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MEDIA RELEASE		
		Date: 23 rd June 2010
		Investigation Ref: CCM/INV/001 KRAFT & GENERAL REBATES
CCM PUBLISHES THE EXECUTIVE DIRECTOR'S REPORT INTO IBL CONSUMER GOODS' SALES CONTRACTS WITH RETAIL STORES		

The CCM has today publicly released its first report since the CCM's inception late last year. These are the findings of the Executive Director, reporting to the Commissioners, following an investigation into IBL Consumer Goods' sales contracts with retailers relating to soft cheese, biscuits, chocolate and powdered juice. The report concludes that some contract terms linking discounts for Kraft Cheese to marketing activities for those goods have the effect of restricting, preventing or distorting competition, and thus breach the monopoly provisions of the Competition Act 2007. These findings from the Executive Director do not constitute a decision by the Competition Commission, as it is for the Commissioners to take the decision on whether the behaviour in question is anti-competitive and, if so, what to do about it.

This report has been published today on the CCM website (www.ccm.mu). It was provided to IBL and the Commissioners last Friday, June 18th, a few weeks ahead of schedule in the published investigation timetable. IBL had the opportunity to comment on an earlier, provisional draft of the findings. The Commissioners will now consider the report and are then expected to hold hearings with IBL and with other interested parties. After this, the Commission will make its decision and also decide whether any remedies are needed. If the Commission does order remedies, affected parties have the right to appeal to the Supreme Court.

The findings of the Executive Director of the CCM as set out in the Final Report are, inter alia:

- IBL Consumer Goods is in a monopoly situation in the market of processed cheese. Its Kraft-branded processed block cheese (250g) has a market share well beyond the 30% threshold defined under section 46 of the Act.
- IBL Consumer Goods entered into a specific sales agreements with some supermarkets that offer discounts on 250g Kraft block processed cheese subject to specified percentage increases or minimum purchase volumes (growth rebates) and shelf space requirements for both Kraft Block cheese and other Kraft branded products.
- Discounts of this sort can distort competition, by providing retailers with strong incentives not to let sales of Kraft Cheese fall below the threshold. This might prevent the entry of a rival brand.
- The provision of financial incentives to retailers in exchange for shelf space appears to be unusual in Mauritian retailing. The report expresses a concern that if rivals to IBL retaliate in a similar way, only the larger brands with financial resources would receive adequate or advantageous shelf space.
- In one particular case, the sales contract offered by IBL amounted to exclusive dealing, as it required that its competitor's product should not be listed in that supermarket.

John Davies, Executive Director of the CCM today said "I am pleased today to be able to publish my first report to the Commissioners under the Competition Act. This investigation began in December 2009. We have had several meetings with IBL and other interested parties, including supermarket owners and rival importers. The process has been a very thorough one, and I think we have adhered throughout to our core principles of transparency and fairness to the parties under investigation. For their part, IBL – and almost all of the businesses we dealt with - engaged very openly and constructively with our investigation from the start, responding fully to information requests, explaining the markets and the products to us and putting their views to us about the matters under investigation. The investigation has been a good start to the work of the Competition Commission."

“On the basis of the information we received, I concluded that aspects of IBL’s Top Stores programme are likely to distort competition in several different markets. Competition authorities in other jurisdictions have often concluded that discount schemes of the sort offered by IBL on Kraft Cheese will distort competition, especially when offered on products with high market shares, through affecting the willingness of retailers to stock or promote competing products. Kraft Cheese is a big seller in Mauritius, so I would expect the level of discount available to retailers to affect their behaviour.”

“IBL might not agree with our conclusions about the effects of its contractual terms, and it will now have an opportunity to make that case to the Competition Commissioners. It is now up to the Commissioners to decide what to do in this particular case, following hearings with IBL and other interested parties. Following their decision, there may be lessons to be drawn for other businesses in Mauritius, if they want to avoid a similar investigation, as I understand that similar practices have become common in the absence of effective competition law until now.”

The version published today has had some material removed, on grounds of commercial sensitivity. All the excisions are clearly marked.

If hearings are required for this case, the Commission expects to hold them in the latter half of July. Anyone with an interest in the case may write to the Secretary to the Commission, with views to put to the Commission or with a request to take part in the hearing.

Notes for editors

The Competition Commission of Mauritius was established in 2009, under the Competition Act 2007. It launched its first investigation, into IBL Retail’s contracts relating to Kraft Cheese, on December 10th 2009.

The Act defines four types of *restrictive practice* against which the Commission can take action: collusive agreements (cartels, price fixing), non-collusive agreements, abuse of monopoly and anti-competitive mergers. The Commission has the power to impose financial penalties of up to 10% of a business’s turnover, but only for deliberate or negligent breaches of the prohibition of collusive agreements. The IBL case does not involve a collusive agreement, so no penalties are applicable. The Commission does have extensive powers to remedy competitions under all forms of restrictive practice, including amending contracts and requiring divestment of

businesses and assets. There is a right of appeal to the Supreme Court following the Commission's decision.

The Act creates a separation of powers between the Executive Director (and his staff) on the one hand, and independent Commissioners, on the other. The Executive Director decides which cases to investigate and, with his staff, carries out an investigation. He then reports to the Commissioners. It is for the Commissioners alone to make the decision on whether there has been a breach of the Act, and if so what remedial action or penalties to impose.

The current Executive Director of the Competition Commission is John Davies, formerly Chief Economist at the Competition Commission in the UK. The four Commissioners are Mr Rajiv Servansingh (Acting Chairman), Mrs Selvam Poonoosamy, Mr Rodney Rama and Mr Reshad Sadool. Biographies of all senior staff and Commissioners are available on the CCM web site, www.ccm.mu