, light, décor and so on. Note that Event organization and production may also form part of event services. The diagram is for illustrative purpose giving a glimpse on the process and roles.

The Approach used

6.9 As previously mentioned in the Statement of Issues, the CCM aimed at establishing the following factors with some of the clients prior to determining the relevant market:

- a) Whether customers view event management services and associated services like provision of décor, sound, lights, etc, as a single product or different products.
- b) Substitutability of products and services from a customer perspective
- c) Who competes with whom
- d) Which service providers the clients consider
- e) The selection process used by the client

f) The client's view of competition within the market

6.10 The opinion and past buying behaviour of the clients were considered, to enable the CCM to understand how the market operates, where competition occurs and what service providers they consider using.

6.11 The merging parties were asked for a list of their clients and other data and information pertaining to the market in which they operate. This data and information from merging parties was also used to determine the market definition and structure.

6.12 Initially the CCM conducted some face to face interviews with the users of event services to understand their view of the market and to know who they consider as event service providers.

6.13 Following the initial interviews, Information Request Orders were issued to service providers in the broad market to understand their product and market of operation, the parties with which they collaborate and the parties with which they compete.

6.14 Users of event services also provided the CCM with some information in the form of a mini-survey. They were asked to indicate the event service providers with which they have worked in the past and with which they will consider working in the future for various types of events. The CCM received 13 responses out of the 18 questionnaires sent. One questionnaire was not valid as the company was not a client in the relevant market, leaving 12 valid responses.

Product Market

6.15 'Events' can be a very broad concept, ranging from small birthday parties to big concerts and shows. The purposes for events include sports, entertainment, conferences, product promotion and so on. The suppliers in this sense may also be broad ranging from companies specialized in the supply of event services to individuals offering event services on a smaller scale.

6.16 The product market was considered in two main dimensions. The first one can be categorized as the class of event services; where there are various classes of event services in terms of technological appeal, quality and the type of clients it appeals to. For instance there are basic event services that may be offered for small events like a small party and on the other extreme high end event services of advanced technology that may be offered during a big concert. The second dimension is in terms of the type of event service like décor, light, marquee, fireworks and so on.

Class of event Services

6.17 The main customers of both merging parties are corporate users and “high-end” individual users (from client list provided by the merging parties). These customers said that they do not consider individuals as service providers and do not consider the individuals as alternatives to companies specializing in event services with a reputation of quality and reliability in the market. The clients of the merging party (thereon referred to as users, clients or customers) have put much emphasis on the reliability and risk aspect in deciding whom to choose as service provider. The main reason being that the reputation of their company will be at stake given that the event is consumed at the moment it is delivered and cannot be seen prior to delivery. Thus, a badly delivered event may damage the reputation of the company vis-à-vis those present in the event and other stakeholders.

6.18 Reliability is the expected consistency in the delivery of the event in terms of class, timeliness and quality as per the user’s expectation. Ability to provide high quality high class event services is obtained through experience. Some users even said that price does not really matter as compared to ability to deliver high quality up class event services. For instance one company said that “there are many suppliers in the market. Suppliers need to be chosen depending on experience and technical knowhow. Price becomes secondary.”²⁵ This relationship of quality and class of service and price has an important implication. It implies that those who are perceived to be able to deliver high quality high class event services can charge higher prices. That is, demand for reliable quality high class event services may tend to be rather inelastic.

6.19 Unless someone has shown his ability to deliver quality, reliable events and high class services, these users will not consider service of individual non-specialised service providers. Thus, the individuals who provide event services on a lower scale (even to corporate and high-end users) were not in the relevant market. It remains to establish the specialized service providers which are considered by the users in their selection process.

6.20 The merging parties’ services are perceived to be reliable quality and high class event services, in the local context. This does not mean all clients have this perception.

Types of Event Services

6.21 An event consists of many elements. This will include services like décor, light system, sound system, marquee, stage, fireworks, and water-effects among others. In the narrow

²⁵ INV008 – SA1

sense, the market could be of these separate elements or services offered as part of an event package or on an individual basis. For example décor services offered in the event production may be a market in itself, so may be the others. There are instances where these services are offered on a standalone basis. For instance, a client may need only a sound system and not other services.

6.22 These individual services are in no way substitutes for each other. For instance light is not a substitute to sound nor is firework a substitute to marquee or tent. These individual products are highly complementary products – they are used together. The question is whether users will buy these services separately or as a package.

6.23 Initial interviews with the corporate users established that they do not consider these various services on an individual basis except in rare instances when they need these services on a standalone basis or when the event is “small”. So in most cases they consider the event service as package rather than separately. For instance, one user said that they prefer not to select and coordinate items of events like décor, sound and lights separately as “they are specialized in financial services and not event management.”²⁶ Another user said that “she perceives services like sound, light, décor, etc, to be as one market rather than individual markets in themselves.”²⁷ Users of event services have expressed low concern on whether the service provider offering an event package (comprising of all required services like sound, light, décor, marquee and so on) supplies the services within that package on his own or it outsources it, as long as the service provider offering the event package is reliable in terms of offering high quality high class event services.

6.24 On the supply side also, service providers offer more than one of these individual services, they offer a range of services. Some service providers specialize in one of these services but still provide other services. It is common to see companies to offer services like sound and light; sound, light and décor; marquee, light and décor and so on.

6.25 Users are of the opinion that some of the service providers are better in particular event services. For instance when talking about sound only some suppliers were quoted usually as being very good and their product of high quality and reliability and to be preferred supplier. But these users were also of the opinion that other suppliers may outsource particular event services to preferred suppliers of users to generate a better event. That is, most of the service providers can offer the whole package through outsourcing. For example, if a supplier has as equipment only tents and he is approached to produce a whole event, it may do same by

²⁶ INV008 – INT04

²⁷ INV008 – INT03

offering the tent from in-house equipment and outsourcing the other services, even the production of the event, instead of losing the business.

6.26 Also, many of the service providers do not have all the required equipment to produce an event and therefore in many instances they work in “collaboration” with the other suppliers to be able to produce events.

6.27 Taking these factors into account, the CCM has deemed appropriate to consider the product as being a package of event services rather than separate specialized event services.

6.28 However, the fact that these separate services are an integral part of the package; that some companies may compete within these specialized markets; that a dominant position within any of these specialized market may impact competition on the broader market, are taken into consideration in assessing the theories of harm.

6.29 Marketing and advertising agencies may also act as event organizers, but information gathering has shown that they are more the users of event services and they do not compete in the market of the merging parties.

Conclusion

6.30 The CCM has deemed the product market definition to be: high quality and high class event services provided as a package that are perceived to be reliable by corporate and “high-end” users. The market is for services provided as a package, and the individual specialized services, such as sound and light, may be considered submarkets which will also be taken into account.

Geographical Market

6.31 Another dimension of the market is the geographical area within which competition takes place.

6.32 Event users told the CCM that they will only consider providers outside Mauritius in rare cases. It may also not be profitable to import event equipments for the purpose of a single event as the cost may be really high as compared to similar facilities locally. The perceived reliability of timely and quality delivery may also be low.

6.33 Event services were procured from abroad mostly in rare cases when similar services were not available locally.

6.34 The market will not be narrower (limited to regions of Mauritius) because users are likely to consider procurement from the whole of Mauritian territory.

6.35 Therefore the geographic market is Mauritius.

Functional dimensions

6.36 Reliability as perceived by customers, in terms of quality and class of the service is one key element. Clients have also said that the more they will look for quality and high class services the higher will be the price. So, they assess the need for quality and class in terms of the budget they can allocate or the price they can afford. If the client has a low budget, it is less likely that he will be able to afford a service of high quality and class. Users have expressed that they consider some dimensions in determining their service provider. These dimensions can be categorized as follows:

- Event size. The larger the event, the more will the user be cautious in selecting its service provider and they will consider a more limited number of service providers that they perceive to be more reliable and capable of delivering.
- Event Importance. As mentioned previously, service providers who are perceived as higher quality may charge a higher price. Event importance is virtually the price per unit that the purchaser is willing to pay or the value per unit of delivery.

6.37 These two dimensions are not clear cut. The CCM was not able to establish what is a “big” event in terms of quantifiable numbers, for instance through number of participants in the event.

6.38 The more the event is of importance and big in terms of size the more the user will tend to look for higher quality services.

6.39 The CCM therefore will categorize the events based on the above dimensions, as, “Big events of high Importance” (Big events), “Medium sized events of average importance” (Medium events) and “Small events” (Small events). (These were also commonly quoted by the clients as referral points)

6.40 The mini survey revealed that the merging parties’ services are more targeted for big and medium events, although they also operate in smaller markets.

The Relevant Market

6.41 Taking consideration of the product, geographical and functional dimension of the market, the CCM has concluded that the relevant market is the market for packaged reliable high quality and high class event services and related services offered as a package to corporate and high-end users of big to medium sized events in Mauritius. Event services are services like décor, light system, rental of marquee and content, rental of tent and content, sound system, event production, event organization, stage and content, water-effects, fireworks, event audiovisuals and related services.

The Market Structure

6.42 There are many suppliers in the broad event industry. But for the relevant market the service providers seems to be fewer with some major players. As the market depends to some extent on perceptions by customers, market shares are inevitably rather uncertain. The following represents the CCM’s assessment on the basis of the evidence available.

6.43 In this Investigation we considered ESL/Impact as a whole as compared to only ESL; given the market definition of packaged services and not individual specialized services. Had the definition been individual event services like décor, sound, marquee and so, separately the approach would have been different. Therefore ESL provides part of the specialized service that ESL/Impact sells within its packaged event services. Services can be obtained individually from ESL, but given the market definition of package product, the economic analysis will consider ESL “working together” with the other companies of Impact, that is ESL/Impact. Therefore, ESL/Impact competes in the relevant market, with the service of ESL being in a submarket within that broader market.

6.44 Customers were asked about the supplier they will consider working with in the future for big to medium size events. Some 14 service providers emerged as being the major suppliers that they will consider as shown in [Figure 4](#). This figure does not represent market share. It is an indication of the suppliers that are considered for event services. For example [80-90%]²⁸ of clients said that they will consider ESL/Impact when deciding their service provider for big and medium size events. This does not mean that they will *only* consider ESL/Impact.

²⁸ DATA PRESENTED IN [] ARE CATEGORISED IN RANGES OF 10% TO KEEP CONFIDENTIALITY

Figure 4- Players in the Market

✂ Initial chart excised and replaced by indicative table:

Service Provider	% Response
Impact Production Group	80-90%
Bedouin Tents (Mauritius) Co Ltd.	40-50%
HEAT	30-40%
LC Events Co Ltd	20-30%
DB Vision	20-30%
Kawai Music Centre	20-30%
Bedouin Sound and Light	10-20%
Seven Amps Ltd	10-20%
Silent Partners Ltd (B Bassin)	10-20%
Pyrolight (Mauritius) Ltd	10-20%
Symphony Record	10-20%
Damoo "Sound & Music"	0-10%
Others	0-10%

6.45 Impact told the CCM that it operates in a niche market offering high quality and high class customized products and does not compete with LCE as such. The demarcation of the niche seems blurred. Some clients told the CCM that in the Size and Importance dimension, the more we move towards the extreme of big events and high importance the more the suppliers are limited to ESL/Impact and few others. The few others depend on the individual client and his experience with other service providers. But as we move toward the other end towards events of smaller size and with lower importance then more potential suppliers emerge and more choice is available.

6.46 Impact has various departments offering specialized event services, which gives ESL/Impact the capacity to organize large scale events on its own with less dependence of other players. The other players in the market do not have that capacity in terms of equipment but they act in collaboration with other players to organize large scale events. This may also explain why ESL/Impact may be chosen by certain clients for large scale events and as we move towards smaller events the other suppliers get the ability to organize and deliver events on their own and the choice of customers increase. Though other suppliers may collaborate and produce large scale events, they will have to coordinate and will depend on availability of more than one player.

6.47 [20-30%] of clients surveyed will consider LCE for big to medium size events.

6.48 Based on the above information and turnover of the companies in that market the estimated market shares are as below:

Figure 5 - Market Shares

✂ Initial chart excised and replaced by indicative table below:

Service Provider	2008	2009
Impact	60-70%	50-60%
LCE	0-10%	0-10%
Bedouin Tents Co Ltd	0-10%	0-10%
Silent Partners	0-10%	0-10%
Seven Amps Ltd	0-10%	0-10%
Damoo	0-10%	0-10%
Others	0-10%	10-20%

6.49 Note the following in relation to the above market share figures:

- Figures for Impact are from registrar of companies as provided by LCE as figure provided by ESL/Impact was not comprehensive.
- One company did not give its turnover figures – not likely to have much impact on the market share figures.
- The figures are based on turnover which may include sales for small events
- The turnover figures may include revenue from outsourced services within the market, creating spillover effects. Given that outsourcing is more common to players other than ESL/Impact, market share of ESL/Impact in relation to direct sales to user will tend to be higher. For instance, a client pays supplier A Rs. 500,000 for an event and in turn supplier A outsources provision of the tent to Supplier B for Rs. 200,000. This will mean that Rs. 200, 000 may be accounted for twice in the turnover figures. But to the extent they are two different markets considered as one for this Investigation mitigates this effect.
- Since the information request order was issued before the end of 2010, the figure for 2009 has been used.

6.50 As shown in the chart above, we estimate ESL/Impact had [60-70%] of the market in 2008 and this share was reduced to [50-60%] in 2009. The market share of LCE was [0-10%] in the year 2008 and [0-10%] in the year 2009. Note that there are other suppliers with varying market shares. The turnover figures may include revenue from activities in markets of small events and other markets also. From the facts of the survey it seems that the turnover from smaller events shall apply more to suppliers other than ESL/Impact, given that the latter is more involved in big and important events.

6.51 At the extreme of big and important events, the market share of ESL/Impact will tend to be nearer to 100% and as we move to the other extreme, broadening the market, the share of ESL/Impact will tend to lower. The above seems to be a fair balance for the relevant market but the market share figures must be regarded as indicative.

6.52 Both merging parties provided lists of their competitors. During the issue of an Information Request Order they were given a second opportunity to clarify who are their competitors. Neither ESL/Impact nor LCE provided this information. The list as derived following the survey matches the initial list of competitors as provided by the merging parties to a large extent.

6.53 The CCM recognizes there are uncertainties in these figures but: (a) ESL/Impact clearly has over 30%; and (b) LCE appears to have some presence in this market as a competitor to ESL/Impact, and therefore this is a reviewable merger within the meaning of Section 48 of the Act.

7. Competitive effects of the Merger

7.1 This section of the Report assesses the likely effect that the merger may have on competition in the relevant market. The assessment will be in terms of unilateral, coordinated and foreclosure effects that the merger may have and the prospect of entry and expansion within the industry to restore any loss of competition.

7.2 In assessing the theories of harm the state of competition after the merger is compared to the state of competition that would exist, had the merger not taken place.²⁹

Assessment of SLC – Unilateral Effects

7.3 “Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to raise prices profitably on its own and without needing to coordinate with its rivals. This arises where a price rise by one of the merger firms would have been unprofitable without the merger because significant numbers of customers would have switched to products supplied by the other merger firm; these switching customers would be retained if the firms merged, rendering the price increase profitable.”³⁰

7.4 “Other things being equal, unilateral market power is more likely the fewer suppliers there are in a market. Mergers that result in very high market shares are more likely to lead to market power, and so are large increases in market share.”³¹

7.5 In assessing if there has been or there may be SLC through unilateral effect, it will be considered to what extent competition has decreased or is likely to decrease.

7.6 The main question here is whether post-merger, there is sufficient alternative left to consumers to shift to other products and/or suppliers as compared to a situation had the merger not taken place.

Preferred service provider

7.7 Customers in the relevant market were asked to indicate their preferred service providers for big and medium events. They were allowed to select up to three preferred service providers in order of preference. [The questionnaire asked 3 questions for this assessment one for big events, second for medium events and third for small events. The results for the two

²⁹ Section 3.18 of CCM5 – Guidelines on Mergers

³⁰ CC and OFT Review of Merger Assessment Guidelines 2010 - http://www.competition-commission.org.uk/about_us/our_organisation/workstreams/analysis/pdf/merger_assessment_guidelines.pdf

³¹ Section 3.31 of CCM 5 – Guidelines on Mergers

former questions were combined to constitute the relevant market. 20 responses were obtained]. Their response is summarized in the table below:

Figure 6 - Choice of Clients

✂ Initial chart excised and replaced by indicative table below:

Service Provider	1st Preference	2nd Preference	3rd Preference
Impact Production Group	50-60%	10-20%	10-20%
LC Events Co Ltd	10-20%	0-10%	0-10%
HEAT	0-10%	10-20%	0-10%
Kawai Music Centre	0-10%	10-20%	10-20%
Silent Partners Ltd (B Bassin)	10-20%	0-10%	0-10%
Others	20-30%	20-30%	10-20%
No Response	0-10%	30-40%	60-70%

7.8 For [50-60%] of respondents, ESL/Impact is the first choice for event services while for [10-20%] LCE is their first choice.

7.9 Half of the [60-70%] of respondents who said that either ESL/Impact or LCE is their 1st preference, saw the other company as their other preference, which makes [30-40%].

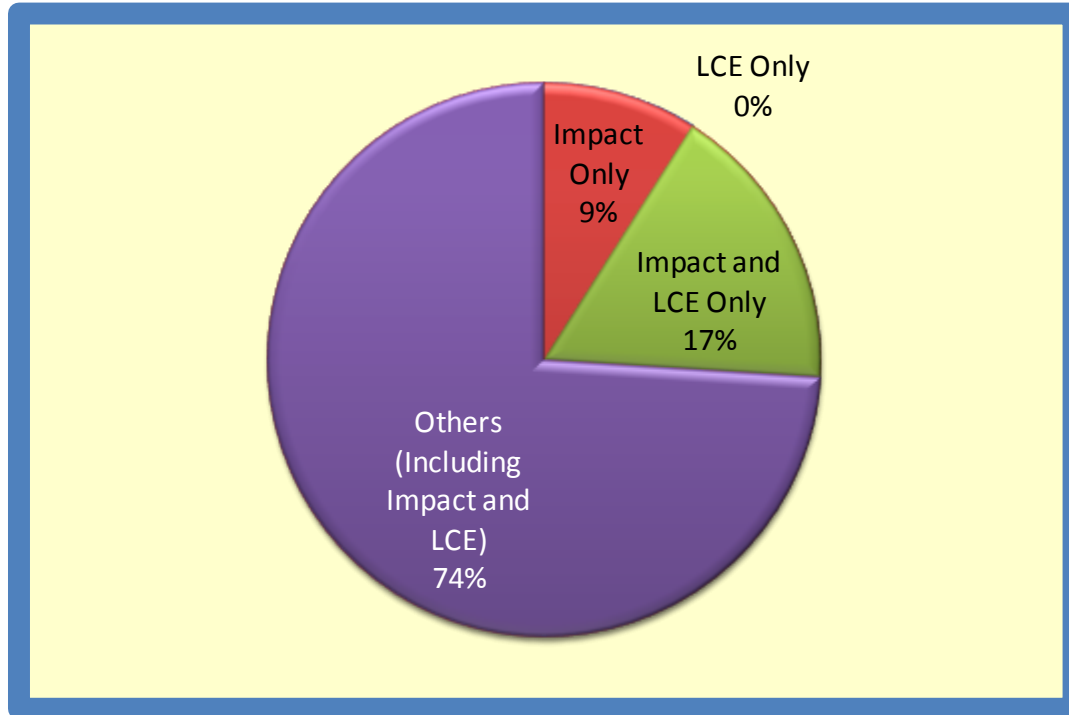
7.10 Another [30-40%] of users perceive their first choice to be neither ESL/Impact nor LCE. So post-merger, they will be affected to a lesser extent as they will still avail of at least one choice. This does not mean that their choice will remain the same as pre-merger. Their choice may be limited but to a lesser extent.

7.11 It can be recalled from *Figure 5* that the market share of ESL/Impact prior to the merger was [50-60%] and that of LCE [0-10%]. This will imply that the merged parties' market share will be [50-60%].

Service providers considered in the market

7.12 As well as considering preferences, our mini-survey asked users to indicate the service providers they will consider working with in the future for medium and big events. The question aimed at identifying the extent to which only Impact and LCE will be considered in isolation or combination. The result is summarized in the table below:

Figure 7 - Service provider that customers will consider working with in future



7.13 Only 9% of respondents said that they will consider only ESL/Impact. None of the respondents said that they will consider only LCE. 17% of respondents said that they will consider only ESL/Impact and LCE. The rest, that is, 74% will also consider other event suppliers other than LCE and ESL/Impact. On average the customers have said that they consider 3-4 event service providers in determining their choice. This implies that post merger 74% of clients will still have an alternative to consider.

Conclusion

7.14 The merger will result in a reduction of choice for [30-40%] of clients in the relevant market while the others will continue to have a choice though to a lesser extent. Furthermore, for 17% of the clients, the elimination of LCE leaves only one provider they will consider.

7.15 Thus, although for much of the market, choices remain after the merger, there are clients who will be less able to benefit from competition to provide them with event services. As prices are set individually for different events, the fact that many customers continue to experience a choice does not necessarily protect these adversely-affected customers from possible market power on the part of the merged firm.

Assessment of SLC – Coordinated effects

7.16 As mentioned earlier there are about 14 main players in the market, with ESL/Impact having a high market share. Also the other players are highly dependent on each other to supply event services. This implies that there is price transparency in the market.

7.17 There is no indication that the risk of coordination will increase post-merger as compared if the merger did not take place. Post-merger there will continue to exist several providers of the size of LCE pre-merger. ESL/Impact is by far the largest and may become larger as a result of the merger. In such a market structure, unilateral effects through monopoly market power are more likely than co-operation between the suppliers. .

7.18 Therefore we see no evidence that the merger will increase the likelihood of coordinated effects.

Assessment of SLC – Foreclosure

7.19 The smaller players outsource their equipment to each other in this market. This implies that if a considerable proportion of users' main contact is LCE and LCE generates work to the other service providers through outsourcing, the merger may enable ESL/Impact to foreclose the competitors to which LCE outsourced its event services, thereby reducing competition in the market still further as a result of the merger.

7.20 From *Figure 6* it can be seen that [10-20%] will consider LCE as their first choice. This may imply that [10-20%] of the market share may be shifted to the merged parties. *Figure 5* illustrated that LCE had [0-10%] share of the market in terms of turnover in 2009. This may imply that post-merger the turnover of the rest of companies may lessen by [0-10%]³². It is less likely that the merger may foreclose competitors.

7.21 In gathering evidence in the course of this investigation, however, we came across no allegations from competing suppliers that they had concerns that the merger might have this effect. We therefore see no grounds for believing that anti-competitive foreclosure is more likely as a result of this merger.

Assessment of Entry and Expansion

7.22 “Effective competitive markets are dynamic: companies rise and fall, competitors come and go. Higher prices make it more attractive to enter the market. Even if a merger would result in one or more suppliers having the ability to raise prices, a merger might still be allowed if the

³² ✂ Excised confidential data

Commission believes that entry is sufficiently timely, likely and effective that no long-term damage to competition will result.”³³

7.23 In the relevant market, as mentioned earlier, there are about 14 players that customers may consider. The question is to what extent they can expand to restore competition in the market and whether new entrants can enter the market to restore the lost competition following the merger.

7.24 There seems to be few, if any, legal barriers that will act as a major barrier preventing new companies to enter the market or preventing existing players from expanding. The main barrier that seems to exist in that market is the perception of clients, creating loyalty, and the limited size of the market.

7.25 ✂ Excised Information

7.26 Investments in assets do not seem to act a barrier in the market to reinstitute competition.

7.27 The main barrier is the extent to which service providers can create the perception of quality, reliability and being high class.

7.28 Clients will consider service providers only if they are perceived to be reliable and service providers get at that level through experience and previous delivery of quality high class event services. It may be difficult for new entrants to enter the market and create that positioning rather quickly. This may act as a barrier to new entrants. However, many clients already view other service providers as being up to that level of expectation.

7.29 These existing service providers may be able to expand and restore competition in the market. As far as perceived reliability is concerned many clients already believe that they have alternatives to the merging parties and they believe that post merger there will continue to exist about 12 alternative companies. Any of these remaining companies may expand and restore competition.

7.30 During face-to-face interviews many customers said that previously they had no choice as ESL/Impact was the only service provider while in the recent years new service providers have been entering that market. This fact is also represented in the reduction of ESL/Impact’s market share as illustrated in the previous chapter.

³³ Section 3.21 of CCM5 – Guidelines on mergers

7.31 In the event that LCE ceases to exist or weakens following the merger, even the pre-merger Directors of LCE can set up their enterprise and use their reputation on the market to re-enter the market. The creative aspect of the business makes the human element an important criterion for assessing perceived delivery. Indeed, Mr. Lala, through partnership in other companies will continue to exist in the market and may pull customers to restore competition. ✂ Excised Information

7.32 The extent to which the merging parties may create barriers to entry post-merger must also be taken into account. For the moment there is no evidence of the merging party to create such barrier. Some clients have expressed their concern that ESL/Impact may adopt certain strategies to regain its dominant position. If for instance ESL/Impact is able to acquire a consequential amount of equipment from the small service providers, the remaining service providers may not be able to compete with the former as the small service providers rely on the availability of each other's equipment. The CCM may continue to monitor the industry for any future anticompetitive behaviour in that respect.

7.33 It seems reasonable to conclude that post-merger, competition can be restored in a rather timely manner and the Director(s) of pre-merger LCE might also restore competition in the event that LCE is weakened.

Conclusion

7.34 The merger may result in an immediate substantial lessening of competition through unilateral effects. The fact that there are emerging competitors must be taken into account.

7.35 The evidence indicates that any such loss of competition is likely to be restored in the future. It is a matter of fine judgment whether this will occur sufficiently quickly and completely for the Commission to reach a finding of no SLC and clear the merger.

7.36 On balance, the Executive Director believes that the evidence suggests that competition will be restored sufficiently quickly for any loss of competition to be regarded as transitory. However, it is for the Commission to decide. The judgment depends on assessment of uncertain future events, and the Commission is entitled to take a different view on the evidence presented here.

8. Remedies

8.1 If (and only if) the Commission finds that the merger is likely to result in an SLC, it has powers to remedy the anti-competitive effects of the merger.

8.2 As noted in the previous section, on balance the Executive Director believes that this merger should be allowed to proceed without remedy. If the Commission takes the same view, the question of remedies does not arise. However, the evidence is finely balanced and this conclusion depends critically on perceptions of the likely speed and effectiveness of new entry and expansion by existing, smaller, players. The Commission could legitimately reach a different conclusion on the basis of the same evidence. Consequently, it is worth setting out recommendations on possible remedies.

8.3 Section 61 of the Act deals with remedies in merger control.

8.4 If the Commissioners determine that an enterprise has been party to a merger situation which “has resulted, or is likely to result, in a substantial lessening of competition within a market for goods or services, the Commission may give the enterprise such directions as it considers necessary, reasonable and practicable to...” mitigate, restrict or prevent any SLC or likely SLC and its effects.

8.5 In the case of completed mergers, like for this Investigation, the Commissioners may require the acquiring party, that is ESL to:

(a) divest itself of such assets as are specified in the direction within the period so specified in the direction;

(b) adopt, or to desist from, such conduct, including conduct in relation to prices, as is specified in the direction as a condition of maintaining or proceeding with the merger.

8.6 The CCM Guidelines on remedies³⁴ set out the CCM’s approach to considering these different remedies. The first broad set of options can be considered ‘structural’ as they attempt to restore a competitive market structure. The second broad set can be considered ‘behavioural’, as through directions they seek to change the continuing behavior of companies in the market.

8.7 In this case there is an obvious structural remedy: to require ESL to divest its shareholding in LCE to another entity. In general, competition authorities requiring divestment

³⁴ CCM 6 http://www.gov.mu/portal/sites/ccm/pdf/CCM6%20-%20Guidelines%20-%20Remedies%20and%20Penalties_Nov09.pdf

need to put conditions in place to ensure that the new owner creates no additional competition problems, for example restricting the ability of the divesting party to sell to players already in the industry. In this case, it should suffice to specify that the shares cannot be sold to any company or individual connected to ESL/Impact or Mr. Manneback, as the other competitors are so small that a merger between one of them and LCE would not meet the market share threshold for the merger to be reviewable by the Commission.

8.8 In principle, behavioural remedies could also be imposed, and could be seen as particularly appropriate for a temporary SLC. However, as in this business deals are agreed individually with each client, it is hard to see how price controls or other regulatory mechanisms could work at all, and they would impose a significant regulatory burden on the companies affected. This market is almost certainly too diverse and fast-moving for the Commission to be able to draft a direction that really benefits customers, and is probably best left unregulated. Accordingly, at this stage, the Executive Director sees no realistic scope for behavioural remedies.

8.9 Having considered the effectiveness; timeliness; and proportionality of implementation costs to the expected benefits of the remedy, the Executive Director therefore recommends the complete divestment of the acquired shares, to any person or entity unconnected to ESL/Impact or Mr. Manneback, were the Commission to conclude that remedies were required.

9. Conclusion – advice to Commission

9.1 We (the Executive Director and staff of the CCM) have examined whether this transaction qualifies as a merger within the meaning of the Act, is a reviewable merger under the Act and whether it is likely to lead to a Substantial Lessening of Competition.

9.2 We are confident that the transaction qualifies as a merger under Section 47 of the Act because the shareholding provides ESL with material influence, through its ability for example significantly to reduce LCE's competitiveness by blocking investment. That this material influence exists is clear from the shareholding thresholds in Company's constitution, and precedents from other competition agencies, which have found material influence arising from smaller shareholdings than 30%.

9.3 We are equally confident that the transaction is reviewable under Section 48 in that ESL/Impact's market share is above 30%. Market definition is not straightforward in this case, and there is no one market definition which is unambiguously correct. However, ESL/Impact is the market leader and clearly has well over 30% market share on any reasonable market definition – and around [50-60%] on the market definition we find most relevant (for packaged event services to larger and quality-sensitive clients).

9.4 The evidence on whether an SLC is more likely than not is very finely balanced. We considered whether the merger might lead to an increased likelihood of co-ordinated effects or anti-competitive foreclosure, and found no evidence that would support either proposition. This leaves the possibility of an SLC arising through unilateral effects: the possibility that the merger would strengthen ESL/Impact's monopoly position and its ability and incentive to raise prices (or otherwise exploit customers) as a result of its leading position.

9.5 Whether this concern is valid or not depends on the existing role of LCE as a competitive constraint, and on whether other competitors could grow to replace that role if LCE were effectively eliminated.

9.6 In principle LCE might *not* be a competitive constraint on ESL/Impact for two possible reasons:

- As ESL/Impact itself claims, ESL/Impact might be in such a position of trust and capability within the market that it has no effective competitors, and in particular

LCE is not an alternative provider of services to ESL/Impact. Then its removal would not cause an SLC³⁵;

- At the other extreme, there may be so many suppliers all equally capable of supplying event services, that LCE is just one competitor among many. Then again its removal would not cause an SLC.

9.7 We examined this question by gathering evidence from customers. Clearly, there are large customers (for big events) for whom the first is true: there is no realistic alternative to ESL/Impact in Mauritius. Equally, there are many smaller customers (for smaller events) who can choose from lots of event service providers.

9.8 However, our evidence gathering found some customers ([30-40%] ✂ Excised Information) for whom ESL/Impact and LCE were the top two choices, and a small number of customers (17% ✂ Excised Information) for whom they were the only two choices. The removal of LCE will likely result in a significant loss of choice and competition for these customers. If ESL/Impact had to offer similar prices to all its customers, this would not matter because the need to be competitive for remaining customers would constrain them. However, in this business, the products and prices are bespoke and unique to each client (and each event) so this argument does not apply.

9.9 It therefore seems likely that there would be an immediate loss of competition and choice, albeit one affecting only a minority of large customers. On balance, we would recommend this be considered to lead to an SLC, in the absence of any other considerations. But it is quite finely balanced, and it would be open to the Commission to view it differently.

9.10 However, this is only the immediate effect. If LCE were removed as a competitor, we need to consider whether other suppliers would be able to change their market position, to enter or grow to replace it as a competitor to supply those affected customers. The main barrier to entry and expansion in this market seems to be reputation (which can take time and investment to build). The findings of our customer survey suggested that for some customers only LCE and ESL/Impact have sufficient reputation.

9.11 It seems likely that some other existing players will be able to build that reputation, given opportunities created by the removal of LCE. The existing staff at LCE themselves may be able to enter the market, with their existing reputation, through a new company. Customers seemed on balance to be fairly optimistic about the prospects for the industry to expand in the

³⁵ This is a merger investigation, not a monopoly investigation, so this line of argument is entirely valid if true. If Impact has no competitors, there can be no Substantial Lessening of Competition and the Commission cannot rule against the merger.

future and for potential service providers to grow, which indicate that the industry may adjust to the loss of LCE.

9.12 Considering the possibility of entry is inevitably highly speculative. However, the Act requires the Commission to consider whether a merger “is likely to” result in an SLC, so the Commission is empowered (indeed, it is required) to take a view on future developments³⁶.

9.13 On the evidence presented in Section 7, it seems reasonable to conclude that entry and expansion will restore competition in time. The question is how much time is required and what period (or degree of uncertainty) the Commission is prepared to tolerate. There is no defined period of time over which a lack of competition should be deemed short enough to tolerate. It is for the Commission to set its own policy in this area, through this decision and others. This leaves the final decision on whether an SLC is to be expected in this case to be a matter of very fine judgment.

9.14 On balance, the Executive Director judges that market developments *are* likely to restore competition reasonably quickly, and therefore there should be no finding of SLC. However, the Commission must exercise its own judgment. It is well within the Commission’s margin of appreciation to take a different view, on the basis of the evidence presented here, should it choose to do so.

9.15 If (and only if) the Commission does reach an SLC finding, then it should consider remedies. In this case, as in many mergers, the obvious remedy is simply to reverse the transaction by requiring the divestment of the acquired shares. No alternative, behavioural, remedy appears feasible.

³⁶The standard to be applied is “the balance of probabilities” not a more stringent test such as “beyond reasonable doubt”.

10. Next Steps

10.1 This Final Report will be sent to the Commissioners and the merging parties. A non-confidential version may be issued for public consultation.

10.2 If the parties wish to or the Commissioners find it appropriate, Hearings may be conducted in early March 2011.

10.3 The Commission's Decision and associated directions are due to be issued by the end of March 2011.

10.4 The Executive Director may continue to monitor the conditions of competition within that market.

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