

# A Short Guide to Competition Law in Mauritius





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This guide does not constitute legal advice and should not be relied upon as a statement of law relating to the Competition Act 2007, the CCM Rules of Procedure 2009 or any of the CCM Guidelines. Stakeholders are encouraged to seek legal advice should they have any doubt about whether any conduct may breach the Competition Act 2007.

# What's in it for me?

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# Overview of Competition Law

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## What is Competition Law?

Simply put, Competition Law (also known as 'antitrust' law) is a set of legal rules which prohibits or allows the review of certain business conducts, which reduce or eliminate competition in the marketplace. Competition law therefore seeks to promote competition between businesses by prohibiting businesses from taking anti-competitive measures. As with other laws, non-compliance with the law will render the businesses liable to financial sanctions and other corrective measures may apply.

## Where did Competition Law come from?

Sir John A. MacDonald, Canada's first Prime Minister, marked history by tabling the Competition Act in the House of Commons as far back as 1889, one year before the United States enacted theirs, the Sherman Act. The Competition statute was later incorporated into Canada's first Criminal Code of 1892.

According to some legal historians, the Canadian Competition Act is the first competition/antitrust statute in the Western world to control monopolies and price-fixing.

The Canadian Competition Act sought to

reign in businesses which were abusing their freedom to contract, by creating and fostering monopolies and fixing prices. Water supply, petroleum and transportation were the early areas of monopolistic conduct.

Although the Canadian competition law regime underwent significant changes with time, the 1889 statute remains an avant-gardist piece of legislation that has opened up the way to modern-day competition law!

## Why is Competition Law important?

If there were no competition law, there would be little or no means available to safeguard competition on the market against business practices that reduce or eliminate competition.

Competition law makes it possible to redress situations where, for instance,

- businesses **abuse** their strong positions on the market by making it impossible for other businesses to enter or survive on the market or to exploit the consumers (e.g. high prices, poor quality products or services, reduce and limit choices);
- instead of competing with each other to capture sales, businesses agree to act together and form a **cartel** to impose

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higher prices on consumers;

- businesses **merge** together to increase their power on the market which may lead to abuses.

### Who does Competition Law protect?

Competition law sees to it that the market forces of demand and supply are not artificially disturbed (by businesses). Competition law protects competition in the market so that businesses view one another as rivals and compete in order to win clients.

It should however be noted that while competition law applies to certain 'business practices', it will not act to protect or shield competitors simply because they face competition from stronger or more dynamic rivals on the market.

Because consumers ultimately benefit from the process of competition, Competition law also takes into account the interest of consumers. However, not all aspects of consumer interest (such as safety, health, environment and privacy) can be addressed by competition law enforcement.

The CCM is here to protect the process of competition and consumers, **NOT competitors.**





## Why is competition important to me: As a Business?

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Competition occurs in almost every field of business!

Healthy competition is not only good for consumers, it is also good for your business.



### Competition:

- ✓ encourages you to innovate and drives you to be a more effective and efficient business in the market.
- ✓ ensures that you do not face anticompetitive practices from your competitors; thus, enabling you to be a more effective player in domestic and global markets.
- ✓ can motivate you to provide better quality of product and higher standard of customer service. Thus, earning your business a greater level of customer satisfaction.
- ✓ among your suppliers ensures that, as a consumer of raw products and other inputs, you stand to benefit from a reduction of your costs. This, in turn translates into lower prices for and higher demand for your products.

Your company's liability may be engaged even if your staff engaged in an anti-competitive practice (e.g. sharing of pricing information) **without your knowledge**. Your **business reputation**, your **shareholders' trust**, & even your **financial stability** could be at risk if your business is in breach of the law.

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Enjoying a more competitive environment and its benefits in the marketplace requires some effort on your part as well.

As a business, you should be able to recognise and report anti-competitive practices which affect your business and you should make sure that your business is itself competition compliant!

Having a **Competition Compliance Programme** that fits your business needs can help you achieve both.

There is no 'one-size-fits-all' approach when it comes to implementing a Competition Compliance Programme. A Competition Compliance Programme can be part of your overall corporate compliance framework. A few points you may wish to consider when designing your company's Competition Compliance Programme are:





## Why is competition important to me: As a Consumer?


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Consumers stand to gain the most from a state of healthy and open competition.


In a competitive environment, businesses must thrive to preserve their market share. They do so by competing on price, improving productivity, providing a wider choice and raising the benchmark on quality and level of service.

Where markets work well, they provide strong incentives for businesses to be more competitive, thus rewarding consumers with lower prices, higher quality, and wider choice.

### Less competition on the market could mean that:



retail shops could decide to sell the products of only one dominant supplier, which are more expensive rather than selling competing products.



instead of competing with each other, businesses can agree with one another to sell their products at the same price.



following the merger of two big companies, the price of their products suddenly increase because they face less competition on the market.

### As a consumer, what's your role in all this?

By staying informed and reporting companies which you think are not acting in a competitive manner – you can do your part to ensure that businesses keep delivering more choice, quality, innovation and lower prices!



# What does Competition Law in Mauritius cover?

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The 'Competition Law' in Mauritius is the **Competition Act 2007** (the 'Act') which is fully in force since November 2009.

The Act established the Competition Commission ('CCM') as the body responsible for:

- regulating and promoting competition in Mauritius; and
- enforcing the law against businesses (enterprises) which are found to infringe the law.

The Act covers three main types of restrictive business practices:

## (1) Collusive Agreements between enterprises (Cartels)

The law prohibits all 'collusive agreements', namely

- price fixing;
- market sharing;
- output restrictions;
- bid rigging; and
- resale price maintenance.



## (2) Abuse of Monopoly situations

The law allows the CCM to investigate and review conduct on the part of one or more enterprise(s) enjoying a monopoly situation in a market, where the conduct adversely affects competition, or exploits consumers.

## (3) Merger Reviews

The CCM can also investigate and review merger situations which can substantially lessen competition in a market in Mauritius.

# 1. Collusive Agreements Between Enterprises (Cartels)

- A collusive agreement (also known as 'cartel') is formed when businesses agree to act together in an anticompetitive manner instead of competing against each other.
- By artificially limiting the competition between them, cartel participants will neither have the incentive to innovate nor produce more efficiently nor provide better quality and wider choice. Cartels also have the effect of artificially raising the prices to the detriment of consumers. This not only makes consumers and other businesses suffer but also damages the economy as a whole.
- **Cartels** are considered to be the most serious type of restrictive business practice. In fact, the U.S Supreme Court (2004) had described them as the 'supreme evil of antitrust' [*Verizon Communications v. Law Offices of Curtis V Trinko 540 US 398, 408*].



## **BUSINESSES, WHETHER ON THEIR OWN OR AS MEMBERS OF A TRADE ASSOCIATION, SHOULD:**

Not discuss or agree on prices, discounts or any matter relating to price with their competitors.

Not exchange pricing information with or among their competitors.

Not discuss or agree to share customers either based on location, type and size or volume of business involved.

- **Cartels are prohibited under the Act** and cartel-related conduct can neither be exempted nor excused under the Act.
- Cartels can occur in almost any industry and can involve goods or services at the manufacturing, distribution or retail levels.
- Cartels, under the Act, include 'agreements' (whether in writing or otherwise) to:

 **fix prices,**

 **share customers / markets or to limit production,**

 **engage in bid rigging,**

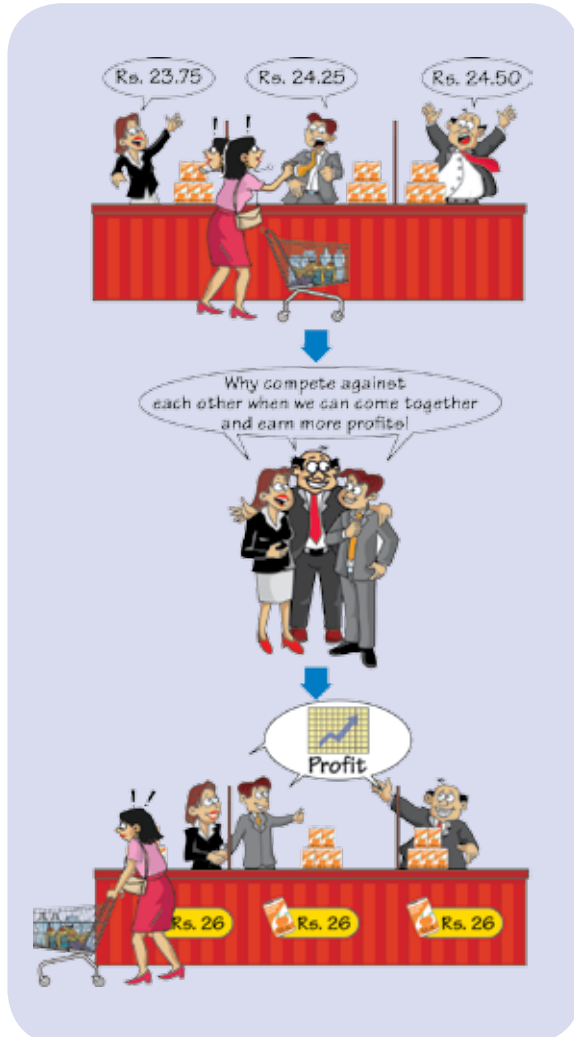
 **engage in resale price maintenance.**

*For more information on collusive agreements, please refer to the 'CCM 3 Guidelines on Collusive Agreements'. See [www.ccm.mu](http://www.ccm.mu).*



## Price fixing Cartel

A price fixing agreement is an agreement between two or more competitors to take actions that have the object or effect of fixing the price of any product or service at a minimum, maximum or within a range or agreeing upon competitive terms such as discounts, promotions, etc.

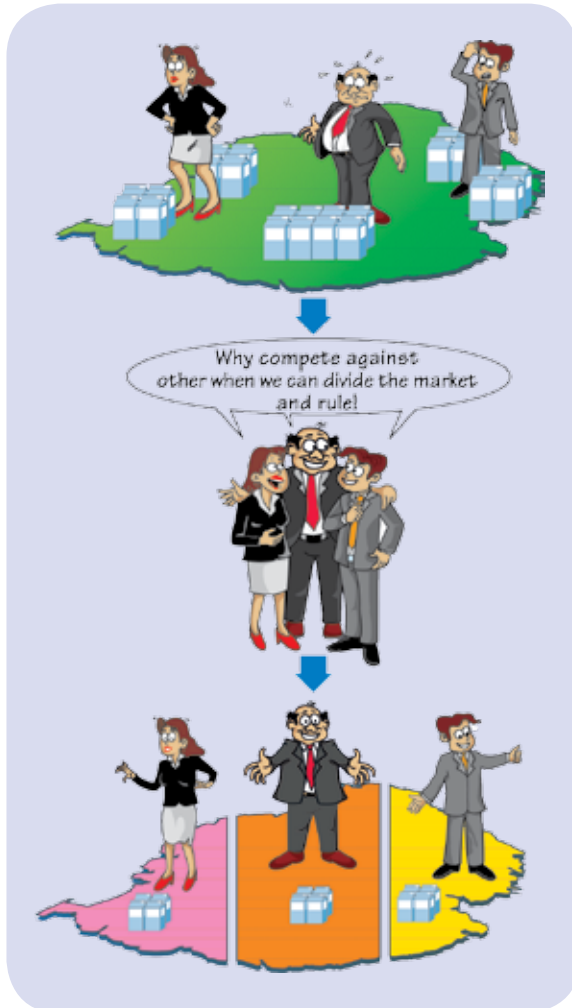




### **Market sharing Cartel**

Market sharing occurs when competitors agree to divide or allocate customers, suppliers, or territories among themselves, rather than allowing competitive market forces to work.

Market sharing restricts competition, and can result in increased prices and reduced choice for consumers and other businesses.





### **Cartel relating to Restriction of Supply**

Businesses may also enter into agreements to restrict the supply or acquisition of goods and services on the market such as by fixing the production level or imposing production quota.

Doing so creates an artificial shortage on the market that can drive up prices.





## Bid rigging

Businesses participating in a tender/call for bids can agree to 'rig the bids' by agreeing not to compete among themselves for the purposes of winning the contract. For instance, bidders may have already discussed bids beforehand while giving the illusion of a competitive bidding process; or some bidder(s) may refrain from submitting a bid. For regular contracts, bidders may agree to rotate bids between themselves so that they take turns in winning. At the end of the day, the buyer ends up paying more when the bid is rigged as opposed to when bidders compete on the merits.





## Resale Price Maintenance

Resale price maintenance occurs when a supplier/distributor forces or agrees with its resellers on the price at which the latter will resell the products to his customers. This may involve a fixed resale price, minimum resale price, a price range specified either in percentage, in a given amount, among others



## 2. Abuse of Monopoly Situations

☞ A monopoly situation exists when :

- an enterprise acquires or supplies 30% or more of the market
- or
- 3 or fewer enterprises acquire or supply 70% or more of the market.

☞ Being in a monopoly situation is not, in itself, a breach of the Act.

☞ The CCM will only investigate an enterprise in a monopoly situation where the enterprise:

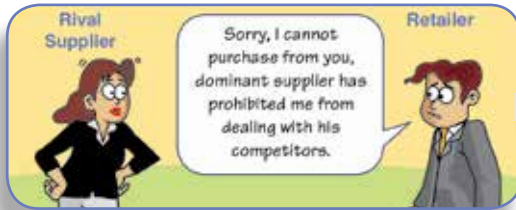
- is believed to have engaged in a conduct which eliminates competitors;
- is believed to have engaged in a conduct which deters entry of new competitors so as to maintain or extend its market share, with the result that competition is significantly lessened; or
- is exploiting consumers.



The following examples illustrate some cases of abuse of monopoly situations which the CCM may investigate:



### Exclusive Dealing



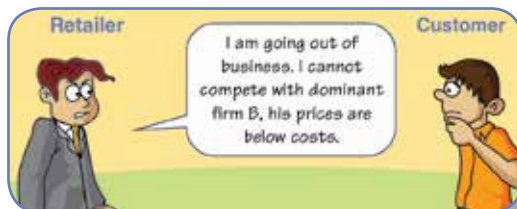
A dominant supplier may prohibit a retailer from dealing altogether with competing suppliers or may require the retailer to purchase a significant volume of products from him. These requirements can deprive competitors of growth opportunities, distribution channels and can hinder new suppliers from entering the market.



A dominant player may sell his products or services at prices that are significantly lower than his costs, so as to force his competitors out of the market and deter potential entry into the market. The dominant player can then charge higher prices after his competitors are eliminated and in the long term consumers will be worse off as a result of higher prices and reduced choice.



### Predatory Pricing





## Refusal to Supply



While enterprises are free to choose with whom they want to do business, if a dominant supplier refuses to do business with an enterprise that requires a specific input from the dominant supplier in order to operate, it can affect the enterprise's ability to compete in the market. This is called refusal to supply. A dominant player may also refuse to provide a competitor with access to an essential facility that is required for production.



A dominant business may make the purchase of his popular products or services conditional upon the purchase of less popular products or services, thus forcing consumers to purchase the less popular products against their will. This is anticompetitive as the dominant player is relying on the strength of his popular products to increase its market share for other products rather than competing on the merits.



## Tying and Bundling



For more information, please refer to the 'CCM 4 Guidelines on Monopoly situations and non-collusive agreements'. See [www.ccm.mu](http://www.ccm.mu)

### 3. Merger Reviews

Not all mergers will necessarily require a review under the Act. The CCM will most likely investigate those transactions which qualify as 'merger situation' and which are likely to result in a 'substantial lessening of competition'.

A merger situation occurs where two or more enterprises, of which at least one carries out its activities in Mauritius, come together under common control and ownership.

A merger situation is likely to be reviewed if:

- post-merger, the **merged enterprise** will have a market share of 30% or more;

or

- pre-merger, **one of the enterprises** has a market share of 30% or more;

and

- the merger is likely to give rise to a substantial reduction in competition.

In general, most mergers have pro-competitive effects. The merged enterprise may be able to offer lower prices or better quality products to its customers as a result of efficiencies and costs reductions.

In some merger cases however, the enterprise can become so powerful that it is able to increase its prices or reduce the quality of its

products without fearing its competitors.

The CCM can review prospective mergers or completed mergers and can impose such remedy it deems appropriate, in either case, to address any competition concern which may result or have resulted from the transaction.

It is not mandatory for merger parties to notify their anticipated merger, but parties may do so if they have serious concerns as to whether the anticipated merger may be expected to result in a substantial lessening of competition. Such enterprises are strongly encouraged to seek guidance from the CCM to avoid the costs and risks of modifying the merger transaction!

*For more information, please refer to the 'CCM 5 Guidelines on Mergers'. See [www.ccm.mu](http://www.ccm.mu)*

## Scenario 1: Parties to the merger seek guidance from the CCM before the implementing their merger

JuZi Co Ltd & Fruitssi Ltd, the two major juice manufacturers in Mauritius are planning to merge their businesses. After several weeks of discussions and negotiations...



**Scenario 2: Parties to the merger choose to implement the merger without seeking CCM's guidance**

JuZi Co Ltd & Fruitssi Ltd, the two major juice manufacturers in Mauritius are planning to merge their businesses. After several weeks of discussions and negotiations...





## Why should I take Competition Law seriously?

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An enterprise which has been found to breach the Competition Act may have different measures imposed on it by the CCM so as to prevent or to mitigate any harm to competition which it has caused.

### **In the case of a Cartel**

In addition to terminating the cartel agreement, members of the cartel may also face fines of up to 10% of their respective turnovers during the period the cartel, for up to a maximum period of 5 years.

### **In the case of an Abuse of a Monopoly situation**

The enterprise may be ordered to terminate or amend a restrictive agreement (giving rise to the abuse), cease or amend its practice, including conduct in relation to prices, and grant access to facilities, amongst others.

Remedies imposed in view of correcting the harm to competition arising out of an abuse of monopoly situation can also have significant financial implications for the business found to infringe the law.

### **In the case of a Merger which substantially lessens competition**

An enterprise may be ordered to refrain from completing or implementing the merger; to dispose of some of its assets in view of creating a new or a more effective competitor to preserve competition in the market; and/or to adopt (or refrain from) certain practices as a condition for proceeding with the merger.

Implementing the directions (in particular structural remedies) imposed to remedy the lessening of competition resulting from a completed merger, or a requirement to desist from completing a merger transaction can also create significant costs for the enterprises concerned by the merger.

In addition to the reputational and at times financial damage suffered, enterprises also run the risk of being sued by affected parties.



## What can I do if...

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### .... I am involved in a cartel?

Be the first to apply for the CCM Leniency Programme!

The **CCM Leniency Programme** is designed to encourage enterprises which are involved in a cartel to denounce such illegal agreement, provide the CCM with relevant information on the conduct and potentially benefit from reduced fines.

An enterprise can be granted immunity (total exemption from) or leniency (a reduction) in financial penalty, if it:

- provides the CCM with all information, documents and evidence available to it regarding the cartel activity;
- is not the one to initiate the cartel;
- has not taken any step to coerce another enterprise to take part in the cartel activity;
- maintains continuous and full cooperation throughout the investigation;
- refrains from further participation in the cartel activity.

An enterprise that comes forwards with evidence of a cartel activity before the CCM has started an investigation can benefit from **total immunity** from financial penalties.

The first enterprise that comes forward after

the start of an investigation may benefit from a **reduction of financial penalties of up to 100%**.

Subsequent enterprises who have additional evidence of the cartel activity may benefit from a **reduction of financial penalties of up to 50%**.

### ...I suspect the existence of anti-competitive conduct on the market?

The CCM encourages you to report any suspected anti-competitive conduct from your competitor, your supplier, or any other business.

The law provides special protection to informers!

As an informer, you can request the CCM to treat your identity and the information you provide as confidential.

Any information that you provide cannot be disclosed to anyone outside the CCM without your prior consent except under exceptional circumstances such as in criminal proceedings.

Even in these circumstances, such disclosure will only be made after ensuring that no prejudice will be caused to the informer.



# Are certain practices excluded or exempted from the Competition Act?

The Act does not contain any block exemption for a sector or type of restrictive business practice.

## Excluded Agreements or Practices:

### Employment practices or agreements

Any practice by an employer or agreement involving an employer, which relates to the remuneration, terms or conditions or employment of employees;

### Intellectual property rights

Any agreement that contains provisions relating to the use, licence or assignment of rights under or existing by virtue of laws relating to copyright, industrial design, patents, trade marks or service marks.

### International agreement

Any practice or agreement approved or required under an international agreement to which Mauritius is a party.

## Excluded Products:

Petroleum products and liquid petroleum gas are also excluded from the purview of the law.



A practice/conduct on the part of enterprise, whose business for example consists in supply of product A together with incidental sale of an excluded product/service, may still fall within the scope of the Act if the conduct is attributed to the supply of product A (as opposed to the excluded product/service).

Similarly, although the Act excludes agreements relating to intellectual property, this does not imply that any other provision of an agreement (which in part relates to intellectual property rights) will not be looked into if those provisions are likely to harm competition.



# Competition Law around the World

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## SOUTH AFRICA

Between 2011 and 2013, the Competition Commission of South Africa (CCSA) investigated and settled cases of collusive tendering involving more than 300 contracts for construction works in the public sector. These bids were found to have been rigged to the value of USD 4.6 billion. Settlement agreements were reached with the construction companies and the CCSA imposed fines totalling USD 146 million.



## BRAZIL

The Administrative Council for Economic Defence (CADE), the Brazilian competition authority investigated into a complaint by a bakery owner who had been threatened by other bakeries for selling bread at price lower than that of its competitors. CADE fined 18 bakeries and 19 individuals a total of 650,000 Brazilian Real for fixing the price of bread.



## EU

In 2013, the EU Directorate General of Competition (DG Comp) handed out € 1.9 billion in fines in anti-cartel enforcement on

eight international financial institutions for colluding to manipulate benchmark interest rates in Euro (EURIBOR) and Yen (JPY LIBOR and TIBOR). EURIBOR (Euro Inter-Bank offered Rate), LIBOR (London Inter-Bank Offered Rate) and TIBOR (the Tokyo Inter-Bank Offered Rate) are all benchmark interest rates intended to reflect the cost of interbank lending in Euros or Yen in the Eurozone, London or Tokyo respectively.



## INDIA

The Competition Commission of India (CCI) imposed fines totalling USD106 million on four public sector insurance companies for manipulating the bidding process.



## UNITED STATES

In 2013, the US fined nine companies and two executives for their role in the auto-parts cartel, netting more than USD 600 million in criminal fines.

## Competition Law in Africa

The first competition legislation in the African continent was enacted in Kenya in 1989.

About 20 countries in Africa now have a domestic competition regime in place.

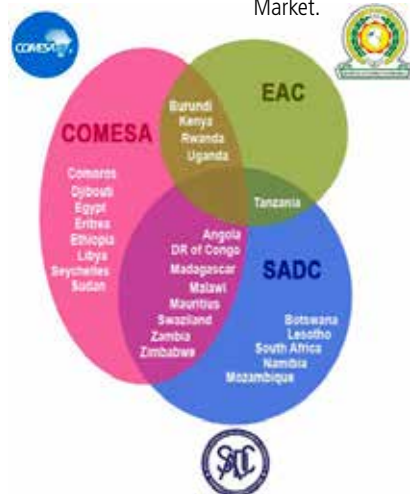
In addition, 3 regional economic blocs in Africa, the East African Community (EAC), the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) have put in place **regional competition regime/policy** in view of capturing anti-competitive practices which adversely affect trade within their respective economic blocs.

The 'East African Community Competition Act' was assented by the EAC Summit in 2006.

In 2009, the SADC incorporated rules relating to competition regulation within the SADC region, in its 'SADC Declaration on Regional Cooperation in Competition and Consumer Policies'.

In 2013, the COMESA, which is made up of 19 Member States including Mauritius, established the COMESA Competition Commission to enforce the COMESA Competition Regulations.

While domestic competition laws apply only to practices having an effect in the respective country, the COMESA Competition Regulations, on the other hand, prohibit and sanction anticompetitive practices of a **cross-border** and **regional** nature which adversely affect competition in the Common Market.





# How to file a complaint with the CCM?

Complaints regarding potential anti-competitive behaviour from businesses and consumers play an important role in the CCM's enforcement and supervisory actions.

Each complaint provides the CCM with a chance to evaluate a perceived competition problem and to see if it can be addressed successfully.

## Who can lodge a complaint?

Any person (individual or company) can lodge a complaint at the CCM.

A complainant can either request that his identity or any information that he submits be treated as confidential or that his complaint be registered as an anonymous one.

## Submission of Complaint

If you have a concern or complaint, you may contact the CCM in any of the following ways:



## CCM Guidelines

For more details on the procedural and substantive aspects of the CCM's operations, please consult the following CCM Guidelines, which may be accessed from [www.ccm.mu](http://www.ccm.mu) :

- i. CCM 1 - Competition Commission Rules of Procedure 2009 & Competition Commission (Amendment) Rules of Procedure 2011
- ii. CCM 2 - Market definition and the calculation of market shares
- iii. CCM 3 - Collusive agreements
- iv. CCM 4 - Monopoly situations and non-collusive agreements
- v. CCM 5 - Mergers
- vi. CCM 6 - Remedies and Penalties
- vii. CCM 7 - Guidelines on general provisions

## Competition Law Quotes

“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices”



[Adam Smith, *Wealth of Nations*, 1776]

“Competition is good for consumers for the simple reason that it compels producers to offer better deals – lower prices, better quality, new products, and more choice”



[Sir John Vickers, former Chairman of the Office of Fair Trading, U.K.]

“Anti-competitive behaviour on the part of the dominant firms imposes artificial restraints on the competitive process, impeding the market from efficiently allocating resources. In a healthy, dynamic economy, goods and services are supplied by the firms, which can produce them most efficiently and adapt to the ever-changing demands of the marketplace”



[Canadian Competition Bureau, *International Competition Network Report*, May 2007]

“Competition matters. It brings dynamism to our economy. It means good jobs for our citizens. It is not merely an economic concept...”



[Report of the Canadian Competition Policy Review Panel, *‘Compete to Win’*, June 2008]

“It is not unusual for antitrust (cartel) violations to involve far greater sums than those that may be taken by thieves and fraudsters, and the violations can have a far greater impact upon the welfare of society...”



[Justice Finkelstein of the Federal Court of Australia, 2002]



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