

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE COMPETITION COMMISSION OF MAURITIUS



AND

THE INFORMATION AND COMMUNICATION

TECHNOLOGIES AUTHORITY



[Section 66 of the Competition Act]

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THE COMPETITION COMMISSION OF MAURITIUS (CCM)

AND

THE INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY (ICTA)

The Aim and Coverage of the MoU

1. In certain aspects of information and communication technologies regulation, the Competition Commission of Mauritius (CCM) and the Information and Communication Technologies Authority (ICTA) have overlapping powers. This is because the conduct of an operator in the supply of information and communication services which may be considered objectionable under section 30 of the ICT Act 2001, may also infringe the Competition Act 2007.
2. The ICTA has inter alia powers under the ICT Act –
 - to create a level playing field for all operators in the interests of consumers in general;
 - to license and regulate the information and communication services;
 - to promote and maintain effective competition, fair and efficient market conduct between entities engaged in the information and communication industry in Mauritius and to ensure that the ICT Act is implemented with due regard to the public interest and so as to prevent any unfair or anticompetitive practices by its licensees.
3. The Competition Commission has the powers to investigate and take enforcement action against suspected breach of the prohibition of restrictive agreements which fall within sections 41 to 43 of the Competition Act and investigate any matter that is subject to review under sections 44 to 48 of the Competition Act. Sections 41 to 43 cover agreements, namely horizontal agreements, bid rigging which are collusive and vertical agreements involving resale price

maintenance. Sections 44 to 48 cover those agreements which have the effect of preventing, restricting or distorting competition or resulting in a substantial lessening of competition.

4. The CCM and the ICTA have therefore agreed in this Memorandum of Understanding which aims to:

- promote co-operation and coordination between the CCM and the ICTA when dealing with cases of anti-competitive behaviour where they have overlapping powers;
- facilitate the treatment of cases of anti-competitive behaviour within the information and telecommunication sector;
- minimize the duplication of activity, wherever possible; and
- improve understanding of the respective roles of the CCM and the ICTA.

5. The MoU includes:

- a description of the roles of the CCM and the ICTA;
- arrangements between the CCM and ICTA for the day-to-day handling of competition cases involving information and telecommunication services;
- provisions for dealing with cases within the information and communication technologies sector including telecommunications;
- arrangements for the implementation of the MoU and its review.

The Role of the CCM in relation to this MoU

6. The CCM is established as an independent body corporate under the Competition Act 2007. Its goal is to make the market work optimally in the interests of consumers and the economy of Mauritius. To this end, the CCM has a number of powers under the Competition Act 2007.

These include:

- keeping the operation of markets in Mauritius and the conditions in those markets under constant review
- investigating collusive agreements, monopoly and mergers;
- taking action against identified anti-competitive practice ;

- undertaking general studies on the effectiveness of competition in individual sectors of the economy in Mauritius.

The Role of the ICTA in relation to the MoU

7. The ICTA is established, for the purpose of the ICT Act 2001, as an independent body corporate. The objects of the ICTA include the democratization of access to information taking into account the quality, diversity and plurality in the choice of services available through the use of information and communication technologies and the creation of a level playing field for all operators in the interest of consumers in general. To this end, the ICTA has a number of functions and powers under the ICT Act 2001. These include:

- the provision of economic and technical monitoring of the information and communication industry in accordance with recognised international standard practices, protocols and having regard to the convergence of technology;
- the promotion and maintenance of effective competition, fair and efficient market conduct between entities engaged in the information and communication industry in Mauritius and ensuring that the ICT Act is implemented with due regard to the public interest so as to prevent any unfair or anticompetitive practices by licensees;
- the exercising of licensing and regulatory functions in respect of information and communication services in Mauritius including the determination of types and classes of licensees and the approval of prices, tariffs and alterations thereto;
- the commissioning of expert evaluations, conduct of studies, collection of data related to the information and communication industry;
- entertaining complaints from consumers in relation to any information and communication services in Mauritius and where necessary, referring them to the appropriate authorities;

- monitoring every access or interconnection agreement and assisting in the resolution of any dispute relating thereto;
- to disallow any tariff which is deemed to have an anti-competitive effect

Potential Overlap between the functions of the CCM and the ICTA

8. There exists a potential overlap between the functions of the CCM and the ICTA in cases affecting information and telecommunication services. The ICTA may have a power under sections 17, 24, 30 and 31 of the ICT Act 2001 while the CCM may have a power under sections 41-48 of the Competition Act 2007 in relation to the same matter.
9. As is the case within other regulated sectors with sector-specific legislation, a decision will need to be taken whether the alleged conduct should be investigated under the Competition Act or the ICT Act.
10. The factors that the CCM and ICTA would expect to take into account in deciding which one of them will investigate the conduct of a licensee under the ICTA will include:
 - whether the subject matter of the complaint suggests that there may be a breach of the prohibitions of section 41 to 48 of the Competition Act;
 - which organization is able to provide the more effective solution taking into account the route by which any final action can be determined;
 - which organisation is in a position to conduct the most efficient investigation, taking into account their relative powers (including their powers to gather information and to impose interim measures);
 - any views or preferences expressed by the complainant; and

- whether either organisation has particular knowledge or experience that is relevant to the issues raised by the complainant.

11. The decision as to whether the CCM or the ICTA should deal with a particular case would normally be taken soon after receipt of a complaint or before the beginning of a formal investigation or shortly after launching an informal review to identify whether there are reasonable grounds that the Competition Act has been infringed in order to determine whether a matter should be investigated. However, it may not always be possible to make such a decision in the early stages as there may be instances where the decision on how best to proceed can only be made once significant progress has been made in considering a complaint or in an own-initiative investigation. This will require close cooperation between the CCM and the ICTA until sufficient information is obtained for a decision to be taken. The CCM and ICTA would expect the decision on who will deal with a case to be made at an appropriate time, and where possible, before a formal investigation is launched by either of them.

12. Where the CCM and the ICTA decide that it is more appropriate for the CCM to proceed under the Competition Act in relation to a competition issue, the CCM will seek to coordinate its approach with that of the ICTA, so far as this is compatible with meeting its statutory duties.

13. Where the ICTA is in receipt of a complaint or had identified any matter which it considers might infringe the ICT Act or the Competition Act, it may request the CCM to launch a formal investigation. The CCM shall bring the matter before the ICTA within three weeks to consider whether there are reasonable grounds to institute an investigation under the Competition Act or if such is not the case, refer the matter back for investigation by the ICTA under section 30 of the ICT Act. The CCM shall share its expertise with the ICTA on competition analysis during the ICTA investigation.

14. The CCM and the ICTA may also decide to conduct a joint investigation in relation to a competition issue. In such a case, both the CCM and the ICTA shall co-ordinate their approach and will adopt the CCM analytical approach and remedies under the Competition Act. The ICTA shall be able to contribute to the report of the Executive Director of the CCM before the report is referred for a decision to the Commissioner of the CCM. Any action taken under the

Competition Act shall not preclude any further action by the ICTA under the ICT Act, based on the report of the CCM.

15. The ICTA shall ensure that the remedies agreed upon with the CCM by its licensees are effectively implemented. The ICTA shall report any default by its licensees to implement remedies proposed or agreed with the CCM.

The responsibilities of ICTA under the MoU:

16. The ICTA will:

- inform the CCM of formal complaints it receives alleging that its licensee's conduct infringes the competition provisions under the ICT Act or the Competition Act;
- inform the CCM of any course of conduct that the ICTA adopts to investigate under section 30;
- discuss with the CCM at an early stage in a case, with a view to reaching a decision on the relevant legislation under which to proceed;
- provide the CCM with any views when notified of an investigation under the Competition Act 2007 that directly involves a licensee of ICTA;
- consider the views of the CCM as to the analytical approach to take concerning any competition issue in relation to which it carries out an investigation under the ICT Act to ensure consistency in approach across the economy, and have regard to the CCM's guidelines on competition;
- inform the CCM of any action it takes under section 30 of the ICT Act.

The responsibilities of the CCM under the MoU:

17. In relation to the Information and Communication Technologies sector including Telecommunications, the CCM will:

- inform the ICTA of formal complaints it receives from any person alleging that a telecommunications licensee's conduct infringes the competition provisions under the ICT Act or the Competition Act;

- discuss with the ICTA at an early stage in a case with a view to reaching a decision on the relevant legislation under which to proceed (i.e. Competition section of ICT Act)
- inform the ICTA when the CCM decides to begin an investigation under the relevant sections of the Competition Act prior to launching a market study or making an investigation;
- consider any views of the ICTA when an investigation or study under the Competition Act involves the information and communication technologies sector. The CCM will also further inform the ICTA if it disagrees with certain aspects of the advice;
- inform the ICTA of the issue of any written notices that the CCM may propose to make a decision that section 41-48 of the Competition Act has been infringed;
- inform ICTA prior to making a decision under section 41-48 of the Competition Act that the Act has been infringed;
- consult ICTA whenever it considers that action under the ICT Act is more appropriate than enforcement action under the Competition Act;
- inform the ICTA of cases in other markets which it believes may have consequences for the Information and Communication Technologies sector.

Disclosure of confidential information

18. Each party will respect the confidentiality and/or secrecy of information exchanged and which has been obtained as a result of the other party's statutory powers or other legal obligations and which relates to the affairs of any individual, business or undertaking. Each party will comply with any non-disclosure obligations that are binding on the other, in particular, those set out in sections 70 of the Competition Act and section 32 of the ICT Act.
19. It is agreed that the CCM shall publish its decisions with reasons and as such may have to disclose information exchanged between the two parties. However, in no event shall any party disclose any information which is protected as confidential under the Competition Act or section 32 of the ICT Act.

Review and Implementation

20. The practices set out in the MoU are now in operation. They may be reviewed as the need arises, or by written request of either party. Any changes will be subject to the agreement of both parties.

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