

Public Version

# **INV 006- Importation of Secondary school textbooks in Mauritius**

## **Final Report**

*21<sup>st</sup> March 2011*



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## I. Summary

- 1.1 By the power conferred upon the Executive Director of the Competition Commission of Mauritius (CCM) under section 51 of the Competition Act 2007 (hereinafter 'the Act'), the CCM<sup>1</sup> launched an investigation into the importation of secondary school books in Mauritius (INV 006), on the 28<sup>th</sup> July 2010.
- 1.2 This report is in pursuance of Section 51(2) of the Act, which stipulates that "upon completion of an investigation, the Executive Director shall submit his report on the investigation to the Commission."
- 1.3 The investigation has focused on whether Editions Le Printemps Ltd (ELP) and Editions de L'Océan Indien (EOI) may be colluding to fix the wholesale trade discount rates offered to bookshops.
- 1.4 Such practices may be in breach of Section 41 of the Competition Act 2007.
- 1.5 In this report, the Executive Director finds that there is no evidence of collusion between the parties concerned to fix the wholesale trade discounts offered to bookshops.
- 1.6 The CCM remains concerned about a lack of any competitive culture in this market, particularly at the bookseller level. The booksellers are not required by law to sell textbooks at the recommended price, they sometimes receive different discounts off that price from the importers, and they operate in a market in which they sell identical products. All these factors would lead us to expect that booksellers would seek to undercut one another's prices, trying to increase sales by offering better deals to consumers. They do not do so; instead they charge the recommended price. The CCM therefore remains interested in this sector, but booksellers are not the focus of this current investigation.
- 1.7 The final report is intended to set out the findings of the investigation and to give an explanation of the reasons for the findings.

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<sup>1</sup>In this report, the CCM refers to the Executive Director and the investigative Team of the CCM.

## 2. Introduction

### *The Allegation*

2.1 The allegation concerns the possible existence of a collusive agreement between ELP and EOI to fix the wholesale trade discount rates offered to bookshops for secondary school books.

### *The Investigation*

2.2 After an initial enquiry into the allegation, the Executive Director launched an investigation into the possible existence of a collusive agreement between EOI and ELP and potentially other smaller importers of secondary school books, in July 2010, in accordance with Section 51 of the Act.

2.3 The investigation was referred as CCM/INV/006, investigation on the Importation of Secondary School Textbooks in Mauritius.

2.4 Main parties to the investigation were informed and a press release was issued. At that stage, Information gathering and interviews with parties were initiated.

2.5 After the preliminary information gathering and interviewing, the CCM produced a Statement of Issues in October 2010, which was sent to the main parties to the investigation. The Parties were given the opportunity to comment on the Statement of Issues. The CCM continued its information gathering and data analysis after the production of the Statement of Issues. The concerned parties opted not to comment on the Statement of Issues.

2.6 The provisional findings report was issued on the 31<sup>st</sup> of January 2011 and comments were invited from the main parties.

2.7 The main parties have commented to say that they agreed with the findings of Provisional Findings Report.

2.8 The CCM has conducted this investigation through:

- (a) Interviews with the Ministry of Education, ELP, EOI and other concerned bookshops
- (b) Information requests to Booksellers and Stationery Owner's Association(BSOA) , ELP, EOI and BM Bookcentre
- (c) Notice requesting EOI and ELP to provide information under oath ( through affidavits<sup>2</sup>)
- (d) Analysis of the information/data provided to the CCM

2.9 The findings of the Executive Director for this investigation are explained in this final report.

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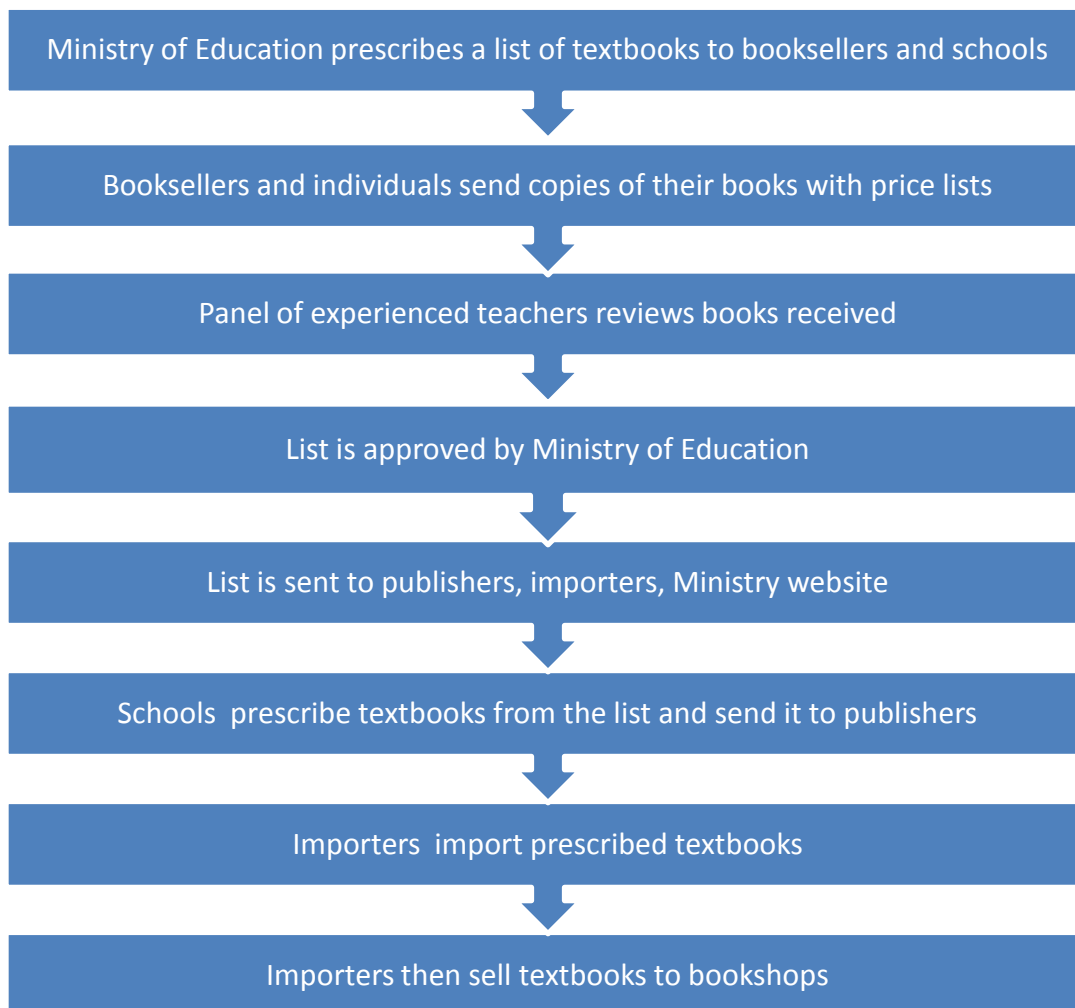
<sup>2</sup> [X]

### 3. Background

#### *Selection of textbooks and the supply chain*

3.1 Imports of textbooks are based on the list of prescribed textbooks. Figure 1 summarizes the selection process.

**Figure 1. The selection of textbooks and the supply chain**



## The main importers of books in Mauritius

- 3.2 There are two main importers of textbooks in the country. These are Editions le Printemps (“ELP”) and Editions de L’Ocean Indien (“EOI”). There are also other importers of textbooks such as Ramanjooloo, BM Bookcenter and Naz Publications. Bookshops buy textbooks at a wholesale level from ELP or EOI, Ramanjooloo and BM Bookcenter to be resold to the public (students) at the retail level. ELP also buys its textbooks from EOI.<sup>3</sup>
- 3.3 Editions le Printemps (ELP) is a registered company since 1989. It was established with the main aim of supplying school books and other fiction books, reading books as well as books for educational purposes. ELP also represents the ‘maisons d’editions’ from France, UK and Singapore in Mauritius.
- 3.4 Editions de L’ocean Indien is a state-owned company with 44% of its shares owned by the Government of Mauritius and 49% of the shares owned by the State Investment Corporation (SIC) and the remaining by other shareholders. EOI’s main activities include production, publication, importation and sales of books on the local and international market. EOI has been importing textbooks since 1977.

## The Importation process

- 3.5 The import process is as follows<sup>4</sup>: publishers are firstly notified of the titles and volumes to be produced at least two years prior to the school term. Exporters will have a price list for books published from their country of origin. An export discount on the selling price will be given to importers. This export discount would vary from country to country and would also depend on the product and volume being imported. Importers will then calculate their markup, freight and insurance costs (which are likely to be fairly similar for all the Mauritian importers) and the foreign exchange rate to determine the recommended retail selling price.

## Description of the pricing mechanism

- 3.6 The importers give retailers a recommended retail selling price, and a wholesale trade discount. At the Statement of Issues stage, the CCM considered information which was provided by both ELP and EOI on the trade discount rates. ELP, EOI and Ramanjooloo have told the CCM that they usually give the same trade discount of [~~3~~%] on purchases of books on credit and [~~3~~%] on books purchased on a cash basis to bookshops. If booksellers then sell the books at the recommended price, this discount percentage represents the profit margin made by the bookshops.<sup>5</sup> It appears that there is no requirement to sell at the recommended retail price, or at least not to sell below the recommended retail price imposed by the

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<sup>3</sup> [~~3~~]

<sup>4</sup> [~~3~~]

<sup>5</sup> [~~3~~]

importers. However the resellers have said that they are unlikely to sell below, as it will significantly cut into their profit margins.<sup>6</sup>

3.7 This seems a little surprising, as it might be expected that a price cut of (for example) 5% on the cover price of a secondary school book might well generate increased sales that outweigh the loss of margin on each individual sale. Identical school books, available in different bookshops, are easy to compare on price and the CCM would expect that a book seller willing vigorously to compete could secure significantly increased sales. Bookshops themselves were not the focus of this investigation, but we note with some concern this almost complete absence of competition at retail level in the market.

3.8 In the information gathering stage prior to the Statement of Issues, the CCM noted that the trade discount rate of [X%] to bookshops is also practiced by EOI. EOI stated that it first established the practice. The trade discount rate applied by EOI is [X%], which would be the minimum and the maximum would be [X%].<sup>7</sup>

### 3.9 [X---Paragraph excised]

3.10 This trade discount represents the profit margins made by the bookshops for both EOI and ELP. Another importer of textbooks, [X] also stated that this discount of [X%] is the normal reduction off the recommended retail selling price offered to bookshops. Wholesalers, according to him, must give a minimum of [X%] of trade discount off the wholesale price to bookshops because the costs for importers, such as freight and insurance were the same, this is why the prices look similar.<sup>8</sup>

3.11 Collusion to fix prices among companies who should be in competition will prevent effective competition. This may mean that many consumers will be paying a price which is higher than would be the case had there been proper competition.

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<sup>6</sup> [X]  
<sup>7</sup> [X]  
<sup>8</sup> [X]

## Competition Act and the Guidelines

### Collusive Agreement

- 3.12 Sections 41 to 43 of the Act prohibit collusive agreements between enterprises.
- 3.13 Section 41 of the Act prohibits “agreements or a provision of such agreement between enterprises that supply goods or services of the same description, or acquire goods or services of the same description, which have the object or effect of significantly preventing, restricting or distorting competition.”
- 3.14 In the Act, the definition of ‘agreement’<sup>9</sup> is a wide one and includes concerted practice which is defined as “a practice involving contacts or communications between competitors falling short of an actual agreement but which nonetheless restricts competition between them.”<sup>10</sup>
- 3.15 According to Section 2 of the Act, “‘agreement’ means any form of agreement, whether or not legally enforceable, between enterprises which is implemented or intended to be implemented in Mauritius or in part of Mauritius, and includes an oral agreement, a decision by an association of enterprises, and any concerted practice”
- 3.16 Moreover, the Guidelines on Collusive Agreements (“CCM Guidelines 3”) state that ‘collusive agreement’ covers various forms of agreements “but all essentially amount to agreements that directly prevent competition, thus eliminating the benefits that free competition provides to consumers and the economy more generally.”<sup>11</sup>
- 3.17 The section on Horizontal Agreements under Section 41 of the Act states that a horizontal agreement occurs “between enterprises that supply goods or services of the same description, or acquire goods or services of the same description, which have the object or effect of significantly preventing, restricting or distorting competition”<sup>12</sup>.
- 3.18 CCM Guidelines 3 gives as illustration examples such as: (i) fixing the selling or purchase prices of the goods or services; (ii) sharing markets or sources of the supply of the goods or services... Following the Guidelines, price fixing may involve the price itself or its components such as discount, the amount or percentage by which prices are to be increased.<sup>13</sup> Furthermore, it may include an agreement to adhere to published price lists.
- 3.19 CCM Guideline 3 notes at paragraph 1.2, “... The CCM will expect businesses to have reviewed their practices to ensure compliance with the law in this regard.”

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<sup>9</sup> See Sec 2 of the Act

<sup>10</sup> See Sec 2 of the Act

<sup>11</sup> See para 1.1 CCM Guidelines 3

<sup>12</sup> See para 2.1 CCM Guidelines 3

<sup>13</sup> See para 2.3 CCM Guidelines 3



3.20 Section 41 of the Act prohibits collusive agreements. In addition, the Commission can impose a financial penalty under Section 59 if “the breach of the prohibition was committed intentionally or negligently.”

3.21 Even if an agreement was entered into before the Act came into force, it may still be a breach of the Act if the effect of the agreement or conduct or concerted practice is continuing.

### **Tacit Collusion**

3.22 Unlike horizontal agreements which fall under the Collusive Agreement provision, tacit collusion is considered as an abuse of monopoly under Section 46 of the Act.

3.23 The CCM Guidelines on Monopoly Situation and Non-Collusive Agreements (CCM Guidelines 4 hereafter) describes what can amount to tacit collusion. “Any clear understanding not to compete would be a breach of the prohibition on collusive agreements. However, even in the absence of such an understanding, enterprises might become aware of their mutual dependence and soften competition against one another, to maintain profits or simply in the interest of a quieter life. This situation is sometimes termed ‘tacit collusion’ (to distinguish it from active collusion). “

3.24 Paragraph 4.12 draws a list of three conditions that must be present in the market for tacit collusion to be sustained:

(a) It must be possible for enterprises engaged in tacit collusion to reach an implicit agreement about the price level, and to monitor compliance, becoming aware if any among them undercut it;

(b) It must be in each of the participating enterprises’ interests to maintain the tacit collusion, for example through credible threats to launch a price war if one of the enterprise undercuts the collusive price; and

(c) Constraints from rivals outside the co-ordinating group (e.g. fringe players or new entrants) must be weak.

3.25 If the above conditions are not present, there is no tacit collusion occurring. However, if such conditions exist, the CCM will investigate whether market outcomes show that there is no effective competition, in particular that enterprises are foregoing apparently profitable opportunities to undercut one another’s prices and take one another’s market share. For this purpose, the CCM may resort to evidence such as price-cost comparisons, the stability of market shares or stable or parallel price levels over time. These are only indicators that are not decisive in assessing whether there is tacit collusion.<sup>14</sup>

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<sup>14</sup> See Para. 4.13 CCM Guidelines 4

- 3.26 Following paragraph 4.14, penalties cannot be imposed in cases of tacit collusion which is “a state of the market, reflecting a monopoly situation that the Competition Commission would seek to remedy going forward”.

## 4. Assessment of Facts

### *The trade discount rate*

- 4.1 In its information gathering stage, the CCM had noted that the trade discount rates as practiced by both ELP and EOI were similar.<sup>15</sup> The CCM did not preclude a possible collusive agreement between ELP and EOI which could have been the reason behind the similar trade discount rates offered to bookshops.
- 4.2 Similar trade discount rates would have amounted to similar profit margins and subsequently similar retail prices practiced by most bookshops. This could result in reduced price competition, to the detriment of consumers. Thus, if the imposition of trade discount rates by EOI and ELP is the result of a collusive agreement, that would be prohibited by the Act under Section 41.
- 4.3 The CCM has gathered further information to assess if there has been any communication or a collusive agreement between ELP and EOI to fix the trade discount rates.

### *The methodology behind the fixing of the trade discount rates*

- 4.4 Through further information gathering, the CCM has noted that ELP and EOI have different ways of determining the trade discount rates. ELP stated that the trade discount rates offered to bookshops are [X%] and [X%] for cash and credit sales respectively. EOI, on the other hand, has stated that the trade discount rate offered to bookshops for cash sales range from [X%] and [X%] for credit sales.<sup>16</sup>
- 4.5 [X---Paragraph excised]
- 4.6 The CCM has further analyzed data obtained from EOI and ELP during the course of this investigation. The results of the analysis are shown below.

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<sup>15</sup> See paragraph 3.6

<sup>16</sup> [X]

4.7 The mean of the discount rates were computed from sales data obtained from both parties. The mean range for both parties differed considerably. This is illustrated in Table 1.

**Table 1. The mean trade discount range for both importers**

Mean discount rate range		
Bookshop	Cash sales	Credit sales
ELP	[X%]	[X%]
EOI	[X%]	[X%]

4.8 The trade discount rates differ between both importers as can be seen in Table 1. The variation in the mean suggests, on the face of it, that the importers are not fixing their trade discount rates offered to bookshops.

4.9 Further analysis of the data submitted to the CCM has revealed that the trade discount rates from EOI do differ across bookshops while those from ELP do not differ as much.<sup>17</sup> This is shown in the graph below. The variation in the trade discount rates between importers and across bookshops shown in Table 1 as well as Figures 2, 3 and 4 also suggest that importers are not fixing the trade discount rates between themselves and across the bookshops.

<sup>17</sup> The CCM has not received extensive datasets for ELP as opposed to EOI

Fig 2. [Excised graph]

Fig 3. [Excised graph]

Fig 4. [Excised graph]

#### **Evidence of communication or agreement between the importers**

4.10 In addition to the analysis of the data received, the CCM also undertook to investigate whether there was any evidence of communication or agreement between the importers. To this end, a notice was sent to both ELP and EOI, requiring them to produce certain information under oath.

4.11 The Notice under Section 52(1)(c) of the Competition Act 2007 required ELP and EOI to state, under oath, inter alia:

- (a) Whether they knew the trade discount rates offered by competitors
- (b) Whether there has been any communication between importers to fix trade discount rates offered to bookshops
- (c) Whether there has been any agreement, understanding not to compete or any contact with competitors regarding trade discounts.
- (d) Whether there have been any threats of retaliation if they do not charge the same trade discounts.

4.12 In response to the Notice under Sec. 52(1)(c) of the Act, both ELP and EOI, responded, through affidavits and solemnly affirmed that there have not been any kind of communication between the importers to fix the trade discounts nor has there been any kind of agreement or understanding not to compete on the trade discount rates.

4.13 Both ELP and EOI also solemnly affirmed that there have not been any threats of retaliation made by them or towards them.

4.14 The CCM did not find any other evidence of communication between the importers during the course of this investigation.

#### **Tacit Collusion**

4.15 The CCM has assessed the existence of tacit collusion in this market based on Paragraph 4.12 of CCM 4 Guidelines which states that there are three necessary conditions for tacit collusion

to be sustained.<sup>18</sup> This particular assessment is done on a case by case basis and on the amount and quality of evidence available.

**a) *Implicit agreement about price levels and the ability to monitor compliance***

4.16 ELP has stated through its affidavit that it is “aware of the trade discount rates offered by [our] its competitors” as it “purchases secondary school books from them”<sup>19</sup>. EOI on the other hand stated that it is “not aware of nor does it have the means to know as to how its competitors determine the trade discount rate”<sup>20</sup>. However, the small size of the market and limited number of importers may be conducive to observing price changes for both parties, at least in a broad sense.

**b) *The possibility of launching a price war through credible threats***

4.17 The CCM also believes that participants in this market may be able to react to price changes, enabling a credible threat of a price war to underpin any tacit understanding to maintain prices. This reflects the basic conditions of the products and the market: discounts can freely be negotiated, and booksellers can be expected to source from the highest-discounting supplier, for a given book.

**c) *Constraints from fringe players or new entrants***

4.18 The CCM has determined through its information gathering stage that there may be some barriers to entry such as capital investment and consumer loyalty.<sup>21</sup> However, these did not preclude other importers such as BM Bookcentre and Ramanjooloo from entering the market.

**Conclusion on tacit collusion**

4.19 The CCM thinks that market conditions may contribute to tacit collusion in this market but there is no clear evidence which could suggest that there is tacit collusion actually taking place.

4.20 In light of the above discussion and of the conditions required to sustain tacit collusion as per the Guidelines CCM 4, the CCM has not established that the conditions necessary to sustain tacit collusion exist in this market.

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<sup>18</sup> See section 3.23 of this report

<sup>19</sup> [REDACTED]

<sup>20</sup> [REDACTED]

<sup>21</sup> [REDACTED]

## 5. Conclusion

- 5.1 From the analysis of the data received from the parties, it has been seen that the discount rates offered to bookshops by ELP and EOI differ.
- 5.2 The CCM has also not found any evidence of communication or agreement by the importers pertaining to fixing of trade discount rates.
- 5.3 The CCM therefore concludes that there has not been a breach of Section 41 of the Act by ELP, EOI or any of the other importers.
- 5.4 Although this does not appear to be a market characterized by vigorous competition, the evidence also does not support a finding of tacit collusion between EOI and ELP. The CCM concludes that there has been no breach of Section 46 of the Act.
- 5.5 If the Commission agrees with this recommendation, then no penalties or remedies can be imposed on the concerned parties.

## 6. Next Steps

- 6.1 This report will be sent to the Commissioners, main parties and a non-confidential, excised version may be issued for the public.
- 6.2 As per Section 55 of the Act, the Commission shall entertain requests for a hearing from the main parties, should the latter wish to have a hearing upon receipt of the report.
- 6.3 The CCM remains concerned that there is a lack of competition in this market, at the bookseller level. Booksellers seem unwilling to compete on prices even though there is no obligation on them to charge the recommended retail price by importers. They charge the recommended price, all then making margins at the level determined by the discount. Booksellers achieving a higher discount do not charge a lower price, nor are we aware of any bookseller seeking to gain sales by cutting prices, even by a small amount.
- 6.4 However, this may reflect established practice in the market over the years rather than any specific breach of the Act, and there is no obvious manner in which CCM intervention can make market participants behave more competitively. The secondary school books market is an important one, as all families in Mauritius at some point have little alternative but to purchase these books. The CCM will continue to monitor this market, and welcomes comments on whether it should investigate further, with a focus at the bookseller level.



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