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MEDIA RELEASE

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THE COMPETITION COMMISSION OF MAURITIUS LAUNCHES AN INVESTIGATION INTO THE CONDUCT OF DISTRIBUTORS OF NEW CARS FOR THE SUPPLY OF REPLACEMENT AUTOMATIC ELECTRONIC IGNITION KEYS AND RELATED KEY SYNCHRONISING SERVICES.

The Competition Commission of Mauritius (CCM) has launched an Investigation into the supply of replacement Automatic Electronic Ignition Keys and related synchronising services by several distributors of new cars, who also provide repair and maintenance services in Mauritius. The investigation will cover smart keys and ignition keys that use transponder technology.

The CCM will investigate whether the distributors under investigation have contravened the monopoly provisions in section 46 of the Competition Act 2007. The CCM will investigate whether these distributors are charging excessive prices for replacement ignition keys and synchronising services, and whether they are preventing, restricting or distorting competition by not releasing codes or passwords to car owners.

Dr Sean Ennis, Executive Director of the CCM, said: *“This investigation is about pricing practices for high technology car keys and the access that alternative suppliers have to the aftermarkets for replacement Automatic Electronic Ignition Keys. Traditional metal car keys are not the subject of concern. Enterprises that have a monopoly position over provision of the new generation of automatic car keys are subject to few competitive constraints. With the technology now used by some car manufacturers, if a car owner needs an extra electronic key, for example after losing a key, there is one main source for a replacement – the car dealer for that brand.”*

Dr Ennis also stated that *“A monopoly supplier of car keys can take advantage of this situation to set excessive prices. Excessive pricing is one anti-competitive abuse of monopoly situation. When a company’s pricing policies result in direct loss to consumers it becomes a cause of concern for the CCM. ”*

“If enterprises in a monopoly situation maintain excessive prices by preventing competitors from entering the market, this also becomes a concern for the Commission. A healthy market thrives on

competition amongst rivals. Hence, it is a major concern to the CCM if firms implement practices that may have the object or effect of pushing rivals out of the market or restricting their access to the market," Dr Ennis added.

A breach of section 46 occurs if an enterprise in a monopoly situation engages in conduct that has the object or effect of preventing, restricting or distorting competition; or the conduct constitutes exploitation of the monopoly situation in any other way.

The Executive Director will investigate into the matter and report his findings to the Commission as he is required to do under section 51 of the Competition Act.

Only when the Investigation is completed can firm conclusions be drawn about the conducts of the new car distributors under investigation.

No financial penalties can be levied for a breach of the monopoly provisions of the Act, the focus instead is on taking measures to redress the situation and promote competition. If the Commission concludes that the effect of these terms and conditions is to restrict, prevent or distort competition in any market, it may take steps to remedy the situation by imposing behavioural remedies.

A monopoly position is not in itself any kind of breach of the Competition Act 2007.

Background for editors:

The Competition Act

The Competition Act 2007 came fully into effect on November 25th 2009, and is enforced by the Competition Commission of Mauritius, the CCM. Sub-parts II and III of Part III of the Competition Act 2007, cover restrictive practices described under 'Other restrictive agreements' and 'Monopoly situations'.

To take action, the CCM must find that the conduct of an enterprise in a monopoly situation restricts, prevents or distorts competition or otherwise exploits the monopoly situation. We refer to such conduct as 'abuse of monopoly'. Where the Executive Director has reasonable grounds to believe that abuse is occurring, or will occur, he may launch an investigation.

Monopoly abuse:

It is not in itself any breach of the law for an enterprise to be in a monopoly situation. However, as per Section 46(2) of the Competition Act, enterprises which hold monopoly positions may be in breach of the abuse or exploit any market power this position confers upon them. The question for the CCM is whether such enterprises are engaged in conduct which restricts, prevents or distorts competition (such as using their market position to exclude rival enterprises) or otherwise exploiting the monopoly situation.

'Anticompetitive foreclosure' is said to occur when the conduct of a monopoly enterprise restricts or eliminates the effective access of actual or potential competitors to customers or to supplies, to the detriment of consumers or the economy in general. 'Foreclosure' should be read to mean 'exclusion of competitors in a manner that damages consumers or the economy in general', not simply 'exclusion of competitors'.

Anticompetitive foreclosure may arise through exclusive dealing – preventing competitors from selling to customers through the use of exclusive purchasing obligations or rebates. Retrospective rebates, such as a rebate on all wholesale purchases over a year if the sales exceed a target threshold, may have foreclosure effects because they can result in very powerful incentives for a wholesale buyer just below the threshold to increase sales volumes.

The CCM takes the view that, in most markets, free competition is an effective guarantor of the interests of consumers and is likely best to promote the efficiency, adaptability and competitiveness of the economy of Mauritius. Significant weakening of competition will therefore have adverse effects.

Consequently, if the CCM finds evidence of behaviour that is preventing, restricting or distorting competition, on the part of an enterprise with market power, in a monopoly situation, it will normally expect that such behaviour will have adverse effects on consumers or the economy as a whole.

Following an Investigation, the CCM has the power to force changes in company behaviour and will consider behavioural undertakings offered by the investigated party or parties.

Further information:

For further information see the COMPETITION COMMISSION's website at www.CompetitionCommission.mu, and the COMPETITION COMMISSION's Procedural Rules and Guidelines: 'CCM1 - Procedural Rules', 'CCM4 - Monopoly situations and non-collusive agreements' and 'CM6 - Remedies and Penalties', all available on the CCM's web site at www.ccm.mu.