



# Application & Relevance of Competition Law to Trade Associations

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# ADVERTISING & COMMUNICATION

As enterprises, you help businesses/organisations

→ connect with their audiences

by promoting their brands, products & messages through diverse means:

- ▶ Advertising activities
- ▶ Communications & Public Relations
- ▶ Web design and development
- ▶ Media Planning
- ▶ Direct Marketing
- ▶ Amongst others...

## ROLE OF A TRADE ASSOCIATION

Trade associations play a useful role:

- Enabling businesses to meet and discuss industry-wide issues and practices
- Share experience and ideas for the development of the industry
- Represent members' interests vis-a-vis the public and government authorities
- Continuous education of its members
- Code of conduct and best practices

# ARE TRADE ASSOCIATIONS COVERED UNDER THE COMPETITION ACT?

## Relevant Provisions:

### ▶ Section(2):

*“enterprise” means any person, firm, partnership, corporation, company, **association** or other juridical person, **engaged in commercial activities for gain or reward**, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them*

### ▶ Section(2):

*“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 apart of Mauritius, and includes an oral agreement, **a decision by an association of enterprises**, and any concerted practice*

- ▶ An association can be considered as an enterprise or;
- ▶ an association of enterprises

## RELEVANCE OF THESE SECTIONS..

Can apply to a trade association if it:

- ❑ Is engaged in **trade / commerce**

Participates in the supply of goods/services for which there is a market

Can also apply to the trade association and its members

- ❑ Decision of an association of enterprises (formal or informal)

Qualifies as an **agreement** within the meaning of the Act

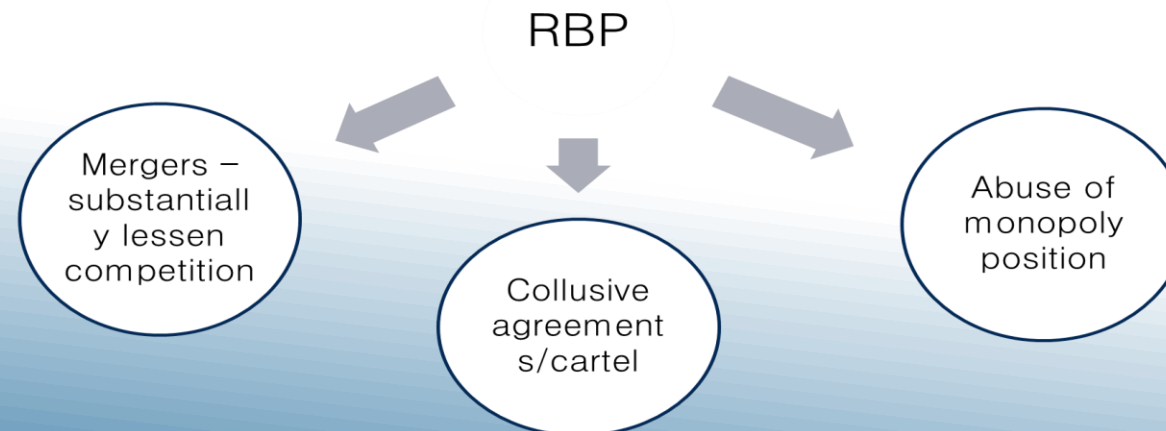
Therefore, 2 main elements to consider for assessments of Trade Associations:

- **Trade & Commerce/Economic Activity** and
- **Decision of the association** (informal/formal)

## RESTRICTIVE BUSINESS PRACTICES

- ❑ There are a number of provisions of the Competition Act of which the Association and its members should abide by.

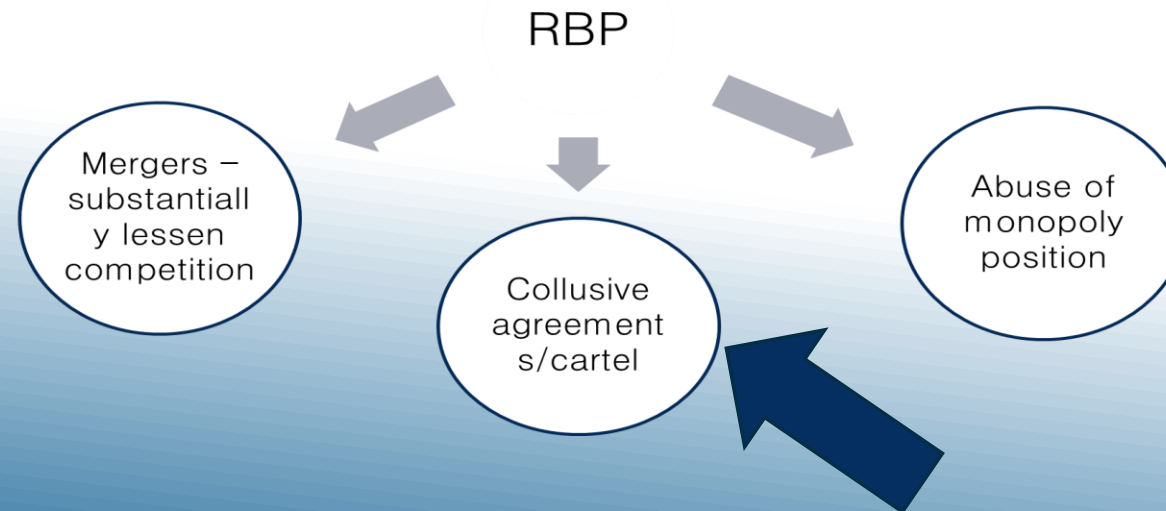
*Recall, the Restrictive Business Practices (RBP):*



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## POTENTIAL BREACHES

Decision of a Trade Association is prohibited under section 41 & 42 (collusive agreements) if it has the object or has the effect of:

- ▶ **Price fixing:** the actual price, components of the price, mechanism for calculation of price, discount policies, target price, minimum price, other terms and conditions
- ▶ **Sharing market:** allocation of territories, allocation of client base, specialisation agreements
- ▶ **Bid rigging:** tendering rules, rotations, discussions of terms
- ▶ Agreements to **restrict output:** Restricting the supply of the goods or services to, or the acquisition of them from, any person



## HOW CAN TRADE ASSOCIATION COME UP WITH SUCH AGREEMENTS & WHY?

- ▶ The association provides platform for companies in the same line of business to meet regularly and to discuss business matters of common interest
- ▶ Discussion of prices, quantities or future business strategies can lead to agreements including informal understandings.
- ▶ These agreements aim to maximise the profits of those involved, while maintaining the illusion of competition.
  - ▶ This conduct can damage the welfare of Mauritian citizens by raising prices and reducing choice, innovation, quality and investment.

# INFORMATION EXCHANGE & CONCERTED PRACTICE

## Trade Associations:

- ▶ sometimes gather information about their members' activities.
- ▶ when the information gathered and shared with members relates to prices, then this could be sufficient to suggest an arrangement which could result in a *likely* effect of controlling or maintaining prices.

**→ Avoid information exchange that could lead to Concerted practice!**

- ❑ May fall under the Act even if agreements:
  - Not binding
  - Members did not abide to

# CODES OF CONDUCT & COMPETITION

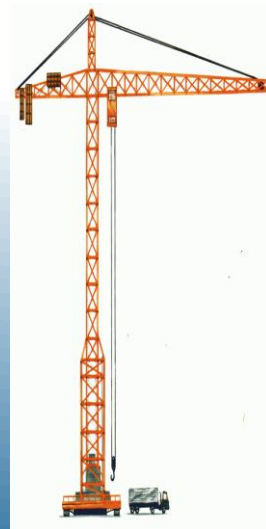
- ▶ Many trade associations develop and apply their own standards to promote quality, and ethical standards - known as codes of conduct.
- ▶ Codes of conduct can deliver increased protection for consumers and reduce the regulatory burden for members.
- ▶ However, trade associations must also ensure that:
  - the rules do not relate to pricing;
  - any restrictions on members do not restrict competition;
  - any disciplinary procedures do not restrict competition.
  - trading conditions are not set in a way that restricts competition

## CASE PRECEDENTS

### SCK and FNK v Commission

#### Rules & Constitution:

- Association of companies which regularly hired cranes in Netherlands
- Rule to prohibit hiring from non-certified enterprises



## CASE PRECEDENTS

### Re Belgian Roofing Felt Cartel

#### PRICE FIXING

- Association of Belgian roofing providers (Belasco)
- Common price list
- Minimum selling prices

#### MARKET SHARING

- Sales quotas
- Monitoring of sales & levy of penalties in excess of quotas



## CASE PRECEDENTS

### Fenex

Recommendations by Association:

- Association of Dutch forwarding companies
- Recommended tariffs
- Non-binding NOT a defence



## DETECTION & ENFORCEMENT

Detection of breaches

- Monitoring of markets
- Public anonymous complaints system
- Leniency programme
- Dawn raids

# CONSEQUENCES OF BREACH

- ❑ Decisions amounting to collusive agreements may be liable to fines of up to 10% of the turnover of members for a maximum period of 5 years
  - > Annual turnover of **all** participating members





# HOW DO YOU AVOID RISKS OF BREACH?

Compliance - Educate members about competition law

| Don't   | Do  |
|---|---|
| Do not discuss or exchange commercially sensitive information:  | Ensure that rules are compliant with the Act and educate members on compliance  |
| <ul style="list-style-type: none"> <li>▪ Price, including: individual prices, price changes, discounts, margins, credit terms, price trends, terms and conditions of sales, purchase prices, etc</li> </ul> | Ensure proper supervision of meetings and activities; consult with counsel where appropriate; do not let discussions divert to commercially sensitive information |
| <ul style="list-style-type: none"> <li>▪ Production, including: data on costs, production plans, production capacities, stock, etc</li> </ul>   | Do ensure that the exercise of standard setting is related to mandate; ensure that the policies of the association does not restrict access to markets            |
| Don't establish arbitrary criteria that would exclude some competitors from membership  | Ensure proper recordkeeping; set proper structure of information  |

# ALREADY IN BREACH?

- ❑ Apply for leniency before breach is detected
  - Benefit from reduction in fines
- ❑ Undertakings under Section 63
- ❑ Seek legal advise

# ARE YOU AWARE OF BREACHES BY OTHERS?

- ❑ Anonymous complaint
- ❑ Informants are protected

Section 51 (a) ... *the information and the identity of the informer shall, at the request of the informer, be treated as confidential between the Commission and the informer...*

## Complaint

Tel: 211-2005

Email: [info@ccm.mu](mailto:info@ccm.mu)

Fax: 211-3107

Online: [www.ccm.mu](http://www.ccm.mu)

# CONCLUSION

Trade Association and members to bear in mind:





Thank you for your attention

[www.ccm.mu](http://www.ccm.mu)