



Competition Advocacy Workshop
for Trade Associations in the
Advertising & Communications Sector

24 AUGUST 2016

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The workshop

Part of CCM's advocacy project 2016 – series of workshops

Function and powers of ED – “publish and otherwise promote and advertise the provisions of this Act and the activities of the Commission”

Session 1: An overview of the Competition Act 2007 and the working of the CCM

Session 2: Application of the Act to Advertising & Trade Associations

Session 3: Practical Application of Key Points Learnt

Session 1 – Introduction to the Act & the Competition Commission (CCM)



Benefits of competition policy

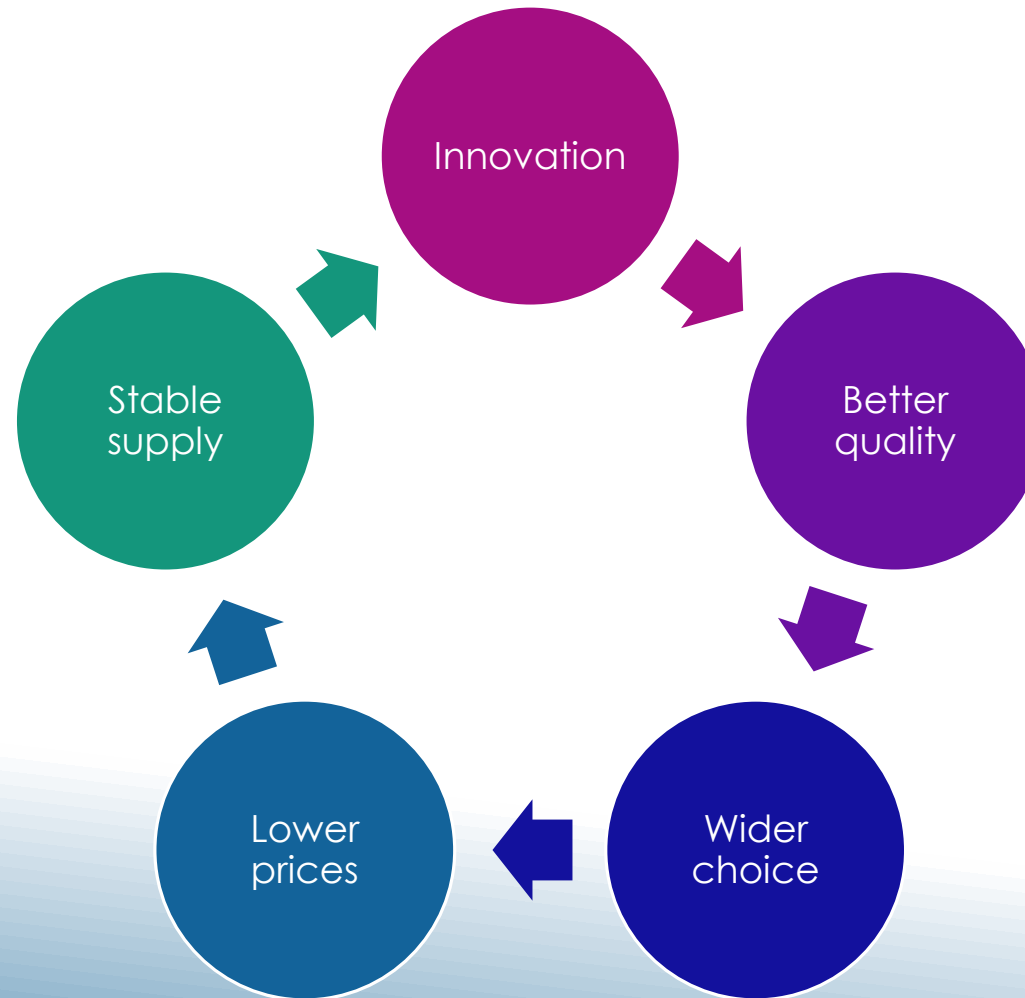
The Competition Act 2007

Overview of the types of breach/infringement

The CCM (institutional design) and our process

CCM's work so far

Benefits of competition policy



The Competition Act 2007 (Act 25/2007)

Fully into operation on 25 November 2009

Legislative objective – “*to make better provisions for the regulation of competition*”

Established – Competition Regime and The Competition Commission (Commissioners & ED)

Law prohibiting 3 types of Restrictive Business Practices (RBP) :

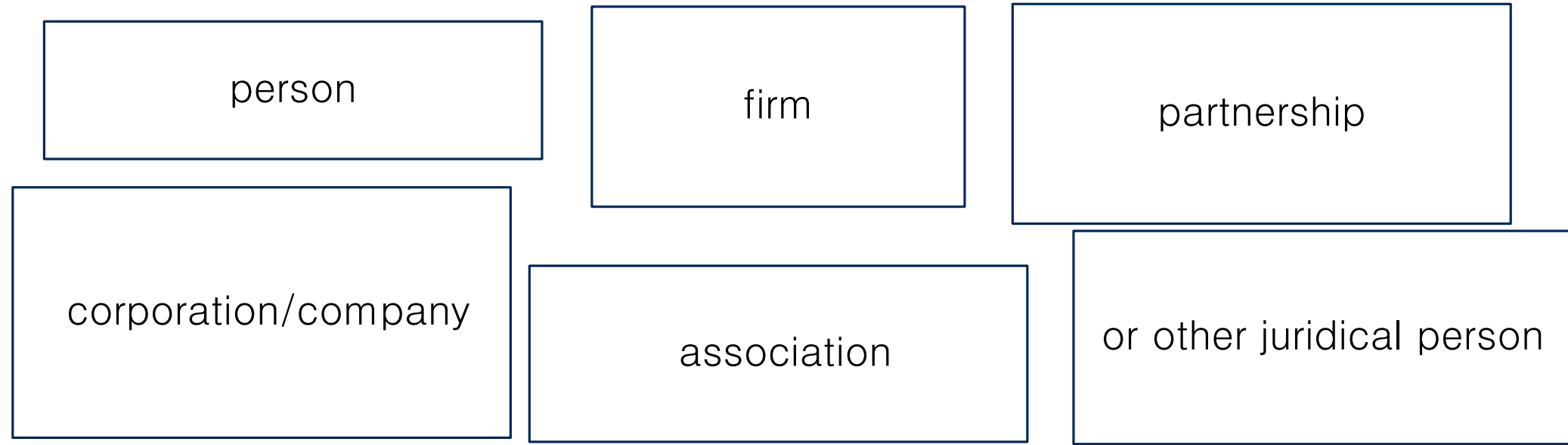
Collusive/restrictive Agreements – Abuse of Dominance – Mergers SLC

Maintain competition – Protection for businesses, consumers and the economy in general against restriction, prevention or distortion of competition

Wide scope of application:

- Applies to “*every economic activity within, or having an effect within, Mauritius ...*” –
 - Binds the State to “*the extent that the State engages in trade or business...within a market in Mauritius...which is open to participation by other enterprises.*”
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Enterprises

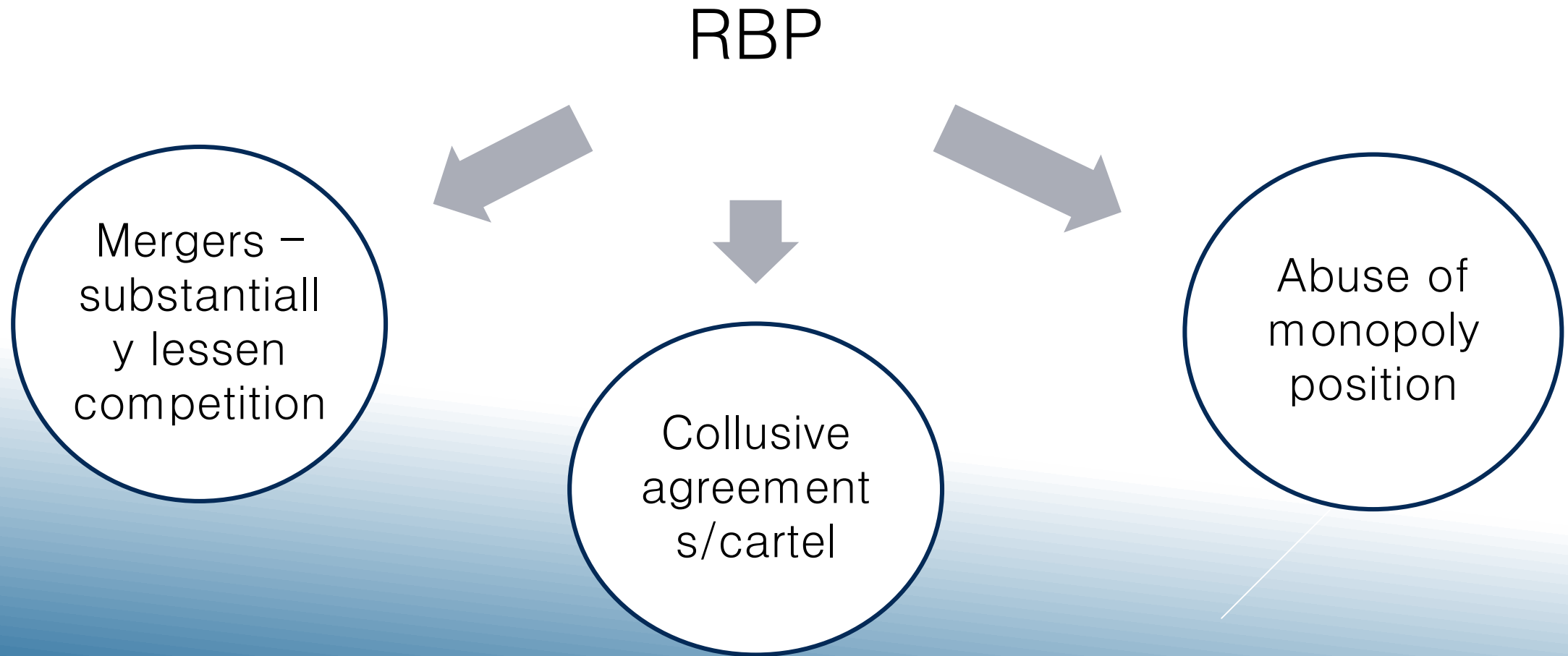


and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them;

engaged

- in commercial activities
- for gain or reward

Restrictive business practices



Collusive Agreements – horizontal cartels

Section 41 of the Act prohibits agreements or a provision of such agreements 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.



Horizontal (same level of distribution chain)

Price fixing

Market sharing

Restriction of supply

Prohibited and void

Up to 10% fine

Forms of collusive Agreements – Section 2

“agreement” means any form of agreement

- whether or not legally enforceable
- between enterprises
- is implemented or intended to be implemented in Mauritius or in a part of Mauritius

“agreement” includes

- oral agreement
- a decision by an association of enterprises
- any concerted practice
 - Concertation’ between enterprises,
 - followed by a particular conduct on the market and
 - a causal link between these two (*HülsAG v. Commission Case C-199/92 P, para 161*)

Collusive Agreements – bid rigging

Section 42 – An agreement, or a provision of such agreement, shall be collusive if one party to the agreement



(a) agrees not to submit a bid or tender in response to an invitation for bids or tenders; or

(b) agrees upon the price, terms or conditions of a bid or tender to be submitted in response to such a call or request.

Prohibited and void

Up to 10% fine

Collusive Agreements – types of bid rigging

Types of bid rigging

Bid suppression

1 or more competitors agree to refrain from bidding or withdraw a previously submitted bid so that the designated winner's bid will be accepted.

Cover bidding

Some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer.

Bid rotation

All conspirators submit bids and take turns being the lowest bidder. The terms of the rotation may vary.

Subcontracting

Competitors who agree not to bid, or to submit a losing bid, frequently receive sub-contracts in exchange from the successful low bidder

Collusive Agreements – Retail price maintenance

Section 43 (1) – a vertical agreement between enterprises shall, to the extent that it involves resale price maintenance, be prohibited and void.

Vertical – between supplier and retailer

To fix the retail price

Prohibited and Void

(2) A supplier or producer may recommend a minimum resale price ... provided that the recommendation is not binding.

Recommendation must not be binding

(3) Where a supplier or producer has recommended a minimum resale price to a reseller of goods and the resale price appears on the goods, the words “recommended price” shall appear next to the resale price.

Disclose to consumers that the price has been set as per the recommendation of the supplier

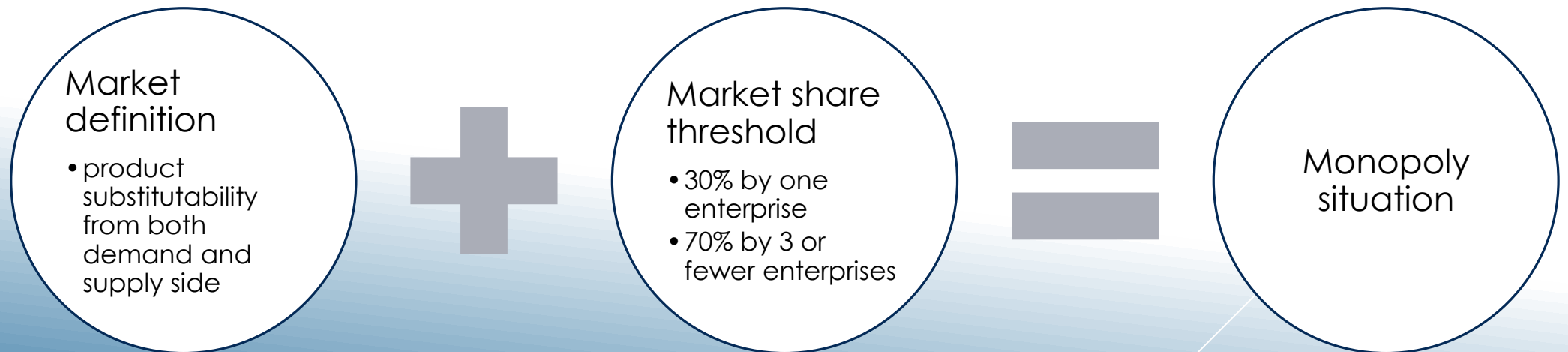
Monopoly situation – I Market power

Section 46(1) of the Act defines a monopoly situation by reference to market shares as follows:

(1)“A monopoly situation shall exist in relation to the supply of goods and services of any description where-

(a)30% or more of these goods and services are supplied, or acquired on the market ,by one enterprise, or

(b)70% or more of these goods or services are supplied or acquired on the market, by 3 or fewer enterprises”.

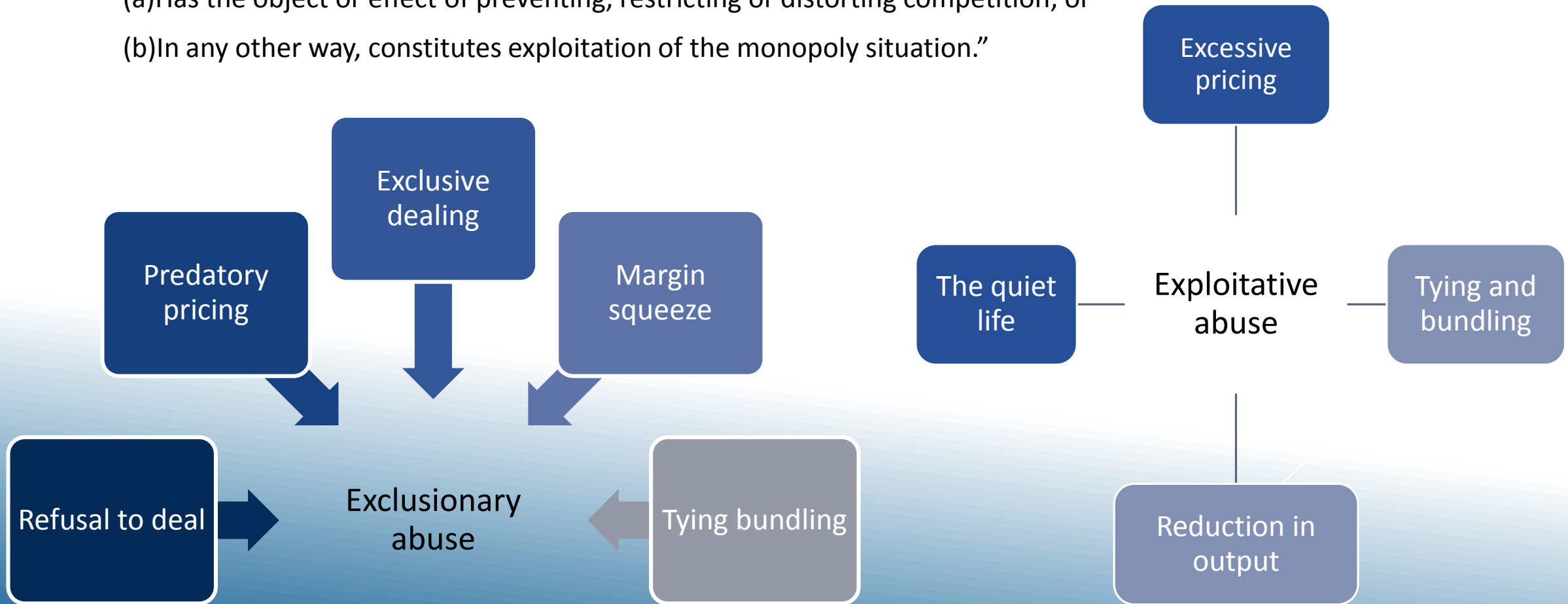


Monopoly situation – II Abuse

Section 46(2) states:

“A monopoly situation shall be subject to review by the CCM where the CCM 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.”



Monopoly situation – III Remedies

The Commission may give such directions to

remedy, mitigate or prevent the adverse effects on competition

remedy, mitigate or prevent any detrimental effects on users and consumers



- Supply goods or services, or grant access to facilities
- provide the Commission with specified information on a continuing basis.



- Terminate or amend an agreement
- Cease or amend a practice or course of conduct, including pricing practices
- separate or divest itself of any enterprise or assets;

Mergers – Substantially lessen competition

Section 47 – Merger situation

the bringing together under common ownership and control of 2 or more enterprises (Acquisition of shares, amalgamation...)

at least one of the enterprises carries its activities, in Mauritius, or through a company incorporated in Mauritius

Section 48 -Merger situations subject to review by CCM

the merging parties will together supply or acquire 30% market share

one of the parties alone supplies or acquires prior to the merger, 30% market share

the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition

– Unilateral effect – Coordinated effect – Conglomerate merger

Institutional design – I

Office of the Executive Director – Investigative Arm



- Functions and powers under section 30
- Carry enquiries/investigations – Gather Information/make assessment and report findings
- Monitor compliance with a penalty or remedy and enforce compliance with this Act
- Initiate advocacy projects
- Market studies – keep the operation of markets and the conditions of competition under constant review / undertake general studies on the effectiveness of competition in individual sectors of the economy
- Liaise and exchange information, knowledge and expertise

Institutional design – II

The Commission – The adjudicative arm

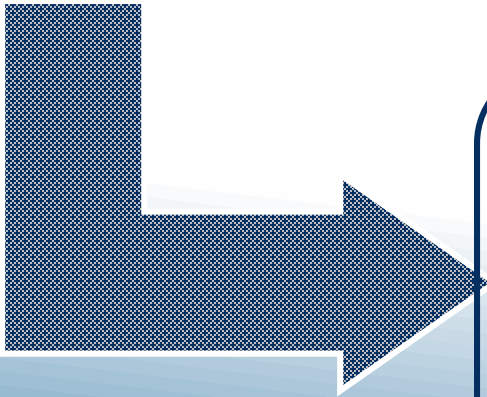


- Determine cases
- Convene Hearings
- Issue orders and directions – Impose financial penalties (cartel)/Remedies (merger)
- Accept undertakings (commitments)
- Interim measures
- Keeping directions and undertakings under review (material change in circumstances)
- Enforcement of directions and undertakings – apply to the Judge in Chambers for a mandatory order

Investigation

S51 (1) – “Where the Executive Director has reasonable grounds to believe that a restrictive business practice is occurring or about to occur, he shall investigate, or cause to be investigated, such restrictive business practice.”

- S30 (b)7(c) – “*The Executive Director shall either on his initiative, or on the complaint of any person, open an investigation ...*”
- Enquiry under rule 5 of the Rules of Procedure

- 
- Vested solely in the ED
 - Not based on ED’s discretion
 - Statutory duty to open an investigation

- Rule 8 RoP – Prioritisation
“*Where the Executive Director is in receipt of 2 or more complaints or has already identified on his own any investigation to be conducted, he may prioritise investigations.*”

CCM's process

① An Issue

- Complaint
- Internally generated



② Issues Committee

- Close the matter – NFA
- Proceed to enquiry
- Reasonable grounds



③ Enquiry

- Rule 5 of the Rules of Procedure
- *“in order to satisfy himself that there is reasonable ground to believe ...”*
- May include:
 - specific request for information from any enterprise;
 - invitation to attend an interview;
 - visit to a locus or site.
- No power to compel co-operation



④ - ED's decision

- Reasonable grounds - Launch Investigation based on ED's prioritisation
- No reasonable grounds - Close the enquiry
- Put the enquiry on hold

The Executive Director may, where any enterprise is not collaborating or is delaying unreasonably in relation to an enquiry, consider that state of affairs as being reasonable grounds for believing that a restrictive business practice has occurred or is occurring or is about to occur.

Enforcement powers in the event of noncompliance

71. Offences (1) Any person who –

- (a) fails without reasonable excuse to comply with a requirement imposed on him under this Act;
- (c) gives to the Executive Director information which he knows is false or misleading in a material particular, or recklessly gives to the Executive Director information which is false or misleading in a material particular;
- (d) knowing of the making of a requirement for the production of a document, alters, suppresses or disposes of it, or causes it to be altered, suppressed or disposed of;
- (e) obstructs the execution of a warrant issued under section 53;
- (f) refuses to take an oath at a hearing before the Commission;
- (g) fails to answer fully and satisfactorily to the best of his knowledge and belief any question put to him by the Commission in the exercise of powers under sections 52 and 53; or
- (h) insults, interrupts or otherwise commits any contempt of the Commission, shall commit an offence.

Fine not exceeding
500,000 rupees
and to
imprisonment for
a term not
exceeding 2 years.

CCM's work so far

Enquiries

- >180
- Diverse sectors of the economy
- Cartel >40
- Monopoly >100
- Merger >30
- Advice >10
- In advertising industry <10

Investigations

- 34
- Telecoms (INV009:MYT and bundled internet access)
- General food/retail (Kraft: Inv0003)
- Banking (Inv007: Bundling of insurance products and credit)
- Beer (Inv027)

Market study

- Cement
- Pharmaceutical

Complaint from public

- >500

End of session one



Thank you.