
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMPETITION COMMISSION OF MAURITIUS
AND
THE BANK OF MAURITIUS

*(Section 66 of the Competition Act and
Section 26 of the Bank of Mauritius Act 2004)*

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMPETITION COMMISSION OF MAURITIUS (CCM)
AND
THE BANK OF MAURITIUS (BOM)

1. OBJECTIVE

This memorandum of understanding sets out a framework of co-operation between the Competition Commission of Mauritius (CCM) and the Bank of Mauritius (BOM) in their common pursuit to promote and maintain a fair, competitive, efficient and sound financial environment in Mauritius.

2. ESTABLISHMENT AND RESPONSIBILITIES

2.1 The Competition Commission of Mauritius

The CCM is established as an independent body corporate under the Competition Act 2007. Its goal is to make market work well 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, inter alia,

- (i) to keep the operation of markets in Mauritius and the conditions in those markets under constant review;
- (ii) 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, which cover agreements, namely horizontal agreements, bid rigging, which are collusive and vertical agreements involving resale price maintenance;

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- (iii) to investigate any matter that is subject to review under sections 44 to 48 of the Competition Act, which cover those agreements which have the effect of preventing, restricting or distorting competition or resulting in a substantial lessening of competition;
 - (iv) to take action against identified anti-competitive practice; and
 - (v) to undertake general studies on the effectiveness of competition in individual sectors of the economy in Mauritius.

2.2 The Bank of Mauritius

The BOM is established under the Bank of Mauritius Act, as the central bank for Mauritius, and has, inter alia, the responsibility -

- (i) of licensing, regulation and supervision of all banks, non-bank deposit taking institutions and cash dealers under the Banking Act 2004 and Bank of Mauritius Act 2004;
- (ii) of ensuring the stability and soundness of the financial system of Mauritius.

2.3 The law casts a duty,

- (a) in terms of section 19(d) of the Banking Act on financial institutions falling under the purview of the BOM, not to engage in non-competitive market practices detrimental to consumers of financial services, make an agreement or arrangement with another financial institution with respect to -
 - (i) the rate of interest on a deposit;
 - (ii) the rate of interest or the charges on a loan or other forms of credit;
 - (iii) the amount or kind of any charge for a service provided to a customer;
 - (iv) the amount or kind of credit to a customer;
 - (v) the kind of service to be provided to a customer, or

(vi) the classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld.

(b) on the BOM:

(i) under Section 31(4)(a) of the Banking Act, not to approve any proposed acquisition of interest in a financial institution where the proposed acquisition would give rise to undue influence or would result in a monopoly or substantially lessen competition; and

(ii) under section 32(4) of the Banking Act, not to approve a proposed merger, consolidation, acquisition or assumption of liability of a financial institution, where the proposed transaction would result in a monopoly or substantially lessen competition.

2.4 Common Interests

The CCM and the BOM are both committed to conduct their regulatory responsibilities in the public interest. They recognize the importance of mutual consultation across a wide range of issues relevant to competition in the financial system. The CCM and BOM believe that the Mauritius financial system should be competitive, efficient and financially sound. In entering into this MOU, the CCM and the BOM give due recognition to the need to -

(a) promote co-operation and coordination between the CCM and the BOM when dealing with cases of anti-competitive behavior where they have overlapping powers;

(b) facilitate the treatment of cases of anti-competitive behavior within the Banking sector;

(c) share information relevant to the exercise of their functions;

(d) minimize the duplication of activity, wherever possible; and

(e) improve understanding of the respective roles of the CCM and the BOM.

3. CONSISTENCY OF REGULATORY POLICY AND FUNCTIONS

- 3.1 To promote co-operative regulatory decision making, the CCM and BOM agree that in the event that either organization is considering a proposal for an acquisition of assets or companies involving financial institutions falling under the purview of the BOM, they will consult each other. The CCM may inform BOM that it does not wish to be consulted about proposals involving specified types of financial institutions, as for instance those which are too small to impact on competition, in particular financial markets.
- 3.2 In determining regulatory policy that may affect competition in the Banking Sector, the CCM and BOM shall, where appropriate:
- (i) notify the other of broad policy questions being considered, and advise the other of the approach it proposes to take to seeking information and formulating policy, and the date by which it anticipates a policy decision will be reached;
 - (ii) provide the other with the opportunity for private discussions on the proposed policy, prior to any public consultation period. Discussions will be on the basis of material prepared by the organization with prime responsibility for the policy; and
 - (iii) provide an opportunity to the other for comment on draft determinations, and plans to impose or revise prudential rules or standards.
- 3.3 Where the BOM is in receipt of a complaint or identifies any matter which it considers might infringe the relevant provisions of the Banking Act, it may request the CCM to launch a formal investigation. The CCM shall revert to the BOM within three weeks as to 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 BOM under the Banking laws. The CCM shall share its expertise with the BOM on competition analysis, during the BOM investigation.

3.4 The CCM and the BOM may also decide to conduct a joint investigation in relation to a competition issue. In such a case, both the CCM and the BOM shall co-ordinate their approach and shall follow the CCM analytical approach and remedies under the Competition Act. The BOM 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 CCM. Any action taken under the Competition Act shall not preclude any further action by the BOM under the Banking Act, based on the report of the CCM. Similarly the CCM shall contribute to the report of the BOM in cases falling under the Competition Act. Any action taken under the Banking Act shall not preclude any further action by the CCM in matters falling within the purview of the Competition Act.

3.5 Where the BOM is in receipt of an application for approval in the case of a merger [Section 32(4) of the Banking Act] or acquisition review [Section 31(4) of the Banking Act] or determining any agreement or arrangement made in contravention of Section 19(a) of the Banking Act which involves a competition issue, the BOM may request the CCM to conduct the review exclusively in relation to the competition issue. The CCM shall inform the BOM of the outcome of the review. Where it is agreed that the BOM shall conduct the merger and acquisition review or determining whether any agreement or arrangement has been made, the BOM shall give due consideration to the Competition Act and the Guidelines issued by the CCM in respect of merger or acquisition or collusive agreements.

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

4. SHARING OF INFORMATION

4.1 The CCM and BOM shall, where appropriate, share information and expertise relevant to each organization in the discharge of their powers, duties and functions under the Competition Act and the Banking Act.

4.2 The CCM and BOM agree that, subject to law, information available to one which is relevant to the responsibilities of the other will be shared on request.

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- 4.3 Each party shall, to the extent it is authorised by law or by its contractual obligations, provide relevant information to the other on a best endeavours basis, with due regard to the urgency of doing so. This obligation is subject to any relevant legislation, operational considerations and any conditions placed by the original provider of the information upon its use or disclosure.
- 4.4 When exchanging confidential information, the CCM and BOM acknowledge the confidentiality provisions of the laws under which they operate. Each party shall 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.
- 4.5 Each party agrees not to disclose any confidential information obtained pursuant to this MOU to a third party unless it has obtained the prior consent of the party which has provided the confidential information. Each party shall 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 26(4) of the Bank of Mauritius Act.
- 4.6 In no event shall any party disclose any information which is protected as confidential under either section 70 of the Competition Act or section 26(4) of the Bank of Mauritius Act.

5. UNSOLICITED ASSISTANCE

- 5.1 Each party recognises that in the course of carrying out its functions and exercising its powers, it will come into possession of information which would, if provided to the other party, be likely to assist that other party in administering or enforcing the particular laws for which it is responsible.
- 5.2 Each party agrees to use its best endeavours to notify the other party with due regard to the urgency of doing so of the existence of any information of a kind referred to in paragraph 5.1, notwithstanding that it may not have received a request from the other party for such information.

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6. Co-ordination Meetings and Liaison

6.1 The CCM and BOM shall hold meetings of senior officials, at least annually, to discuss the coordination of policy on competition, efficiency and financial soundness in the financial system. The meetings will be additional to those called to discuss particular policy initiatives.

6.2 There shall be regular contact between officers of the CCM and BOM on routine matters.

7. REVIEW AND IMPLEMENTATION

This MOU is not intended to create binding obligations on either party and it shall be reviewed as the need arises, or by written request of either party. Any changes will be subject to the agreement of both parties.

Done at Port Louis on 26 day of August 2010

FOR THE BANK OF MAURITIUS



Yandraduth Googoolye
First Deputy Governor



FOR THE COMPETITION COMMISSION OF MAURITIUS



John Davies
Executive Director

