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## MEDIA RELEASE

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### **UNDERTAKINGS OFFERED BY SWAN GROUP IN RELATION TO THE PROPOSED MERGER OF THE INSURANCE BUSINESSES OF SWAN GROUP AND ROGERS GROUP**

The Competition Commission of Mauritius (CCM) launched a detailed assessment into the proposed merger of the insurance businesses of Swan group and the Rogers group, under sections 48 and 51 of the Competition Act 2007 (the Act), on the 16<sup>th</sup> November 2011, following application for guidance by Swan Insurance Company Limited (Swan) and Cim Insurance Ltd (CIL) on the proposed amalgamation of their general insurance businesses, and by The Anglo-Mauritius Assurance Society Limited (AMAS) and Cim Life Ltd (CLL) on the proposed amalgamation of their long term insurance businesses.

On the 23<sup>rd</sup> December 2011, following initial information gathering and assessment, the CCM produced and made available to the parties to the proposed mergers a Statement of Issues setting out its initial views and likely concerns in relation to the proposed merger. The merger review is aimed at establishing whether a merger situation as per the Act would be created following the proposed amalgamation and if so, which markets may be affected and whether there may be substantial lessening of competition in any of these market(s). From initial findings the concerns of the CCM were mainly in relation to the pension businesses and general insurance businesses of the proposed mergers.

On the 03<sup>rd</sup> February 2012, Swan and AMAS, which would be the surviving entities following the proposed amalgamation, offered the CCM undertakings in relation to their general insurance businesses and pension businesses respectively, pursuant to section 63 of the Act.

Section 63 of the Act provides enterprises the opportunity to offer the CCM undertakings and if, after taking cognizance of the report of the Executive Director on the matter, the Commissioners conclude that the undertakings resolves the competition concerns of the investigation, the Commissioners may accept the undertakings and publish them in form of a decision of the Commission and is legally binding on the enterprises.

**Swan inter alia offered the following undertakings, subject to clauses and conditions set within the undertaking, to:**

1. Continue to provide same class and types of products as those offered by CIL.
2. Refrain from amending or varying upwards its pricing methodology, including its management fees and/or administrative charges.
3. Work in a fair manner with all insurance brokers and consultants.
4. Not to lessen accessibility to products and services.
5. Refrain from anticompetitive practices aiming at gaining significant market share and eliminating competitors among others.
6. Not to change its approach to risk assessment and acceptance practices.

**AMAS inter alia offered the following undertakings, subject to clauses and conditions set within the undertaking, to:**

1. Provide similar pension and other related products and services, to both individuals and companies, in line with those offered by CLL.
2. Not to increase beyond inflation rate the different type of fees and/or administrative charges applicable to existing, potential and new clients whether in relation to investment, bonuses, risk premiums, claims processing, surrender charges and/or penalties.
3. Work in a fair manner with all insurance brokers and consultants.
4. Not to lessen accessibility to products and services.
5. Not to change its approach to risk assessment and acceptance practices.

The Executive Director of the CCM is currently considering those undertakings and is inviting concerned parties to give their views on the proposed undertakings, more specifically if they feel they have any concerns with the proposed merger that is not resolved through the proposed undertakings.

Parties concerned with the proposed merger are also welcome to contact the CCM for any other concern in relation to the proposed merger and / or to get further information on the said merger review and / or the undertakings offered.

Parties concerned have up to **Friday 10<sup>th</sup> February 2012, 15:00 hrs** to give their views, following which the Executive Director would send his report and the undertakings offered to the Commissioners for them to reach a decision. Parties interested to submit their views and comments can do so through written submissions via email, letter or fax, or they may call the CCM for an appointment.

Dr. Sean Ennis said 'I welcome such undertakings from companies, which will be forwarded to the Commissioners. If the Commissioners are of the view that the undertakings resolve the competition concerns that may arise from a merger, they may accept the undertakings. This merger is within a regulated sector, which may to some extent mitigate the concerns of the CCM. I equally believe that parties concerned and/or parties that feel affected by the mergers must get the opportunity to express their views in these circumstances. Anyone wishing to provide their views should do so within the deadline proposed.'

**End of media release.**

## **Background for editors:**

### ***The Competition Act***

The Competition Commission of Mauritius is a statutory body established in 2009 to enforce the Competition Act 2007. This Act established a competition regime in Mauritius, under which the CCM can investigate possible anticompetitive behavior by businesses.

Sub-part IV of the Competition Act 2007, cover merger situations subject to review by the Commission.

To take action, the CCM must find that there is a merger situation and it has resulted or is likely to result in a substantial lessening of competition within the market.

### ***Merger Situations:***

Section 47 of the Competition Act explains merger situations. The Act refers merger situations 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.”

Section 47(2) of the Act defines ‘common control’ as a criterion for a merger to occur. According to Section 47(2), ‘common control’ occurs where:

- (a) The enterprises to the merger are enterprises of interconnected bodies
- (b) One person has, or groups of persons have, control in enterprises which are carried on by 2 or more bodies corporate;
- (c) 2 distinct enterprises, one of which is a body corporate and the second one a person having control over the first body corporate.

Control refers to the ability to materially influence policy of an enterprise; acquiring controlling interest in an enterprise or ability to control policy of an enterprise. (Section 47(3) of the Competition Act 2007)

### ***Reviewable mergers:***

Section 48 of the Competition Act 2007 stipulates that merger situations are subject to review where one of the party to the merger is in monopoly situation by having more than 30% of the market share prior to the merger or all the parties are in monopoly situation by having more than 30% of market share after the merger and where “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 the market...” The market may be the supply or acquisition of goods or services.

The CCM has the power to impose directions (Part VI of the Act) including directions to enterprise to desist from completion of a merger and divest part of its assets if it reaches the conclusion that a merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.

### ***Undertakings:***

Section 63 in Part VI of the Competition Act states that an enterprise may offer a written undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation into a restrictive agreement. If an undertaking is accepted by the Commission, it is published in the form of a decision of the Commission, and the enterprise must comply with its terms. The undertaking then operates like a direction issued by the Commission under section 60. If the enterprise does not comply with the undertaking (without reasonable excuse), Section 65 of the Competition Act permits the Commission to apply to a Judge in Chambers for a mandatory order requiring the enterprise to make good its default.

***Further information:***

For further information see the CCM's website at [www.ccm.mu](http://www.ccm.mu), and the CCM's Procedural Rules and Guidelines: 'CCM 1 - Procedural Rules', 'CCM 2 – Market definition and the Calculation of Market Shares' 'CCM 5 - Mergers' and 'CCM 6 - Remedies and Penalties', all available on the web site.