

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE COMPETITION COMMISSION OF MAURITIUS

AND

THE FINANCIAL SERVICES COMMISSION

Section 66 of the Competition Act 2007 and
Section 87 of the Financial Services Act 2007

2011

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMPETITION COMMISSION OF MAURITIUS (CCM)
AND
THE FINANCIAL SERVICES COMMISSION (FSC)

1. OBJECTIVE

This Memorandum of Understanding (MOU) sets out a framework of co-operation between the Competition Commission of Mauritius (CCM) and the Financial Services Commission (FSC) 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 markets 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 2007; which cover agreements, namely horizontal agreements, bid rigging, which are collusive and vertical agreements involving resale price maintenance;

- (iii) to investigate any matter that is subject to review under sections 44 to 48 of the Competition Act 2007, 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 Financial Services Commission

The FSC is deemed to be established under the Financial Services Act 2007, as the integrated regulator for the financial services sector other than banking, and global business, and has, *inter alia*, the responsibility of:

- (i) licensing, regulation and supervision of all non-bank financial institutions under the Financial Services Act 2007, the Insurance Act 2005 and the Securities Act 2005;
- (ii) licensing, regulation and supervision of global business and its service providers under the Financial Services Act 2007; and
- (iii) ensuring the stability and soundness of the financial system of Mauritius.

The law provides *inter alia*,

- (a) for the FSC to:
 - (i) carry out investigations and take measures to suppress illegal, dishonourable and improper practices, market abuse and financial fraud in relation to any activity in the financial services and global business sectors;
 - (ii) carry out research, commission studies and disseminate information in the field of financial services;
 - (iii) take measures for the better protection of consumers of financial services; and
- (b) to approve mergers with respect to its licensees.

2.3 Common Interests

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

- (a) promote co-operation and coordination between the CCM and the FSC when dealing with cases of anti-competitive behaviour where they have overlapping powers;
- (b) facilitate the treatment of cases of anti-competitive behaviour within the non-banking financial sector and the global business sector;
- (c) share information relevant to the exercise of their functions;
- (d) minimise the duplication of activity, wherever possible; and
- (e) improve understanding of the respective roles of the CCM and the FSC.

3. CONSISTENCY OF REGULATORY POLICY AND FUNCTIONS

3.1 To promote co-operative regulatory decision making, the CCM and the FSC agree that in the event that either organisation is considering a proposal for a merger [falling under Section 47 of the Competition Act 2007] of assets or companies involving financial institutions falling under the purview of the FSC, they may consult each other. The CCM may inform the FSC 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 financial services sector other than banking, and global business, the CCM and the FSC 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 organisation 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 FSC is in receipt of a complaint or identifies any matter which it considers might infringe the relevant provisions of the Competition Act 2007, it may request the CCM to launch a formal investigation. The CCM shall revert to the FSC within three weeks and inform the FSC whether there are reasonable grounds to institute an investigation under the Competition Act 2007 or, if such is not the case, refer the matter back for investigation by the FSC under the relevant laws. The CCM shall share its expertise with the FSC on competition analysis, during the FSC's investigation. The FSC may provide the CCM with any views when notified of an investigation under the Competition Act 2007 that involves a licensee of the FSC.

3.4 The CCM shall inform the FSC of complaints it receives from any person alleging that the conduct of a licensee of the FSC may have infringed the Competition Act 2007. Moreover the CCM shall inform the FSC at an early stage when it decides to begin an investigation into the conduct of such a licensee or prior to launching a market study relating to the conduct of licensees of the FSC, and may consider any views from the FSC.

- 3.5 The CCM and the FSC may also decide to conduct a joint investigation in relation to a competition issue. In such a case, both the CCM and the FSC shall co-ordinate their approach. The CCM shall lead on the joint investigation and shall be responsible to prepare the report of the Executive Director. The FSC 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 Commissioners of CCM. Any action taken under the Competition Act 2007 shall not preclude any further action by the FSC under the Financial Services Act 2007, the Insurance Act 2005, or the Securities Act 2005, based on the report of the CCM.
- 3.6 Where the FSC is in receipt of an application for approval in the case of a merger which involves a competition issue, the FSC may consult the CCM on the Competition Act 2007 and guidelines or refer the matter to the CCM. The approval of the FSC regarding the merger shall not in whatsoever manner be construed as an approval from the CCM. Such an approval of the FSC shall not also affect the decision of the CCM and shall not impede any subsequent investigation carried by the CCM.
- 3.7 Where it is decided that the CCM will conduct the review mentioned in paragraph 3.6, the CCM shall be entitled to consult the FSC and may take into account the inputs of the FSC. The CCM shall inform the FSC of the outcome of the review.
- 3.8 The FSC shall be informed of the remedies agreed upon with the CCM by its licensees.

4. SHARING OF INFORMATION

- 4.1 The CCM and the FSC shall, where appropriate, share information relevant to competition, efficiency and financial soundness in the financial services sector other than banking, and global business.

- 4.2 The CCM and the FSC agree that information available to one which is relevant to the responsibilities of the other will be shared on request.
- 4.3 Each party shall, to the extent it is authorized by law, 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 the FSC acknowledge the confidentiality provisions of the laws under which they operate. Each party shall respect the confidentiality of information exchanged 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.
- 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.

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.

6. CO-ORDINATION MEETINGS AND LIAISON

- 6.1 The CCM and the FSC shall hold meetings of senior officials of both institutions, 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 and specific competition matters falling under the purview of both the CCM and the FSC.
- 6.2 There shall be regular contact between officers of the CCM and the FSC on matters of relevance.

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, by written request of either party. Any changes will be subject to the agreement of both parties.

Done at Ebène on ... 11 day of ... *November* 2011

FOR THE FINANCIAL SERVICES COMMISSION

FOR THE COMPETITION COMMISSION OF MAURITIUS


.....
Ms. Clairette Ah-Hen

Chief Executive


.....
Dr. Sean Ennis

Executive Director