

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMPETITION COMMISSION
OF MAURITIUS



AND

MINISTRY OF RENEWABLE ENERGY AND PUBLIC
UTILITIES



[Section 66 of the Competition Act 2007]

MEMORANDUM OF UNDERSTANDING

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THE COMPETITION COMMISSION OF MAURITIUS (THE CCM)

AND

MINISTRY OF RENEWABLE ENERGY AND PUBLIC UTILITIES (MREPU)

The Aim and coverage of the MoU

1. The Government, through the Ministry of Renewable Energy and Public Utilities, is committed to promoting competition, inter alia, in the energy, water supply and waste water sectors to improve productivity in Mauritius and to enable the market to work for the well-being of consumers so as to achieve prosperity for all.
2. The MREPU has inter alia responsibility to ensure the provision of efficient, effective and quality services in the utilities sector which inter-alia include the following;
 - To provide a 24-hour good quality water supply to the whole population;
 - To ensure a reliable supply of electricity to all sectors of the economy;
 - To ensure judicious use of available water resources;
 - To progressively extend the wastewater network islandwide;
 - To maximize the use and benefits of indigenous renewable sources of energy;
 - To ensure electrical safety in buildings;
3. The Competition Commission has powers to investigate (on its own volition or on the basis of a complaint) and take enforcement action against suspected breach of the prohibition of restrictive agreements which fall within sections 41 to 43 of the Competition Act 2007 and investigate any matter that is subject to review under sections 44 to 48 of the Competition Act 2007. 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 MREPU have therefore agreed this Memorandum of Understanding which aims to:

- Promote co-operation and coordination between the CCM and the MREPU when dealing with cases of anti-competitive behavior;
- Facilitate the treatment of cases of anti-competitive behavior within the energy, water supply and wastewater sectors
- Minimize the duplication of activity, wherever possible; and
- Improve understanding of the respective roles of the CCM and the MREPU.

5. The MoU includes:

- A description of the roles of the CCM and the MREPU;
- Working together and matters of Mutual Interests
- Case Handling
- Interchange
- 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 market work well for consumers. To this end, the CCM has a number of powers under the Competition Act 2007, including:

- Keeping the operation of markets in Mauritius and the conditions in those markets under constant review
- Investigating collusive agreements, monopoly and mergers on its own volition or on the basis of complaints received;
- 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 MREPU in relation to the MoU

7. The Ministry of Renewable Energy & Public Utilities has overall jurisdiction over the water, sanitation and energy sectors ,and ,the CWA, CEB and WMA have been conferred statutory responsibility to provide water, energy and sanitation services to the population. In this regard the MREPU’s mandate is:

- (i) to formulate policies to ensure that these services are delivered to the population in a cost effective manner and at affordable prices;
- (ii) to ensure that the agencies providing these services operate within the ambit of policies approved by Government taking into consideration the financial sustainability and affordability criteria;
- (iii) exercise the powers under the Electricity Act with regard to the issue of licence to service providers for the generation of electricity;
- (iv) enter into contracts for the provision of services for the collection, treatment and disposal of wastewater; and
- (v) mobilise water resources to meet the demand of all sectors of the population.

Relationship

8. In agreeing to this MoU:
- The MREPU fully recognizes the operational independence of the CCM; and
 - The CCM recognizes the legitimate interest of the MREPU in the overall mandate to ensure fair competition in the energy and water supply sectors.

Working together

9. CCM and MREPU undertake to help each other carry out their individual responsibilities more effectively by working together on issues of common interests. They will do so wherever it does

not cut across their ability to carry out their respective mandates in addition to exchanges arising from legal responsibilities or other requirements. Working together will include:

- Exchange of information, including aggregate information for the purposes of the CCM investigation and enforcement action;
- Provision of advice based on relevant experience
- Sharing of expertise for the purposes of CCM's investigation
- Joint working up of ideas and policy options
- Joint problem solving
- Joint research
- Partnership working with stakeholders in the energy, water supply and wastewater sectors

Matters of Mutual Interest

10. Where the MREPU becomes aware of matters of concern relating to the competitive operation of commercial markets in the energy, water supply and wastewater sectors, which it wishes the CCM to review or investigate, it will inform the CCM without delay and provide the CCM with relevant material in its possession that would assist the CCM to conduct such review or investigation. If the CCM is not already investigating the matter as empowered under the Competition Act 2007, the CCM may decide to investigate the matter referred by the MREPU under its enforcement powers and it will inform the MREPU accordingly. Thereafter the investigation will be conducted under the appropriate CCM legislation including the Competition Act, or any rules or Guidelines made by the CCM.
11. Similarly, where the CCM becomes aware of matters that affect or may affect the economic interests of consumers and of Mauritius, which it proposes should fall to the MREPU or the Government to remedy, it will inform MREPU and supply at that time any material in its possession to assist timely corrective action (subject to any confidentiality requirements.)
12. Both parties, when undertaking their functions, will have regard to the interest of the other in being kept informed of significant developments that affect or may affect the economic

interests of beneficiaries of energy , water supply and wastewater services, and the working of commercial energy, water supply and sanitation markets. For the CCM, this will be subject to statutory restraints on keeping information from parties confidential and to the operation need for secrecy on some investigations.

Case Handling

13. The MREPU recognizes the CCM's independent decision-making process in relation to Mauritian competition cases. The MREPU will, if requested by the CCM co-operate with any of the CCM investigations.
14. The CCM will draw the attention of the MREPU to any competition cases that the CCM considers may raise material issues in relation to a public interest issue which may have overall repercussion on the Mauritian Economy in respect of energy , water supply and sanitation services.

Disclosure of confidential information

15. Each party will respect the confidentiality and/or secrecy of information exchanged which has been obtained as a result of the other party's statutory powers or other legal obligations and 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 section 70 of the Competition Act or any secrecy law applicable to MREPU.
16. It is agreed that the CCM shall publish its decisions with reasons and as such may have to disclose information exchanged between parties. However, in no event shall any party disclose any information which is protected as confidential under either section 70 of the Competition Act or any secrecy law applicable to MREPU.

Interchange

17. The complementary roles of the CCM and MREPU mean that secondment of staff between them can provide valuable experience. Both CCM and MREPU will encourage such secondments, if suitable opportunities arise. Value will also be gained by shorter attachments, joint training where appropriate and regular policy exchanges.

Review and Implementation

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

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This 26th day of March 2010