

**Manhole Covers for the
Telecommunications Infrastructure in
Private Sector Projects
INV 012**

Report of Undertakings

11th September 2012



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I. Summary

- 1.1 On 10th November 2011, the Competition Commission (CCM) started an investigation into potential breaches of the Competition Act 2007 (the “Act”) by Mauritius Telecom Ltd (MT) in relation to the market of manhole covers for telecommunications infrastructure in private sector projects.
- 1.2 The CCM received a complaint which indicated that a supplier of manhole covers has not been able to supply his Telecommunications Manhole Covers (TMCs), which abide by required international standards, to customers who are developers of private morcellement¹, Integrated Resort Schemes (“IRS”), and Real Estate Schemes (“RES”). There were concerns that the conduct of MT was resulting in the exclusion of some suppliers of TMCs from the market and caused developers to be willing to accept competitive quotes for TMCs from other manufacturers or distributors which consequently restricted competition in the relevant market for TMC.
- 1.3 The complaint was followed by an enquiry during which the CCM met with several stakeholders including engineers from major private developers and construction consultancy firms in Mauritius. Major suppliers of manhole covers situated outside Mauritius were also contacted via conference calls.
- 1.4 The CCM held the view that MT may have been leveraging market power from the telecommunication services sector as a provider, to the TMC market as a buyer. This conduct, if established, would breach Section 46 (2) of the Act, which deals with the monopoly abuse provisions.
- 1.5 After the procedural meeting with representatives of MT, in December 2011, the option of negotiating undertakings was considered. The undertakings were to address the concerns of the CCM noted at the start of the investigation. Therefore a Statement of Issues (“SOI”) was not produced. Instead, the CCM and MT proceeded to negotiation of undertakings.
- 1.6 The text of the undertakings has been subject to many modifications and outstanding issues were discussed and resolved following several meetings, telephone conversations and emails from representatives of MT.
- 1.7 To address the concerns, on 03rd August 2012, MT offered undertakings to the CCM under Section 63 of the Act.
- 1.8 After having taken cognizance of the undertakings, the Executive Director is of the opinion that the undertakings offered would address the concerns of the CCM and therefore recommends

¹ As per the Morcellement Act 1990, “morcellement” means the division of a plot of land into two or more lots.

that the Commission accepts the undertakings and publishes them in the form of a decision of the Commission pursuant to Section 63(4) of the Act.

2. Background

The Allegation

2.1 The allegation pertained to the fact that MT excluded:

- (a) some manufacturers of manhole covers; and
- (b) some local importers of manhole covers

from supplying their products for telecommunications infrastructure in private sector projects, such as private morcellement, IRS, and RES. The exclusion occurred when the developers were required to co-operate with MT in the supply of the telecommunications infrastructure.

2.2 Briefly, when developers are engaged in construction, they require TMCs to cover the telecommunication networks or private networks that they build or that are built by Mauritius Telecom (MT) or other such service providers in their development projects. If the cabling infrastructure belongs to MT, then according to the complainant, MT recommends, approves or disapproves the type of TMCs that the developer should place but if it is the developer's own networks then the latter can freely choose the type of TMCs without consulting MT.

2.3 Following several attempts of the complainant to sell TMCs to developers, the latter either emailed the complainant to inform that MT is not approving for these TMC or stated that the complainant should provide certificates from the Mauritius Standard Bureau (MSB) and/or Bureau Veritas among others as proofs that MT's specifications have been met.

2.4 After meeting the MSB, the CCM found out that the institution does not engage in the testing of TMC as they do not have the necessary equipment to do so. The MSB believed that if a supplier of TMC has a 'Certificate of Conformity' for its product, this would suffice to show that the product meets a specific required international standard. The 'Certificate of Conformity' is a document certifying that the product in question has been tested for quality and has undergone other mandatory safety tests such as loading tests. This certificate is normally provided by international certification services bodies, such as the Bureau Veritas, to the manufacturers of the product. The manufacturers in turn provide its distributors with a certificate showing that its product conforms with a particular standard. This would mean that anybody selling that product will have a certificate which states where the product comes from and for which standard it has been tested.

2.5 Despite having the 'Certificate of Conformity' for the standard BS EN 124 from Bureau Veritas, the complainant went to the MSB to find the possibility of getting a certificate that satisfies MT's requirement. MSB is however not equipped for carrying out such tests. Therefore, indirectly, through developers, MT is disapproving all the TMCs that the complainant is trying to market to the developers.

Manhole Covers

- 2.6 A manhole cover is a removable plate forming the lid over the opening of a manhole, to prevent anyone or anything from falling in, and to keep out unauthorized persons and materials. Manhole covers usually weigh more than 50 kg, partly because the weight keeps them in place when traffic passes over them, and partly because they are often made out of cast iron, sometimes with infills of concrete. This makes them inexpensive, strong, and heavy. A manhole cover sits on metal base, with a smaller inset rim which fits the cover. The covers usually feature "pick holes", into which a hook handle tool is inserted to lift them.
- 2.7 A manhole cover for telecommunications is used as part of the infrastructure in the supply of services for telecommunications. There is a recognised international standard for manhole covers, BS EN 124, which addresses matters such as the strength of the product.
- 2.8 The BS EN 124 is a European standard which applies to gully tops and manhole tops with a clear opening up to and including 1000 mm, for installation within areas subjected to pedestrian and/or vehicular traffic. It does not apply to surface boxes or to floor and roof gullies in buildings which are specified in other standards.
- 2.9 The purpose of this standard is to establish definitions, classes, materials, design and testing requirements, marking and quality control of gully tops and manhole tops.
- 2.10 In Mauritius, any individual can procure TMCs from hardware shops. A major TMCs seller is Quincaillerie Central in Port Louis. For commercial purposes, there are some major companies incorporated in Mauritius such as: Torenia Impex Ltd and Knickel Co Ltd. Moreover if a company wishes to import in bulk, it can easily do so directly from manufacturers located around the world.
- 2.11 From general enquiries conducted and onsite inspections carried out by the CCM staff, it was noted that it is common to see the Norinco and Brousseval TMCs brands on the streets in Mauritius. The Armor brand can also be noticed in many places but they are mainly manhole covers for utilities other than telecommunications.
- 2.12 The TMCs are used by infrastructure operators such as MT or developers like construction companies, consultancy firms or other property developers which need to install telecommunications infrastructure. Orders are either placed directly by the end user with the manufacturer, or the end user may obtain supplies from a local importer which deals with the manufacturer or with other intermediaries.
- 2.13 When a network project is carried out by MT, it might decide to purchase the TMCs in bulk directly from its manufacturers which are selected based on a tender exercise .
- 2.14 The main players in the market include:

Mauritius Telecom Ltd

Mauritius Telecom, the public telecommunications operator of Mauritius, was established in 1992, following a merger between the former Overseas Telecommunications Services Ltd and Mauritius Telecommunication Services Ltd. It is the primary provider of voice, mobile, Internet and data communication services in Mauritius.

It is a major buyer of TMC which forms part of one of the products required to carry out its main activity. It offers services such as Voice and Data services – fixed, mobile and internet platforms; Convergent services – MyT; Internet and TV Services; Call centre and Directory services.

Meetings with several stakeholders brought about a unanimous view that MT is a major operator in the provision of telecommunication services and infrastructure in Mauritius.

Competing operators of MT in Mauritius are Enterprise Data Services Ltd, Emtel Ltd and other small service providers.

It was also noted that MT has a set of preferred suppliers for purchasing TMC.

Knickel Co Ltd

Knickel Co Ltd was incorporated in March 2003 and it supplies products such as bearings & accessories, oil seals; power transmission products; electric motors, gear motors, gearboxes; manhole covers, telecom covers and channel gratings. Knickel Co Ltd is the authorised distributor of major TMC brands Armor and Norinco.

Torenia Impex Ltd

Torenia Impex Ltd was incorporated in August 2000 and is active in the distribution of manhole covers and other gratings infrastructure. It is an importer and distributor of Brousseval brand TMC in Mauritius.

Norinco France

Norinco France forms part of the East Jordan (EJ) group which is a global leader in providing solutions for access to infrastructure. The EJ group designs, manufactures and distributes access solutions for water systems, sewers, drainage, telecommunications and utility worldwide. Their brands are: East Jordan Iron Works, Cavanagh, Norinco, McCoy and Havestock. They are present in the world in more than 50 sales offices, 10 manufacturing sites and numerous research and development centres.

Brousseval France

The Brousseval brand operates under the company Soval. It is involved mainly in the provision of drinking water networks; sewage drainage for highways and sanitation; and in the provision of manhole covers for dry networks.

3. The Market

- 3.1 For the purpose of analysis, the framework within which the market operates has been identified.
- 3.2 This investigation primarily focusses on TMCs in Mauritius.
- 3.3 A key point raised by major international suppliers is that TMCs usually require customized features requested by the onsite engineers which make it different from other types of manhole covers.
- 3.4 The design of the telecommunication manholes or scuttles could be different from the other types as the underground wiring infrastructure would require customised specifications due to specific security reasons. For example, the size of the scuttle would differ and the load of the covers is defined as per the location of the product. Those placed on roads would normally be heavy duty metal covers and of specified sizes. Certain covers are also designed to encompass a keyhole and; security keys would be used to access the infrastructure. This would normally occur in cases where high security of the underground telecommunication infrastructure is required.
- 3.5 Following discussions with major international suppliers, it has been pointed out that the covers used for the different projects (E.g. Waste water, Telecommunications) are interchangeable to some extent. However this is not the best alternative for the telecommunications infrastructure due to the safety requirements mentioned above.
- 3.6 Therefore the product dimension of this investigation would be limited to telecommunications manhole covers.
- 3.7 As a matter for consideration, the demand for TMC is related to the installation of the telecommunication networks for development projects. That is, if a developer is engaged in the installation of telecommunication networks, he will require all the base products that come with it, such as cables, wires, and the manhole covers. The installation of telecommunication networks in Mauritius is required for the provision of:
 - (a) telecommunication services provided by MT throughout Mauritius;
 - (b) telecommunication services provided by MT for private sector projects in which MT is a party to the development proposal from start of the project;
 - (c) telecommunication services for private sector projects, acquired by MT at a later stage following a prior intervention of other network operators; and/or
 - (d) telecommunication services in which MT does not have any involvement in the supply or operation of telecommunications networks within the project at any time.

- 3.8 Private sector developers can choose between setting up their own private network through other operators or to obtain the services of MT from the start of the project itself - paragraph 3.7 (b) above. There are cases where developers engage with service providers other than MT and due to technical reasons there may be difficulties in establishing the networks properly. In these circumstances, the developer sometimes resorts to procuring the services of MT as remedial action. Depending on its availability, MT might take over the whole project of network installations and the other associated services as stated in paragraph 3.7 (c) above.
- 3.9 The TMC market in Mauritius could therefore be derived from the above segmented markets for the provision of telecommunication services. Similarly, the situations in which TMC are used to secure and protect the telecommunications infrastructure can be divided in the above markets. TMC are purchased by:
- (a) MT for use in its network throughout Mauritius;
 - (b) MT for use in private developments in which is it a party to the development proposal from its commencement;
 - (c) private project promoters for use in private developments, in which MT later acquires ownership and responsibility for the safe operation of the telecommunications network in accordance with the terms and conditions of its licenses; and
 - (d) private project promoters for use in private developments, in which MT does not have any involvement in the supply or operation of the telecommunications network within the project at any time.
- 3.10 Since the nature of the allegation pertains to private sector developments, therefore the relevant market for this investigation would be the supply of manhole covers for telecommunications infrastructure in private sector projects in Mauritius.

4. The Competition Act 2007 (The Act) and the CCM Guidelines

- 4.1 Section 46 (1) of the Act states that *“a monopoly situation shall exist in relation to the supply of goods or services of any description where –*
- (a) 30 per cent or more of those goods or services are supplied, or acquired on the market, by one enterprise; or*
 - (b) 70 per cent or more of those goods or services are supplied, or acquired on the market, by 3 or fewer enterprises.”*
- 4.2 The CCM Guidelines 4 on Monopoly situations and Non-Collusive Agreements note at paragraph 1.3 that *“it is not in itself any breach of the law for an enterprise to be in a monopoly situation but such enterprises have a responsibility to ensure they are not abusing or exploiting any market power this position confers upon them”*.
- 4.3 Under Section 46 (2), *“a monopoly situation shall be subject to review by the Commission where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that –*
- (a) has the object or effect of preventing, restricting or distorting competition; or*
 - (b) in any other way constitutes exploitation of the monopoly situation.”*
- 4.4 The CCM Guidelines 4 notes that the CCM, following international precedents, refers to the conduct described in part (a) as ‘*exclusionary*’ abuse and in part (b) as ‘*exploitative*’ abuse.
- 4.5 As the CCM Guidelines 4 points out, *“there are no forms of conduct which are necessarily abusive”* but the CCM will need to assess if the object or effect of the conduct prevents, restricts or distorts competition.
- 4.6 In accordance with Section 50 (2) of the Act, the Commission shall first determine whether competition in any market is adversely affected in the case of a monopoly situation falling under Section 46 (2) of the Act and shall consider the desirability of maintaining and encouraging competition and the benefits to be gained in respect of the price, quantity, variety and quality of goods and services.

5. Assessment of Facts

- 5.1 In this section, we assess the potential harm that could be caused as a result of MT's behaviour and the considerations by MT regarding the affected market are also outlined.
- 5.2 The need to co-operate with MT as the owner and operator of the fixed line telecommunications infrastructure in Mauritius appears to be the source of its market power in the TMC market.
- 5.3 Due to its dominance in the installation of telecommunication networks throughout Mauritius, MT would have the power to determine the type and the brand of TMC to be used for its project. It could also be noted that developers tend to have no reliable substitute for the installation projects and are therefore bound to cooperate with MT. With these aspects, MT could use its market power to exclude some manufacturers and importers.
- 5.4 (a) Preliminary inquiries by the CCM seemed to indicate that representations had allegedly been made to developers or promoters of Private Sector Projects to the effect that manhole covers from certain suppliers could not be used in their Projects.

(b) Inquiries also seemed to indicate that due to the alleged conduct of MT's representatives, Promoters were less inclined to accept competitive quotes for manhole covers from other manufacturers, which restricted competition and reduced pressure on suppliers of MT's preferred manhole covers to charge competitive prices.
- 5.5 The conducts, as described in the allegation would tend to contravene section 46 (2) (a) and (b) of the Act. The harm is likely to result in the exclusion of suppliers of TMC who can compete effectively in terms of quality, features or price, provided that their products satisfy reasonable safety standards. In this case, setting an unreasonable standard or requiring unachievable methods of proving those standards may lead to exclusion of potential competitors on the market. As a result, developers will be harmed from the restricted choice.
- 5.6 In the situations mentioned in the Market Definition section at paragraph 3.9 (a), (b) and (c), MT is fully liable for the installed network infrastructure.
- 5.7 Discussions with MT revealed that proof that the products meet the BS EN 124 standard and satisfy safety requirements are critical to supply. A principle of MT is that the TMCs suppliers should demonstrate that they satisfy MT's required standards. As such, TMCs which do not meet these standards may be excluded from use as safety is a relevant criterion. If an accident happens due to a TMC installed by MT, then MT will be fully liable to it. Therefore MT attaches great importance to quality standards and would purchase or if required, ask developers to purchase TMC even at a higher price than other TMCs on the market.

- 5.8 For this purpose, MT has discussed undertakings for the TMC supplied in paragraph 3.9 (d) only whereby its representatives will not advise developers whose network projects do not involve MT, on the TMC brand or type to be used in their development premise.

6. Undertakings

- 6.1 On 03rd August 2012, the CCM received from MT a document containing undertakings pursuant to section 63 of the Competition Act 2007.
- 6.2 The undertakings are in conformity with the paragraph 28 of the CCM Rules of procedure in that it contains a statement of facts, details of the alleged concerns and the measures that the parties propose to take to address the concerns of the Commission.
- 6.3 The undertakings were negotiated with the CCM and the CCM indicated to the main party which measures would potentially be satisfactory and lead to the resolution of the competition issues identified.
- 6.4 Undertakings, if accepted by the Commission, shall be published as a decision of the Commission pursuant to Section 63(4) of the Act and consequently shall have the effect as if it were a direction under Section 60 of the Act.
- 6.5 The Commission is empowered under Section 64 of the Act to keep under review directions and undertakings. Under Section 65, the Commission is empowered to enforce the directions and undertakings.
- 6.6 In general terms, the party offered the following undertakings²:
- (a) *MT will not represent to any enterprise that a brand of manhole covers that complies with a recognised international standard cannot or should not be used in a private sector construction project.*
 - (b) *MT shall take appropriate measures to ensure that its employees shall in no circumstance:*
 - i. *give brand advice with respect to telecommunication manhole covers that can be used in Private Sector Projects;*
 - ii. *make express or implied representation to any Private Project Developer that any brand of telecommunications manhole covers which complies with a recognised international standard cannot or should not be used in a Private Sector Project.*
 - (c) *Where MT is not the telecommunications service provider in a private sector projects, it will not advise the private sector promoter, or any other party concerned with that project, in relation to the acquisition or installation of manhole covers in the telecommunications network infrastructure.*

² Refer to Annex 1 for a copy of the full undertakings.

Conclusion

- 6.7 The undertakings offered by MT, seek to address the specific concerns which the CCM had at the start of the investigation.
- 6.8 The CCM believes that the undertakings would prevent any potential breaches of Section 46 (2) of the Act identified earlier in this report.

The Executive Director's recommendations to the Commission

- 6.9 The CCM believes that the undertakings offered by MT would satisfactorily address all the concerns it has about any prevention, restriction or distortion of competition.
- 6.10 The Executive Director therefore recommends that the undertakings offered by MT be accepted by the Commission and such undertaking shall be given in the form of a direction under section 60 of the Act.

7. Annexes

7.1 Copy of Undertakings (*a scanned version*) offered by MT:

INVESTIGATION BY COMPETITION COMMISSION ON THE MARKET OF MANHOLE COVERS FOR TELECOMMUNICATIONS INFRASTRUCTURE IN PRIVATE PROJECTS

UNDERTAKINGS GIVEN BY MAURITIUS TELECOM LTD ("**MT**"), REGISTERED OFFICE SITUATED AT THE TELECOM TOWER EDITH CAVELL STREET, PORT LOUIS, TO THE COMPETITION COMMISSION PURSUANT TO SECTION 63 OF THE COMPETITION ACT 2007 (the "**Act**").

Statement of facts

1. On 10th November 2011, the Executive Director of the Competition Commission launched an investigation under section 51 of the Competition Act, into the market for Manhole Covers for Telecommunications Infrastructure in private sector construction and development projects ("**Private Sector Projects**" or "**Projects**").

Details of alleged concerns

2. The Executive Director commenced the investigation due to concerns that a restrictive business practice may be occurring which was excluding some suppliers of manhole covers from the market, so that competition in the market for the supply of an important component of telecommunications infrastructure is being prevented, restricted or distorted.
3. Preliminary inquiries by the Executive Director of the CCM seemed to indicate that representations had allegedly been made to developers or promoters of Private Sector Projects ("**Private Project Promoters**" or "**Promoters**") to the effect that manhole covers from certain suppliers could not be used in their Projects.
4. Inquiries also seemed to indicate that due to the alleged conduct of MT's representatives, Promoters were less inclined to accept competitive quotes for manhole covers from other manufacturers, which restricted competition and reduced any pressure on suppliers of MT's preferred manhole covers to charge competitive prices.

5. In this context, it also became a matter of concern that the avenues for obtaining supply of some of MT's preferred manhole covers also appeared to change so that whereas previously a Promoter could obtain one particular brand of manhole cover from more than one importer in Mauritius, it was represented that an alleged change to that manufacturer's supply arrangements meant that its manhole covers could only be obtained through one importer. MT is not responsible for the private contractual arrangements of a manufacturer and its local distributor, but the combination of this change and the alleged conduct of MT's representatives may have the potential to prevent, restrict or distort competition in the supply of manhole covers for telecommunications infrastructure in Private Sector Projects.

Telecommunications manhole covers

6. Manhole covers are purchased by public infrastructure owners and private interests in Mauritius to secure and protect a variety of infrastructure, including telecommunications equipment.
7. There are internationally recognised standards for metal manhole covers, such as the British Standard EN 124, which ensure that the covers are safe and perform the required function.
8. In the case of telecommunications infrastructure, MT is a major purchaser of manhole covers to secure and protect its telecommunications network and when it participates in Private Sector Projects as the supplier and operator of the telecommunications network in those Projects.
9. MT has preferred suppliers for its own purchases of manhole covers.
10. Private Project Promoters purchase manhole covers for the telecommunications infrastructure in Private Sector Projects in cases where MT does not supply or

operate the telecommunications network within the Project. The practice in such cases is that the Private Project Promoters supply the telecommunications network within the Project, which is then connected to MT's infrastructure outside the Project. The Private Project Promoters also operate the telecommunications network within the Project.

11. In some cases, the Private Project Promoters initially install their own telecommunications infrastructure, including manhole covers, and begin to operate the telecommunications networks in their Projects. However, later they request that MT take over and operate those telecommunications networks. In other cases, MT is not involved in the supply or operation of the telecommunications network in the Projects at any time.
12. The Private Project Promoters have a range of suppliers from whom they can obtain manhole covers. These suppliers include but are not limited to MT's preferred suppliers.
13. The situations in which metal manhole covers are used to secure and protect telecommunications infrastructure can be divided into the following categories. They are manhole covers purchased by:
 - a. MT for use in its network throughout Mauritius;
 - b. MT for use in Private Sector Projects in which it is a party to the development proposal from its commencement;
 - c. Private Project Promoters for use in Private Sector Projects, in which MT later acquires ownership and responsibility for the safe operation of the telecommunications network in accordance with the terms and conditions of its licences ; and

- d. Private Project Promoters for use in Private Sector Projects, in which MT does not have any involvement in the supply or operation of the telecommunications network within the Project at any time.

NOW:

Pursuant to Section 63 of the Competition Act 2007, Mauritius Telecom Ltd ("MT"), hereby gives to the Competition Commission (the Commission), the following undertakings (the "Undertakings") in respect of addressing the above concern of the Commission at the preliminary stage of the investigation INV 012 – "Telecommunication Manhole Covers".

MT undertakes that:

1. This undertaking shall not apply to purchases of metal manhole covers identified in paragraphs 13. a., 13. b. and c of the Statement of Facts.
2. MT, its officers, employees and agents will not represent to any enterprise that a brand of manhole covers that complies with a recognised international standard, including but not limited to the British Standard EN 124, cannot or should not be used in a private sector construction project.
3. MT shall take appropriate measures to ensure that its officer, employees and directors, shall in no circumstance
 - a. give brand advice or brand reference with respect to telecommunication manhole covers that can be used in Private Sector Projects;
 - b. make express or implied representation to any Private Project Developer that any brand of telecommunications manhole covers which complies with a recognised international standard cannot or should not be used in a Private Sector Project; and

4. Where MT is not the telecommunications service provider in a Private Sector Project and where MT is not liable for any injury, damage or loss resulting from a defect or malfunction in the telecommunications infrastructure, MT will not advise the Private Sector Promoter, or any other party concerned with that project, in relation to the acquisition or installation of manhole covers in the telecommunications network infrastructure.
5. If MT, its subsidiaries and successors, or the officers, employees or agents of MT, its subsidiaries and successors breach this undertaking, the breach will be reported to the Chief Executive Officer of MT, who shall:
 - a. take remedial action within one month of the breach being discovered to prevent further breaches of a similar kind occurring again; and
 - b. report to the Executive Director of the Competition Commission within one month of the breach being discovered, the details of the breach, and the remedial action taken by MT.
6. In addition to the obligation in paragraph 4, the Chief Executive Officer of MT shall submit a status report on an annual basis, on compliance with the present undertakings for the period these undertakings shall remain in force.
7. For the purposes of this undertaking, the relevant recognised international standards include but are not restricted to the British Standard EN 124.
8. MT will publish together, and with equal prominence, on the home page of its website at <http://www.orange.mu> during the term of this undertaking, the text of this undertaking.
9. This undertaking binds MT and all of its subsidiaries and successors, in respect of the conduct of MT, its subsidiaries and successors, and their officers, employees and agents.

10. This undertaking takes effect on the date of any decision by the Commissioners of the Competition Commission to accept it and shall remain in force for a period of three (3) years from that date.

Signed by duly authorised signatories:

FOR AND ON BEHALF OF MAURITIUS TELECOM LTD, registered office situated at Telecom Tower, Edith Cavell Street, Port Louis


SARAT MITT LALLAH
Chief Executive Officer

(who has authority from the Board of Directors to sign this undertaking on behalf of the Board)

Date 3rd August 2012

Competition Commission of Mauritius

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