

General Notice No. 34 of 2013

COMMISSION/DS/0012



# **Decision of the Commissioners of the Competition Commission**

**Decision**

**26<sup>th</sup> October 2012  
CCM/DS/0012**

COMMISSION/DS/0012

## **Decision of the Commissioners of the Competition Commission.**

### **COMMISSION/DS/0012 – Manhole Covers for the Telecommunications Infrastructure in Private Sector Projects**

#### **Commissioners present –**

*Mr. Rajendra T. Servansingh - (Acting Chairperson) – Chairperson*

*Mr. J.R. Rodney Rama – Commissioner*

*Mr. Mohamed Reshad Sadool – Commissioner*

*Mrs. J.P. Selvon Poonoosamy – Commissioner*

On the 26<sup>th</sup> October 2012, the Commission held a meeting where the Commissioners have taken cognizance of the following:

#### **Facts of the Case**

On 10<sup>th</sup> November 2011, the Executive Director of 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.

The investigation follows a prior enquiry into a complaint which indicated that a supplier of manhole covers has not been able to supply his Telecommunications Manhole Covers ('TMCs'), which abide by international standards, to customers who are developers of private morcellement as defined under the Morcellement Act 1990, Integrated Resort Schemes ('IRS'), and Real Estate Schemes ('RES').

The Report reads that 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. A manhole cover for telecommunications is used as part of the infrastructure in the supply of services for telecommunications. Thus,

TMCs are used by infrastructure operators such as MT or developers like construction companies, consulting firms or other property developers which need to install telecommunications infrastructure. When a network project is carried out by MT, it might decide to purchase the TMCs in bulk directly from its preferred manufacturers or refer the developer to buy the TMCs from a particular local supplier.

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 allegedly occurred when the developers were required to co-operate with MT in the supply of the telecommunications infrastructure.

The concerns of the Executive Director, as contained in the Report of Undertakings, were that MT may have been leveraging market power from the telecommunication services sector, as a provider, to the TMC market, as a buyer. 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.

After a procedural meeting held with representatives of MT, in December 2011, the option of negotiating undertakings was considered. Therefore a Statement of Issues was not produced. Instead, the CCM and MT proceeded to negotiation of undertakings.

On 03<sup>rd</sup> August 2012, MT offered Undertakings to the CCM pursuant to Section 63 of the Act, in an attempt to address the competition concerns of the Executive Director.

Upon receipt of the Undertakings by MT, the Executive Director of the CCM produced a Report of Undertakings dated 11<sup>th</sup> September 2012 titled 'Manhole Covers for the Telecommunications Infrastructure in Private Sector Projects INV 012'.

### **Assessment of the Executive Director in the Report of Undertakings**

In the Report, the Executive Director found that:

COMMISSION/DS/0012

- a) the product dimension of the investigation would be limited to telecommunications manhole covers;
- b) the demand for TMCs is related to the installation of telecommunications networks for development projects;
- c) the relevant market for this investigation would be the supply of manhole covers for telecommunications infrastructure in private sector projects in Mauritius.
- d) due to its dominance in the installation of telecommunication networks throughout Mauritius, MT would have the power to determine the type and brand of TMC to be used for its project.
- e) from discussions held with MT, the fact that proof that the products meet the international BS EN 124 standard and satisfy safety requirements are of critical importance to MT. In the event of an accident occurring because of a TMC installed by MT, MT would become liable for same. Thus, as a matter of principle, TMC suppliers should demonstrate that they satisfy required standards. TMCs which do not meet these standards may be excluded from use. Therefore, MT would purchase or, if required, ask developers to purchase TMCs at a higher price than other TMCs on the market.

### **Recommendations of the Executive Director**

The Executive Director's recommendations to the Commissioners are as follows:

- a) The Undertakings offered by MT satisfactorily address all the concerns about any prevention, restriction or distortion of competition, and
- b) Therefore, the Executive Director recommends that the Undertakings offered by MT be accepted by the Commissioners.

### **Decision of the Commissioners**

Now

Having taken cognizance of

- i) the Undertakings offered by MT,

COMMISSION/DS/0012

- ii) the recommendations of the Executive Director in his Report of Undertakings, and
- iii) the fact that the Commission is empowered by Section 63(3) of the Act to determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns that it has about any prevention, restriction, distortion or substantial lessening of competition,

we, the Commissioners state as follows:

- 1) That we are satisfied with the recommendations of the Executive Director of the CCM,
- 2) That we believe that the Undertakings given by MT would indeed satisfactorily address the concerns that the Commission has about any prevention, restriction distortion of competition,
- 3) That the Commission shall keep under review the compliance with this direction and the performance of Undertakings given by MT,
- 4) That notwithstanding paragraph 10 of the Undertakings offered by MT, whereby the duration of the Undertakings is set for a period of three (3) years as from the date of decision of the Commissioners, MT has a continuing obligation to comply with the Competition Act 2007.

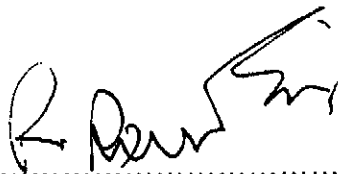
We hereby accept the Undertakings as per:

Annex 1: Undertakings offered by MT

Pursuant to section 63(5) of the Competition Act, the above acceptance of the Undertakings given by MT shall have the effect of a direction in similar manner as under section 60 and shall have immediate effect.

Dated this 26 October 2012


Mr. Rajendra T. Servansingh

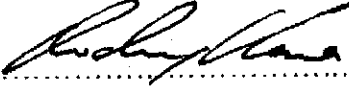


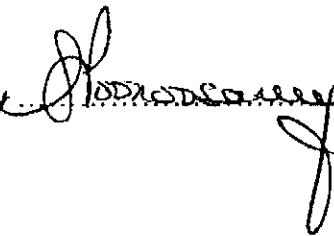
Date 26/10/2012

(Chairperson)

COMMISSION/DS/0012

Mr. Mohamed R. Sadool  ..... Date 26.10.2012 .....  
(Commissioner)

Mr. Rodney J.R. Rama  ..... Date 26/10/2012 .....  
(Commissioner)

Mrs. J.P. Selvon Poonosamy  ..... Date 26 Oct 2012 .....  
(Commissioner)

## **Annex 1: Undertakings 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 10<sup>th</sup> 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.

COMMISSION/DS/0012

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

COMMISSION/DS/0012

- 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.

COMMISSION/DS/0012

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 3<sup>rd</sup> August 2012