# CCM/MS/005

# Market Study of the Construction Industry in Mauritius

## PRELIMINARY REPORT

## 20/04/18

COMPETITION COMMISSION OF MAURITIUS

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# 1. Introduction

1.1. The Competition Commission of Mauritius (CCM) is a statutory body established in 2009 to enforce the Competition Act 2007 ('the Act') in Mauritius. The Act empowers the Executive Director of the CCM ('the ED') to investigate into potential restrictive business practices[1]. In addition, section 30 of 'the Act' provides that the ED should, inter alia, (i) keep the operation of the markets in Mauritius and the conditions of the competition markets under constant review; and (ii) undertake general studies on the effectiveness of competition in individual sectors of the economy in Mauritius.

1.2. In April 2017, pursuant to section 30 of the Act and in the context of the cross-country sector studies conducted by the African Competition Forum, the ED launched a market study into the construction industry in Mauritius.

1.3. A market study is not an investigation of restrictive practices resulting in the infringement of the Competition Act 2007. The aim of the market study is to understand the current conditions of competition in the local construction industry and identify prevailing competition concerns, if any. The CCM has no authority or expertise to investigate any alleged breaches of law other than the Competition Act. It would be for Government to take such wider concerns into account when considering any recommendations we might make.

1.4. The main focus of the study has been the identification and assessment of potential barriers to entry or constraints to the process of competition in the various markets within the construction sector. These potential bariers to entry or contraints may be arising from the regulatory framework, the market structure or the conduct of the players in the industry. Key aspects that have been reviewed include the degree of concentration and vertical integration, pricing, norms and standards and public procurement process for construction works.

[1] The restrictive business practices covered under the Act are collusive agreement (comprised of horizontal agreements, bid rigging and resale price maintenance), non-horizontal agreements, other vertical agreements, review of monopoly situations and control of merger situations.

1.5. This report summarises the findings of the construction market study and is organized as follows:

- Section 2 provides an overview of the construction industry in Mauritius.
- Section 3 covers the construction regulatory framework in Mauritius.
- Section 4 looks at the price determination of construction material and the providers of professional services in the construction industry.
- Section 5 discusses the underlying public procurement framework and- issues related to construction works.
- Section 6 provides an assessment of the potential competition issues in the construction industry.
- Finally, section 7 concludes.

1.6. By way of this Report, the CCM is soliciting the views and comments of interested stakeholders on the preliminary findings of the market study presented therein. All stakeholders are invited to submit their views and comments, in writing, not later than **18th May, 2018** either via email: info@ccm.mu or by post. Any correspondence should be addressed to the **Executive Director**, Competition Commission, 10th Floor, Hennessy Court, Corner Suffren Road and Pope Hennessy Street, Port Louis.

# 2. The construction industry in Mauritius

## A. Brief overview of the construction industry

2.1. The construction sector is often the engine that stimulates the development of an economy. In Mauritius, the sector has significant contribution to economic growth, employment creation and income generation. Its contribution to GDP is estimated at around 7.5% for the year 2017. It should be noted that the share to GDP of the construction sector has been declining since 2011 when it accounted for 6.6% to reach 3.7% in 2016. However, after the negative growth experienced by the construction sector over the period 2011 to 2015 and no growth in 2016, Statistics Mauritius estimated a growth rate of 7.5% for 2017 and projected the construction sector to grow by 9.5% in 2018.

2.2. In terms of employment, the construction sector currently provides some 56,500 jobs or around 10% of total employment in the country. In addition, the Statistics Mauritius estimated that that construction sector contributed around Rs 50 billion or 62.5% of the gross fixed investment of Rs 80 billion in 2017[2].

### I. Types of construction work

2.3. The construction sector encompasses all types of activities which involve construction, repairs, demolition and renovation of buildings and infrastructure. Construction projects can be divided into governmental (public sector) and non-governmental (private sector) and comprise the following types[3]:

#### a. Residential buildings

2.4. Residential buildings include all real estate properties where more than half of the floor area services for dwelling purposes.

[2] National Accounts Estimates (2014 – 2017), Statistics Mauritius
http://statsmauritius.govmu.org/English/Publications/Documents/EI1359/NAE_Dec%2017.pdf
[3] See
http://statsmauritius.govmu.org/English/StatsbySubj/Documents/Digest/National%20Accounts/Digest_NA_2015.pdf

### b. *Non-residential buildings*

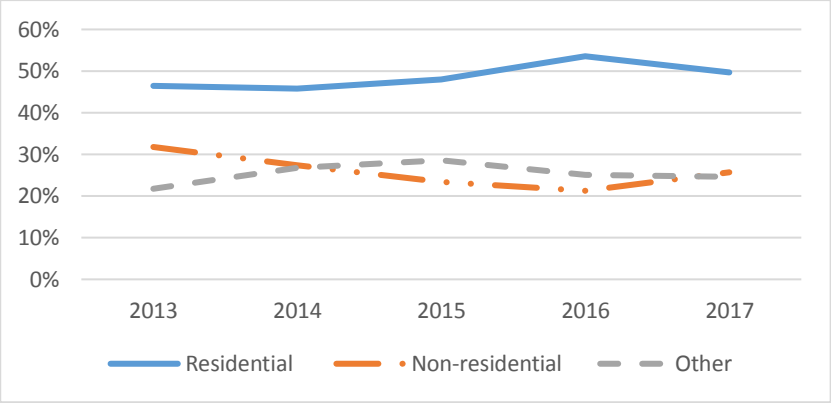
2.5. Non-residential buildings include properties mainly used for industrial, commercial, educational, health and purposes other than dwelling.

### c. *Other construction works*

2.6. Other construction works include works such as on road constructions, dams, reservoirs, pipe laying, electricity distribution networks, land improvement and reclamation and all other civil engineering works.

2.7. The shares of residential buildings, non-residential buildings and other construction works of the value of the construction output, as measured by their value in terms of gross fixed investment, for the period 2013 – 2017 are illustrated in Figure 1 below.

***Figure 1: Evolution of the types of construction work***

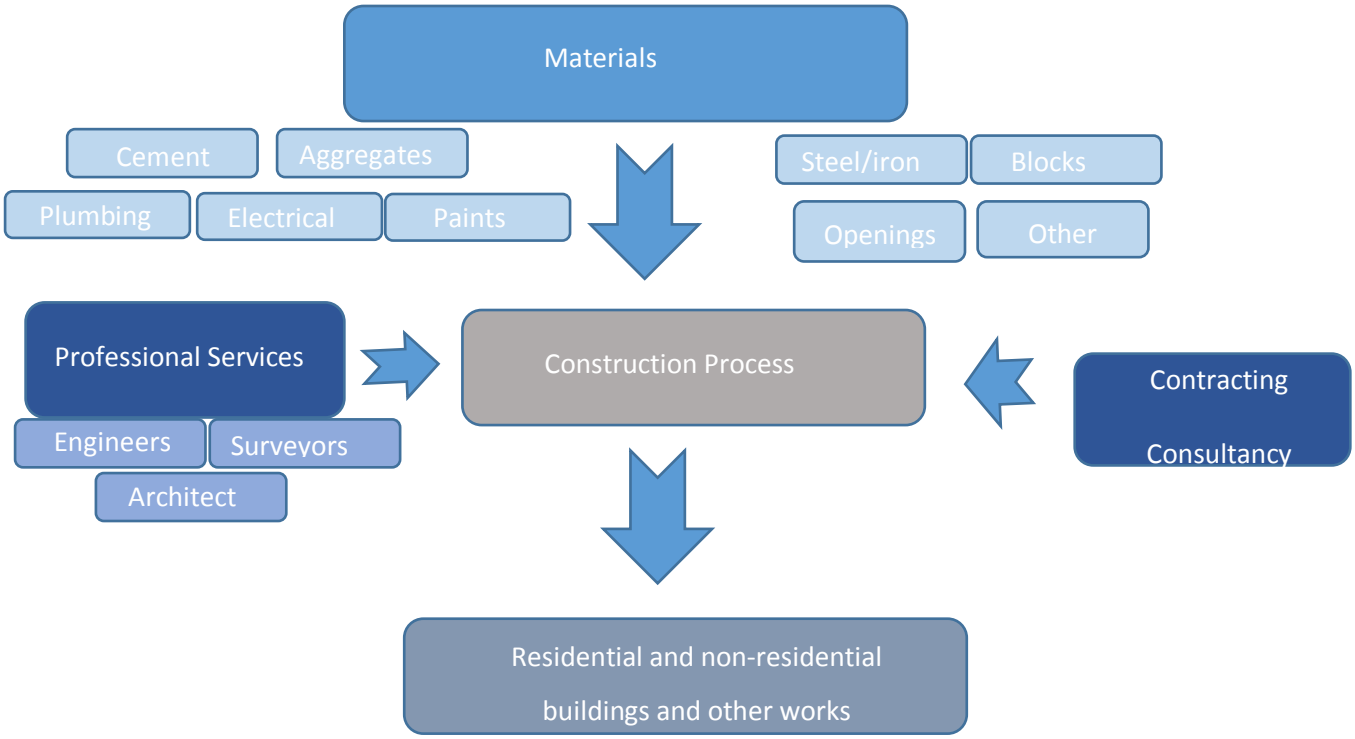



*Source: Statistics Mauritius*

2.8. In 2017, around 50% of construction works related to residential buildings and that of non-residual buildings and other construction works ranged between 20% - 30%. It is observed that the fall in the share of non-residential buildings has been declining over the period under consideration.

2.9. The main inputs required to deliver the various outputs in terms of residential and non-residential buildings and other construction works such as roads, dams, reservoirs and public utility networks is illustrated in Figure 2.

*Figure 2: The construction process from inputs to finished products*




2.10. As illustrated in Figure 2, the supply chain in the construction sector in Mauritius relate to the supply of:

(a) construction materials which include:

(i) cement;

(ii) aggregates (gravels and sand);

(iii) blocks;

(iv) ready-mix concrete;

(v) iron bars;

(vi) plumbing and electrical installation;

(vii) openings (aluminum, metal, wooden); and

(viii) other supplies (paints, sanitary installation, flooring, timber, etc)

(b) professional services which include architects, surveyors and engineers.

(c) contracting and consultancy services.

## B. The cement market

2.11. Cement is an essential input which is used in all types of construction works (residential, non-residential and other construction works). It is used as an intermediate product in the production of ready mixed concrete, pre-cast concrete products and mortar[4]. One important characteristic of this product is its lack of substitutes. There is no effective substitute to cement. Less cement can be used in construction projects but it cannot be effectively substituted by another product.

2.12. Among the three main types of cement, which are the Ordinary Portland Cement (OPC), the Portland Pozzolana Cement and the Portland slag Cement[5], it is the OPC which is the most common type of grey cement used in Mauritius. This, in view of its wide range of applications.

2.13. Cement is not produced domestically. It is imported in bulk by two main companies, namely Lafarge (Mauritius) Cement Ltd and Kolos Cement Ltd. They are both engaged in the bagging and distribution of the product in bulk or in bagged formats under the brand names "Baobab" and "Kolos", respectively. The demand for cement is estimated to range between 600,000 and 700,000 tonnes annually or around 450 kg per capita in Mauritius.

2.14. In 2016, total cement imported amounted to 691,000 tonnes[6] valued at Rs 1,669 million or around USD 49 million. This represents a 12% increase in the amount of cement imported compared to the previous year with 619,000 tonnes of cement being imported.

### I. Operators in the cement market

2.15. It is important to highlight that the cement market in Mauritius has recently been characterized by the merger between Lafarge S.A and Holcim Ltd.

2.16. Lafarge (Mauritius) Cement Ltd, a member of the LafargeHolcim Group is a leader in the cement industry in Mauritius, being one of the main importer and distributor of cement in the

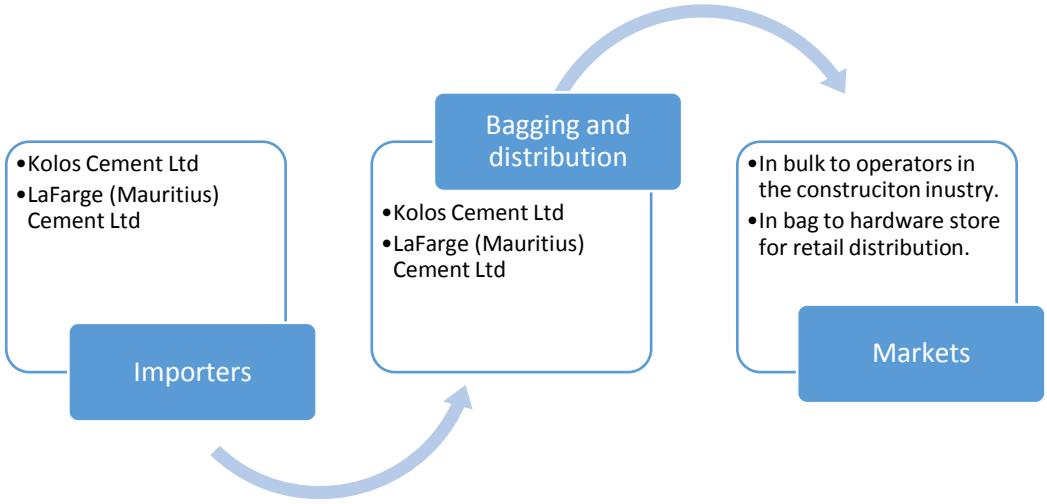
[4] Case No Comp/M.7009-Holcim/Cemex West. Regulation (EC) No.139/2004: Merger procedure. Date published: 05.06.2014
[5] Ordinary Portland Cement (OPC) is made by blender clinker with gypsum and used in construction where high initial strength is required. Portland Pozzolana Cement (PPC) contains gypsum and fly ash in the tune of 25-30%. Addition of fly ash reduces the per ton cost of cement. The long-term strength of PPC is higher than OPC, and Portland Slag Cement (PSC) contains gypsum and blast furnace slag. It is used where structures are susceptible to attach of chloride and sulphate (Marin, Water treatment plants).
[6] See Annual digest of statistics, 2015.

country. Before the merger of Lafarge S.A and Holcim Ltd in the year 2014, the other main importer of cement and distributor in Mauritius, was the local subsidiary of Holcim Ltd; Holcim (Mauritius) Ltd.

2.17. Post-merger, after the divestment[7] of the shares of Holcim (Mauritius) Ltd to the Gamma Group which was as the purchaser of such shares and hence became the owner of Holcim (Mauritius) Ltd, the new entity became known as Kolos Cement Ltd [8]. The Gamma Group has majority shareholder of Kolos Cement Ltd and exercises controlling interest in the latter.

2.18. Figure 3 below illustrates the value chain in the cement industry in Mauritius. Imported bulk cement is stored at the respective cement terminals of the operators, after unloading from the ships. The bulk cement is either processed into bagged cement and distributed to hardware stores for retail distribution or sold in bulk format at wholesale level to their respective clients such as construction companies or ready-mixed concrete companies.

***Figure 3: Supply chain of cement and the associated operators***




### *a. Lafarge (Mauritius) Cement Ltd*

2.19. Like its international counterpart, Lafarge (Mauritius) Cement Ltd is an importer and wholesale supplier of cement. It has a production capacity of 40,000 metric tons per month and has invested in a 'ship unloader' and a 'vacuum pump' which will further allow the company to unload cement from ships and process and distribute the cement at a faster pace[9].

[7] See CCM investigation CCM/INV/028: Merger between Holcim Ltd and Lafarge S.A
[8] See CCM investigation CCM/INV/028: Merger between Holcim Ltd and Lafarge S.A
[9] www.lafarge.mu

2.20. Lafarge (Mauritius) Cement Ltd's cement terminal allows for the vertical storage of 35,500 metric tons of cement in concrete silos. Bulk cement is processed into bags of 25 kg and 50 kg under the brand 'Baobab' of CEM I 42.5N; CEM II 32.5; and MC 22.5N for masonry works in bags of 10 kg and 25 kg. The company also supplies cement in bulk to players in the construction industry.

2.21. The Executive Director has gathered[10] that the Group LafargeHolcim owns 58.36% of Lafarge (Mauritius) Cement Ltd. The shareholding structure of the company is shown below.

*Table 1: Shareholding structure of Lafarge (Mauritius) Cement Ltd*

| Shareholder | % of shares owned |
|---|---|
| **LafargeHolcim Group[11]** | 58.36 |
| **Taylor Smith Investment Ltd** | 28.98 |
| **State Investment Corporation Ltd** | 7.93 |
| **Other shareholders (less than 2% shareholding)** | 4.73 |

*Source: Compiled from Registrar of Companies*

### *b. Kolos Cement Ltd*

2.22. Kolos Cement Ltd is the other main importer and distributor of cement in Mauritius. It has the largest terminal in the Indian Ocean, with a total capacity of 60,000 tons, representing more than 2 months of the market consumption[12]. Kolos Cement Ltd has also the largest stocking capacity of finished products representing 3,000 tons and has a discharging equipment for cement; which is deemed as unique in the region[13]. Its principal activities therefore include unloading, storing, bagging and distribution and sale of cement products in Mauritius. The company supply bagged and bulk cement of the type CEM I 42.5N, CEM II 42.5, CEM III A 42.5 and CEM III B 32.5[14].

2.23. In terms of the shareholding structure, Kolos Cement Ltd is found to be fully owned by the Gamma Group through Gamma Cement Limited.

[10] http://reports.lafargeholcim.com/2015/annual-report/financials/notes-to-the-consolidated-financial-statements/notes-31-39/39-principal-companies-of-the-group.html
[11] Shares held through Associated International Cement Ltd (29.18%) and Cementia Holding AG (29.18%)
[12] www.koloscement.com
[13] www.koloscement.com
[14] http://www.koloscement.com/our-business

### II. *Market shares and level of concentration in the cement market*

2.24. The two players in the cement market are therefore Lafarge (Mauritius) Cement Ltd and Kolos Cement Ltd with almost 100% market share. It is to be noted that the market for cement has been liberalized as from 1 July 2011. As such there could potentially be some operators importing cement but from information gathered so far, it appears that the volume of such imports would be insignificant in comparison to that of the two main players.

2.25. Table 2 represents the indicative market shares of the two players and the degree of concentration, as measured by the Herfindahl Hirschman Index (HHI)[15].

*Table 2: Indicative Market shares and concentration in the cement market*

| Company | Indicative Market share |
|---|---|
| ***Kolos Cement Ltd*** | *40% - 50%* |
| ***Lafarge (Mauritius) Cement Ltd*** | *50% - 60%* |
| ***HHI*** | *5,000 – 5,200* |

*Source: Computed from publicly available information[16]*

2.26. It is found that the HHI index for the cement market is around 5,000, which indicates that the cement market is highly concentrated. However, given the characteristics of the industry: huge investment requirement, most of which would potentially be sunk costs; minimum efficient scale to be achieved; and the relative smaller size of the local market, it is unlikely that many operators would be attracted to enter the market.

## C. *The market for the supply of ready-mix concrete, aggregates and blocks*

2.27. Concrete is a mixture of cement, water and aggregates (fine and coarse), or rocks. The mixture forms a fluid mass that is easily molded into shape. When the paste hardens, it gains strength to form the rock-like mass known as concrete.

[15] The HHI is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in a market, and then summing the resulting numbers, and can range from close to zero to 10,000.

[16] Top 100 Companies ranking for the year 2015

2.28. Aggregates are inert granular materials such as sand, gravel, or crushed stone that, along with water and Portland cement and are an essential ingredient in the manufacture of concrete. Aggregates account for 60 to 75 percent of the total volume of concrete and are divided into two distinct categories: fine and coarse.

2.29. Natural gravel and sand are usually dug or dredged from a pit, river, lake, or seabed. Crushed aggregate is produced by crushing quarry rock, boulders, cobbles, or large-size gravel. Recycled concrete is a viable source of aggregate and has been satisfactorily used in granular subbases, soil-cement, and in new concrete.

2.30. Blocks are used to make walls, pavements and other inputs in construction. Concrete blocks are made from cast concrete, e.g. Portland cement and aggregate, usually sand and fine gravel for high-density blocks. Given the size and weight, blocks are locally produced in Mauritius.

### *I. Operators in the market for ready-mix concrete, aggregates and blocks*

2.31. In Mauritius, ready-mixed concrete is currently being supplied by four companies, namely Pre-Mixed Concrete Ltd, Betonix Ltd, Gamma Materials Ltd and Eastern Mix Ltd. In addition, there are a number of small operators which produce and supply concrete at the site of the client using mainly labour and a minimum level of mechanisation (smaller sized concrete mixer and in some cases concrete pump). However, these smaller enterprises cater for a limited market for residential buildings mainly.

2.32. The suppliers of ready-mix concrete are also in the business of aggregates and construction blocks. As explained earlier, aggregates and cement are the two key inputs in the production of construction blocks and ready-mix concrete. Suppliers of construction materials do benefit from economies of scope and scale in providing aggregates, concrete and blocks. Fine Crush Ltd (which is the sister company of Betonix Ltd and part of the Bhunjun Group), Gamma Materials Ltd, Eastern Stone Crusher Ltd (the holding company of Eastern Mix Ltd) and United Basalt Products Ltd are active in the supply of aggregates and blocks. It is highlighted that UBP has 49% shareholding in Pre-Mixed Ltd, with Lafarge (Mauritius) Ltd having controlling interest with its 51% shareholding.

2.33. In the case of ready-mix concrete, the providers supply their products directly to consumers; that is those who are building their own houses and those companies undertaking construction

works. For aggregates and construction blocks, consumers obtain their required products directly from the suppliers or through a hardware store in the vicinity.

2.34. A brief description on the various operators in the supply of construction materials is provided below.

### *a. United Basalt Products Ltd*

2.35. United Basalt Products Ltd ('UBP') was founded in 1953 following the merger of five companies engaged in stone crushing: Stone Utilities, Stone Masters, Stone & Bricks, Concrete Products and Building & Engineering. It is a public company with about 3,941 shareholders and is listed on the stock exchange of Mauritius since June 1989. Its current capitalization is around Rs 2.2 billion (USD 61.5 million). Its activities are categorized into 3 main segments, namely: stone crushing, retail and agriculture.

2.36. UBP runs 8 production and sales plants and 2 sales depots at strategic points throughout Mauritius, besides units in Rodrigues, Madagascar and Sri Lanka.

2.37. The main shareholders of UBP are GML Investissement Ltee and Forward Investment and Development Enterprises Ltd which respectively hold 25.01% and 9.45% of the total shares. The rest of the shareholders hold less than 5% of the ordinary share capital of the company[17].

### *b. The Bhunjun Group*

2.38. The Bhunjun Group, a family owned business, is a major player in the local construction industry with its subsidiaries namely, Bhunjun & Sons Ltd, Bhunjun Properties Ltd, Betonix Ltd and Fine Crush Ltd. It offers a wide range of interrelated services in the construction and real estate development.

2.39. The Bhunjun Group supplies construction materials like aggregates and building blocks through its subsidiary Finecrush Ltd; and ready-mixed concrete through its another subsidiary Betonix Ltd. The Group is active is the construction and real estate development through its subsidiaries: Bhunjun & Sons Ltd and Bhunjun Properties Ltd.

[17] See http://www.stockexchangeofmauritius.com/downloads/archives/25092013UBP.pdf.

### *c. Pre-Mixed Concrete Ltd*

2.40. Pre-mixed Concrete Ltd, is a company that is specialised in the production of ready-made concrete. It is one of the main ready-made concrete producers in Mauritius. It is owned 51% by Lafarge (Mauritius) Ltd and by United Basalt Products (UBP) (49%)[18].

### *d. The Gamma Group*

2.41. The Gamma Group is engaged in the building materials, construction and property activities. In the 'materials' segment, it is active, through its Gamma Materials Ltd, in the production and supply of aggregates, asphalt and precast products, ready-mixed concrete, concrete blocks and cement. In the 'construction' segment, it is active, through Gamma Civic Ltd, in the building engineering and civil engineering markets, as well as infrastructure. And in the 'property' segment, the Group is active in commercial property, residential property and hotels and resorts. It also has a strategic alliance with Colas[19].

2.42. With a combined market capitalization of USD 200 million and current combined group turnover of USD 250 million, the Gamma Group is listed on the Stock Exchange of Mauritius since November 1994 and appears today amongst the Top 10 most performing companies on the Stock Exchange of Mauritius with 5-year total return to shareholders of 392%.

### *e. The Eastern Stone Crusher Ltd*

2.43. The Eastern Stone Crusher Ltd is a family company founded in 2000. It forms part of the Eastern Group of Companies which also includes the Eastern Mix Ltd and the ESC Construction Ltd. The Eastern Stone Crusher Ltd supplies aggregates and construction blocks and his wholly-owned subsidiary Eastern Mix Ltd supplies ready-mix concrete.

## *II. Market shares and level of concentration in supply of concrete, aggregates and blocks*

2.44. In the absence of segregated data on each product of the operators and taking into consideration the three of them, namely the Bhunjun Group, Gamma Group and Eastern Group inter-related companies, we have calculated the market shares based on the estimated total turnover for the construction materials. For comparison purposes, the turnover of Pre-Mixed Ltd and UBP Ltd, being related companies, have been combined.

[18] http://www.businessmag.mu/article/le-partenariat-en-beton-de-premix-concrete-avec-lafarge
[19] http://www.gamma.mu/gamma-at-a-glance.html

*Table 3: Indicative Market shares and concentration*

| Company | Indicative Market shares |
|---|---|
| ***Bhunjun Group (Betonix Ltd and Finecrush Ltd)*** | *25% - 30%* |
| ***Gamma Materials Ltd*** | *17% - 22%* |
| ***Pre-Mixed Ltd and UBP Ltd*** | *35% - 45%* |
| ***Eastern Group*** | *5% - 10%* |
| ***HHI*** | *3,000 – 3,500* |

*Source: Computed from publicly available information*[20]

2.45. As illustrated in Table 3, the markets for the supply ready mix concrete, aggregates and construction blocks are also highly concentrated with the three firms having around 90% market share and the HHI ranging between 3,000 and 3,500.

## D. The market for the supply of iron bars and metal products

2.46. Iron and steel are also a major input in the construction sector. Also known as commodity items, they are used in building as well as civil engineering projects. They consist of rebars, H beams and other shapes, pipes (structural pipes and others), sheet piles, galvanized steel sheets and other coated sheets (e.g. roofing), heavy and medium plates, steel sheets and other secondary and tertiary wire rod products. Iron bars and rebars are used as a tension device to reinforce concrete and masonry structures.

2.47. The market of iron bars has been fully liberalized in terms of removal of price control as from April 2007. There is no restriction on the volume of iron bars imported but are subject to permits and quality control terms of certification by the Mauritius Standard Bureau. Same control applies to locally manufactured iron bars.

2.48. In 2016, the total volume and value of iron and steel imported amounted to 114,000 tonnes and Rs 2,567 million (around USD 75 million). In comparison with the figures for 2015, the volume and value of iron and steel imported were 7% and 30% lower for 2016.

2.49. The annual volume of Iron bars, which are mainly used in the reinforcement in construction of buildings and other infrastructure, traded annually on the local market is estimated to range

[20] Top 100 Companies ranking for the year 2015.

between 70,000 to 90,000 tons. Of these, around 65% - 70% are imported and the remaining 30% - 35% are produced locally by one local enterprises dealing in scrap metals.

### *I. Operators in the supply of iron bars*

2.50. The main operators in the iron and steel market include local manufacturers, wholesale importers and hardware stores. Larger construction companies also directly import iron bars and steel products.

2.51. The two local manufacturers of iron bars are: Samlo Koyenco Steel Co. Ltd which operates a foundry makes iron bars by processing scrap metals; and Shankar Steel Ltd which manufactures iron bars from imported steel billets.

2.52. Kosto Ltd, a subsidiary of Desbro (Seychelles) and part of Murray & Roberts Group, operates a steel mill and is in the importation and distribution of iron bars and other steel products. Joonas Co. Ltd is another major player in the market.

### *II. Market shares and level of concentration in the supply of iron bars*

2.53. As indicated previously, the steel product market, including iron bars has been liberalised since 2007 and there are presently numerous players in the market. We estimate that the four above listed players in the market would have combined market share in the range of 65% - 75% and the concentration index of HHI to be 1,400 – 1,600.

## *E. Professional services*

2.54. Projects in the construction industry in Mauritius can be regrouped into residential buildings, non-residential buildings and other works. Other works are mainly public works such as the construction of roads, bridges, social housing projects, construction and renovation of government buildings such as hospitals and educational institutions. The services of architects, engineers and quantity surveyors are demanded for the various types of construction works listed above, albeit to limited extent for individual residential projects such as small and medium-sized houses.

2.55. Professional services are either provided by individual construction professionals, particularly for small project or by consultants which registered companies.

2.56. The regulatory framework for professionals in the construction industry is provided below.

### *I. Architects*

2.57. Architects have the role of planning, designing, and overseeing the construction of buildings. The profession of architects in Mauritius is regulated and controlled by the Professional Architects' Council set up under section 3 of the Professional Architects' Council Act 2011. In Mauritius, as per the Professional Architects' Council Act 2011, only professional or authorized foreign architects are allowed to practice in Mauritius.

2.58. To become a registered professional architect by the Professional Architects' Council, the applicant should firstly be a citizen of Mauritius, or a resident in Mauritius if not a citizen) and has attained the age of 21. The professional architect should not have been convicted of an offence involving fraud or dishonesty in any country or been disqualified or deregistered from practicing architecture. Moreover, he/she should hold a degree or an equivalent qualification in architecture, after full-time studies of a duration of not less than 5 years, from a university or other institution which is – (i) recognised by the "Union Internationale des Architectes" in accordance with the UNESCO/UIA Charter for Architectural Education; or (ii) recognised by the competent authority of the country where the degree or equivalent qualification has been obtained; and (iii) approved by the Council. He/she should also have at least 2 years' approved post qualification experience; and have paid the registration fee as may be prescribed.

### *II. Engineers*

2.59. Engineers contribute to the construction sector by designing materials, structures, and systems while considering the limitations imposed by practicality, regulation, safety, and cost.

2.60. The process for the registration of engineers in Mauritius is in two stages, firstly the approval of qualifications and secondly the assessment of experience in the practice of engineering (Registration Stage).

2.61. The approval of qualifications consists of ensuring that the candidates' qualifications in engineering are of a standard which satisfies the requisites of Section 13 of the Registered Profession Engineers' Council Act (1965). This may require candidates to demonstrate a sound

and adequate knowledge of mathematics, engineering science and fundamental engineering principles applicable to their field of engineering through a technical interview.

2.62. The assessment of experience in the practice of engineering which occurs at the registration stage entails that the applicants must have had at least 24 months of satisfactory training, under the supervision of a Registered Professional Engineer, from their own field or an allied field.

### *III. Quantity Surveyor*

2.63. The quantity surveyor is responsible for managing all costs relating to building and civil engineering projects, from the initial calculations to the final figures. They seek to minimize the costs of a project and enhance value for money, while achieving the required standards and quality.

2.64. In order to practice as a professional quantity surveyor in Mauritius, the applicant has to be registered at the professional quantity Surveyors' Council which is governed by the Professional Quantity Surveyors' Council Act 2013. To be a registered quantity surveyor, the applicant must has attained the age of 21, not been convicted of an offence involving fraud or dishonesty in any country and not been disqualified from practicing quantity surveying. The applicant should also hold a degree or an equivalent qualification in quantity surveying from an approved institution with at least 3 years approved post-qualification experience and pay registration and annual fee as may be prescribed.

### *IV. Contractors*

2.65. Contractors plays an important role in the construction industry. They are one who undertake the responsibility to carry out and deliver construction projects. Contractors are regulated by the Construction Industry Development Board Act 2008. In August 2017, there were 1803 contractors registered with the Construction Industry Development Board, of which there were 989 building contractors, 493 civil engineering contractors, 113 mechanical contractors and 138 electrical contractors. Amongst these, the top five contracting firms with the highest turnover in the construction sector were: (1) Bhunjun & Sons Ltd; (2) General Construction Co. Ltd; (3) Transinvest Construction Ltd; (4) Rehm-Grinaker Construction Ltd; and (5) Manser Saxon Contracting Limited.

# 3. Regulatory Framework

3.1. In Mauritius, the construction industry is mainly regulated by the government through the Construction Industry Development Board (CIDB) which operates under the aegis of the Ministry of Public infrastructure and land transport.

## *A. The Construction Industry Development Board Act*

3.2. The CIDB is responsible for the promotion of the development and improvement of the construction industry. It is a statutory body which has been established under the CIDB Act of 2008. The CIDB has among others the main functions of regulating and registering providers of construction works and construction services; providing the standardisation and improvement of construction materials and techniques; developing standard forms of construction agreements and contracts; and publishing periodically indicative schedules of rates for construction works.

### *I. Composition of the Construction Industry Development Council*

3.3. The CIDB is administered by its Construction Industry Development Council, which is statutorily prescribed at Section 8 of the CIDB Act 2008 and is composed as follows:

(a) a Chairperson, appointed by the Minister;

(b) a representative of the Ministry;

(c) a representative of the Ministry responsible for the subject of environment;

(d) a representative of the Ministry responsible for the subject of local government;

(e) a representative of the Professional Architects' Council established under the Professional Architects' Council Act;

(f) a representative of the Professional Quantity Surveyors' Council established under the Professional Quantity Surveyors' Council Act;

(g) a representative of the Council of Registered Professional Engineers of Mauritius established under the Registered Professional Engineers Council Act;

(h) a representative of the small and medium enterprises of the construction sector, to be appointed by the Minister;

(i) a representative of an association of contractors for building and civil engineering works, to be appointed by the Minister;

(j) a representative of an association of contractors for mechanical and electrical works, to be appointed by the Minister;

(k) a person having wide experience in the construction industry, to be appointed by the Minister.

3.4. The Construction Industry Development Council comprises therefore of members which are representatives of the private stakeholders of the construction industry, which by virtue of their registration are subjected to the regulatory control of the CIBD.

3.5. A potential concern may therefore be whether the private stakeholders, which by virtue of their position as the Construction Industry Development Council members, may take decisions which unjustly favour the enterprises which they represent to the detriment of the other stakeholders of the industry. While any potential conflict of interest might not amount to a restrictive business practice as defined by the Competition Act 2007, this might be hindering competition in the construction sector by putting stakeholders not represented at the Construction Industry Development Council at a competitive disadvantage and/or constitute a corruption issue.

3.6. It is however highlighted that there are internal procedures set up for the Construction Industry Development Council to mitigate the potential conflict of interest concern. The CCM has been informed that the members of the Construction Industry Development Council are provided with the agenda of the council meeting prior to the meeting on which they are expected to base themselves to determine whether they would be in any potential situation of conflict of interest for any decision. Where any conflict of interest is declared, this is recorded by the Council secretary in the minutes of the Council meeting and the member who has declared the interest does not take part in the proceedings or decision in relation to that matter.

### *II. Registration of contractors and consultants*

3.7. In Mauritius, as per the CIDB Act 2008, no person can offer his services as a consultant or as a contractor in both the public and the private sector unless he is registered. It is the council which decides whether to grant an application or not.

3.8. Contractors are classified into 8 Grades A to H. The grading is based on their financial capabilities and the nature of the projects they can undertake. This means that a contractor could achieve a high grading provided it had available capital and its financial performance over the last few years.

3.9. The rationale of having a grading system of contractors in Mauritius is to have a method of classification, which allows the regulatory body to know which value of work that the contractor can undertake. It is highlighted that a contractor is not allowed to undertake construction works above his Grade Limit.

3.10. Licenses of contractors are renewed on a yearly basis and the CCM has been informed by the CIDB that at the moment of renewal, if the financial circumstance of the contractor has changed, the latter can apply for registration for either an upper or lower grade, based on documentary evidence. They will also be required to pay for a registration fee for additional class of works or additional area of specialization. To the extent that contractors may apply for an upper or lower grading each year, the grading system does not therefore constitute any barrier to entry or expansion for contractors. The grading system appears to be more a method of classification therefore which allows the regulatory body, i.e., CIDB to better regulate and monitor the activities.

3.11. Table 4 illustrates the number of contractors registered with the CIDB.

*Table 4: Number of contractors registered with CIDB as at August 2017*

| Grade | BUILDING CONSTRUCTION WORKS | | CIVIL ENGINEERING CONSTRUCTION WORKS | | MECHANICAL WORKS | | ELECTRICAL WORKS | | MEP WORKS | | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Local | Foreign | Local | Foreign | Local | Foreign | Local | Foreign | Local | Foreign | |
| GRADE A (Above 250 Million) | 22 | 23 | 12 | 152 | 12 | 11 | 5 | 25 | 1 | 6 | **269** |
| GRADE B (Up to 200 Million) | 4 | 3 | 2 | 1 | 3 | 0 | 3 | 1 | 1 | 1 | **19** |
| GRADE C (Up to 150 Million) | 16 | 2 | 3 | 3 | 3 | 1 | 4 | 5 | 4 | 1 | **42** |
| GRADE D (Up to 75 Million) | 34 | 13 | 18 | 21 | 13 | 7 | 10 | 6 | 3 | 1 | **126** |
| GRADE E (Up to 50 Million) | 69 | 1 | 19 | 3 | 12 | 1 | 17 | 1 | 3 | 6 | **132** |
| GRADE F (Up to 25 Million) | 59 | 2 | 25 | 3 | 9 | 2 | 8 | 0 | 7 | 2 | **117** |
| GRADE G (Up to 10 Million) | 152 | 0 | 52 | 2 | 12 | 0 | 15 | 0 | 7 | 0 | **240** |
| GRADE H (Up to 5 Million) | 587 | 2 | 175 | 2 | 27 | 0 | 38 | 0 | 26 | 1 | **858** |
| **TOTAL** | **943** | **46** | **306** | **187** | **91** | **22** | **100** | **38** | **52** | **18** | **1803** |

*Source: CIDB*

3.12. The CIDB Act also puts an obligation on consultants providing professional construction services to be registered with CIDB. Table 5 provides the number of consultants registered with CIDB as at August 2017.

*Table 5: Number of consultants registered with CIDB as at August 2017*

| Category | Number |
|---|---|
| Architecture | 102 |
| Civil Engineering | 254 |
| Mechanical Engineering | 78 |
| Electrical Engineering | 87 |
| Quantity Surveying | 62 |
| Project Management in Construction | 160 |
| MEP Services | 16 |
| Multiple Fields | 98 |
| **Total** | **857** |

*Source: CIDB*

3.13. Consultants and contractors registering at the CIDB are however required to pay a fee. The fee includes (i) a processing fee (ranging between Rs 500 - Rs1000) and (ii) a registration fee and annual renewal fee (ranging between Rs 2 500 - Rs150, 000), as per field of specialization. The registration and annual renewal fee will depend on the grading of the consultants/contractors[21].

3.14. There is no fee to provisional registration as a foreign contractor. However, registration for a permanent application costs Rs 10,000 to the foreigner.

## B. Construction standards

3.15. While the CIDB is mandated to 'encourage the standardization and improvement of the construction materials and techniques', the institution which is responsible for the development of common standards on construction is the Mauritius Standard Bureau (MSB). Consequently, both the CIDB and the MSB are involved in the development and adoption of the common standards and improvement of constructions materials and techniques in the construction industry in Mauritius.

[21] The details of the fees to be paid are available in the CIDB (Registration of Consultants and Contractors) (Amendment) Regulations 2015 at http://cidb.govmu.org/English/Consultants-Contractors/Documents/Fees%20for%20Registration%20as%20Contractor%20in%20Building%20and%20Civil%20Engineering%20Construction%20Works.pdf

### *I. Mauritius Standard Bureau*

3.16. The Mauritius Standards Bureau (MSB) is, a corporate body, set up under the Mauritius Standards Bureau Act 1993 has the responsibility of ensuring the standardisation, quality assurance, testing and metrology of construction materials. It also offers calibration services as a custodian of the national measurement standards. It is the 'Building and Construction Standard Committee', a technical committee set up by the MSB is responsible for the development of common standards in the construction industry.

3.17. MSB operates a certification marking scheme for products and a national management system certification scheme (ISO 9001, ISO 14001, ISO/IEC 27001, ISO 22000, HACCP). MSB is a member of the International Organization for Standardization (ISO), an affiliate member of the International Electrotechnical Commission (IEC) and a member of the African Organisation for Standardisation (ARSO).

3.18. However, although a few standards such as MS 10 and MS 34 are mandatory, the standards developed or adopted by the MSB are usually voluntary. All standards developed in Mauritius are voluntary standards and it is the Consumer Protection Unit within the Ministry of Industry, Commerce and Consumer Protection which adopts regulations made under the Consumer Protection Act 1991 to make a standard mandatory. The standards made mandatory standards by the Consumer Protection Unit. The main rationale for having such standards imposed by the Consumer Protection Unit is for safety purposes.

3.19. The Business Facilitation Act 2017, which came into force on 20th of May 2017 provides that cement imported in Mauritius should comply with the standard MS 36-1:2006.

3.20. The table 6 shows the Mauritian standards for construction materials in Mauritius[22].

[22] The full set of standards is available on the following link: http://msb.intnet.mu/English/Documents/MSB/Standards/latest_cat.pdf

*Table 6: Standards for construction materials in Mauritius*

| Construction Material | Standard | Specification for |
|---|---|---|
| Cement | MS 36-1:2006-Cement | Cement |
| Aggregates | MS EN 12620:2002+A1:2008 | Concrete |
| | MS 129:2006 (EN 13139:2002) | Mortar |
| | BS 882: 1992 | natural source for concrete |
| Iron and metal | MS 10:1999 | carbon steel bars for the reinforcement of concrete |
| | MS 34:2002 | cold reduced steel wire for the reinforcement of concrete |
| | MS 35:2006 | Steel fabric for the reinforcement of concrete |
| | MS ISO 1461:2009 | Hot dip galvanized coatings of fabricated iron and steel articles |
| | MS ISO 4998:2011 | Continuous hot-dip zinc-coated carbon steel sheet of structural quality |
| Blocks | MS 42:2000 | Precast concrete building blocks |
| | ISO 9001:2000-certified | Conform to BS 6073:3.5 N/mm² and other standards manufacture |

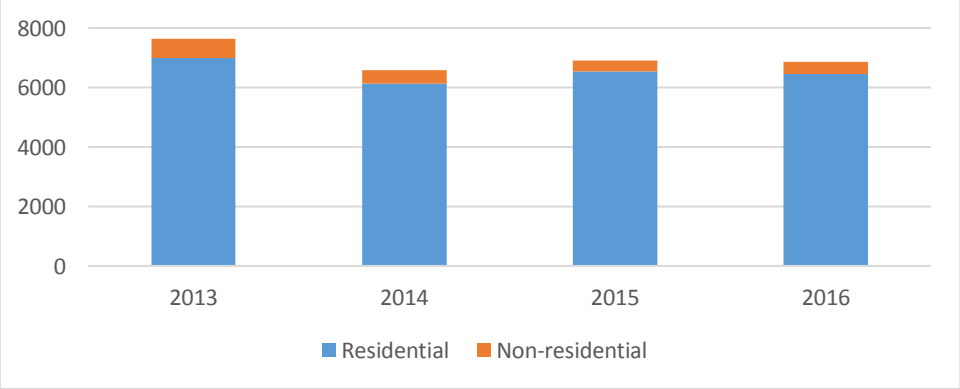
*Source: Mauritius Standard Bureau*

## C. Building permits

3.21. The Building and Land Use Permit is an administrative document which gives the means to administration for checking that a project of construction complies with the norms and rules of the local authority. It takes on average 21 days to obtain the building and land use permit.

3.22. Figure 4 reports the number of permits issued for residential and non-residential buildings.

*Figure 4: Number of building permits issued*




*Source: Statistics Mauritius*

## D. Government Intervention

### I. Trade restrictions

3.23. There are at present no specific trade restrictions as far as construction materials are concerned.

3.24. The exports and imports of goods in Mauritius are regulated under the Consumer Protection (Export Control) Regulations 2000 and the Consumer Protection (controls of Imports) Regulations 1999 respectively.

3.25. The documents and permit required for exportations of goods are:

- Export permits
- Export Certificates
- Kimberley Process Certificates

3.26. Import of cements and iron and steel including iron bars is open to anyone provided that the latter has the required import permit[23] and satisfies the relevant quality standard.

### II. Taxes and subsidies

3.27. Taxes targeted at specific products or services may unwittingly create an uneven playing field by channelling consumers towards substitutes that are not subject to tax. On the other hand, inefficient businesses that would have exited the market under competitive conditions may be "sponsored" by subsidies to remain in the market as they do not face competitive discipline to improve and innovate.

#### *a. Taxes*

3.28. The government charges a 15% VAT on all construction materials. In addition to the VAT, an excise duty of 6% and 10% are charged only for iron bars of 6mm and greater than 6mm respectively.

[23] Ministry of Industry, commerce & Consumer Protection (Commerce Division), Guidelines on Import and Export Procedures. Available at http://commerce.govmu.org/English/Documents/news/leaflet1.pdf.

### *b. Subsidies*

3.29. The Government does not offer any subsidy or grants to the construction industry. However, loans up to a maximum amount of Rs 250 000 are offered at a preferential interest rate by the Development Bank of Mauritius for inter alia, the construction commercial or office building, any other related activity under the micro credit scheme to mainly registered small and medium enterprises, small businesses holding a Business Registration Card at an interest rate of 6% per annum with a repayment period of up to 5 years, depending on the project.

# 4. Price Determination

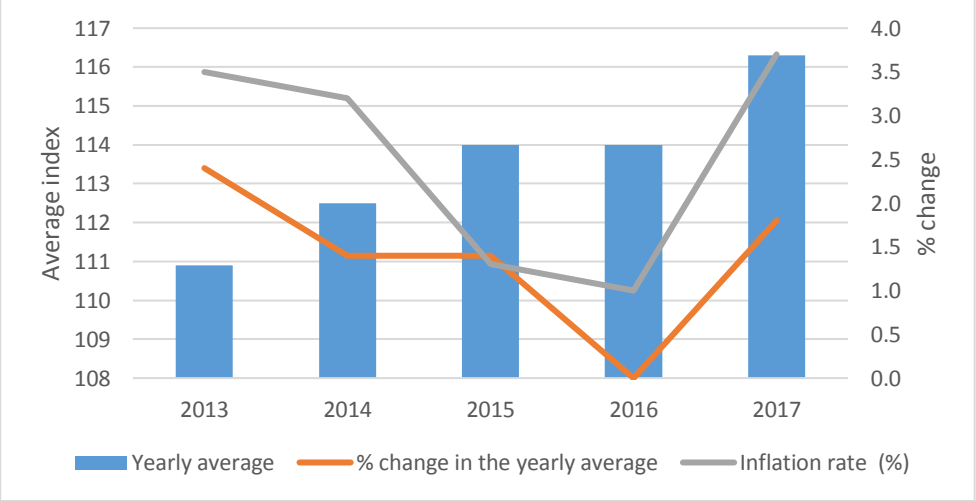
4.1 In Mauritius, prices of construction materials, including that of cement, aggregates, blocks and iron and metals, are not controlled by the Government.

## A. Construction Price Index

4.2 The Statistical Office of Mauritius regularly publishes the Construction Price Index (CPI). This index measures the change in the level of construction prices relative to the base year. The CPI consists of four main items, namely labour, hire of plant, materials and transport. Materials which include cement, iron bars, aggregates and blocks represent the highest weight in the CPI (64.2), followed by labour (28.2), transport (4.3) and hire of plant (3.3). It may be noted that cement and iron bars have the highest individual weight in the CPI of 12.7 and 10.6, respectively.

4.3 The construction price indices therefore give an indication of the change in the level of prices of construction works. They are also useful for evaluating cost fluctuations in contracts regarding construction works.

*Figure 5: Evolution of Construction Price Index*




Source: Statistics Mauritius

4.4 From Figure 5, it can be observed that construction prices, as measured by CPI[24], have increased between 2013 and 2017. However, the rate of increase fell from 2.4% in 2013 to 1.8% in 2017

[24] Computed by Statistics Mauritius, using 2009 as base year.

and with no increase registered in 2016. In comparison with the inflation rate, it is found that the increase in construction prices has been lower than the inflation rate over the period 2013-2017.

4.5 An analysis of the increase in prices of construction items reveals that four items, namely cement, cement, paint and ceramic tiles have registered the highest increase over the period 2013 -2017 in the range of 12.4% - 18.5%. Labour cost have also followed the same trend. Table 7 illustrates changes in price of the various items in the CPI for the period 2013-2017.

*Table 7: Construction Price Index for the period 2013 - 2017*

| Input Categories | Weight | Percentage increase in the construction price index | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | 2013 | 2014 | 2015 | 2016 | 2017 | Total | Average |
| **LABOUR** | **28.2** | **2.70%** | **3.70%** | **4.50%** | **1.10%** | **0.90%** | **12.90%** | **2.58%** |
| **HIRE OF PLANT** | **3.3** | **3.40%** | **1.10%** | **0.00%** | **0.00%** | **0.00%** | **4.50%** | **0.90%** |
| **MATERIALS:** | **64.2** | **2.40%** | **0.50%** | **0.20%** | **-0.50%** | **0.70%** | **3.30%** | **0.66%** |
| *Hardcore* | *1.8* | *2.00%* | *0.60%* | *0.00%* | *0.00%* | *0.70%* | *3.30%* | *0.66%* |
| *Cement* | *12.7* | *8.90%* | *1.20%* | *1.50%* | *0.80%* | *0.00%* | *12.40%* | *2.48%* |
| *Sand* | *4.2* | *1.30%* | *0.40%* | *0.00%* | *0.00%* | *0.80%* | *2.50%* | *0.50%* |
| *Aggregate* | *3.4* | *2.30%* | *0.70%* | *0.00%* | *0.00%* | *1.00%* | *4.00%* | *0.80%* |
| *Block* | *5.2* | *3.70%* | *4.50%* | *0.00%* | *0.00%* | *2.30%* | *10.50%* | *2.10%* |
| *Steel bars* | *10.6* | *-3.00%* | *-3.20%* | *-3.80%* | *-6.70%* | *1.30%* | *-15.40%* | *-3.08%* |
| *Galv. corrugated cast iron sheeting* | | *0.00%* | *-2.20%* | *-2.40%* | *0.40%* | *0.10%* | *-4.10%* | *-0.40%* |
| *Timber: (a) Carpentry* | *3.9* | *2.20%* | *0.90%* | *2.80%* | *0.90%* | *0.70%* | *7.50%* | *1.50%* |
| *(b) Joinery* | *1.6* | *2.20%* | *0.40%* | *0.50%* | *0.60%* | *0.70%* | *4.40%* | *0.88%* |
| *Aluminium openings* | *4.1* | *0.40%* | *0.00%* | *0.00%* | *0.00%* | *0.00%* | *0.40%* | *0.08%* |
| *Metal openings* | *2.7* | *0.30%* | *0.20%* | *0.20%* | *-0.10%* | *-0.10%* | *0.50%* | *0.10%* |
| *Ceramic tiles* | *0.8* | *7.30%* | *4.10%* | *4.40%* | *2.30%* | *0.40%* | *18.50%* | *3.70%* |
| *Adhesive* | *1.7* | *0.60%* | *0.20%* | *-0.20%* | *0.40%* | *1.00%* | *2.00%* | *0.40%* |
| *Paint* | *2.5* | *4.20%* | *2.70%* | *2.30%* | *3.70%* | *0.90%* | *13.80%* | *2.76%* |
| *Plumbing* | *1.5* | *0.40%* | *-0.20%* | *0.00%* | *0.10%* | *0.00%* | *0.30%* | *0.06%* |
| *Sanitary installation* | *2.2* | *0.70%* | *1.50%* | *2.30%* | *0.20%* | *3.30%* | *8.00%* | *1.60%* |
| *Electrical installation* | *4.7* | *0.50%* | *1.10%* | *0.30%* | *0.30%* | *-0.80%* | *1.40%* | *0.28%* |
| **TRANSPORT** | **4.3** | **0.00%** | **0.00%** | **0.00%** | **0.00%** | **0.00%** | **0.00%** | **0.00%** |
| **Total** | **100** | **2.40%** | **1.40%** | **1.40%** | **0.00%** | **0.70%** | **5.90%** | **1.18%** |

*Source: Statistics Mauritius*

## B. Indicative prices of key construction materials

4.6 A comparison of the current level of prices of cement, aggregates, concrete and iron has been carried out on the basis of informal information gathering. Table 8 provides the price range for the various products.

*Table 8: Indicative price range of key Construction Materials*

| **Price of cement (Rs/ bag)** | | | | | |
|---|---|---|---|---|---|
| **CEM-I 42.5** | | **CEM II 32.5** | | **MC 22.5** | |
| 50 kg | 25 kg | 50 kg | 25 kg | 10 kg | 25 kg |
| Rs 220 – Rs 230 | Rs 110 – Rs 115 | Rs 230 | Rs 115 | Rs 65 | Rs 115 |
| | | | | | |
| **Price of construction blocks (Rs/unit)** | | | | | |
| **4 inch** | | **6 inch** | | **8 inch** | |
| Rs 19 - Rs 20 | | Rs 21 – Rs 23 | | Rs 26 – Rs 27 | |
| | | | | | |
| **Price of Aggregates / Rocksand (Rs /ton)** | | | | | |
| **0 – 2 mm** | **0 – 4 mm** | **6 - 10 mm** | **10 – 14 mm** | **14 – 20 mm** | **20 – 31.5 mm** |
| Rs 710 – Rs 760 | Rs 628 – Rs 678 | Rs 440 – Rs 465 | Rs 434 – Rs 483 | Rs 434 – Rs 483 | Rs 425 – Rs 507 |
| | | | | | |
| **Ready-mix concrete (Rs /m3)** | | | | | |
| **Grade 15** | **Grade 20** | **Grade 25** | **Grade 30** | **Grade 35** | |
| Rs 3,750 – Rs 3,800 | Rs 3,800 – Rs 4,000 | Rs 4,000 – Rs 4,200 | Rs 4,100 – Rs 4,350 | Rs 4,250 – Rs 4,500 | |

Source: compiled from various sources

4.7 In course of information gathering on the various items for construction materials, it was observed in most cases prices of the products (with the exception of cement which are sold at hardware stores) were mostly available on request. As such, customers have to search for the competitive source of supply.

4.8 In terms of the price of iron bars, it ranges between Rs 22,000 to Rs 24,000 per ton. It is should be noted that bulk purchasers of construction materials bargain with suppliers and normally benefit from lower prices.

4.9 Moreover, the finishing of buildings can account up to between 20% - 30% of the project cost. Some industry players have highlighted that although there are many registered contractors for mechnanical, electrical and plumbing services (MEP) on the market for the supply of MEP, only a few companies have been winning the majority of public and private contracts.

## C. Pricing of professional services

4.10 The CCM understand that the fees for professional services are determined on the basis of the scope and the complexity of the work and the time spent on the project. This fee is normally negotiated between the client and the service providers. It has been submitted that the fees for quantity surveyor vary between 1%-1.5% and for architects between 4% and 10%. As for large construction projects, a competitive bid exercise is normally organized in the public sector.

# 5. Public Procurement

5.1 Public procurement is the process of purchasing goods, services and works by government and state-owned enterprises (referred to as 'public bodies'). As stated in OECD (2011)[25], "the primary objective of an effective procurement policy is the promotion of efficiency, i.e. the selection of the supplier with the lowest price or, more generally, the achievement of the best "value for money". Both public and private organizations often rely upon a competitive bidding process to achieve better value for money in their procurement activities. Low prices and/or better products are desirable because they result in resources either being saved or freed up for use on other goods and services."

5.2 The objective of any procurement policy is to mainly promote efficiency, avoid mismanagement and waste of public funds and Mauritius is no exception. In Mauritius, public procurement is governed by the Public Procurement Act 2006 ('the Procurement Act').

## *A. The legal framework*

5.3 The Procurement Act came into force in January 2008. Section 61 of the Act provides for the basic principles and procedures to be applied by public bodies, and regulates, the public procurement of goods, public works, consultant services, and other services. The Procurement Act is in line with the procurement procedures and principles of the United Nations Commission on International Trade Law Model Law on Public Procurement.

5.4 The Procurement Act defines a public body as 'any Ministry or other agency of the Government'. It applies to a total of 204 public bodies, comprising of Ministries, Departments, Local authorities and Parastatal organisations. The public bodies are heterogeneous in terms of administrative structure and value of procurement.

5.5 Public procurement is regulated by three institutions namely the Procurement Policy Office (PPO), the Central Procurement Board (CPB) and the Independent Review Panel (IRP).

[25] See 'Competition and Procurement, Key Findings 2011', by Competition Committee, OECD. Available at: https://www.oecd.org/daf/competition/sectors/48315205.pdf

### *I. Procurement Policy Office*

5.6 The Public Procurement Office (PPO) is the procurement policy making and monitoring body set up under the Procurement Act and is under the aegis of the Ministry of Finance. It is responsible inter alia, for the formulation of policies relating to public procurement, the issue of Standard Bidding Documents (SBD), forms of contracts to be used by public bodies, issue of directives, compliance monitoring and training in procurement activities. The PPO has amongst others the main functions of:

- issuing instructions to public bodies concerning the coordination of their actions with the Policy Office, the Board and the Review Panel;
- formulating policies relating to procurement, including directives, procedures, instructions, technical notes and manuals, for the implementation of the Act;
- issuing standard forms of contracts, bidding documents, pre-qualification documents, requests for proposals and other similar documents for mandatory use by every public body implementing procurement;
- collecting from the Board, the Review Panel and public bodies information on procurement activities and monitor their compliance with this Act;
- recommending, and facilitating the implementation of, measures to improve the functioning of the procurement system,
- preparing and conducting training programs for public officials, contractors and suppliers concerning procurement;
- communicating and cooperating with international institutions and other foreign entities on matters of procurement; and
- advising on and monitoring foreign technical assistance in the field of procurement;

### *II. Central Procurement Board*

5.7 The Central Procurement Board (CPB) is responsible for approving the award of major contracts by public bodies, the values of which exceed the prescribed amounts. Section 2 of the Procurement Act defines a "major contract" as a contract for the procurement of goods or services or the execution of works - (a) to which a public body is or proposes to be a party; and (b) the estimate of the fair and reasonable value of which exceeds the prescribed amount.

5.8 The public body is responsible for itself carrying out its procurement proceedings for procurement values below its prescribed amount, as specified in the Schedule to the Procurement Act whereas for procurement above its prescribed amount, whilst the public body prepares the bidding documents, floats the Invitation for Bids it is the CPB which is responsible for vetting the documents, receipt of the bids, evaluation of bids and recommending award of the related contract by the public body.

5.9 The functions of the CPB as listed at Section 11 of the Procurement are inter alia to:

- vet bidding documents and procurement notices submitted by public bodies;
- receive and publicly open bids;
- select persons from a list of qualified evaluators maintained by it to act as members of Bid Evaluation Committees and oversee the examination an evaluation of bids;
- review the recommendations of a Bid Evaluation Committee and approve the award of the contract; or require the Evaluation Committee to make a fresh or further evaluation on specified grounds;
- review the recommendations of a public body with respect to an amendment that increases the contract value and approve the variation or amendment proposed, require the public body to make a fresh recommendation or reject the variation or amendment proposed (post reporting period change in Procurement); and
- award public-private partnership/build operate transfer projects.

5.10 The CPB vets bidding documents and conducts the bidding process of all contracts exceeding the amount prescribed in the schedule. For example, the CPB will only conduct bidding process for contracts exceeding Rs 50 million in ministries/government department, Rs 15 million for local authorities among others, Rs 100 million for Central Water Authority, Mauritius Housing Company Ltd, National Transport Authority among others. The whole list is available schedule of the Public Procurement Act[26].

5.11 The Procurement prescribes the composition of the CPB is as follows: a Chairperson, two Vice-Chairpersons and three Members having wide experience in legal, administrative, economic, financial, engineering or technical matters. The day to day administration of the CPB is entrusted

[26] The public Procurement Act 2006 is available on the following link: http://publicprocurement.govmu.org/Pages/default.aspx

to a Chief Executive who is supported by administrative staff and a technical team of professionals comprising, amongst others, engineers and procurement officers.

### *III. Independent Review Panel*

5.12 The PPA provides a review mechanism to an unsatisfied bidder. The Independent Review Panel (IRP) is established under the PPA to review applications from unsatisfied bidders, who have in a first instance challenged the procurement proceedings by a public body. The IRP has the responsibility of reviewing the procurement proceedings where an unsatisfied bidder submits an application for review. If it considers there is merit in the case, it orders and recommends remedies as provided in the PPA. In case of no merit, it dismisses the application.

### *IV. Procurement Methods listed under the Procurement Act*

5.13 The PPA lists the following procurement methods to public bodies for the procurement of goods, other services and works: open advertised bidding; restricted bidding; request for sealed quotations and direct procurement; community or end-user participation; or departmental execution[27]. The public body, may in relation to the procurement of consultancy services under the Procurement Act, opt for request for proposals (on the basis of quality, quality and cost, quality and fixed budget or least cost and acceptable quality) and direct procurement.

5.14 The Procurement Act prescribes open advertised bidding as a general rule in respect of the choice of procurement method by public bodies for goods, other services or works, adding that equal access should be provided to all eligible and qualified bidders without discrimination. The PPA provides that any *other* prescribed method of procurement may be used only if the public body has reason to believe that open advertised bidding - (i) will not be efficient or practical for the procurement in question; or (ii) will be too costly to apply given the value of the procurement[28].

5.15 When using open advertised bidding method, a public body may opt for open national bidding, i.e, 'limit participation in open advertised bidding proceedings to citizens of Mauritius or entities incorporated in Mauritius only where such limitation is stated in the invitation to bid or, for

[27] Section 15(1)(a) PPA
[28] *Section 15(2)(d) PPA*

prequalification, in the bidding documents and is otherwise in accordance with such criteria as may be prescribed'[29].

5.16 Section 18 of the PPA further allows the public body to use open international bidding, where:

'(a) the estimated value of the procurement exceeds the prescribed threshold;

(b) the goods, works or other services are not available under competitive price and other conditions from more than one supplier in Mauritius; or

(c) there is no response to open national bidding and the goods, other services or works must be obtained from international bidders'.

5.17 Circular No 4 of 2014 as issued by the PPO provides guidance on the manner according to which public bodies may use open advertised bidding method:

(i) Open National Bidding

The Circular provides that this method may be used where the estimated value of the procurement is of Rs 200 million or less. Participation to the bidding process is limited to citizens of Mauritian or entities incorporated in Mauritius where such limitation is stated in the invitation to bid or, for prequalification, in the prequalification document.

(ii) Open Advertised Bidding Method

Public bodies may choose to open participation to all eligible and qualified suppliers (including overseas suppliers) for procurements with estimated value of Rs 200 million or less.

(iii) Open International Bidding

It is mandatory for public bodies to use open international bidding for procurements of goods, works and other services, with estimated value exceeding Rs 200 million subject to section 19(1)(a) (relating to restricted bidding) and Section 21 (relating to emergency procurement) of the Public Procurement Act. For procurements with estimated value of Rs 200 million or less, public bodies may have recourse to international bidding where it is known that the requirements cannot be met by the local market, or in view of the contract amount opening to foreign suppliers might foster competition.

5.18 Section 19 of the PPA provides that a public body may use restricted bidding where,

[29] *Section 17 PPA*

*(1) '(a) where [it] has reason to believe that the goods, other services or works are only available from a limited number of bidders;*

*(b) where the time and cost of considering a large number of bids is disproportionate to the value of the procurement, having regard to such thresholds as may be prescribed; or*

*(c) by limiting the participation in a particular procurement to those suppliers included on preapproved supplier eligibility lists drawn up and maintained by the public body, in such manner as may be prescribed, so as to ensure that suppliers of specialised goods and services have and maintain the necessary technical and financial capability to provide them.*

*(2) (a) Where restricted bidding is used on the ground referred to in subsection (1)(a), all known suppliers capable of supplying the goods, other services or works shall be directly solicited.*

*(b) Where restricted bidding is used on the ground referred to in subsection (1)(b), the public body shall, as far as reasonably possible, directly solicit bids from a minimum of 5 bidders'.* The PPA provides limits the use of 'request for sealed quotations' as a method of procurement only for the procurement of:

*'(a) readily available commercially standard goods not specially manufactured to the particular specifications of the public body;*

*(b) small works; or*

*(c) small other services,*

*where the estimated value of the procurement does not exceed the prescribed amount'.*

5.19 The public body is required by the PPA to request for sealed quotations from a minimum of three suppliers, unless the number of suppliers which supply the required good is less than three.

## *V. Margin of Preference in public procurement*

5.20 The Directive No 5 of 2012 issued by the PPO provides for a margin of preference for procurement of works from small and medium enterprises. The aim of the directive is to encourage the participation of small and medium enterprises (SME) in public procurement. The relevant parts of the directive read as follows:

- For low value procurement up to Rs 500,000 undertaken through informal quotation under Section 25(2)(a) of Public Procurement Act 2006, the number of suppliers to be solicited should include at least two SMEs, as far as reasonably possible.

- For procurement up to Rs 5 Million, at least two SMEs, as far as reasonably possible, should be included in the shortlisting of bidders under the Restricted Bidding Method. Similarly, for Request for Sealed Quotations, the short list should also include, as far as reasonably possible, at least two SMEs.
- Non-inclusion of two SMEs under the Restricted Bidding, Request for Sealed Quotations and Low Value Procurements should be fully justified and properly recorded.

5.21 Directive 12 of 2012 issued by the PPO provides for a revised margin of preference for procurement of Works to promote the employment of local manpower in works contracts as follows:

- A margin of preference of 10% in respect of International Bidding to a bidder, incorporated in the Republic of Mauritius and employing local manpower for 80 % or more of the total man-days deployed for the execution of a works contract.
- A margin of preference of 20% in respect of national bidding, to a local SME, having an annual turnover not exceeding Rs 50 million or a joint venture consisting of local Small and Medium Enterprises having an aggregate annual turnover not exceeding Rs 50 million and employing local manpower for 80 % or more of the total man-days deployed for the execution of a works contract.
- A margin of preference of 10% in respect of national bidding to a non-SME bidder employing local manpower for 80 % or more of the total man-days deployed for the execution of a works contract.

### *VI. Framework Agreement*

5.22 A framework agreement refers to an agreement between one or more public bodies or a lead organisation and one or more suppliers, which establishes the terms and conditions under which the supplier will enter into contract(s) with the public body. In other words, a framework agreement is an agreement between public bodies and shortlisted suppliers, which enables the public bodies to procure, as and when required under certain conditions, from these suppliers.

5.23 The Government has announced a measure to the effect that all construction contracts which value does not exceed Rs 5 million will be allocated exclusively to SMEs. It is highlighted that this measure has not been adopted formally and is as at date not a Government policy nor decision. While it is evident that the aim of this measure is to encourage the participation of SMEs in the

construction industry of the country, it is however stated that this measure can be problematic. This is so because the measure despite being a positive measure, it remains a discriminatory measure. Barring larger companies from participating in such contracts might result in the loss of efficiencies which are associated with the large scale work of larger companies. It is also highlighted that, in practice, the implementation of this measure might be problematic in that larger companies may incorporate sister companies, with a smaller turnover only to be able to bid for these contracts. A framework agreement is ideal for the repetitive procurement of goods, works and services.

5.24 The total value of contracts awarded for the year 2016-2017 amounted to approximately Rs 7 billion in respect of 44 projects. Building projects accounted for around 60% (Rs 4 billion) of the total contract value awarded.

5.25 Table 9 provides information for the period 2013-2017 on the total value of contracts awarded and the number of projects approved by the CPB.

*Table 9: Value of contracts and number of projects approved by CPB*

| Year | Value of contracts awarded (Rs billion) | No. of projects approved |
|---|---|---|
| **2013-2014** | 16 | 46 |
| **2014-2015** | 7 | 40 |
| **2015-2016** | 15 | 39 |
| **2016-2017** | 7 | 44 |

Source: CPB Annual reports for year 2015-2016 and 2016-2017

5.26 Table 10 provides information on the number of public openings, bids received from 2013 to 2017.

*Table 10: Number of bids received for the period 2013 - 2017*

| Year | No. of Public Openings | No. of Bids received | Average No. of Bids per Bidding Exercise |
|---|---|---|---|
| **2013-2014** | 47 | 300 | 6 |
| **2014-2015** | 52 | 366 | 7 |
| **2015-2016** | 38 | 331 | 9 |
| **2016-2017** | 73 | 381 | 5 |

Source: CPB Annual report reports for year 2015-2016 and 2016-2017

5.27 An analysis of the bid response rate on public procurement exercises related to construction works and reported to the PPO as at June 2016 is shown in the Table 11.

*Table 11: Analysis of bid responsiveness*

| Details | 2013 | 2014 | 2015 | Jan – June 2016 |
|---|---|---|---|---|
| Number of bids analysed | 465 | 145 | 204 | 266 |
| Approved contract value (Rs billion) | 5.4 | 2.3 | 1.1 | 1.3 |
| Bid Response rate (%)* | 65.8 | 61.1 | 68.9 | 67.7 |
| Maximum number of responsive bidders | 10 | 11 | 8 | 7 |

Source: Public Procument Office; *Estimated by the CCM on the basis of information provided by PPO

5.28 It is observed that over the period 2013 – 2016, the bid response rate (as measured by the proportion of responsive bids over the total bids invited/submitted) has been fluctuating over the years while remaining below 70%. In addition, the average maximum number of responsive bids fell from 10 in 2013 to 7 in 2016.

5.29 Some industry players have submitted that bidding documents are complex and that small contractors may find it difficult to correctly fill in these documents. This could be one of the reasons for the the low bid responsiveness.

## B. Competition concerns in public procurement

5.30 The overarching concern with public procurement is that, because formal rules governing public procurement generally make communication among rivals easier, they can promote collusion among bidders and therefore reduce rivalry, with detrimental effects on the efficiency of the procurement process.

5.31 Collusive agreements are very difficult to detect since they are secretive in nature. Only the participants have knowledge of the anti-competitive conspiracy and members continuously devise creative methods to keep the collusive enterprise undercover. Very often the evidence of the collusion are destroyed making it further difficult to detect bid rigging. Moreover, proving bid rigging cartels is a tough task that requires a combination of vigilant monitoring by the procurement bodies and this essentially involves ubiquitous active monitoring and detection from procurement officers.

5.32 In view of facilitating detection of anti-competitive concerns and issues in public procurement, the Competition of Mauritius has entered into a Memorandum of Understanding (MoU) with the

Public Procurement Office. This MoU has helped in promoting co-operation and coordination between the CCM and the PPO when dealing with bid-rigging case in public procurement. It also facilitated the treatment of cases of bid rigging within the public sector.

5.33 Moreover, section 52(3) of the Procurement Act prohibits bidders to engage in collusion before or after a bid submission, designed to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels or otherwise deprive a public body of the benefit of free and open competition. Section 53 (1) (d) of the Procurement Act further allows the PPO to suspend or debar potential bidders or suppliers on, inter alia, ground of collusion – price fixing.

# 6. Assessment of Potential Competition Issues

6.1 In this section, an assessment of potential competition concerns arising from the structure, pricing conduct and regulatory framework underlying the construction industry is provided.

## *A. Market structure*

6.2 An analysis of the various markets for the supply of construction materials reveals high degree of concentration and existence of vertical linkages.

### *I. Vertical integration in the construction industry*

6.3 The shareholding structure of the firms involved in the supply of construction materials is illustrated in Figure 6. It is found that some major players in the industry are vertically integrated. They operate at more than one level in the construction supply chain.

6.4 Cement suppliers are vertically integrated with companies which are active in the downstream markets for the supply of ready-mix concrete, aggregates, and blocks. Some of these companies are also active in the supply of construction contracting services. This may give them a certain competitive advantage with respect to their competitors who are not vertically integrated . Such advantage generally results in benefits for consumers in terms of price and innovative products and services. In some cases, however, these vertically integrated companies may be involved in restrictive business practices such as refusal to deal/supply to gain unfair advantage over their competitors or the exercise of their market power by exploiting customers.

6.5 Upstream producers integrate with downstream distributors to secure a market for their output. Firms are then better able to control access to inputs and control the cost, quality and delivery times of the inputs. Vertical integration describes the ownership or control by a firm of different stages of the production process.

6.6 When two companies are vertically integrated such as Lafarge (Mauritius) Cement Ltd and Pre-mixed Concrete Ltd among others, this implies that they will have easier access to inputs and be able to control the output, and therefore gain a competitive advantage over their respective horizontal competitors.

6.7 They may also be able to price their output cheaper than their competitors as they can absorb costs better. Upstream suppliers who are vertically integrated might margin squeeze their competitors, since the former can control more effectively their costs, through their subsidiary downstream companies and be better able to compete in the downstream market.

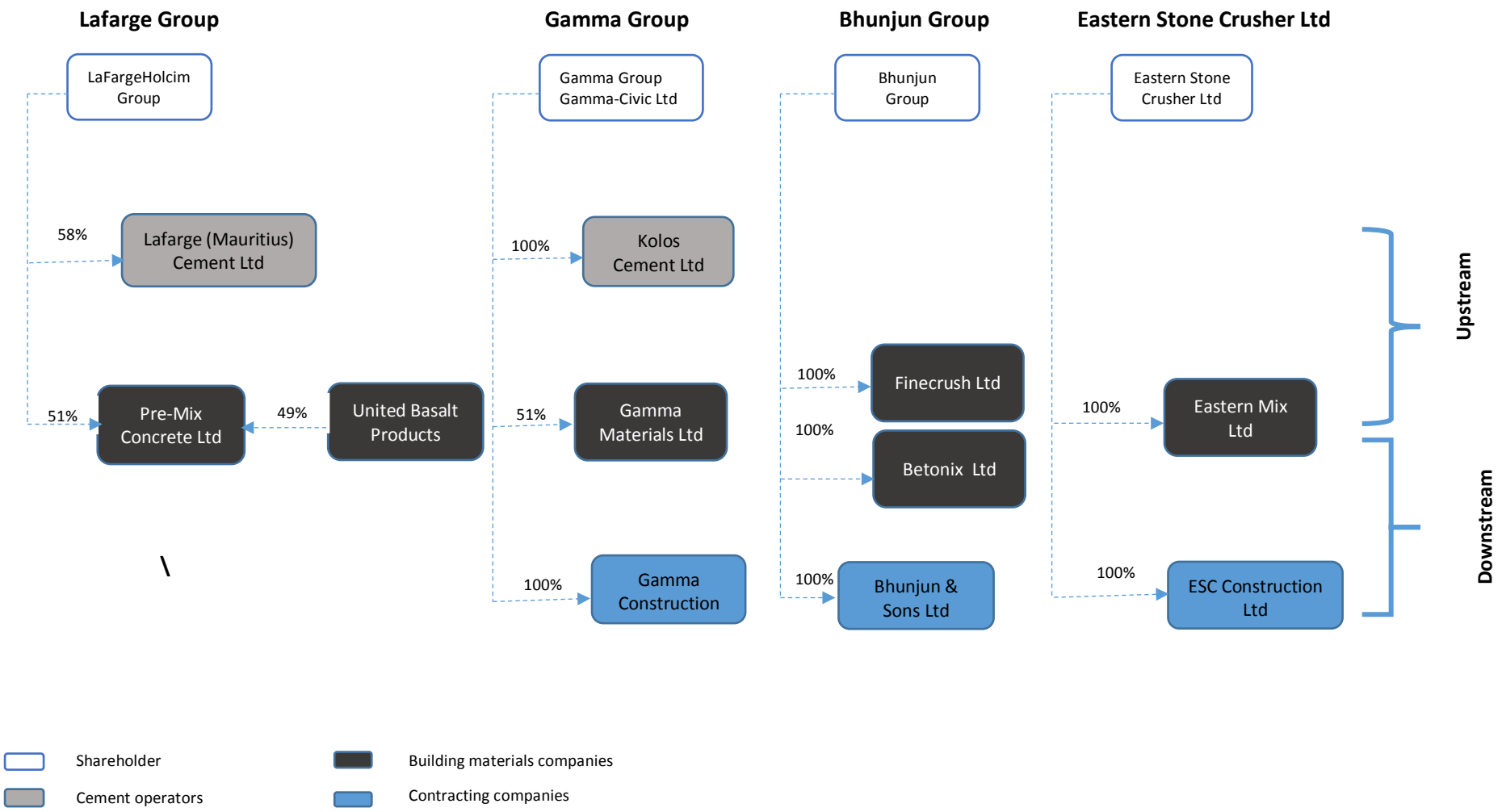
6.8 In certain cases, vertically integrated companies might use their position to foreclose access to inputs to their competitors. For instance, by refusing to deal with competitors or by giving competitors more unfavorable terms of sales or businesses, than they would have given to their subsidiary companies.

6.9 Some of the stakeholders have submitted that vertically integrated companies may not necessarily act in such a manner or have the objective of foreclosing small contractors and restricting competition. These companies are likely to have the ability to invest in innovation and improve the quality of its products to the benefit of the consumers.

6.10 In a previous investigation conducted by the CCM, on the Holcim/Lafarge merger and the subsequent divestment of Holcim Ltd to Gamma- Civic Ltd, the Executive Director expressed some concerns about the vertical links of Gamma-Civic Ltd in the construction market, through its presence in the sub-markets as identified in the sections above. The Executive Director was particularly concerned that Gamma-Civic Ltd, through its acquisition of Holcim Ltd, would consolidate its vertical links in the construction industry, by becoming an integrated player (from cement supplier to the finished construction project contractor).

6.11 Gamma-Civic Ltd proposed undertakings or commitments to the CCM to address those concerns. In the said undertakings, Gamma-Civic Ltd, through its subsidiary, Kolos Cement Ltd, cement supplier, undertook to deal with all its clients and potential clients at arm's length and will not apply any discriminatory policy in relation to the supply of cement, and to the terms and conditions of supply of cement in favour of entities related to Gamma-Civic Ltd, without the prior approval of the CCM. Gamma-Civic Ltd has also maintained that it will not discriminate against its rivals with regards to the price of cement, the supply of cement and the terms and conditions of supply of cement.

*Figure 6: Vertical Integration in the construction industry*



6.12 By virtue of vertical relationship, cement companies are therefore in the market for ready mixed concrete and aggregates (materials) and ready-mixed concrete and are also active in the contracting services segment.

6.13 Some companies are not active on the cement market but are present in the aggregates (materials) and ready-mixed concrete market have shares or ownership in contracting services companies.

6.14 A few concerns have been expressed in relation to the supply rocks for the production of aggregates. It has been submitted that there is a high degree of concentration in terms of ownership of quarries and supply of rocks. It has also been claimed that there may potentially be vertical restraints which may be affecting the markets for aggregates and concrete. However, such claims have not been substantiated but could potentially be a matter for further investigation.

6.15 Given the high degree of market concentration and vertical linkages that exist between the players within the construction industry, markets in this industry may potentially be more prone to anti-competitive conducts. A constant review of the construction material markets would enable the CCM to identify potential vertical restraints and other forms of impediments to competition in the concerned markets.

## B. Regulatory Framework

### I. Grading of contractors

6.16 Like in many countries, the CIBD in Mauritius has put in place a grading system for contractors. The contractors are categorised between Grade A and Grade H according to their work and financial capabilities. The rationale of the grading system is to have an effective classification method for the proper regulation of the industry. The benefits of having a grading system cannot be ignored since it is the grading system itself which allows an efficient procurement process whereby the right contractors for the project amount can be easily identified. This can therefore expedite the procurement process.

6.17 However, on a broader perspective, some stakeholders have raised some concerns in regard to the grading system of contractors. Property development companies have suggested that

grading of contractors should be done in a stricter manner and not be mainly based on their turnover and value of projects performed. According to them, work experiences, quality of the work and the guarantee for completion of projects are other key factors that need to be taken into consideration.

6.18 Smaller contractors have raised concerns in relation to the non-possibility of joint ventures between contractors of same grades, in particular between contractors of lower grades. They submitted that this can potentially act as a barrier to expansion to smaller contractors. For instance, if there is a project for which a single contractor of a particular grade is unable to bid for, a joint venture among contractors of the same grade can allow them to bid and deliver for that particular project. For example, two grade F (up to Rs 25 million) contractors forming a joint venture to bid for a grade E project (Up to Rs 50 million). Although together both contractors (grade F) will have the capacity to perform the grade E project, under the current grading system, they will not be allowed to bid for this project.

6.19 The CIDB explained that the rationale for imposing such restriction is that lower grades contractors may not have the required project management and administration skills required to undertake projects of higher grades. For example, a joint venture among 10 firms in grade H i.e Rs 5 million bidding for a project of Rs 50 million may not have capacity and resources to undertake the project as a Grade E contractor.

6.20 The CIDB however highlighted that one grade of contractors may move up the ladder and bid for a higher grade of projects by joint venture with a contractor in the same higher grade. With such contracts, lower grades contractors will be able to acquire necessary skills and experience to enable them to move to higher grades. Alternatively, small contractors can also merge, work together for a period of time, expand and then request for an upgrading. Moreover, in view of promoting more competition especially among the lower grades contractors, the CIDB has review the scale of the gradings since 1st March 2017 increasing the grading limit of Grade H contractors from Rs 1.5m to Rs 5m.

6.21 In relation to public procurement for construction works, it is found that as the value of projects increases, the number of registered local contractors qualified to perform the job decreases. For example, as at August 2017, out of the 587 contractors registered for building

construction works, only 16 were registred as Grade C, qualifying to bid for projects up to Rs 150 million and 4 contractors as Grade B, qualifying to bid for projects up to Rs 150 Million.

6.22 Moreover, in view of promoting small and medium enterprises (SME) participation in public procurement, the Mauritian Government has also announced that contracts of a value of up to Rs 5 million will be reserved to SME. While the merits of this measure is in line with the Government's policy to democratise the economy, the measure has the immediate effect of excluding contractors of upper grades from participating in the procurement process. Nevetherless, by giving a boost to the SME to enter in the public procurement market, they are likely to expland in the long run and hence make the market more dynamic.

### *II. Registration of Professionals*

6.23 The registration of professionals of the construction industry, engineers, quantity surveyors and engineers is subject to stringent conditions of age, academic qualification and post qualification experience.

6.24 The degree of diligence and responsibility required is very high for construction works given the nature of work and the amount of money involved, the hazard that a faulty work represents to the lives of people and the damage that a faulty work can cause. It is for these reasons that the licensing criteria by professional bodies are essential in order to ensure that quality works are delivered. It is therefore submitted that the licensing requirement should be considered as a barrier to entry in the respective profession but are essential to ensure that the quality of work delivered meets the required quality.

### *III. Associations*

6.25 Associations currently active in the construction industry includes:

- The Mauritius Association of Architects
- Mechanical and Electrical Engineering Contractors Association
- Association of Consulting Engineers
- The Mauritius Association of Quantity Surveyors
- Building and Civil Engineering Contractors Association

6.26 Associations benefits its members in a number of ways. For example, it performs an important information gathering function that would be difficult for its members to perform individually. It may also help in the establishment of standards, promotion of innovation and representation of its members before legislative bodies.

6.27 While a large majority of trade association activity can be pro-competitive or competitively neutral, they may sometimes fail to take account of anti-competitive issues which can result in their engaging in illegal conduct. These associations may sometimes be used by competitors as a platform to meet and discuss about pricing and business strategies. Common examples of such conducts are price fixing, bid-rigging and market sharing.

### *IV. Standard and Norms*

6.28 Compliance for the majority of the standards and norms set in the construction industry are voluntary. Adherence to few standards, like those for cement and iron bars, are mandatory for safety and consumer protection. As such, there are no major barriers to entry arising from norms and standards setting in Mauritius.

### *V. Conflict of Interest*

6.29 The Construction Industry Development Council comprises of members which are representatives from the different sectors of the construction industry, which by virtue of their registration are subjected to the regulatory control of the CIBD. It is fairly represented by both the public and private sector and is comprosed of representatives from various ministries, construction professional associations, small and medium enterprises of the construction sector and a person having a wide experience in the construction industry.

6.30 A common issue that very often arises is the conflict of interest when taking decisions. Council members, by virtue of their position may unjustly favour their enterprises at the detriment of the other stakeholders of the industry. While any potential conflict of interest might not amount to a restrictive business practice as defined by the Competition Act 2007, this might be hindering competition in the construction sector by putting stakeholders not represented at the Construction Industry Development Council at a competitive disadvantage and/or constitute a corruption issue.

6.31 Nevertheless, in Mauritius, internal procedures has been put in place for the Construction Industry Development Council to mitigate the potential conflict of interest concern. The CCM has been informed that the members of the Construction Industry Development Council are provided with the agenda of the council meeting prior to the meeting on which they are expected to base themselves to determine whether they would be in any potential situation of conflict of interest for any decision. Where any conflict of interest is declared, this is recorded by the Council secretary in the minutes of the Council meeting and the member who has declared the interest does not take part in the proceedings or decision in relation to that matter.

## C. Pricing of construction materials

6.32 The pricing of the construction materials has been found to be mainly available on request to consumer. Such prices are normally obtained through a phone call to the hardware store. Out of the various construction companies, only one company active in the supply of aggregates and blocks has its price list published on its website.

6.33 Given that prices of construction materials are made available to customers on request, consumers should be encouraged to shop around before purchasing materials from a particular supplier to take advantage of the competitive prices prevailing on the market.

## D. Public procurement issues

6.34 An analysis of the tender exercises carried out by public bodies in Mauritius over the period 2013-2016 shows that the majority of such bidding exercises occurred via restricted bidding. While restricted bidding can be less burdernsome, help in cost and time savings, reduce the danger of low quality bids and produce better value for money, it is likely to hamper competition in the procurement process due to the limited number of private participants. Thus, one issue that may arise is the criteria of selection of bidders to send request for bids. It is important that the public sector strikes the right balance between keeping the necessary tension among participants and avoid any confidentiality issue.

6.35 In a view to increase bid responsivensss, contractors have suggested that the process of invitation to bid for restrictive bidding could be done in two stages. In the first stage, the concerned public body can send an email to prospective bidders and request them for their

interest for the bids. Bidders can then be shortlisted only based on those expressing their interest to bid.

6.36 Small and medium contractors have pointed out that timeframe for disbursement of funds causes them to have cash flow problems. They do not receive any advance payment for projects worth below Rs 5 million. There are also certain public bodies which also delay the disbursement of claims and can take up to 6 months before they are paid. These may limit their ability to compete and grow and consequently have the effect of distorting competition. It is, therefore, necessary for the public entities to adhere to the financing schedules that have been agreed under the contract to allow contractors to effectively undertake projects.

6.37 One of the proposals in relation to addressing the issue of cash flow problem face by small contractors is to facilitate them in obtaining advances to meet the project costs. This could be done through advances granted by government-owned financial institutions against the contracts that have been awarded to them.

6.38 Another issue raised by contractors is the appointment of district contractors across Mauritius. Each district council normally annually launch an open tender for 3 district contractors. Once the 3 contractors are allocated, the work is shared among the 3 contractors. It is claimed that only 12 contactors in Mauritius are operating across the 10 district councils whereas the saem work could have allocated to 30 contractors (3 per district).

### *Government to Government Business*

6.39 As part of its projects financing strategy, the government of Mauritius often signs G-to-G agreements with countries such as India and China. While such agreements can widely benefit Mauritius in terms of finance, transfer of expertise and know-how, various trade associations within the construction industry have raised certain concerns in relation to consequences of such agreements on local operators.

6.40 The association of architects has expressed concerns that local architects are completely excluded from G-to-G projects. They submit that their involvement in such projects, especially those related to the renovation of historical and public buildings, would bring value given that they have better knowledge on historical and local aspects. Moreover, it would be an opportunity

for them to learn from these foreign firms, develop their skills and expertise. Thus, increase participation and competitiveness of bids for future contracts. As highlighted in the strategy paper from the CIDB[30] and by the association of architects in Mauritius, one way of promoting competition and innovations for prestigious and mega public infrastructure projects would be to have recourse to architectural design competition.

6.41 Associations of contractors have also raised concerns in relation to the international contractors operating in Mauritius. For example the difference between the requirements for local contractors and international contractors over international tenders. Domestic employment laws do not apply to international contractors in the same way as it does to local contractors. While international contractors are allowed to house their foreign employees on the site of construction, local contractors are not allowed to do so. Moreover, local contractors claimed that they have to pay wages in compliance with the law, which have been claimed to be higher than that paid to foreign workers by the international contractors. As a result, local contractors have to incur higher labour costs and are disadvantaged vis-à-vis international contractors. This consequently affects their ability to compete for public contracts.

## *E. Other issues*

6.42 Another issue raised by certain contractors is the need to balance project risks in contracts. It has been claimed that project risks which are beyond the control of the contractors are imposed on them. An example are risks pertaining to the weather conditions. Exceptional circumstances only cover (i) 30mm rainfall or above recorded in 24 hours at the nearest rain station, (ii) an official declaration of torrential rain by the Mauritius Meteorological Services and Cyclone warning class III or above. Heavy rains or floods which may cause delays in project execution are not covered. Contractors consequently have to factor these aspects in the tender price. While larger contractors may to some extent absorb such risks, it is more difficult for small contractors to be able to do same. This situation is consequently likely to cause distortion in the competition process among contractors.

[30] See " A strategy paper for the construction industry" by the Construction Industry Development Board dated July 2013. Available on: http://cidb.govmu.org/English/Publication-Reports/Reports%20on%20Construction%20Industry/Documents/Download%20Strategy%20Paper%20for%20the%20Construction%20Industry.pdf

6.43 Some property developers have expressed concerns in terms of the shortage of skilled labour on the local market. The CCM has been given to understand that the cost of hiring international workers may be twice of that of hiring local ones. While they have to be paid the same wages as the Mauritians, there are additional costs such as air tickets, visa costs, housing, food among others. Nevertheless, property developers have ascertained that foreign workers may also be more skilled and reliable and consequently be more productive than local workers.

# 7. Conclusion

7.1 The study reveals high degree of concentration across the various markets within the construction sector. Some major players are also vertically integrated. While concentration and vertical integration may not be an issue in itself, such markets may be more proned to anti-competitive conduct and a constant monitoring of the sector may be warranted.

7.2 The prices of construction materials are not regulated but are determined by the market players. It is found that prices for construction inputs (labour, hire of plants, materials and transport) have overall increased by around 6% over the 5 years period 2013-2017. Prices of key items such as cement, contruction blocks and ceramic tiles increased by 12% , 10% and 13%, respectively whereas that of steel bars decreased by 15% over the last 5 years. The fees for professional services are determined on the basis of the scope, complexity of the work and the time spent on the project.

7.3 The study also revelaed that the construction industry is subject to various norms and standards. The norms are set by the MSB and the CIDB is responsible for grading of contractors and consultants. Prevailing norms and standards which in certain cases are voluntary, have not been found to be a major barrier to entry or expansion within the construction sector.

7.4 With regards to procurement of construction works by public bodies, it is found that the average number of responsible bids have been decreasing. It may useful to better understand the causes of decrease in the number of responsible bids so as to further promote competition in public procurement. Moreover, industry players have submitted, inter alia, that local contractors should get the opportunity to work on G-2-G projects and the terms of employment of foreign and local construction workers should not be discriminatory which give foreign contractors an edge over local ones.

# 8. The way forward

8.1 The CCM will invite views/comments from interested parties on the issues raised in this preliminary Study Report and more generally any other competition matter of relevance in the local construction sector.

8.2 Having regard to the views/comments put forth and/or any submissions made, the Executive Director will finalise the Study Report.

8.3 In case it is deem necessary that an advice be issued pursuant Section 19 of the Act[31], the Executive Director will send the final Study Report to the Commission. The latter may decide to hold a public hearing in order to give stakeholders in the construction industry and any other interested parties the opportunity to submit their views to the Commission.

### Procedure for submission of views/comments

8.4 Anyone interested in commenting on this Study Report is welcome to do so. All views/comments should be made in writing and should be submitted to the CCM **by 18th May 2018**. All comments should be sent either by e-mail to: info@ccm.mu or by post. Any correspondence should be addressed to the **Executive Director**, Competition Commission, 10th Floor, Hennessy Court, Corner Suffren Road and Pope Hennessy Street, Port Louis.

8.5 Respondents are advised that their contributions may be published on the Commission's website, unless the submission contains business secrets or other confidential information which shall then be treated in accordance with the confidentiality provisions of the Act and the Competition Commission Rules of Procedure 2009. Respondents are requested to identify the relevant section/part of their submission, which they consider to contain business secrets or other confidential information. If so, respondents are also requested to provide together with their original submission, a non-confidential summary of the information concerned.

[31] Section 19 of the Act provides as follows –
*"The Commission may advise the Minister on any action taken or proposed to be taken by the State or any public body that may adversely affect competition in the supply of goods and services".*

**Disclaimer:**

CCM's current views on the market study shall not in any way restrict or confine the CCM's ability to carry out its duties and functions as set out in the Competion Act. In particular, the CCM reserves the right, when examining any alleged anti-competitive activity that may come to its attention, to carry out its own market definition exercise or competition assessment, which may deviate or differ from those or findings expressed by the CCM in relation to this study.

## Competition Commission of Mauritius

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