



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

**Image-based clearing solutions**

**Decision**

**07<sup>th</sup> January 2015  
CCM/DS/0015**

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

### **CCM/DS/0015 - Investigation into the supply of image-based clearing solutions to commercial banks**

#### **Commissioners present –**

|                          |   |                     |
|--------------------------|---|---------------------|
| Mr. Ariranga G. Pillay   | - | <i>Chairman</i>     |
| Mr. Mr. J. R. R. Rama    | - | <i>Commissioner</i> |
| Mr. M. R. Sadool         | - | <i>Commissioner</i> |
| Mrs. J. P. S. Poonoosamy | - | <i>Commissioner</i> |

On the 18<sup>th</sup> December 2014, the Commission held a meeting where the Commissioners have taken cognizance of the following:

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

On 11<sup>th</sup> March 2013, the Executive Director launched an investigation under section 51 of the Competition Act 2007 (the Act) into the provision of image-based clearing solutions by *Blanche Birger Co. Ltd* to commercial banks in Mauritius. The investigation was launched following an allegation that *Blanche Birger* was in a monopoly situation in the market for the supply of image-based clearing solutions to commercial banks and was engaging in exclusionary conduct.

On 31<sup>st</sup> October 2013, the Executive Director issued a Statement of Issues which set out her preliminary concerns in relation to the investigation. The Executive Director therein identified the issues for consideration in relation to a possible breach of Section 46 of the Act by *Blanche Birger*.

On 22<sup>nd</sup> November 2013, *Blanche Birger* submitted its comments on the Statement of Issues. Following *Blanche Birger's* comments, the Executive Director proceeded with information gathering and subsequent assessment, taking into account the comments of *Blanche Birger*.

On 27<sup>th</sup> May 2014, a meeting was held with Mr. Jacques Harel, Chief Executive Officer of *Blanche Birger*, during which he expressed *Blanche Birger's* willingness to offer undertakings pursuant to Section 63 of the Act and Rule 28 of the Competition Commission Rules of Procedure 2009. The Executive Director subsequently engaged into discussions with *Blanche Birger* on the terms of such undertakings.

On 13<sup>th</sup> November 2014, upon the completion of the investigation on the basis of the undertakings offered by *Blanche Birger* under section 63 of the Act, the Executive Director



issued her report on the investigation (the Report) to the Competition Commission (the Commission). The Report laid down the concerns which had been identified in the course of the investigation as well as an assessment of the undertakings offered in light of those concerns.

### **Conclusion of Report of Investigation**

In the Report, the Executive Director concluded that:

- a) A monopoly situation as defined in the terms of Section 46(1) of the Act could exist in relation to the supply of goods and services in the two markets concerned by the investigation.
- b) *Blanche Birger* is in a monopoly situation in the relevant markets. In relation to the supply of software components for the purpose of cheque truncation, *Blanche Birger* is estimated to hold 70.6% of the market, and in relation to the supply of hardware components for the purpose of cheque truncation, *Blanche Birger* is estimated to hold 60.9% of the market.
- c) The market for the supply of the software component is concentrated and the market share of *Blanche Birger* within the market is high. Furthermore, there may exist barriers to entry into the market which could place *Blanche Birger* in a dominant position in the market.
- d) It was a matter of concern that *Blanche Birger* could be engaging in the exclusionary practice termed as 'tying'. The '*NCR Image Mark NCompass*' software supplied by *Blanche Birger* has been found to be restricted to certain scanners that are distributed by *Blanche Birger*. This type of conduct could foreclose competing brands of cheque scanners from the market as a result of the lack of interoperability with the software marketed by *Blanche Birger*.
- e) The existence of a monopoly situation in relation to the relevant markets and the tying practice engaged in by *Blanche Birger* could significantly reduce the choice of banks for the supply of hardware components. Analysis in this regard has revealed that 44% of banks or clients of *Blanche Birger* would have considered switching to other suppliers of cheque scanners, in the absence of the tying practice.



- f) The undertakings offered by *Blanche Birger* to the Commission to address the concerns identified by the Executive Director may satisfactorily address the concerns identified under the Statement of Issues.

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

The Executive Director considers that an undertaking to give access to other brands of cheque scanners following requests for such access from clients and/or third parties, would allow competitors of *Blanche Birger* to supply existing clients of the latter with hardware components for the purpose of cheque truncation. The remaining undertakings offered by *Blanche Birger* provide that such requests will be met on a non-discriminatory basis and in good faith, where technically feasible and within a reasonable delay.

The Executive Director is further of the view that the undertakings offered by *Blanche Birger* satisfactorily address all the concerns in relation to any prevention, restriction and distortion of competition in the market for the provision of image-based clearing solutions and consequently recommends that the Commissioners accept the undertakings.

### **Decision**

We, the Commissioners, take cognizance of:

- i) the undertakings offered by *Blanche Birger Co. Ltd*;
- ii) the comments received from *Blanche Birger Co. Ltd* by the Executive Director in response to the Statement of Issues sent to it;
- iii) the recommendations of the Executive Director in her Report dated 13<sup>th</sup> November 2014; and
- iv) the fact that the Commission is empowered under 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 it has about any prevention, restriction, distortion or substantial lessening of competition.

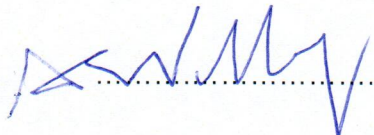
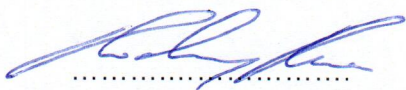
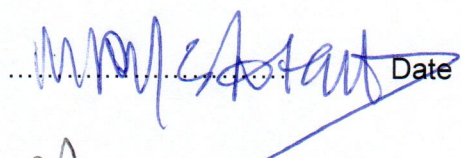
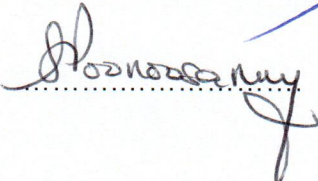
We consequently decide as follows:

- 1) We are satisfied with the recommendations of the Executive Director.

- 2) We consider that the undertakings will indeed satisfactorily address the concerns which the Commission has about any prevention, restriction, distortion or substantial lessening of competition.
- 3) The Commission will keep under review the performance of the undertakings given by Blanche Birger Co. Ltd, and notify the latter on any non-compliance.
- 4) We take the view that, notwithstanding the undertakings offered by Blanche Birger Co. Ltd over the duration of five (5) years from the date on which Blanche Birger Co. Ltd is notified of the final decision of the Commission or final determination of any Court to which any appeal is made by any third party, Blanche Birger Co. Ltd has a continuing obligation to comply with the Act.

We accept the undertakings as per the annex.

Pursuant to section 63(5) of the Act, the undertakings given by Blanche Birger Co. Ltd and accepted by the Commission shall have effect as if they were directions under section 60 of the Act.

|   |  |                  |
|---|--|------------------|
| Mr. Ariranga G. Pillay<br>(Chairman)      |   | Date 7.12.15     |
| Mr. J. R. R. Rama<br>(Commissioner)       |   | Date 07/01/2015  |
| Mr. M. R. Sadool<br>(Commissioner)        |  | Date 08/01/2015  |
| Mrs. J. P. S. Poonosamy<br>(Commissioner) |   | Date Jan 07-2015 |



## Annex

UNDERTAKINGS OFFERED BY BLANCHE, BIRGER CO. LTD INCLUDING ITS BRANCHES, SUSIDIARIES, AFFILIATES OR OTHER ENTITIES DIRECTLY OR INDIRECTLY CONTROLLED BY IT, WHOSE REGISTERED OFFICE IS SITUATED AT 18, JULES KOENIG STREET, PORT-LOUIS, TO THE COMPETITION COMMISSION PURSUANT TO SECTION 63 OF THE COMPETITION ACT 2007.

### I. Statement of Facts

- 1.1. On the 11<sup>th</sup> of March 2013, the Executive Director launched an investigation under Section 46 of the Competition Act 2007 relating to an alleged abuse of a monopoly situation by *Blanche, Birger*, more specifically, regarding its image-based clearing solutions provided to commercial banks.
- 1.2. On the 31<sup>st</sup> of October 2013, the Executive Director issued a Statement of Issues. The Statement of Issues set out the preliminary concerns that the Competition Commission has in relation to the investigation in relation to the provision of image-based clearing solutions to commercial banks. The Competition Commission identified several issues for consideration and thus decided that there were grounds to continue with the investigation into whether *Blanche, Birger* is in breach of Section 46 of the Competition Act 2007. In the Statement of Issues, it was stated that: "the CCM is concerned that there might be a possible anti-competitive tying of these two markets in the light of the market power held by *Blanche, Birger* in the tying market (software market)."<sup>1</sup>
- 1.3. On the 22<sup>nd</sup> of November 2013, *Blanche, Birger* submitted its comments on the Statement of Issues.
- 1.4. Following *Blanche, Birger's* comments on the Statement of Issues, the Competition Commission continued its information gathering.
- 1.5. On the 13<sup>th</sup> of May 2014, the Competition Commission met with Mr. Jacques Harel, Chief Executive Officer of *Blanche, Birger*, Mr. Rahman Nabheebucus and Mr.

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<sup>1</sup> Para 1.3 of the Statement of Issues

Pressley Pavaday, Head of Self-Service Terminal and Payment BU and Software Engineer respectively to further discuss the alleged concerns.

- 1.6. On the 27th of May 2014, a second meeting was held with Mr. Harel where the latter expressed Blanche, Birger's willingness to give an undertaking as provided by Section 63 of the Competition Act 2007.

## II. Details of Alleged Concerns

- 2.1. In the Statement of Issues, the Executive Director took the view that: "At this stage of the investigation, the CCM believes that *Blanche, Birger* may be in breach of Section 46 of the Act, by abusing its monopoly situation in the retail market for the supply of software components for the purpose of cheque truncation in Mauritius. *Blanche, Birger* may be tying its image-based clearing software, NCR NCompass software for the purpose of cheque truncation to its NCR scanner; that is, it may be making the purchase of the license for the NCR NCompass software conditional upon the purchase of NCR hardware (scanners)."<sup>2</sup>

- 2.2. The above view is supported by information received from other scanner suppliers that such behavior was occurring.

### 2.3. WHEREAS

- 2.3.1. Following the communication of the Statement of Issues and the meetings held with the Competition Commission, *Blanche, Birger* has decided to take appropriate measures regarding the alleged concerns of the Competition Commission.

- 2.3.2. On 27<sup>th</sup> May 2014, *Blanche, Birger* has proposed to give Undertakings to the Competition Commission.

### 2.4. Now therefore,

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<sup>2</sup> Para 5.22 of the Statement of Issues





2.4.1. Pursuant to Section 63 of the Competition Act 2007 and the purpose of addressing the concerns of the Competition Commission relating to the provision of image-based clearing solutions by Blanche, Birger to commercial banks that have arisen out of the investigation launched by the Executive Director.

2.4.2. Blanche, Birger undertakes as follows:

**a) Requests from clients and third parties**

*Blanche, Birger* undertakes to consider requests from its clients and/or third parties in relation to integration of cheque scanners, other than those marketed by *Blanche, Birger*, into the NCR Software, subject to technical feasibility<sup>3</sup>.

Wherever technically feasible, *Blanche, Birger* further undertakes to integrate the scanner, subject to the other provisions of the Undertakings and the scanner's certification to standard norms, including but not limited to TWAIN.

**b) Time Period**

Where integration<sup>4</sup> is feasible, *Blanche, Birger* undertakes to perform the integration within a fair, reasonable and non-discriminatory period of time and in good faith following agreement on the scope of work to be undertaken<sup>5</sup>.

**c) Costs**

*Blanche, Birger* undertakes to provide the integration on fair, reasonable and non-discriminatory terms<sup>6</sup> and in good faith.

**d) Notification to the Competition Commission**

<sup>3</sup> It is understood that the Application Programming Interface has to be uploaded into the software as is the current trend worldwide.

<sup>4</sup> Integration means integration of cheque scanners other than the brands marketed by Blanche, Birger into the NCR NCompass software.

<sup>5</sup> It is understood that only in special cases the integration might take longer, which should in no case exceed 6 months.

<sup>6</sup> Includes but is not restricted to the price charged by Blanche, Birger for the integration of cheque scanners, other than those marketed by Blanche, Birger, into the NCR Software.





*Blanche, Birger* undertakes to notify the Competition Commission of its responses to a request for integration, including the details of any cost/pricing element within a period not exceeding 30 working days over the next five (5) years.

*Blanche, Birger* undertakes to notify the Competition Commission of Mauritius, at least 30 working days prior to making any changes to the Undertakings, which changes shall be subject to the approval of the Competition Commission of Mauritius under Section 64 of the Competition Act 2007.

*Blanche, Birger* undertakes to collaborate fully with the Competition Commission and answer any query in a timely and effective manner.

**e) Refusal**

In the event that *Blanche, Birger* refuses to accede to a request for integration, it undertakes to notify the Competition Commission of such refusal and the reasons thereof within a period not exceeding 30 working days over the next five (5) years.

**f) Compliance**

*Blanche, Birger* undertakes to comply with the present Undertakings and any such written directions as the Competition Commission may from time to time give for the purpose of securing compliance with the Undertakings.

**g) Successor and assigns**

The Undertakings shall bind any successors and assigns of *Blanche, Birger*.

**h) Commencement**

The Undertakings shall come into force on the day on which the Undertakings are accepted by the Competition Commission and notified in writing to *Blanche, Birger*.

**i) Duration**

These Undertakings shall be in force for a period of 5 years from the day on which the Undertakings are accepted by the Competition Commission unless they are varied, released or terminated under Section 64 of the Competition Act 2007.

Dated this.....~~11th~~... July 2014.



I am the Chief Executive Officer of, and I am duly authorised to sign for and on behalf of BLANCHE, BIRGER CO. LTD INCLUDING ITS BRANCHES, SUBSIDIARIES, AFFILIATES OR OTHER ENTITIES DIRECTLY OR INDIRECTLY CONTROLLED BY IT.

A handwritten signature in black ink, appearing to be 'J. Harel', is written over a horizontal dotted line.

Mr. Jacques Harel  
Chief Executive Officer  
Blanche, Birger Co. Ltd