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MEDIA RELEASE

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COMMISSIONERS' DECISION IN RELATION TO THE ACQUISITION OF MAJORITY STAKE IN CFAO BY TTC

This media release follows the Decision of the Commissioners on 12 July 2013 regarding the acquisition of majority stake in CFAO by TTC. Following findings of the Report of Investigation, the Commissioners have unanimously decided that:

- (i) The acquisition of a majority stake in CFAO by TTC is less likely to cause any substantial lessening of competition on the local market; and
- (ii) That the transaction should be cleared within the scope and ambit of the Act.

On the 24th December 2012, the Executive Director of the Competition Commission started an investigation under Sections 48 and 51 of the Competition Act 2007 (the 'Act') into the acquisition of a majority stake in CFAO (formerly known as the Compagnie Française de l'Afrique Occidentale) by Toyota Tshusho Corporation ('TTC') (this 'Investigation'), following an application for merger guidance, under Section 47(4) of the Act, made by TTC on 10th October 2012 (the 'Application').

Findings of Report of Investigation

The findings in respect of the acquisition transaction are as follows:

- (a) the potential markets which were assessed were defined as the 'the market for the retail distribution of new Small Family cars in Mauritius' and the 'market for the retail distribution of new minibuses in Mauritius';

- (b) the subsidiaries of the main parties to the investigation conjointly hold 41.0% and 77.9% of market share in the respective above-defined markets for the year 2012;
- (c) the acquisition of a majority stake in CFAO by TTC and the resulting indirect control TTC now exerts on Eldomotors and IMC, the Mauritian subsidiaries of CFAO is not likely to lead to the creation of a dominant position for the two entities on the retail distribution of new small family cars in Mauritius;
- (d) the market for the retail distribution of new minibuses in Mauritius is not expected to change post-merger with TMAU expected to still hold above 75% of the market share and subsidiaries of the main parties jointly holding around 77% of the market;
- (e) the acquisition transaction is not likely to lead to any substantial lessening of competition on any market within Mauritius;
- (f) the relevant product markets may be broader than the ones identified above and on which assessment was based. Given that no finding of substantial lessening of competition on the narrow markets is likely, broadening the market definition will dilute the market shares of the subsidiaries of the parties to the merger situation. In this perspective, no substantial lessening of competition within broader markets would be found.

Based on the above findings, the acquisition of indirect control by TTC over CFAO's subsidiaries is unlikely to lead to a substantial lessening of competition on the Mauritian market.

(A full copy of the Decision will be available on our website: www.ccm.mu)

Mrs. Nandinee Meetarbhan, Executive Director of the Competition Commission says:

"We are conscious that mergers are time-sensitive issues. Both the office of the Executive Director and the Commissioners endeavour to fast-track merger reviews as long as parties are cooperative, as was the case for the present merger review."

Mrs. Meetarbhan added that: "The decision of the Commissioners to clear the acquisition of majority stake in CFAO by TTC is welcome since as per the Findings of the Report, the transaction is less likely to cause any substantial lessening of competition on the local market."

Background Information:

The Competition Act

The Competition Commission of Mauritius is a statutory body established in 2009 to enforce the Competition Act 2007. This Act established a competition regime in Mauritius, under which the CCM can investigate possible anticompetitive behavior by businesses.

Sub-part IV of the Competition Act 2007, cover merger situations subject to review by the Commission.

To take action, the CCM must find that there is a merger situation and it has resulted or is likely to result in a substantial lessening of competition within the market.

Merger Situations:

Section 47 of the Competition Act explains merger situations. The Act refers merger situations as “the bringing together under common ownership and control of 2 or more enterprises of which one at least carries its activities, In Mauritius, or through a company incorporated in Mauritius.”

Section 47(2) of the Act defines ‘common control’ as a criterion for a merger to occur. According to Section 47(2), ‘common control’ occurs where:

- (a) The enterprises to the merger are enterprises of interconnected bodies
- (b) One person has, or groups of persons have, control in enterprises which are carried on by 2 or more bodies corporate;
- (c) 2 distinct enterprises, one of which is a body corporate and the second one a person having control over the first body corporate.

Control refers to the ability to materially influence policy of an enterprise; acquiring controlling interest in an enterprise or ability to control policy of an enterprise. (Section 47(3) of the Competition Act 2007)

Section 48 of the Competition Act 2007 stipulates that merger situations are subject to review where one of the party to the merger is in monopoly situation by having more than 30% of the market share prior to the merger or all the parties are in monopoly situation by having more than 30% of market share after the merger and where “the Commission has reasonable grounds to believe that the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within the market...” The market may be the supply or acquisition of goods or services.

Interim measures may be issued under Section 62 of the Act as explained previously.

Following an Investigation, the Commission has the power to impose directions (Sections 58 and 61 of The Act), including directions to enterprise to divest itself of assets (including shares) and/or “adopt, or to desist from” conducts.

Further information:

For further information see the CCM's website at www.ccm.mu, and the CCM's Procedural Rules and Guidelines: 'CCM 1 - Procedural Rules', 'CCM 2 – Market definition and the Calculation of Market Shares' 'CCM 5 - Mergers' and 'CCM 6 - Remedies and Penalties', all available on the web site.