

# IN FOCUS

Adoption of the AfCFTA  
Protocol on Competition Policy

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## OUR MISSION

To enhance market competition, creating more economic opportunities for the benefit of all Mauritians

## OUR VISION

An impactful institution within the Mauritian economy, shaping business landscape and driving economic progress through the force of competition



# EXECUTIVE DIRECTOR'S NOTE



*A warm welcome to the Competition Commission's sixth newsletter. In this edition, we apprise you of developments at continental level on competition policy and provide an update on enforcement and key initiatives of the Competition Commission for the period June 2023 to July 2024.*

Deshmuk Kowlessur  
Executive Director

The Continental Competition Protocol has reached the ratification stage and regulations are being drafted for implementation. I am proud that the Competition Commission has actively participated in the elaboration of the AfCFTA Competition Protocol and is actively contributing to the development of these regulations on abuse of monopoly, mergers and cartels.

The Competition Commission is also playing an active role within the capacity building network of national and regional competition authorities, namely the African Competition Forum (ACF). Since November 2023, the Competition Commission is Chair of the ACF, taking over the leadership role from the Competition Commission of South Africa. Since February 2024, the Competition Commission is also leading the African Head of Competition Authorities Digital Market Dialogue. The Digital Market Dialogue is aimed at building capacity, sharing best practices and providing a platform for collaboration in the regulation of competition for digital markets. It hosted two events earlier this year for the African competition authorities and brought together international experts such as John Davies, former Head of OECD Competition Division and presently Judge at UK Competition Tribunal; and agencies such as United States Federal Trade Commission.

With regard to capacity building, the Competition Commission partnered with the Centre for Competition, Regulation and Economic Development (CCRED) of the University of Johannesburg, in organizing the 8th Annual Competition & Economic Regulation (ACER) Week in Mauritius in October 2023. The ACER Week is a training forum where regional competition authorities, policymakers, sector regulators, academics, as well as legal and economic practitioners come together to share knowledge on competition matters and discuss on new issues and challenges in the competition realm.

The Competition Commission is also honoured and privileged for having been selected in November 2023 to co-chair the International Competition Network (ICN) Merger Working Group, alongside the European Commission, the Norwegian Competition Authority and the Competition Bureau Canada. The ICN is a major forum whose members represent national and multinational competition authorities whereby regular contacts and discussions about practical competition issues can be maintained. Our appointment as co-chair therefore stands out as a recognition of our capabilities as a competition agency at par with international competition agencies. On the advocacy front, we reached out to businesses through a webinar to promote merger notification.

At Africa level, the adoption of the African Continental Free Trade Area (AfCFTA) Competition Protocol by the African Union in February 2023 is going to redefine competition regulation in Africa. It will provide for the legal framework and institutional set-up to address cross-border anticompetitive practices and merger control with a continental dimension. Thus, shaping competitive landscape in Africa for the promotion of investment, growth and development in the single market.

In collaboration with the Institute of Legal and Judicial Services (IJLS), we delivered lectures on competition law for legal practitioners. The webinar and lectures at the IJLS were delivered by staff of the Commission and also Professor Pierre Regibeau, former Chief Economist of the European Commission.

The Competition Commission continued its capacity building programme for public procurement officials on competition. We held several working sessions on detecting cartel-type behaviour so as to empower the officials in their fight against potential collusive practices by bidders for public sector bids.

We have also intensified our efforts to boost awareness of competition and to inculcate competition culture in people from a young age. To that end, we organized an essay contest for secondary school students. More than 100 students from about 34 secondary schools participated in the contest. The aim of the contest was to raise awareness among the youths, who are tomorrow's business leaders and policy makers, on the importance and societal benefits of enforcing competition law to shape the competitive market landscape.

On the enforcement front, the Competition Commission dealt with the acquisition of Engen and Vivo under our merger review regime. We secured undertakings from Vivo for the divestment of most of the assets of Engen to an independent purchase. Thus, ensuring that competition for the distribution of petroleum products is not harmed. We also launched a market study into the port sector. Our sea port being strategic for imports and exports of commodities, it is imperative that conditions of competition are conducive to ensure that businesses and ultimately end consumers benefit from competitive rates and timely services. We launched cartel investigations related to pharmaceutical and insurance products; and monopoly abuse in relation to supply of tobacco.

On a concluding note, I wish to highlight that the Competition Commission benefitted from the expertise of two eminent personalities in the global competition law arena. Professor Allan Fels, an acclaimed economist and former Chair of the Australian Consumer and Competition Commission; and Professor Pierre Regibeau, well known scholar and former Chief Economist at the European Commission.

I wish you a good read.

*D Kowlessur*



## African Continental Free Trade Area (AfCFTA)

At the 36th Ordinary Session of its Assembly held in February 2023 in Addis Ababa, Ethiopia, the African Union adopted the Protocol on Competition Policy under the African Continental Free Trade Area (AfCFTA) Agreement.

The Protocol on Competition Policy is an important instrument under the AfCFTA Agreement for creating a single common continental market for Africa with a population of about 1.3 billion people and a combined GDP of approximately US\$ 3.4 trillion. It is expected to boost intra-Africa trade by eliminating trade barriers. It is the flagship project of the African Union under the 50-year plan - "Agenda 2063: The Africa We Want", adopted by the African Union 2016 for an inclusive and economically sustainable continent. The implementation of the AfCFTA is expected to remove 30 million people out of extreme poverty and expand the size of Africa's economy to US\$29 trillion by 2050.

Negotiations on the Protocol on Competition Policy began in March 2021, with the establishment of a Committee on Competition Policy. The Committee was tasked with the drafting of the provisions of the Protocol and negotiating for the Member States. The Competition Commission represented Mauritius on the Committee and actively participated in the drafting and negotiations.

The Protocol on Competition Policy seeks to regulate competition in relation to economic activities with a continental dimension to enhance competition within the AfCFTA for improved market efficiency, inclusive growth, and the structural transformation of the African economies.

Thus, it ensures that gains from AfCFTA trade liberalization are not negated or undermined by anti-competitive practices. The Protocol also provides for development and strengthening of the capacity of Member States to deal with anticompetitive business practices; and to manage the interrelationships of competition regimes and sectoral regulatory laws at the national, regional, and continental levels.

A competition policy is necessary on the continent to address competition issues such as international cartels that affect trade and competition; crossborder cartels within continental markets that are not adequately regulated by existing national and regional competition authorities; mergers between firms that generate significant revenue within or from the continent; or anti-competitive practices by dominant firms that reside outside of our continent, such as platforms like e-commerce and social media firms.

The Protocol also introduces a new structure to regulate competition on the continent – a Continental Competition Authority, which will be mandated to investigate, prosecute and adjudicate competition activities at a continental level, and a Tribunal which will hear appeals against decisions.

Mauritius is now called upon, like the other African Union Member States, to ratify the Protocol.

# STRENGTHENING COMPETITION COMMISSION'S INSTITUTIONAL ENFORCEMENT CAPACITY

During the outgoing year, the Competition Commission had the privilege of hosting two eminent personalities in the field of competition law and policy to strengthen its capacity and benchmark its work for a more impactful enforcement.

Firstly, we had the opportunity to have among us, the esteemed Australian economist, Professor Allan Fels. He was the inaugural Chair of the Australian Competition and Consumer Commission and is a leading figure globally in competition policy. He has co-chaired the OECD Trade and Competition Committee and continues regularly to be a keynote speaker at competition events including ICN Conference and the OECD Global Competition Forum.

During his visit, he conducted a 3-day capacity building programme for the staff of the Competition Commission where he shared his experience and discussed strategies to better promote and enforce the law, and how to address challenges faced by the Competition Commission.

The second competition personality is Professor Pierre Régibeau. He has been until very recently Chief Economist at the European Commission's Competition Directorate General. He has published academic and policy papers in leading reviews and has been a member of the Economic Advising Group on Competition Policy at the EU Commission.

He has been involved in numerous cases covering a wide variety of topics and sectors of activity before several national competition authorities globally.

During his stay, he conducted several training courses with the staff of the Competition Commission covering a wide spectrum of topics such as merger control, abuse of dominance, IP and Competition law, etc. He provided insight on cases completed by the Competition Commission over recent years, with a view to benchmark our approach and methodology for the assessment of the matter and share his perspectives.

Professor Régibeau also met with the legal professional on two occasions giving lectures at the Institute for Judicial and Legal Studies (IJLS). The first one focused on 'The Role of Economic Analysis and Evidence in Competition Law', explaining how to best present economic analysis and evidence in Court, while the second was on 'Writing Contracts under the Shadow of Competition Law', stressing on the types of clauses that could attract scrutiny of competition authorities.

Finally, Professor Régibeau intervened during a webinar explaining to enterprises on the importance of notifying the Competition Commission of mergers and acquisitions and ensuring compliance with the Competition Act, to avoid exposing themselves to undue risks and uncertainty.



From left to right: Prof. Katharine Rockett, Prof. Allan Fels, Prof. Pierre Régibeau, Mr Deshmuk Kowlessur



# THE COMPETITION COMMISSION LEADS THE AFRICAN COMPETITION FORUM (ACF) AND AFRICAN DIGITAL MARKETS INITIATIVE (AHCAD)



## African Competition Forum (ACF)

At the ACF Biennial Conference held in The Gambia on 31 October and 1 November 2023, the Competition Commission was elected as Chair of the African Competition Forum (ACF), a network of African national and multinational competition authorities.

Mr Deshmuk Kowlessur, Executive Director of the Competition Commission welcomed the nomination and stated that: “The Competition Commission has had the privilege and honour of holding the position of vice-Chair since 2014. To be elected to the position of Chair comes as a recognition of our active involvement and contribution within the ACF in terms of building the enforcement capacity of the African competition authorities and promoting competition law adoption. We are committed to play an even more important role in shaping regional and continental competition policy. We believe that this nomination constitutes an impetus for both our competition agency and Mauritius to become more visible on the regional and international scenes.”

As the new Chair, the Competition Commission hosted the ACF Workshop and Steering Committee Meeting on 05th and 06th March 2024 at the Labourdonnais Waterfront Hotel. Hon. Dr (Mrs.) Marie Christiane Dorine Chukowry, Minister of Commerce and Consumer Protection was the Chief Guest at the opening of the event.



During the workshop, representatives of African competition authorities had the opportunity to discuss and share experience on various emerging topics such as price increases and competition issues in the regional food supply chain; digital markets enforcement and challenges; continental competition policy.

Several experts shared insights on the topics discussed. Amongst Mr Hardin Ratshisusu, Deputy Commissioner of the Competition Commission of South Africa; Dr Willard Mwemba, Director & Chief Executive Officer, COMESA Competition Commission (CCC); Mr Godfrey Walakira, Consultant from the AfCFTA Secretariat; and Prof. Simon Roberts, Professor of economics at the University of Johannesburg.

The workshop was also marked by the intervention of Mr John Davies, UK Competition Appeal Tribunal member and former Executive Director of the Competition Commission, who made a presentation on “Regulating digital market competition in Africa: Priorities, Challenges, Best practices and Lessons Learnt from other jurisdictions”, and Mr. Wangombe Kariyuki, Competition and Trade Expert, who spoke on Competition on digital markets in Africa.

The Competition Commission will continue to work closely with other African competition authorities for the furtherance of the ACF mandate and in its endeavours to bring its contribution towards consolidating capacity and promoting cooperation in enforcement of competition law for more competitive markets in Africa.



## The Competition Commission leads the African Competition Forum (ACF) and African Digital Markets Initiative (AHCAD)



### Digital Market Dialogue

During the same period, the Competition Commission hosted the 3rd African Heads of Competition Authorities Dialogue (the Digital Market Dialogue) meeting on the theme “Working towards inclusive growth in Africa through better regulation of competition in digital markets” on 7th March 2024 at Royal Green Wellness Resort, Moka.

The Digital Market Dialogue started in February 2022 in Johannesburg with the meeting of Head of the Competition Authorities from Mauritius, Egypt, Kenya, Nigeria, and South Africa on digital markets. In February 2023, the second Digital Market Dialogue took place in Cairo with Gambia, Morocco, Zambia, and the COMESA Competition Commission joining the forum. During both meetings, the participants recognised the greater shared regulatory challenges that digital markets pose for Africa, and the need to provide a stronger and collaborative approach with respect to the regulation of digital markets. Thus, the necessity for African jurisdictions to work in close partnership to share knowledge, and mutual strategies for the development of significant markets.

The experience sharing continued during the 3rd Digital Market Dialogue in Mauritius, which further expanded participation from other African competition authorities. Discussions centred around how to better drive the collaboration of the network to face challenges and priorities for Africa in the enforcement of competition in digital markets.

The participants of the Digital Market Dialogues also benefited from insights and enforcement experience shared by Mr Jon Nathan, representative from US FTC, on the US FTC's experience and Mr James Hodge, Chief Economist and Deputy Commissioner at the Competition Commission of South Africa. Ms Emily Njeri Mburu-Ndoria, Director for Trade in Services, Investment, Intellectual Property Rights at the AfCFTA, made a presentation on the recently adopted AfCFTA Protocol on Digital Trade.

An action plan for 2024 has been agreed for collaboration for more effective regulation of competition in digital markets.

## ICN Merger Working Group: The Competition Commission appointment as Co-chair

The Competition Commission has been appointed as Co-Chair of the International Competition Network Merger Working Group (ICN MWG). The mandate of the ICN MWG is to promote the adoption of best practices in merger reviews in a bid to enhance their effectiveness and to ensure consistency across countries. As Co-Chair to the ICN MWG, the Competition Commission is expected to actively participate in driving discussions and to lead ICN projects on mergers.

In this context, during the 2024 ICN Annual Conference, the Competition Commission was honoured to moderate a discussion on tools and practices for effective and timely management of merger cases, during which fruitful feedback was received from ICN Members. The topic of the session is also a project that the Competition Commission will lead upon. The appointment of the Competition Commission as Co-Chair to the ICN MWG highlights the Competition Commission's maturity and respect in the global competition law arena. The Competition Commission will seize this opportunity to contribute to enhance competition policy at the global front.

## Competition Commission leads ICN Project on Tools and Practices for Effective Management of Merger Cases

To further its ambition to contribute to better competition policy and enforcement at the global level, the Competition Commission has volunteered to lead an ICN project on “Tools and practices for effective management of merger cases” for the MWG. This project aims to gather tools and practices which are used by competition authorities around the world to enhance their case management and thereafter disseminate these tools and practices among ICN Members.

As a key outcome, the project will produce a comprehensive report detailing the various tools and practices used by competition authorities around the world and which can be used as guidance by ICN Members to effectively improve the management of their merger cases and foster further collaboration within the ICN network.



ICN | SA  
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How does competition law enforcement contribute to economic welfare in Mauritius? This was the question that Grade 12 secondary students had to address in the Essay Contest 2024 organised by the Competition Commission. The contest aimed at raising awareness among the youths, who are tomorrow's business leaders and policy makers, on the importance and societal benefits of enforcing competition law to shape the competitive market landscape.

More than 100 students, along with their teachers who acted as facilitators/mentors, participated in the contest from about 34 state and private secondary schools. The 10 shortlisted essays were presented by the finalists at the award ceremony held on Wednesday 12th June 2024 at the University of Mauritius.

The Competition Commission's Essay Contest 2024 Award ceremony was marked by the presence of the Minister of Commerce and Consumer Protection, the **Honourable Dr (Mrs.) Marie Christiane Dorine Chukowry**. In her speech, the Honourable Minister expressed her delight to be among the students and commended the students for their good work. She indicated that the analysis and recommendations of the students were very pertinent and would ensure that these are to the extent possible incorporated in policymaking decisions of her Ministry.

On his part, the Executive Director of the Competition Commission, **Mr. Deshmuk Kowlessur**, expressed his satisfaction with the outcome of the essay contest by the students. He applauded the participants for their interest and hard work to understand the intricacies of competition law and interface with economics concepts learned at school.

On the occasion, **Professor Pierre Régibeau**, a former chief economist for DG competition at European Commission, was invited to deliver a guest speech. **Professor Regibeau** shared his valuable insights on competition law enforcement and importance for Mauritius to have an effective and business friendly competition regime.



He highlighted on the importance of the work of Competition Commission in small market like Mauritius where several markets are characterised by high degree of concentration and cross-sharing. He also stressed on the benefit of introducing a mandatory merger notification.

The finalists, on their part, delivered brilliant presentations on economic benefits of competition law enforcement. They highlighted notable cases handled by the Competition Commission covering the various sectors, including retail and distribution, property development, construction and pharmaceutical. They emphasized how competition law enforcement through these cases contributed to restoring competition in the market and thus benefiting consumers in terms of price, innovation and choice.

The 5 winners were announced by the Jury Panel, **Professor Katharine Rockett** from the Essex University, **Associate Professor Sunil Bundoo** from the University of Mauritius, and **Mr Mosadeq Sahebodin**, Cosumer Protection Advocate.

All participating students and their mentors were awarded certification of participation and each of the 10 finalists received a Shield. In addition, the 5 winners were awarded the cash prizes as follows:

1st prize: Antoine Melanie Rachel, Forest-Side SSS girls – Rs 25,000

2nd prize: Dusoye Nakul Kumar Varma, Royal College Port Louis - Rs 15,000

3rd prize: Narain Loushina, Royal College Port Louis - Rs10,000

4th: Dursun Priyamvada, Royal College Port Louis - Rs 5,000

5th: Hossamdee Bibi Sakinah, Dr Maurice Curé SC - Rs 5,000

# OUTREACH

## A training course at the Institute for Judicial and Legal Studies (IJLS) for law practitioners and legal officers

The Competition Commission has revived its collaboration with the Institute of Judicial and Legal Studies (IJLS) and has organized 3 presentations at the IJLS so far in 2024.

On 23rd April 2024, **Mr. Vipin Naugah**, Head Legal and Cartels, gave a lecture on the topic **'Making your way through the legal intricacies of the Competition Act 2007'**. This introductory lecture was aimed at Barristers of 0-5 years of Call to the Bar. Mr. Naugah talked about the key legal and economic principles that underpin the application of competition law in Mauritius and thus promote a greater understanding of the technicalities of the competition law.

On 14th May 2024 **Professor Pierre Régibeau**, an eminent competition law practitioner and former Chief Economist of EU Directorate General for Competition, delivered a training course at the IJLS on **'The Role of Economic Analysis and Evidence in Competition Law'**. Professor Régibeau's intervention was centered around the different theories of harm and types of evidence in competition law. He also shared insights on the interaction of economic experts with competition authorities and how best to present economic analysis and evidence in Court.

Professor Régibeau further gave a lecture at the IJLS on 4th July 2024 on the topic **'Writing Contracts under the Shadow of Competition Law'**. Issues such as Loyalty rewards, quantity discounts, tying and bundling, aftermarkets and selective distribution were discussed. Dr. Regibeau stressed on the fact that dominant firms should pay particular attention to types of clauses that could attract scrutiny of competition authorities.

## Webinar on importance of notifying mergers and acquisition

On the 20th June 2024, the Competition Commission hosted a webinar on "Mergers & Acquisitions - Complying with the Competition Act", which is part of a series of advocacy initiatives to promote competition compliance. Particularly, this initiative aimed to advocate the importance of notifying the Competition Commission of potential mergers and acquisitions in Mauritius. From past experience, it is observed that many companies involved in mergers and acquisitions do not seek the guidance of the Competition Commission, and thereby exposing themselves to unnecessary risks and uncertainty.

Professor Regibeau, was invited as guest speaker during the said webinar, and he shared his extensive knowledge and experience on the importance of notifying mergers & acquisitions and ensuring compliance with competition law.

The participants gained valuable insights on the potential risks of not notifying the Competition Commission and on the benefits of engaging with the latter at an early stage in the merger process. The session concluded with an interactive Q & A session, allowing participants to seek clarifications on key issues surrounding merger notifications.

## Empowerment of public procurers to fight against bid rigging

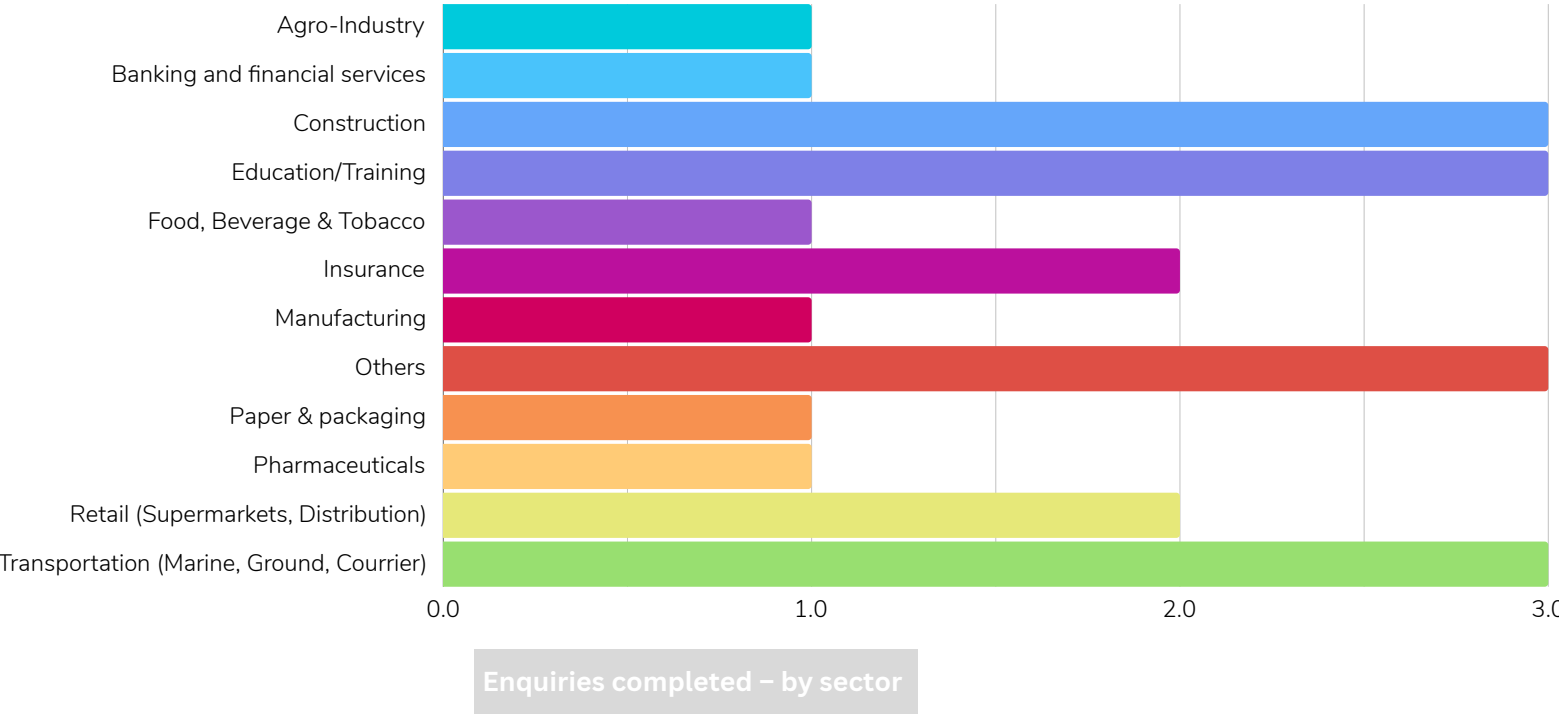
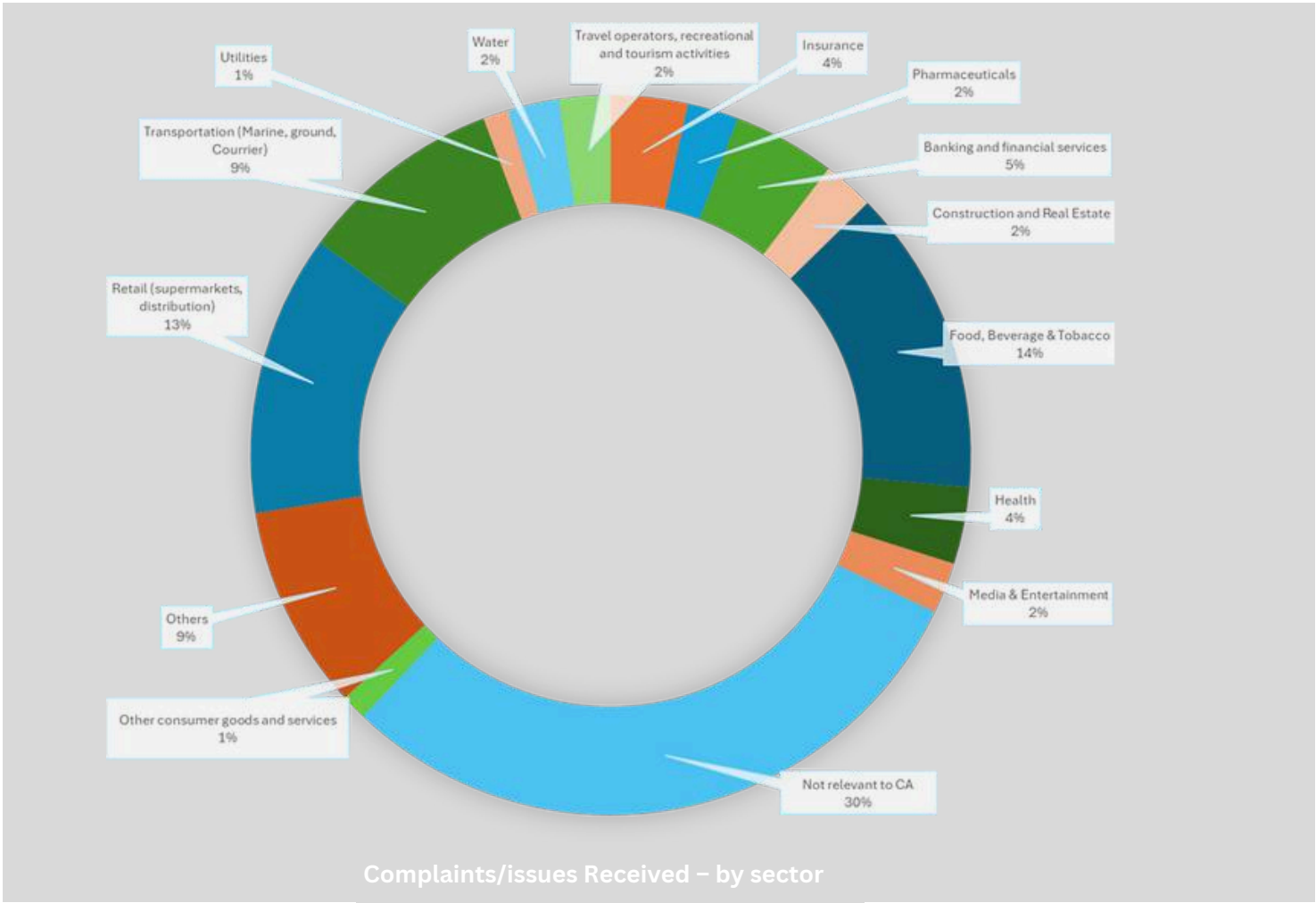
As part of its ongoing advocacy efforts, the Competition Commission in collaboration with the Director of Procurement and Supply conducted seven training sessions on bid rigging in public procurement. These sessions, held between May 2023 and June 2024, were aimed at empowering procurement officials from the 'Procurement and Supply Cadre' to better detect and prevent bid rigging.

The training initiative aligns with the OECD's recommendation for targeted advocacy in cartel detection, reflecting the Commission's commitment to safeguarding the process of competition in public procurement. The project had two primary objectives: first, to raise awareness among procurement officials about bid rigging schemes and detection methods; and second, to encourage case referrals while fostering a robust network between the Competition Commission and procurement professionals. The expertise of these professionals will be invaluable in the Competition Commission's efforts to prevent, detect and deter bid rigging.

These training sessions were attended by **Principal Procurement and Supply Officers (PPSO), Managers (Procurement and Supply) (MPS), and Assistant Managers (Procurement and Supply) (AMPS)**. **A total of 124 procurement officials from 38 ministries, departments, and public bodies participated.**

The training sessions were structured around the Competition Commission's "Guidance to Public Procurers on Bid Rigging," providing attendees with essential tools and recommendations to mitigate the risk of bid rigging in their respective roles. This initiative marks a significant step forward in fostering a culture of vigilance and integrity within public procurement processes.

# OVERVIEW - ENFORCEMENT ACTIVITIES FOR FINANCIAL YEAR 23/24

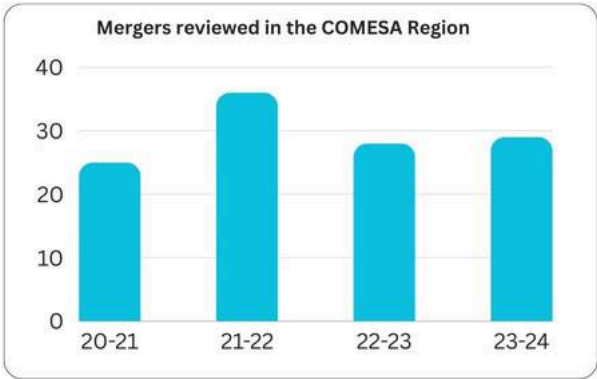




Completed Investigations and Market studies



Mergers reviewed in the COMESA region



COMPLETED INVESTIGATIONS

Merger in the automated distribution of snack and drinks

This investigation relates to a transaction which occurred between two major suppliers of snacks and drinks through automated vending machines. During the investigation, the merger parties have submitted undertakings to address the concerns that were expressed in light of the said transaction. The Executive Director has completed his assessment on the matter and has submitted his report to the Commission for their decision.

Acquisition of Engen Ltd by Vivo Group

This investigation pertained to the acquisition of Engen Limited in South Africa by Vivo Group (through Vitol Emerald Bidco). Vivo Group is present in Mauritius through Vivo Energy Mauritius Limited which operates “Shell” filling stations while Engen Limited operates through Engen Petroleum (Mauritius) Limited (Engen Mauritius). The merger was also reviewed by the COMESA Competition Commission. Given that the merger had significant impact in Mauritius, the Competition Commission of Mauritius requested the COMESA Competition Commission to refer the matter to Mauritius in so far that it concerns the effects of the transaction on Mauritian markets; the referral was thereafter granted.

The Executive Director was concerned that the merger could lead to significant market concentration, particularly in the supply of fuels like mogas, diesel, jet fuel, and marine gasoil, reducing the number of operators from four to three. Following concerns expressed by the Competition Commission, the parties engaged with the Competition

Commission to identify undertakings which may address those concerns.

It has been agreed that the merger parties will sell Engen Mauritius to an independent purchaser subject to the approval of the Competition Commission. The sale includes most of Engen Mauritius’ operations, with the exception of 7 filling stations and certain commercial contracts which Vivo Group will retain. This sale is meant to keep the number of main fuel suppliers in Mauritius at four ensuring undistorted competition. The investigation highlights the importance of preserving competition in strategic markets like petroleum products to benefit both consumers and the economy.



## Completed Market Study

### Ports market study

In February 2024, the Competition Commission launched the ports market study to assess the conditions thereof.

The aim of the ports market study was to identify potential barriers to entry and expansion in the provision of the various port services by public and private operators. The scope of the study included the review of industry structure and regulatory arrangements at the port, compared to international best practices. The objective is to come up with better outcomes for customers in terms of prices, speed, and quality of handling of freight.

The Competition Commission prioritized this market study in view of the strategic importance of our ports and of competitiveness concerns raised by local operators and the international agencies such as the World Bank. Mauritius is a net importer of food and other essential commodities. The country also relies on sea freight for the export of its main products, including textiles, sugar and processed food, in particular tuna. The port therefore serves as a strategic facility for imports and exports of goods and thus contributes to economic development and the welfare of the population. It is therefore imperative that port users, be it local and international, benefit from efficient, reliable and competitive port services.

For the conduct of the study, the Competition Commission has constituted a study team comprising its technical staff and experts in the field of competition law and economics. The team of experts has wide experience in conducting market studies in various sectors, including ports. The lead expert was John Davies who is presently a member of the UK Competition Appeal Tribunal. He has served as the Head of Competition Policy Division of the OECD. At the OECD, he directed several market studies in various countries such as pharmaceuticals, shipping, broadcasting, digital economy, food, financial services, and hospitals and the ports market studies. John Davies was assisted by Professor Simon Roberts and Dr Thando Vilakazi, who have extensive expertise in the field of competition law and economics.



## Ongoing investigation

### Cartel investigation: Third-Party Liability on Contractors' All Risk Insurance

The investigation is into a possible cartel (collusive agreement) by eleven insurance companies in the supply of insurance policies to contractors to cover injury to a third-party or damage to property of a third party caused during construction projects. This insurance product is referred to as Third-Party Liability on Contractors' All Risk Insurance.

It is suspected that the insurance companies may have agreed to limit the amount of coverage (in terms of claims payable) and have also ceased to provide insurance which provides unlimited coverage. Such a cooperation between the insurance companies eliminates competition which is the process of rivalry that should exist between them as independent businesses. Thus, the contractors may be left with no choice as only limited cover is available on the market.

If proven, such an agreement would constitute a breach of section 41 of the Competition Act 2007 ('the Act') in the form of a restriction of supply of an insurance product. Financial penalties may be imposed by the Competition Commission on each enterprise found to be in breach to the tune of up to 10% of their respective turnover (over a maximum of five years).

As part of the investigation an unannounced entry and search exercise (dawn raid) was conducted at the premises of the Insurers' Association of Mauritius ('IAM') in June 2024. The IAM is suspected of being the platform through which the cartel may have been facilitated.



# ONGOING INVESTIGATIONS

## Tobacco

An investigation was opened into the potential exclusivity arrangements that TNS Tobacco Company Ltd ("TNS Tobacco") may have with its sub-distributors of cigarettes. TNS Tobacco is an importer and distributor of cigarettes in Mauritius, distributing British American Tobacco Plc's brands of cigarettes. Following a preliminary assessment, it was found that TNS Tobacco may potentially be in a monopoly situation in the importation and distribution of cigarettes both in Mauritius and Rodrigues. The concerns raised indicated that TNS Tobacco's sub-distributors were not allowed to: (i) distribute other brands of cigarettes or related products, (ii) distribute cigarettes in regions other than those allocated to them, and (iii) sell any competing products for a period of one year after termination of the agreement. Concerns were also raised in relation to the sub-distributors' agreement which may also contain a target setting mechanism which may have exclusivity effects. The assessment is still ongoing.

## Cartel investigation: Suspected Price-Fixing among importers/wholesalers the Pharmaceutical Sector

The Competition Commission has opened an investigation into a potential cartel in the pharmaceutical sector. Seven importers/wholesalers of pharmaceutical products are suspected of having agreed to fix the wholesale mark-up to be applied when selling their pharmaceutical products to retail pharmacies.

Pharmaceutical products are price-controlled goods whose maximum mark-up is fixed by regulations. In 2023, new regulations were implemented to introduce a regressive mark-up system to promote importation of more affordable medicines. While the new regulations fixed the maximum markups for different categories of medicines, it did not fix the mark-ups that pharmaceutical importers/wholesalers may practice for the different medicines.

Each importer/wholesale pharmacy has the commercial freedom to decide upon the wholesale mark-up it will apply (subject to the prescribed maximum) considering its market operations. Any coordination among importers/wholesalers of pharmaceutical products on wholesale markup eliminates price competition, which is a crucial aspect of the process of rivalry that should exist between them as independent businesses.

If proven, such an agreement would constitute a breach of section 41 of the Competition Act 2007 ('the Act') and may engage the legal and financial liability of enterprises found to be party to such agreement.

The investigation is ongoing, and any finding of breach can only be made upon completion thereof.





# UPCOMING

## Upcoming Competition Event: COMESA Regional Conference for Judges & Lawyers, 01 – 03 October 2024



The COMESA Competition Commission (COMESA CC), in collaboration with the Competition Commission, is organizing two successive conferences in Mauritius in early October this year.

The COMESA CC is hosting the 3rd edition of its Regional Conference for Judges on 01 and 02 October 2024 for the benefit of Chief Justices and Judges of COMESA Member states. This conference will be followed by a one-day event on 03rd October 2024 for legal practitioners. The Competition Commission is engaging with the Institute of Judicial and Legal Studies for accrediting the COMESA Regional Lawyers Conference for the purposes of CPD points for law practitioners.

Both events intervene as part of COMESA CC's legal mandate of building a competition culture and advocating principles of competition and consumer protection law across all major stakeholders in the Common Market.

High-profile international speakers will be facilitating both events, which promise to provide a valuable platform for sharing knowledge and keeping abreast of key, practical issues and trends in competition law and policy developments in the COMESA region.

## Secondment to Directorate-General for Competition of the European Commission (EU DG Comp)



The Competition Commission has been provided with an immense opportunity to have one of its officers, namely Ms. Reeva Parasuraman, Assistant Investigation Officer (Legal), selected for a secondment at the Directorate-General for Competition of the European Commission (EU DG Comp).

The secondment is much sought after by Competition Authorities since the EU DG Comp is one of the most advanced and established Competition Authorities in the world.

The secondment, of a duration of three months, will enable Ms. Parasuraman to be actively involved in cases, gathering new learnings and experience from peers at the EU DG Comp.

## GET IN TOUCH WITH US

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