

General Notice No. 1319 of 2014

COMMISSION/DS/0011



Decision of the Commissioners of the Competition Commission

**Alleged Monopoly Abuse in the Supply of Secondary
School Books in Mauritius**

Decision

**17th April 2014
CCM/DS/0011**

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Decision of the Commissioners of the Competition Commission.

COMMISSION/DS/0011 – Investigation into Alleged Monopoly Abuse in the Supply of Secondary School Books in Mauritius

<u>Commissioners present:</u>	Mr Ariranga G. Pillay	-	<i>Chairman</i>
	Mr Rajendra T. Servansingh	-	<i>Vice - Chairman</i>
	Mr J.J. Rodney Rama	-	<i>Commissioner</i>
	Mr M. Reshad Sadool	-	<i>Commissioner</i>
	Mrs J. P. Selvon Poonosamy	-	<i>Commissioner</i>

Pursuant to the Report submitted by the Executive Director of the Competition Commission (the 'Executive Director'), under Section 51 of the Competition Act 2007 (the Act), upon completion of an investigation into 'Alleged Monopoly Abuse in the Supply of Secondary School Books in Mauritius', the Commissioners state the following -

1. Background

1.1 This Decision is addressed to Editions Le Printemps Ltee ('ELP') and relates to alleged abuses of a monopoly situation in respect of the supply of 'secondary school books' ('SSBs') in Mauritius. The Decision follows the Executive Director's investigation, launched on 12th January 2012, to assess whether ELP was abusing its monopoly situation by:

- 1) restricting the supply of some SSBs to retail bookstores, especially during peak periods;
- 2) engaging in the practice of linking the purchases of SSBs exclusively distributed by ELP to the purchase of other SSBs supplied by ELP, and

thus, preventing, restricting or distorting competition in the relevant markets concerned, in breach of Section 46(2)(a) of the Act.

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- 1.2 The market for SSBs in Mauritius has been the subject of a previous Commission decision¹ in relation to a potential collusion between ELP and Editions de L'Océan Indien Ltee ('EOI') to fix the wholesale trade discount rates offered to bookstores. The Commission, endorsing the findings of the Executive Director in his Report of investigation, did not find any evidence of communication or agreement between ELP and EOI to fix discount rates. The Commission neither issued any direction nor imposed any financial penalty upon the main parties.
- 1.3 We would like to point out at the outset that our previous decision has no bearing whatsoever on our determination of the present case.
- 1.4 In the course of its investigation, the Executive Director submitted, on 31st July 2012, a Statement of Issues Report to ELP, which set out the Executive Director's preliminary concerns in relation to the allegations. In its response to the Statement of Issues, ELP essentially denied that it was involved in either type of restrictive business practice.
- 1.5 On the basis of information to the effect that ELP could also be using its market position as an importer of SSBs to influence or attempt to influence international publishers, in particular Interforum Editis, into not supplying SSBs to competing importers operating in Mauritius, the Executive Director extended the scope of the investigation to determine any abuse of monopoly situation in the market for importation of SSBs in Mauritius.
- 1.6 On 17th December 2012, the Executive Director notified ELP of the new concerns arising from ELP's alleged restrictive business practice and informed the latter of the Executive Director's decision to include the new allegation within the scope of its ongoing investigation. On 12th April 2013, the Executive Director submitted an Addendum report to the Statement of Issues, inviting ELP's submissions on the new allegation.
- 1.7 Subsequent to further information gathering and an analysis of orders placed to and deliveries made by ELP for the peak period 2010 - 2011, the Executive Director issued its Provisional Findings Report to ELP for its comments on both the assessment carried out and the findings set out in the Provisional Findings Report. In its response to the Provisional Findings Report, ELP maintained that it has not engaged in any activity contrary to the provisions of the Competition Act
- 1.8 Having regard to the written submissions given by ELP following the Provisional Findings Report, the Executive Director submitted the final Report of Investigation (the *Report*) together with her recommendations to the Commission on 20th January 2014.
- 1.9 The first allegation reported by the Executive Director relates to ELP's alleged use of delaying tactics and/or ELP creating artificial shortages in order to supply certain bookstores at a much later date than its own retail outlets and other preferred retail

¹ Decision of the Commissioners of the Competition Commission, 'Possible Collusion in the market for secondary school books' (CCM/DS/002, 9 May 2011).

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bookstores. The Executive Director found that ELP appeared to delay SSB supplies mostly to bad debtors. However, the Executive Director did not have sufficient information to establish whether ELP's practice reflected a consistent behaviour across all retail bookstores in general and which was aimed at restricting, preventing or distorting competition. The Executive Director thus concluded that the allegation of refusal to supply could not be sustained and that ELP had not breached Section 46(2)(a) of the Act.

- 1.10 During the investigation however, the Executive Director found that secondary schools usually submit their list of prescribed SSBs to wholesalers only. Consequently, SSB wholesalers, in particular those having their own retail outlets, are in a better position to estimate the stock of SSB titles that they will need to purchase in order to meet the demand for the impending academic year. On the other hand, competing retail bookstores are at a disadvantage given that they do not necessarily have access to the lists of SSBs prescribed by secondary schools and are not able to place bulk orders in advance of the peak period. The loopholes identified in the current system create a situation of imperfect knowledge (*information asymmetry*) that ends up favouring some parties over others within the supply/distribution chain.
- 1.11 The second allegation related to ELP's practice of tying the purchase of SSBs exclusively distributed by ELP ('closed SSB titles') to the purchase of other SSBs supplied by ELP ('open SSB titles'). The Executive Director compared ELP's sales pattern for its best-selling open SSB titles for the periods 2009/2010 and 2011/2012 to sales figures of rival distributors for same titles and periods. The analysis showed that rival distributors did not appear to have diverted sales from ELP, which tends to suggest that ELP did not appear to face strong competition from them for open SSB titles. Additionally, none of the bookstore owners interviewed stated having encountered such practice on the part of ELP. The Executive Director thus did not find any basis for the allegation of tying and cleared ELP of any contravention of Section 46(2)(a) of the Act.
- 1.12 The Executive Director did not report any adverse findings in relation to the issue of ELP using its market position as an importer to exclude competitors in the importation of SSBs by making it difficult for them to obtain their supplies. The Executive Director found that ELP had objected to the opening of the market for certain SSB titles in view of the investment made in promoting those titles in Mauritius. However, in her assessment of the facts, the Executive Director concluded that ELP does not have sufficient power to affect the distribution policies of international SSB distributors. Given the size of the domestic market, international distributors retain entire discretion in choosing their local distributors and whether or not to keep the market open or closed.
- 1.13 In view of her findings, the Executive Director did not recommend any remedial measure against ELP. However, given that the information asymmetry faced by retail bookstores may potentially distort competition in the retail distribution of SSBs, the Executive Director has recommended that the Commission review the competitive impact of

publishing the list of SSBs in advance of the peak sales period for each academic year and advise the Ministry of Education and Human Resources accordingly.

2. The Findings of the Commission

Relevant Market Definition

- 2.1 It is appropriate to begin our examination of the matter at hand by first assessing the evidence adduced by the Executive Director in support of its relevant market definitions in view of establishing whether ELP has abused its monopoly situation within any of the markets identified.
- 2.2 The definition of the relevant market is an important exercise that describes "a set of products and a defined geographic area within which competition occurs" and which, in turn, necessarily determines an enterprise's product market share. The Executive Director has based her analyses of potentially affected markets on demand and supply-side considerations.
- 2.3 In defining the relevant product market, the Commission concurs with the Executive Director's justification for distinguishing between 'closed SSB titles' and 'open SSB titles'. As reported by the Executive Director, closed SSB titles regroup all titles exclusively imported by one wholesale distributor in Mauritius (for example, as a result of an exclusivity agreement between an international publisher and a wholesale distributor) and all titles exclusively supplied by a wholesale distributor (because it holds the right to publish/co-publish the titles). On the other hand, open SSB titles refer to all titles, which may be imported and supplied by several distributors.
- 2.4 The Commission has reviewed the arguments put forward by the Executive Director in defining the relevant product and geographical markets. Taking into consideration the characteristics of the SSB market in Mauritius and the supply and demand side analyses of the different levels of the supply chain, the Commission takes the view that the Executive Director has rightly defined the relevant markets as follows:
- 1) the national market for the importation of each SSB title in Mauritius;
 - 2) the national market for the wholesale distribution of each closed market SSB title in Mauritius; and
 - 3) the local markets for the retail distribution of each SSB title in Mauritius.

Assessment of Monopoly Situation

- 2.5 Having assessed the relevant product and geographic markets, we now proceed to examine the Executive Director's assessment as to whether ELP has abused its monopoly situation, if any, within each of the defined relevant markets.

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- 2.6 We first consider the allegation relating to ELP's refusal to supply closed SSB titles within localized retail distribution markets of *Curepipe, Vacoas, Port Louis* and *Mahebourg* (where ELP's retail outlets are situated). The Commission has taken into account the empirical analysis conducted by the Executive Director in comparing ELP's delivery pattern for orders placed during peak periods by different retail bookstores. We are satisfied that ELP's delivery pattern for its closed SSB titles does not exhibit any significant difference from that of its open SSB titles. ELP cannot be faulted for delaying the supply of SSB titles to bad debtors. Having regard to the evidence adduced by the Executive Director, we hold that no adverse finding can be made against ELP as far as this allegation is concerned.
- 2.7 We have also considered the arguments put forward by the Executive Director in assessing the allegation regarding ELP tying the purchase of its closed SSB titles to the purchase of open SSB titles (where ELP faces competition from other wholesale distributors of the same open SSB titles). We agree with the Executive Director's finding that ELP is in a monopoly position for the wholesale distribution of each of its closed market titles but the analysis put forward does not support a finding of conduct on the part of ELP which is restricting, preventing or distorting competition, in breach of section 46(2)(a) of the Act.
- 2.8 Having regard to the evidence put forward by the Executive Director in relation to the alleged foreclosure in the market for importation of each SSB title in Mauritius, we agree with the Executive Director's finding that the allegation cannot be sustained. Although ELP has been a major importer of SSBs from Interforum Editis for 2012, ELP does not appear to possess sufficient market power in order to coerce or influence the international publisher into not supplying competitors of ELP. Also, no other international publisher has reported having faced any type of pressure from ELP into foreclosing ELP competitors from the importation market. In this respect, we hold that ELP cannot be said to be in a monopoly situation which is subject to review by the Commission under Section 46(2)(a) of the Act.

3. Conclusion

- 3.1 Having taken cognizance of the Executive Director's findings in the Report of Investigation and based on our assessment of those findings,

We, the Commissioners, decide that:

- 1) having regard to the evidence presented to us on the issue of whether ELP has attempted to leverage its market power as a wholesaler distributor of closed SSB titles into localized retail markets for SSBs (through the use of delaying tactics) when supplying retail bookstores, no adverse finding can be made against ELP as far as this allegation is concerned;

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- 2) although ELP is in a monopoly situation in the national market for the wholesale distribution of each of its closed SSB titles, the evidence adduced does not establish that ELP has engaged in tying the purchase of its closed SSB titles to that of open SSB titles sold by ELP;
- 3) ELP is a major importer of SSB titles in Mauritius but does not have sufficient market power to coerce or, in any other way, to influence international publishers into not supplying competing importers and cannot consequently be said to be abusing its monopoly situation in the market for the importation of SSBs titles in Mauritius;
- 4) there is no need to apply or consider any remedial action against ELP given that ELP has not contravened Section 46(2)(a) of the Act.
- 5) we do not have sufficient information to assess the competitive impact of publishing the list of SSBs in advance of the peak sales period for each academic year and consequently we decline to advise the Ministry of Education and Human resources on this matter.

Dated this ...17... April 2014.

Mr. Ariranga G. Pillay

(Chairman)

Date 17.4.14

Mr. Rajendra Tagore Servansingh

(Vice-Chairman)

Date 17/04/2014

Mr. Mohamed Reshad Sadool

(Commissioner)

Date 17/04/2014

Mr. Rodney Jacques Roger Rama

(Commissioner)

Date 17th April 2014

Mrs. Jean Pauline Selvon Poonosamy

(Commissioner)

Date April 17-2014