



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE COMESA COMPETITION COMMISSION**

**AND**

**THE COMPETITION COMMISSION OF MAURITIUS**

**REGARDING COOPERATION IN THE APPLICATION AND  
ENFORCEMENT OF THEIR COMPETITION LAWS**

**PORT LOUIS, 24<sup>TH</sup> MARCH 2017**

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**MEMORANDUM OF UNDERSTANDING BETWEEN THE COMESA COMPETITION COMMISSION AND THE COMPETITION COMMISSION OF MAURITIUS REGARDING COOPERATION IN THE APPLICATION AND ENFORCEMENT OF THEIR COMPETITION LAWS**

The COMESA COMPETITION COMMISSION (the "Commission") and the COMPETITION COMMISSION OF MAURITIUS (the "CCM"), (together referred to as the "Parties"):

Noting that the Parties share the view that the sound and effective enforcement of competition law is a matter of importance to the efficient operation of their respective markets and to trade between them;

Acknowledging their commitment to enhancing the sound and effective enforcement of their competition laws through cooperation and, in appropriate cases, coordination between them in the application of those laws;

Noting that coordination of their enforcement activities may, in certain cases, result in a more effective resolution of the Parties' respective competition concerns than would be attained through independent enforcement action by the Parties;

Acknowledging the Parties' commitment to giving careful consideration to each other's important interests in the application of their competition laws and to using their best efforts to arrive at an accommodation of those interests;

**HAVING REGARD TO:**

The provisions of Article 55(3) of the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) under which the COMESA Competition Regulations (the "Regulations") are promulgated, and the accompanying COMESA Competition Rules (the "Rules");

Article 6 of the Regulations establishing the Commission as a body corporate with the functions of regulating, monitoring, and preventing business practices and unfair trading practices which may have an appreciable effect on trade between Member States and may restrict competition in the Common Market;

The provisions of Article 7(2) of the Regulations which empowers the Commission among others to initiate cooperation with competition authorities of Member States; help Member States promote national competition laws and institutions with the objective of harmonization with the Regulations and ensure uniform application of same; assist Member States in the implementation of its decisions; provide support to Member States in promoting and protecting consumer welfare; facilitate the exchange of relevant information and expertise;

Section 4 of the Competition Act 2007 establishing the CCM as a body corporate which shall be impartial and perform its functions without fear, favour or prejudice;





The provisions of Section 6 of the Competition Act 2007 which vest the Commission of the CCM with such functions and powers as to *inter alia* determine whether a restrictive business practice is occurring or has occurred and to cooperate with competition authorities in other countries entrusted with functions similar to those of the Commission

The provisions of Section 30 of the Competition Act 2007 which mandate the Executive Director of the CCM to *inter alia* open an investigation into any suspected restrictive business practice covered under Part III of the Competition Act 2007; to undertake general studies on the effectiveness of competition in individual sectors of the Mauritian economy and generally, to keep the operation of markets in Mauritius and the conditions of competition therein under constant review and to liaise and exchange information, knowledge and expertise with competition authorities in other countries entrusted with functions similar to those of the Commission;

The desirability of setting standards for procedures by which the Commission can act as a forum for exchange of views, consultations and conciliations on matters relating to anti-competitive practices affecting COMESA regional and international trade;

HAVE AGREED AS FOLLOWS:

#### **Article 1: Purpose and Definitions**

1. The purpose of this Memorandum of Understanding is to promote cooperation and coordination between the Parties in order to promote competition in the Common Market and to lessen the possibility or impact of differences between the Parties in the application of their respective competition laws.
2. In this Memorandum of Understanding,

"Anti-competitive activities" or "restrictive business practices", as applicable, shall mean any conduct or transaction that may be subject to penalties and/or other relief under the competition laws of one of the Parties or of both Parties;

"COMESA" means the Common Market for Eastern and Southern Africa established by Article 1 of the Treaty;

"Competition authority" and "competition authorities" shall mean:

- (i) For COMESA, the COMESA Competition Commission established by Article 6 of the Regulations, and
- (ii) For Mauritius, the Competition Commission of Mauritius established by Section 4 of the Competition Act 2007

"Competition law(s)" means:

- (i) For COMESA, the Regulations promulgated under Article 55 (3) of the Treaty establishing the Common Market;



- (ii) For Mauritius, the Competition Act 2007 as well as any amendments thereto and any regulations made thereunder; and
- (iii) such other laws or regulations as the Parties may jointly agree in writing to be a "competition law" for the purposes of this Memorandum of Understanding;

"Enforcement activity" shall mean any application of competition law by way of investigation or proceedings conducted by a Party, and;

"MOU" means this Memorandum of Understanding signed between the COMESA Competition Commission and the Competition Commission of Mauritius;

"Party" shall have the same meaning as "competition authority";

"Territory" means:

- (i) For COMESA, the Common Market, as defined by Article 2 of the COMESA Treaty;
  - (ii) For Mauritius, the Republic of Mauritius;
3. Any reference in this MOU to a specific provision in either Party's competition law shall be interpreted as referring to that provision as well as any amendments thereto.

#### **Article 2: Notification**

1. Each Party shall notify the other Party in writing with respect to its enforcement activities that may affect the important interests of the other Party.
2. Enforcement activities that may affect the important interests of the other Party and therefore ordinarily give rise to notifiable circumstances include those:
  - (i) that are relevant to enforcement activities of the other Party;
  - (ii) that involve anticompetitive activities (other than a merger or acquisition) carried out wholly or in part in the territory of the other Party;
  - (iii) that involve conduct believed to have been required, encouraged or approved by the other Party or one of its Member States; or
  - (iv) that involve the imposition of, or application for, remedies by a competition authority that would require or prohibit conduct in the territory of the other Party, or
  - (v) that involve one of the Parties seeking information located in the territory of the other Party.





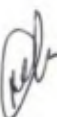
3. With respect to mergers or acquisitions, each Party will notify the other Party with any significant information that comes to its attention regarding mergers that it believes is relevant to, or may warrant, enforcement activity by the other Party.
4. Each Party shall also notify the other Party whenever it intervenes or otherwise participates in a regulatory or judicial proceeding, if the issues addressed in the intervention or participation may affect the important interests of the other Party.
5. Notifications shall be made as soon as possible and shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effect of the enforcement activity on its own important interests. Notifications shall include the names and addresses of the natural and legal persons involved, the nature of the activities under investigation and the legal provisions concerned.

### **Article 3: Consultation**

1. Either Party may request consultations regarding any matter relating to this MOU. The request for consultations shall indicate the reasons for the request and whether any procedural time limits or other constraints require that consultations be expedited. Each Party undertakes to consult promptly when so requested with the view to reaching a conclusion that is consistent with the principles set forth in this MOU.
2. During consultations under paragraph 1, each Party shall carefully consider the representations of the other Party in light of the principles set out in this MOU and shall be prepared to explain to the other Party the specific results of its application of those principles to the matter under discussion.
3. A Party shall as soon as is practical, inform the other Party of any amendment made to its competition laws as well as any change in the enforcement practice of its competition authority that may affect the operation of this MOU. Upon request of either Party, the Parties shall hold consultations in order to assess the specific implications of such amendments or changes for this MOU, and in particular to determine whether this MOU should be amended pursuant to paragraph 3 of Article 12.

### **Article 4: Coordination of Enforcement Activities**

1. The Parties shall render assistance to each other in their enforcement activities to the extent compatible with their respective competition laws and their respective important interests.
2. In cases where both Parties have an interest in pursuing enforcement activities with regard to related situations, they may agree that it is in their mutual interest to coordinate their enforcement activities. In considering whether particular enforcement activities should be coordinated, either in whole or in part, each Party shall take into account the following factors, among others:



- (i) the effect of such coordination on the ability of each Party to achieve the objectives of its enforcement activities;
  - (ii) the relative ability of each Party to obtain information necessary to conduct the enforcement activities;
  - (iii) the extent to which either Party can secure effective preliminary or permanent relief against the anticompetitive activities involved;
  - (iv) the opportunity to make more efficient use of resources, and
  - (v) the possible reduction of cost to persons subject to enforcement activities.
3. The Parties shall cooperate in the enforcement of the competition laws and share information which will facilitate effective implementation of the respective laws.
4. The Parties shall, in this regard, assist each other in the enforcement of the competition laws through:
  - (i) assisting the Party, upon request, in locating and securing evidence and voluntary compliance with requests for information from undertakings or natural persons within the respective jurisdiction;
  - (ii) assisting the requesting Party with such information within the other Party's possession as the requesting Party may specify as relevant to the enforcement of the Regulations;
  - (iii) assisting the Party with any information that comes to the attention of the other Party about anti-competitive activities that may be relevant to or may warrant enforcement activity of the beneficiary Party
5. (a) The Parties may coordinate their enforcement activities by agreeing on the timing of those activities in a particular matter, while respectfully their own laws and important interests. Such coordination may, as agreed by the Parties, result in enforcement action by one or both Parties, as is best suited to attain their objectives.  
  
(b) When carrying out coordinated enforcement activity, each Party shall seek to maximise the likelihood that the other Party's enforcement objectives will also be achieved.  
  
(c) Either Party may at any time notify the other Party that it intends to limit or terminate the coordination and pursue its enforcement activities independently and subject to the other provisions of this MOU.
6. If a Party has reason to believe that anticompetitive activities carried out in the territory of the other Party are adversely affecting, or may adversely affect the first Party's important interests, the first Party may request that the other Party initiate appropriate enforcement activities. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the important interests of the requesting



Party, and shall include an offer of such further information and other cooperation as the requesting Party is able to provide.

7. Upon receipt of a notification, the notified Party shall advise the notifying Party of its decision. If enforcement activities are initiated, the notified Party shall advise the notifying Party of their outcome and, to the extent possible, of interim developments.
8. Nothing in this Article limits the discretion of the notified Party under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the notified anti-competitive activities, or precludes the notifying Party from undertaking enforcement activities with respect to such anticompetitive activities.

#### **Article 5: Avoidance of Conflicts**

1. Within the framework of its own laws and to the extent compatible with its important interests, each Party shall, having regard to the purpose of this MOU as set out in Article I, give careful consideration to the other Party's important interests throughout all phases of competition enforcement activities, including decisions regarding the initiation of an investigation or proceeding, the scope of an investigation or proceeding and the nature of the remedies or penalties sought in each case.
2. Any divergent views arising out of the enforcement of the respective competition laws will be addressed in a timely and practicable manner as circumstances may permit.

#### **Article 6: Exchange of Information**

1. In furtherance of the principles set forth in this MOU and to the extent compatible with their respective competition laws, the Parties agree that it is in their common interest to share information which will facilitate the effective application of their respective competition laws and promote better understanding of each other's enforcement policies and activities.
2. Each Party agrees to provide to the other Party on request and to the extent compatible with their respective competition laws such information within its possession as the requesting Party may describe that is relevant to an enforcement activity that is being contemplated or conducted by the requesting Party's competition authority.
3. In the case of concurrent action by the competition authorities of both Parties with a view to the application of their competition law, each Party shall, on request from the other Party, ascertain whether the natural or legal persons concerned will consent to the sharing of confidential information related thereto between the Parties competition authorities.
4. During consultations pursuant to Article 8, each Party shall provide the other with as much information as it is able in order to facilitate the broadest possible discussion regarding the relevant aspects of a particular transaction.

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## Article 7: Meetings

1. The Parties will endeavor, in case of need or at the request of the either Party to, *inter alia*:
  - (i) discuss current issues, experiences and new developments of mutual interest with respect to competition policy development, legislation and enforcement or the operation of the present MOU;
  - (ii) exchange non-confidential information on the competition environment in economic sectors of common interest; and
  - (iii) discuss other matters of mutual interest relating to the application of the competition laws of each Party.

## Article 8: Technical Assistance and Capacity Building

1. The Parties shall pursue technical assistance and capacity building programs through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that are unique to each Party. In this context and within the framework of development policies and reforms pursued by the Parties; the Parties' cooperation framework and orientation shall take into account the different levels of development as well as the economic needs of each Party.
2. The technical assistance and capacity building programs shall pay systematic attention to institutional aspects and in this context shall support the efforts of either Party to develop and strengthen structures, institutions and procedures that help to enhance the effective enforcement of the competition laws and policies in their respective territories. In this context, the Parties shall:
  - a) jointly mobilize resources for capacity building aimed at assisting the Parties in the establishment and/or strengthening of the respective competition laws and enforcement agencies.
  - b) jointly facilitate and develop competition and consumer protection advocacy programmes involving the sensitisation of policy makers, parliamentarians, the judiciary, the business community, and the general public about the role of competition and consumer laws and policies;
  - c) jointly facilitate the establishment of a mechanism to enable the Parties to take the necessary steps to adopt, strengthen and implement the necessary competition and consumer protection laws in their respective territories.





**Article 9: Communication under this MOU**


1. Communications under this MOU shall be made in English.
2. Communications under this MOU shall be carried out in writing and by direct communication among the Parties.
3. Each Party shall designate a Desk Officer for the purpose of liaison with each other in the enforcement of the respective competition laws.

**Article 10: Confidentiality and use of information**

1. Notwithstanding any other provision of this MOU, neither Party is required to disclose information to the other Party where such disclosure is prohibited by the laws of the Party possessing the information or would be incompatible with the important interests of that Party.
2. Unless otherwise agreed by the Parties, each Party shall, to the fullest extent possible, maintain the confidentiality of any information communicated to it in confidence by the other Party under this MOU. Each Party shall oppose, to the fullest extent possible, any application by a third party for disclosure of such information.
3. The Commission, after notice to the CCM, will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the CCM. However, the Commission will respect the CCM's request not to disclose the information which it provides when necessary to ensure confidentiality.
4. Before taking any action which may result in a legal obligation to make available to a third party information provided in confidence under this MOU, the Parties shall consult one another and give due consideration to their respective important interests.
5. Information received by a Party under this MOU shall only be used for the purpose of this MOU.
6. A Party may require that information furnished pursuant to this MOU be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior consent of the other Party.

**Article 11: Existing Law**

1. Nothing in this MOU shall be interpreted in a manner inconsistent with the existing laws, or as requiring any change in the competition laws of the Parties.



**Article 12: Dispute settlement**

The Parties shall endeavour to settle any dispute arising from the interpretation or application of this MOU amicably through consultation or negotiation amongst themselves.

**Article 13: Entry into Force, Termination and Review**

- 1. This MOU shall enter into force upon signature by the Parties.
- 2. This MOU will remain in force in respect of both Parties until 60 days after the date on which either Party notifies the other Party in writing that it wishes to terminate the MOU.
- 3. The Parties shall, at any time feasible but not earlier than 24 months after entry into force, review this MOU with a view to assessing their cooperative activities, identifying additional areas in which they could usefully cooperate and identifying any other ways in which the MOU could be improved.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this MOU.

DONE in two original texts on ....., 2017 at .....

Signed by the duly authorized representative of the CCM

Name: DESHMUKH KONDHARJUR

Signature: [Handwritten Signature]

Designation: EXECUTIVE DIRECTOR -

Signed by the duly authorized representative of the CCC

Name: GEORGE K. HRIMILE

Signature: [Handwritten Signature]

Designation: DIRECTOR & CHIEF EXECUTIVE OFFICER

In the presence of Witness 1

Name: KRIRAN GA. PILLAY

Signature: [Handwritten Signature]

Occupation: Chairman of CCM.

Address: .....

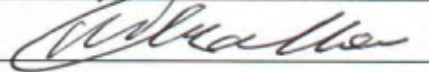
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In the presence of Witness 2

Name: MATTHEWS CHIKANKHANI

Signature: 

Occupation: CHAIRMAN - COMESA COMPETITION COMMISSION

Address: \_\_\_\_\_

