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Decision of the Competition Commission

In the matter referred to as

'INV 051 – Proposed acquisition of the General Construction Company Ltd by IBL Ltd'

CC/DS/0043

Non-Confidential

25 June 2020

25 June 2020

Decision of the Commissioners of the Competition Commission of 25 June 2020

Made under section 64 (2) of the Competition Act 2007 further to a Commission Decision (CCM/DS/0042) issued on 19 March 2020

THE COMMISSION

Mr. A. Mariette	-	Vice-Chairperson,
Mr. C. Seebaluck	-	Commissioner,
Mrs. M. B. Rajabally	-	Commissioner,
Mrs. V. Bikhoo	-	Commissioner,

BACKGROUND

- 1.1 On 06 September 2019, IBL Ltd ('IBL') and General Construction Company Ltd by IBL Ltd ('GCC') (together referred to as 'the Parties') submitted a joint application for guidance on a proposed transaction to the Competition Commission. In their joint application, the Parties indicated that IBL together with a financial partner proposed to acquire the entire share capital of GCC. Accordingly, the entirety of GCC's business would be subject to the Parties' transaction to the exception of certain non-core assets (the 'Proposed acquisition').
- 1.2 On 21 October 2019, the Parties were informed of the competition concerns identified by the Executive Director with respect to the Proposed acquisition and of the launch of an in-depth assessment in the form of an investigation (referenced as 'INV051') in respect thereof.
- 1.3 On 21 November 2019, IBL offered undertakings pursuant to section 63 of the Act in view of allaying the competition concerns identified.
- 1.4 On 29 January 2020, the Executive Director issued a Provisional Report containing his assessment of the undertakings and expressed the view that IBL's undertakings be complemented by a periodic reporting obligation to the Competition Commission on the implementation and enforcement of its undertakings.
- 1.5 On 10 February 2020, IBL submitted further commitments in this regard and provided supporting documentation on the implementation of its undertakings.
- 1.6 On 14 February 2020, the Executive Director submitted his Final Report of Undertakings to the Commission for its determination pursuant to section 63 of the Act.
- 1.7 On 19 March 2020, the Commission issued its decision on the matter (bearing reference 'CCM/DS/0042'), accepting the undertakings offered by IBL. The

Commission also caused to be communicated a copy of its Decision to each of the Parties. The Parties were requested to identify information from the Decision which they deem confidential and justifying any such claim in view of producing and publishing a non-confidential of the Decision.

- 1.8 On 19 March 2020, a national lockdown was declared with effect from 20 March 2020, 06hrs00, in the context of the outbreak of the Coronavirus (COVID-19).
- 1.9 On 09 April 2020, the Commission communicated a non-confidential version of its Decision to IBL seeking its views thereon prior to publishing same.
- 1.10 On 15 April 2020, IBL informed the Commission, via email, that it was agreeable to the non-confidential version of the Decision. By said email, IBL also apprised the Commission of its decision not to proceed with the Proposed acquisition and also submitted a copy of a communiqué dated 15 April 2020 published to this effect on the Stock Exchange of Mauritius. The Communiqué, which is reproduced in full at Annex 1, inter alia states as follows –

The Board [of Directors of IBL] has re-assessed the Transaction amidst the changes to the local and global economic and social landscape as a result of the outbreak of the Coronavirus (COVID-19). In light of the [said] events, which are reasonably expected to have a material adverse effect on the Mauritian economy in general and the construction industry in particular, the Board wishes to inform the shareholders of IBL Ltd and the public in general that it has taken the decision not to proceed with the Transaction.

WHEREFORE

Decision of the Commission

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of procedure 2009,

Having regard to section 64(2) of the Act which provides that the Commission may, “*where it is satisfied that there has been a material change of circumstances - (a) agree to vary or terminate a direction ; or (b) accept a variation to an undertaking or release an enterprise from an undertaking)*”,

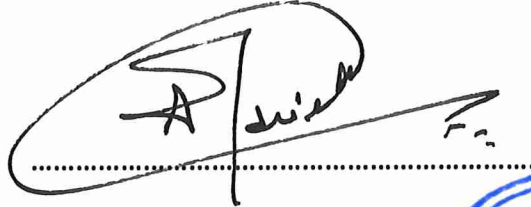
Having regard to the facts, matters, and circumstances set out above, the Commission decides as follows -

- 1) We are satisfied that the decision of IBL not to proceed with the Proposed acquisition, as set out in its Communiqué of 15 April 2020 and as communicated on same date to the Commission, amounts to a material change of circumstances,
- 2) We therefore release IBL from the undertakings provided to, and accepted and published by the Commission in the form of Decision of 19 March 2020, pursuant to section 64(2) of the Act,
- 3) We accordingly recall the Decision of 19 March 2020, and

- 4) For the avoidance of doubt the undertakings referred at sub-paragraph 2 above and related Decision of 19 March 2020 shall not apply in the event the Parties decide anew to pursue the Proposed acquisition or otherwise merge in the future.

Having regard to the provisions of section 18 of the Act requiring the Commission to publish its decisions, the Commission hereby publishes its Decision arrived at on 19 March 2020 for information purposes only (Annex 2).

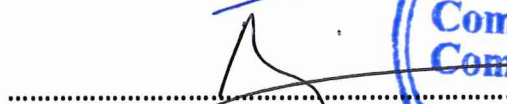
Mr. A. Mariette (Vice-Chairperson)



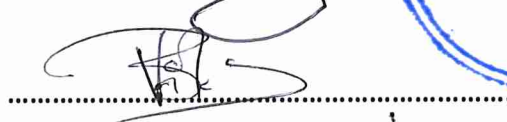
Mr. C. Seebaluck (Commissioner)



Mrs. M. B. Rajabally (Commissioner)

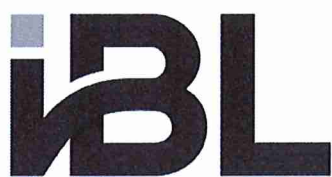


Mrs. V. Bikhoo (Commissioner)



25 June 2020

Annex 1: Communiqué dated 15 April 2020 from IBL Ltd



TOGETHER

Communiqué

By virtue of a communiqué dated 24 June 2019 (the “Communiqué”), the Board of Directors of IBL Ltd (the “Board”) informed the shareholders of IBL Ltd and the public in general that it was considering the acquisition of 100% of the share capital of *The General Construction Company Limited* jointly with a financial partner (the “Transaction”).

The Board has re-assessed the Transaction amidst the changes to the local and global economic and social landscape as a result of the outbreak of the Coronavirus (COVID-19).

As matters stand, the Coronavirus (COVID-19) pandemic has resulted in a complete lockdown by the Government of all non-essential economic activities in Mauritius since 20 March 2020, with no certainty as to when and under what conditions all economic activities in Mauritius will resume.

In light of the above events which are reasonably expected to have a material adverse effect on the Mauritian economy in general and the construction industry in particular, the Board wishes to inform the shareholders of IBL Ltd and the public in general that it has taken the decision not to proceed with the Transaction.

The Transaction was not considered to be a Notifiable Transaction under Chapter 13 of SEM’s Listing Rules.

By order of the Board
IBL Management Ltd
Company Secretary
15 April 2020

This communiqué is issued pursuant to Listing Rule 11.3 and Rule 5 of the Securities (Disclosure Obligations of Reporting Issuers) Rules 2007.

The Board of Directors of IBL Ltd accepts full responsibility for the accuracy of the information contained in this communiqué.

BRN : C07001778

**Annex 2: Decision (CCM/DS/0042) of Commission of 19 March 2020
(Non-confidential version)**



Decision of the Competition Commission

CCM/DS/0042
Non - Confidential

**Proposed acquisition of the General
Construction Company Ltd by IBL Ltd**

19 March 2020

**Decision of the Commissioners of the Competition Commission
of 19 March 2020**

**relating to a proceeding under section 63 of the Competition Act 2007 further
to a report from the Executive Director in the matter referred to as
'INV051 – Proposed acquisition of the General Construction Company Ltd by
IBL Ltd'**

THE COMMISSION

Mr. A. Mariette	-	Vice-Chairperson,
Mr. C. Seebaluck	-	Commissioner,
Mrs. M. B. Rajabally	-	Commissioner,
Mrs. V. Bikhoo	-	Commissioner,

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to undertakings offered by IBL Ltd on 21st November 2019 as supplemented by its reporting commitments subsequently offered on 10th February 2020 (together referred to as 'Undertakings'),

Having regard to a report of the Executive Director of the Competition Commission dated 14th February 2020 on the Undertakings (hereinafter the 'Report'),

WHEREAS:

I. Introduction

- 1.1 This Decision relates to Undertakings, which have been offered to the Commission by IBL Ltd, in the course of an investigation (INV051) opened by the Executive Director into the 'Proposed acquisition of the General Construction Company Ltd by IBL Ltd'.
- 1.2 Having taken cognizance of the Executive Director's Report on the matter, the Commission has determined the case on the basis of the Undertakings, pursuant to section 63(3) of the Competition Act 2007 (the 'Act').

II. Background

- 1.3 The parties to the proposed acquisition (the 'Parties') are respectively IBL Ltd (as acquiring party) and General Construction Company Ltd (as proposed acquired party). The Parties' business activities, including through certain subsidiaries, overlap within the building construction sector.

- 1.4 On 06th September 2019, the Parties submitted a joint application for guidance on the proposed acquisition to the Competition Commission (the 'Application').

i. Parties

IBL Ltd (The Acquiring Party)

- 1.5 IBL Ltd is a public company limited by shares (Business Registration Number: C07001778), having its registered office at IBL House, Caudan Waterfront 11307, Port-Louis. IBL Ltd is a conglomerate group that is involved in Mauritius and overseas in different clusters of activity including building and engineering. IBL Ltd's annual turnover in Mauritius for the year 2018 was about Rs 37 billion and its assets were valued at around Rs 59 billion¹. The Building and Engineering Cluster of IBL Ltd had generated a revenue of Rs 8.6 billion for the year ending June 2018 for the Group².
- 1.6 IBL Ltd's Building and Engineering Cluster comprises several companies: Manser Saxon Contracting Ltd ('MSCL'), United Basalt Products Ltd, Construction and Material Handling Co Ltd, Scomat Ltée, ServEquip, DieselActiv, and Chantier Naval de l'Océan Indien.
- 1.7 Of interest to the Executive Director's investigation and to the present Decision are the commercial activities of IBL Ltd, through MSCL, in material and equipment supply as well as contracting of construction works. The activities of MSCL, including its subsidiary - Systems Building Contracting Ltd, are described below.
- 1.8 MSCL (Business Registration Number: C06011636) was incorporated in 1993 and is registered as a private company, limited by shares. It is 92.5% owned by IBL Ltd. MSCL is described as a multi-disciplinary construction company with an in-depth expertise in the fields of Mechanical, Electrical and Plumbing (MEP), Fit Out interiors, and Facilities Management and Aluminium³. The turnover of MSCL was Rs 1.8 billion for the financial year ended 30th June 2018⁴. Although IBL Ltd describes MSCL as 'primarily undertaking MEP and fit-out works'⁵, it nevertheless was engaged in building construction works in 2018 through the construction and renovation of the following hotels: Saint Géran, Lux Grand Gaube and Le Chaland Hotel Ltd.
- 1.9 *Systems Building Contracting Ltd* (Business Registration Number: C07042813) is described as a multidisciplinary company established in

¹ Integrated Report 2018 IBL Group, per para. 2.17 of the Report.

² <https://www.iblgroup.com/content/building-engineering>, per para. 2.18 of the Report.

³ <https://mansersaxon.com/about-us>, per para. 2.28 of the Report.

⁴ Based on information gathered from the Registrar of Companies, per para. 2.18 of the Report.

⁵ The Parties' Application, under sub-heading 'IBL' at pg. 8.

Mauritius since 1974 but which was incorporated in 2002. It specialises in design, installation and maintenance of electrical and mechanical engineering services for the building industry⁶. Its portfolio of clients includes hospitality, renewable energy, industry and commercial, offices and residential⁷.

- 1.10 MSCL holds 64.5% of the stake in Systems Building Contracting Ltd⁸. In line with the definition given to 'enterprise' under our Act⁹, reference to MSCL in this Decision encompasses Systems Building Contracting Ltd insofar as the latter is a subsidiary of and an entity directly or indirectly controlled by MSCL.

General Construction Company Ltd (The Proposed Acquired Party)

- 1.11 General Construction Company Ltd ('GCC') is a public company limited by shares (Business Registration Number: C07001048), having its registered office address at Industrial Zone, Plaine Lauzun. GCC's turnover was Rs 2.5 billion for the year ended March 2018¹⁰.

- 1.12 GCC is described as being "*among the leading engineering, project management and construction company in Mauritius*".¹¹ GCC operates in the building construction and civil works and civil engineering construction works industries in Mauritius. According to information gathered from the website of GCC, GCC has undertaken a number of construction projects for the following segments: civil roads, commercial, corporate, education and culture, hotels and industrial¹².

- 1.13 GCC owns four subsidiaries: Mauritius Building Co Ltd (100%), Steel Reinforcement Co Ltd (99%), Quick Buil Ltd (100%), and Brass Products Ltd (100%). Mauritius Building Co Ltd and Steel Reinforcement Co Ltd are dormant companies. Quick Buil Ltd is an inactive company. Brass Products Ltd trades as: "*importer/manufacturer/seller of gold and silver wares and other precious metals and or stones*"¹³ although the Application describes Brass Products Ltd as being involved in "*rental of property*". GCC also holds 34.04% shareholding in an investment holding company, B.R.E Ltd, which is described as Associate company of GCC¹⁴.

⁶ <http://www.systemsbuilding.com/en/>, per para. 2.30 of the Report.

⁷ *Ibid.*

⁸ Information gathered from the Registrar of Companies, per para. 2.30 of the Report.

⁹ Under section 2 of the Act, enterprise is defined as '*any person, firm, partnership, corporation, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them*'.

¹⁰ The Parties' Application at pg. 6

¹¹ <https://www.gcc.mu/>, per para. 2.33 of the Report.

¹² <https://www.gcc.mu/our-achievements/>, per para. 2.34 of the Report.

¹³ Information gathered from the Registrar of Companies, per para. 2.40 of the Report.

¹⁴ The Parties' Application at pg. 10.

- 1.14 According to the Parties, GCC has complete control over the management of its subsidiaries and none of the subsidiaries and associate of GCC is involved in the construction industry¹⁵.

ii. The Proposed Transaction

- 1.15 From the Application, it is noted that IBL Ltd together, with a financial partner¹⁶, is proposing to acquire the entire share capital of GCC, currently comprising of an aggregate of 6,651,976 ordinary shares and 5,021,822 redeemable preference shares. The contemplated stake of IBL Ltd in this joint acquisition will be ■%, and that of the financial partner will be ■%.
- 1.16 The entirety of the business of GCC is subject to the Proposed Transaction, with the exception of certain non-core assets. As a condition precedent to the proposed merger, GCC will be restructured to exclude its above-listed subsidiaries and associate from the Proposed Transaction, save for Brass Products Ltd. It is further noted that the precise acquisition structure and directorship details have not been defined as at date of the Application insofar as IBL Ltd, at that stage, was still in discussion with the financial partner regarding the Proposed Transaction.
- 1.17 It has been further gathered from the Application that the Proposed Transaction is not as a result of bankruptcy or insolvency of either Party¹⁷. The Parties have submitted, in their Application, that the *"addition of GCC as a subsidiary within IBL's Building and Engineering cluster will represent a major step towards IBL achieving its strategic ambition of participating in sustainable growth of the building construction and civil engineering construction industries in Mauritius"*. It was also submitted that *"the acquisition of GCC will strengthen IBL's portfolio of activities as a diversified group in Mauritius"*.¹⁸
- 1.18 Having regard to information contained in the Application and the Executive Director's Report, the Commission has based its determination of the Proposed Transaction solely with respect to IBL Ltd's proposed stake in GCC to the exclusion of any control obtained by its financial partner.

iii. Background on the Building Construction Industry

- 1.19 The construction industry is regulated by the Construction Industry Development Board (the 'CIDB'), which has been set up under the CIDB Act 2008. The CIDB Act 2008 defines the construction industry to mean the industry dealing with construction works and construction services.

¹⁵ The Parties' Application at pg. 10

¹⁶ The Parties have stated, in the Application, that the identity and relevant details of the financial partner will be disclosed to the Commission in due course upon finalisation of the negotiations and completion of due diligence on GCC.

¹⁷ The Parties' Application, at para 1.2.

¹⁸ The Parties' Application, at para 3.2.

Construction work is in turn defined to include *'the erection, extension, installation, repair, maintenance, retrofitting, renewal, renovation, alteration, dismantling or demolition of all types of buildings, and engineering infrastructure and includes temporary and any preparatory works required to undertake the works'*. Suppliers of construction works are referred as contractors.

1.20 Pursuant to the CIDB Act 2008 and regulations made thereunder, all contractors must be registered with the CIDB. The CIDB Act prescribes different Grades (A to H, as amended per Act No 31 of 2016 to include Grade A+)¹⁹ and classes of works for contractors. According to information gathered from the CIDB, the grading structure classifies contractors according to their capacity to undertake a construction project, namely with regards to their financial ability and expertise to undertake the project as well as the value thereof. Three classes of works are set out in the CIDB Act (Part B of Schedule) viz., building construction works, civil engineering construction works and MEP works. Contractors for all the afore-referred three classes of works are graded as per the CIDB grading schedule from Grades A to H. As at date of the Report, no contractor had been graded A+.

1.21 MEP works and building construction works are two different types of works that are generally required for and complementary to one another in the construction of buildings. It has been gathered that MEP works suppliers may either act as nominated subcontractors, whereby they are selected by the client, who then instructs the building works contractor to appoint such nominated subcontractor, or as domestic subcontractors, whereby the MEP works subcontractor is selected (including through bidding processes) and appointed by the building works contractor. It is noted that for certain projects, it is the supplier of the building construction works who selects and appoints the MEP works supplier while in certain projects, it is the client who appoints the MEP works supplier.

1.22 The Parties have stated in their Application that:

- (a) GCC is registered as a "Grade A" local contractor with the CIDB for building construction works and civil engineering construction works respectively. GCC undertakes work in all Grades (A-H) for these two classes and generated █% of the turnover from Grades A-D works; and

¹⁹ Per Part C of Second Schedule to the CIDB Act 2008. According to the Parties' Application, the Grades refer to the value of projects that contractors may undertake. Each Grade refers to a maximum value for projects and contractors registered for a specific Grade cannot undertake projects the value of which exceeds the Grade for which the contractor is registered. Contractors registered for a higher Grade of works may undertake works within lower Grades.

- (b) MSCL is registered as a "Grade A" building construction works contractor and a "Grade A" MEP works contractor.

iv. The Investigation

- 1.23 The Competition Commission took cognizance of IBL Ltd's proposed acquisition of GCC from a press article dated 25th June 2019.

[REDACTED]

On 6th September 2019, the Competition Commission received the Parties' Application.

- 1.24 Upon assessment of the Application, the Executive Director found reasonable grounds to believe that the transaction was likely to qualify as a merger situation likely to result in substantial lessening of competition in the markets for the supply of building construction services and the supply of MEP works within the meaning of section 48 of the Act.
- 1.25 By letter dated 21st October 2019 and during a factual meeting, the Parties were informed of the competition concerns identified by the Executive Director with respect to the Proposed Transaction and of the launch of an in-depth assessment, by way of investigation ('INV 051'), into the Proposed Transaction.
- 1.26 During said meeting, the Parties expressed their willingness to resolve the matter through undertakings. On 21st November 2019, IBL Ltd offered undertakings pursuant to section 63 of the Act in view of allaying the competition concerns identified.

The competition concerns identified during investigation

- 1.27 In his Report, the Executive Director expressed the concern that through the Proposed Transaction, IBL Ltd will be acquiring an [REDACTED] % stake in GCC viz., an independent enterprise with which IBL Ltd neither had any previous corporate link nor prior control. With an [REDACTED] % shareholding in GCC, IBL Ltd would likely be acquiring both ownership and controlling interest in GCC wherein the latter would become a subsidiary of IBL Ltd.
- 1.28 Post-transaction, IBL Ltd would likely have controlling interest over two subsidiaries – GCC and MSCL – of which GCC previously and independently operated within Grades A – H building construction works while MSCL operates within Grade A building and construction and MEP works.

- 1.29 Regard had to the overlapping business activities, the likelihood of complementarity between building construction and MEP works, demand and supply considerations, and CIDB licensing requirements, works categorisation and Grading mechanism; the Executive Director has focused his assessment within the markets for (a) the supply of building construction works by "Grade A" contractors in Mauritius; and (b) the supply of MEP works by "Grade A" contractors in Mauritius.
- 1.30 Regard also had to the nature of the Proposed Transaction and views submitted by stakeholders interviewed during investigation, two concerns have been identified namely, potential foreclosure of competing contractors upon Parties leveraging their market power (referred to as '*Concern 1*') and increased access to information and transparency in bidding exercises (referred to as '*Concern 2*').
- 1.31 Under *Concern 1* and to the extent that MSCL and GCC will be under the common ownership and control of IBL Ltd, IBL Ltd may have the economic incentive to maximize its overall profits and as such, the joint profit of MSCL and GCC. MSCL is viewed as the leading MEP works supplier and GCC as the leading building construction works supplier amongst "Grade A" suppliers in Mauritius. As such, IBL Ltd may have the incentive to require or otherwise incentivize clients (for instance through discounts with either GCC or MSCL) of GCC to procure MEP works from MSCL and vice versa. Every client won on the other business may thus, increase the profit of the merged entity. A foreclosure strategy within the supply of MEP works is furthermore perceived as carrying a higher potential for anticompetitive impact insofar it is often the main contractor who appoints the MEP supplier. In such cases, concerns arise relating to the ability for and incentive of GCC to select MSCL as preferred MEP works supplier in future projects to the detriment of competition.
- 1.32 *Concern 2* has been expressed having regard to the complementarity of MEP works and building construction works and the significant amount of bidding through which such works are allocated. On the one hand, main contractors may call for bids from different MEP works suppliers, where they are required to appoint a MEP works supplier. If such information is shared by GCC (as main contractor) to MSCL, it will allow MSCL to know the bidding strategies of its competitors and to access information, which may be used to the detriment of competition. Conversely, where MSCL is contacted as potential MEP works supplier by main contractors, other than GCC, who are also bidding on the same project as GCC; MSCL will know who the potential bidders are and may also have access to certain technical or pricing specifications of such contractors' bids/offers for building construction works. Should MSCL share such information with GCC or should GCC otherwise have access to such information, this will provide

GCC with an advantage which others will not have, to the detriment of competition. Information sharing of the likes described above may reduce the effectiveness of bidding exercises as a competitive tool and may hinder effectiveness of competition in the markets concerned.

The Undertakings

1.33 On 21st November 2019, IBL Ltd offered certain behavioural commitments, as undertakings pursuant to section 63 of the Act, to address and alleviate Concern 1 and Concern 2, as identified in relation to the Proposed Transaction. Pursuant of its undertakings of 21st November 2019, IBL Ltd will procure that, following the completion of the Proposed Transaction:

In relation to *Concern 1*,

- (a) No change will be made to the sub-contractor agreements entered into by MSCL with the competitors of GCC, except as required in the ordinary course of business and in accordance with the terms of the sub-contractor agreements, and MSCL will continue to offer on a fair, reasonable and non-discriminatory basis its services for MEP Works to the competitors of GCC;
- (b) GCC will continue to deal with all domestic sub-contractors and suppliers at arm's length and will not apply any discrimination policy in relation to the selection of such sub-contractors and suppliers and to the terms and conditions of the contractual agreement between GCC and MSCL and its subsidiaries, without the prior approval of the Competition Commission; and
- (c) No change will be made to the domestic sub-contractor and supply agreements entered into by GCC with the competitors of MSCL and its subsidiaries, except as required in the ordinary course of business and in accordance with the terms of the sub-contract and supply agreements, and GCC will continue to appoint such sub-contractors and suppliers on a fair, reasonable and non-discriminatory basis;

In relation to *Concern 2*,

- (d) A firewall will be maintained between MSCL and GCC, MSCL will continue not to directly or indirectly access data held by GCC and GCC will continue not to directly or indirectly access data held by MSCL, other than data regarding construction projects to which both GCC and MSCL are appointed;
- (e) The employees, officers, directors and other personnel of GCC ("GCC Staff") will continue not to have access to the data of MSCL, and any

such data will continue to be maintained on the premises of MSCL and/or on the data servers of MSCL only, and the employees, officers, directors and other personnel of MSCL ("MSCL Staff") will continue not to have access to the data of GCC and any such data will continue to be maintained on the premises of GCC and/or on the data servers of GCC only;

- (f) The IT systems and databases of MSCL and GCC will continue to be hosted independently, with independent system administrators. GCC Staff will continue not to have access to the database of MSCL, and MSCL Staff will continue not to have access to the database of GCC;
- (g) Directors of MSCL on the one hand and Directors of GCC on the other hand will respectively be informed of the Undertakings in writing and such directors will be requested to undertake not to request or disclose such data, as per the terms of the Undertakings.

1.34 In his Provisional Report of Undertakings, the Executive Director expressed the view that, in addition to the undertakings initially offered, a periodic reporting to the Competition Commission would further serve to demonstrate the implementation and enforcement of the said undertakings. The Executive Director viewed that IBL Ltd should further provide a reporting mechanism where it shall report to the Competition Commission on the implementation and enforcement of the undertakings, within six (6) months from the completion of the Transaction and thereon on a yearly basis for a period of three (3) years.

1.35 By letter dated 10th February 2020, IBL Ltd submitted further commitments with respect to a periodic reporting mechanism on the performance of its undertakings with respect to leveraging of market power and exchange of information respectively.

1.36 Upon finalisation of his Report and considering the additional reporting commitments offered, the Executive Director believes that the Undertakings satisfactorily address the concerns identified and recommends their acceptance under section 63 of the Act.

1.37 For the purposes of its determination, the Commission considers together the undertakings offered by IBL Ltd on 21st November 2019 as supplemented by its reporting commitments subsequently offered on 10th February 2020 as undertakings properly offered pursuant to section 63 of the Act (the 'Undertakings'). The said Undertakings are annexed to the present Decision.

III. Legal Framework

1.38 Having found reasonable grounds to believe that the Proposed Transaction is likely to qualify as a merger situation subject to review in accordance with sections 47 and 48 of the Act, the Executive Director proceeded to investigate same pursuant to section 51(1) of the Act. However, insofar as the Parties offered Undertakings during investigation pursuant to section 63 of the Act, the Executive Director's assessment is confined to the legal threshold enunciated at section 63(3) of the Act.

Determination based on Undertakings

1.39 Under section 63(1) of the Act, enterprises may offer undertakings to the Commission *"to address any concern that has arisen, or is likely to arise, during an investigation in respect of (...) a merger situation"*. From section 2 of the Act, "undertaking" in turn means *"an obligation or commitment given in writing by an enterprise to, and accepted by, the Commissioners, to prevent or terminate a restrictive business practice"*.

1.40 Pursuant to section 63(3) of the Act, the Commission may determine a case on the basis of an undertaking. The threshold for the acceptance of undertakings under section 63(3) is that the Commission must be satisfied that the undertakings address *"all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition distortion (...) of competition"* which may arise from the matter at hand.

IV. Determination

1.41 Having regard to the concerns identified during investigation, the Undertakings offered by IBL Ltd, and the Executive Director's assessment thereof as set out in his Report, the Commission finds that the concerns identified from the Proposed Transaction are valid and sufficiently reasoned.

1.42 Having regard to the nature of the Proposed Transaction, the arising concerns and the Undertakings offered, the Commission determines, as per section 63(3) of the Act, that the behavioural measures set out in the Undertakings satisfactorily address all the concerns which it has regarding any substantial lessening of competition within the identified markets.

1.43 Our reasons in this respect are more fully set out below:

- (a) The Undertakings with respect to 'Concern 1', are aimed at minimizing risks of preferential treatment being afforded to either MSCL or GCC to the detriment of competition, except as may be required in the ordinary course of business. In this respect, MSCL will continue to offer on a fair, reasonable and non-discriminatory basis its services for MEP Works to the competitors of GCC while

GCC will continue to deal with all domestic sub-contractors and suppliers at arm's length and will continue to appoint such sub-contractors and suppliers on a fair, reasonable and non-discriminatory basis;

- (b) any derogation from the non-discriminatory policy in relation to the terms and conditions of the contractual agreement between GCC and MSCL and its subsidiaries will first need to be notified to and obtain the Competition Commission's prior approval;
- (c) The Undertakings with respect to 'Concern 2' will ensure that a ring-fencing mechanism is put in place between the two subsidiaries of IBL Ltd wherein information/data pertaining to construction projects of MSCL and GCC (excluding construction projects to which both GCC and MSCL are appointed) will not be shared, whether through physical and electronic means, with one another or the respective Staff, or respective Directors of each other; and
- (d) The Undertakings pertaining to periodic reporting obligations will enable monitoring of the proper implementation of the Undertakings on behalf of all parties concerned.

V. Decision

NOW THEREFORE,

For the reasons set out in this Decision, the Commission decides as follows:

- 1) We accept the Undertakings offered by IBL Ltd, which are being published as per section 63(4) of the Act (as herewith annexed); and
- 2) The Undertakings shall be effective as from the date of the present Decision.

Mr. A. Mariette
(Vice-Chairperson)

Mr. C. Seebaluck
(Commissioner)

Mrs. M. B. Rajabally
(Commissioner)

Mrs. V. Bikhoo
(Commissioner)

The image shows four handwritten signatures in blue ink, each followed by a dotted line. The signatures are: 1. A signature with a large 'A' and 'M' (Mr. A. Mariette). 2. A signature that appears to be 'Seebaluck' (Mr. C. Seebaluck). 3. A signature that appears to be 'Rajabally' (Mrs. M. B. Rajabally). 4. A signature that appears to be 'Bikhoo' (Mrs. V. Bikhoo). To the right of the signatures is a large blue circular stamp with the words 'Competition Commission' in the center.

19 March 2020

ANNEX

**Undertakings offered by IBL Ltd on 21st
November 2019 as supplemented by its
reporting commitments subsequently
offered on 10th February 2020
(The ‘Undertakings’)**



21 November 2019

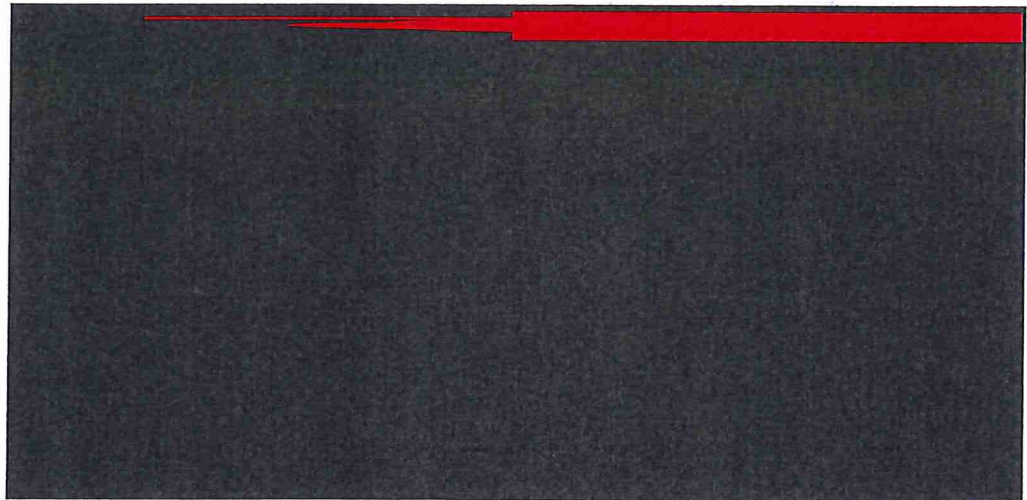
Mr. Dashmuk Kowlessur
The Executive Director
The Competition Commission of Mauritius
10th Floor Hennessy Court
Corner Suffren Road & Pope Hennessy Street
Port Louis

Dear Sir,

Re: Proposed acquisition of The General Construction Company Limited ('GCC') by IBL Ltd ('IBL') and a financial partner

1. We refer to the meeting held on 21 October 2019 between our representatives, representatives of GCC and the officers of the Competition Commission of Mauritius ('CCM'), and your letter dated 21 October 2019 bearing reference number ENQ252/21J19/NJ/1 (the 'CCM Letter') in connection with the above subject matter.

2.



3.



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Cauden Waterfront
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4. We further note that the CCM has expressed certain competition concerns with regards to the proposed acquisition, which may be summarised as follows:

(i) *Leveraging of market power with respect to MEP Works and Building Works*

- (a) potential discriminatory conduct by each of GCC and MSCL in favour of each other, and to the detriment of the respective competitors of GCC and MSCL³; and
- (b) potential exclusive outsourcing of all the MEP Works requirements of GCC to MSCL, to the detriment of the competitors of MSCL⁴.

(ii) *Exchange of information to the detriment of competition*

- (a) GCC potentially sharing with MSCL such information on the competitors of MSCL that GCC may come across during its working process and that competitors would not likely make available to MSCL, e.g. pricing and technical offers of the competitors of MSCL⁵; and
- (b) MSCL potentially sharing with GCC such information on the competitors of GCC that MSCL may come across during bidding exercises or contractual negotiations, and that competitors would not likely make available to MSCL, e.g., the identity of potential bidders and their respective technical offers⁶.

5.

2

THE MARKET SHARE OF MSCL AND ITS SUBSIDIARIES FOR MEP WORKS

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³ Paragraph 3(a) of the CCM Letter

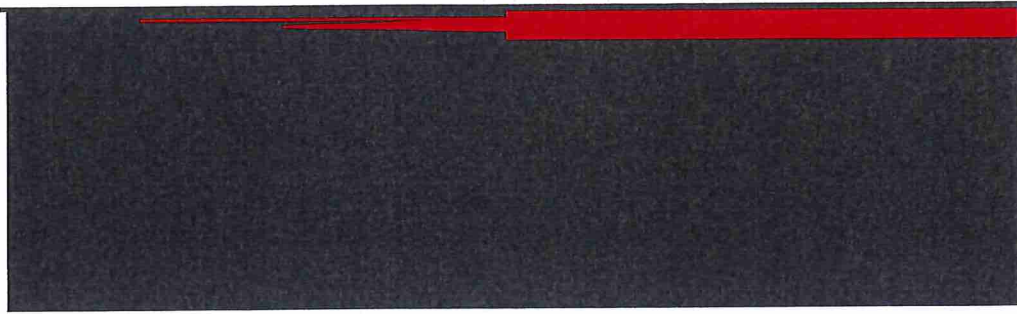
⁴ Paragraph 3(a) of the CCM Letter

⁵ Paragraph 3(b) of the CCM Letter

⁶ Paragraph 3(b) of the CCM Letter

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8.



THE COMBINED MARKET SHARE OF MSCJ, THE SUBSIDIARIES OF MSCJ AND GGC FOR BUILDING WORKS

MSCJ

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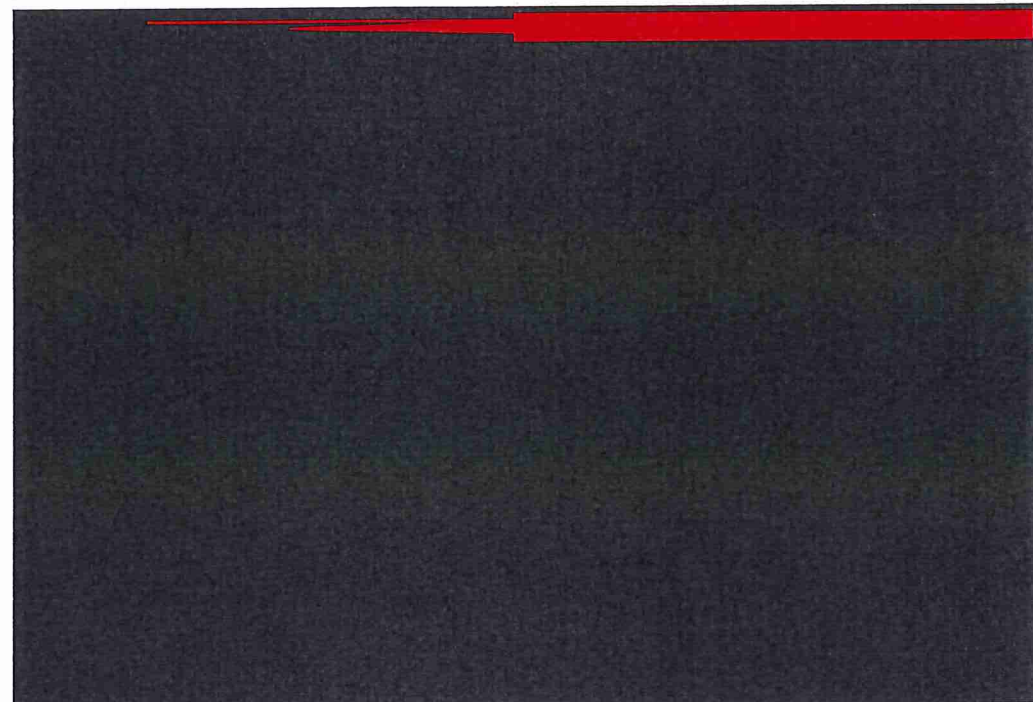
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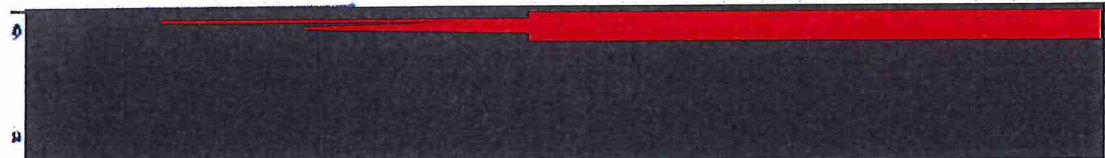
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3

The Subsidiaries of MSCJ

15.



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GCC

16.

17.

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19.

COMPETITION CONCERNS

4

Leveraging of Market Power

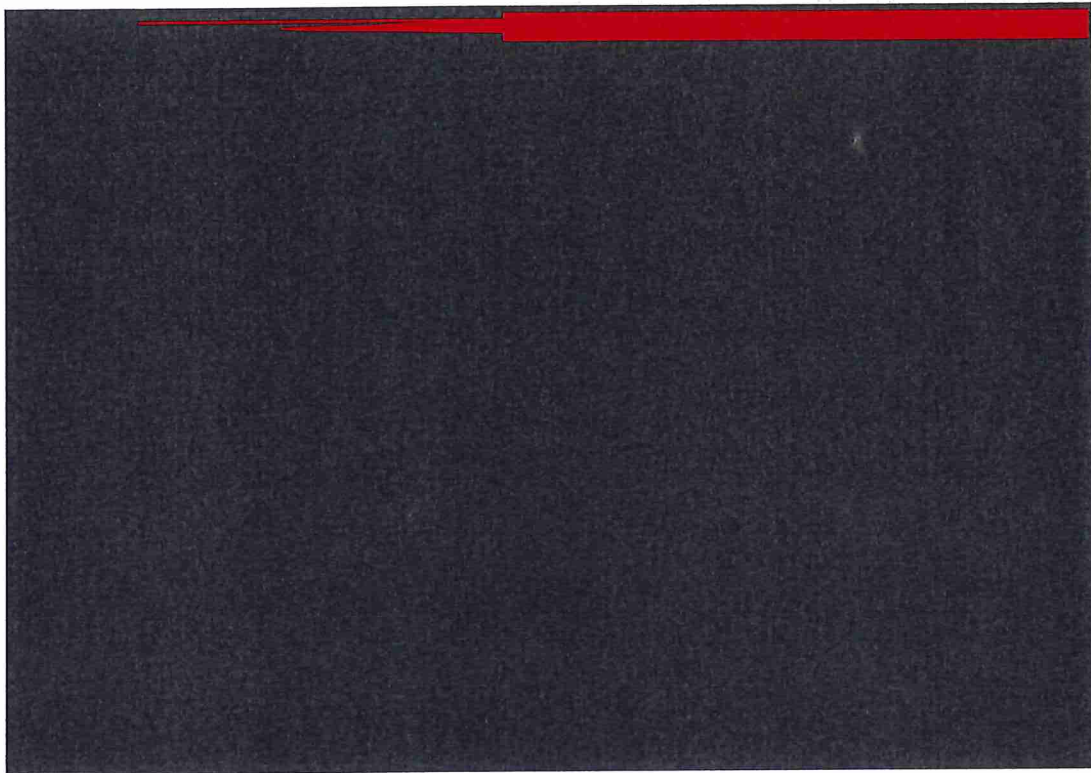
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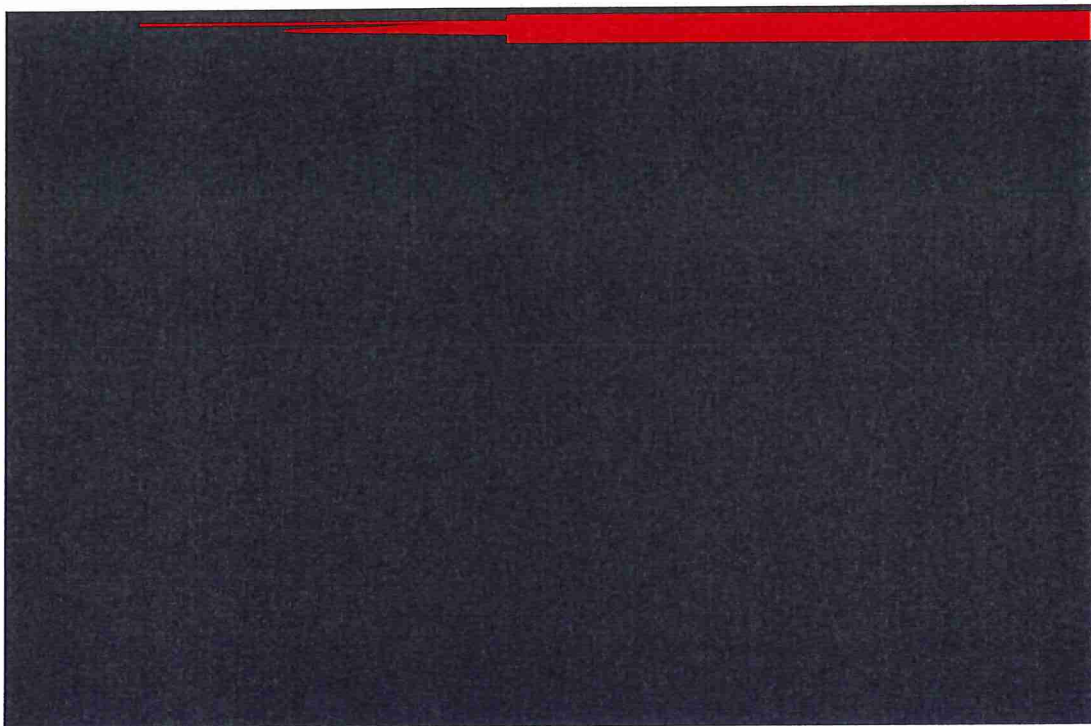
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Information

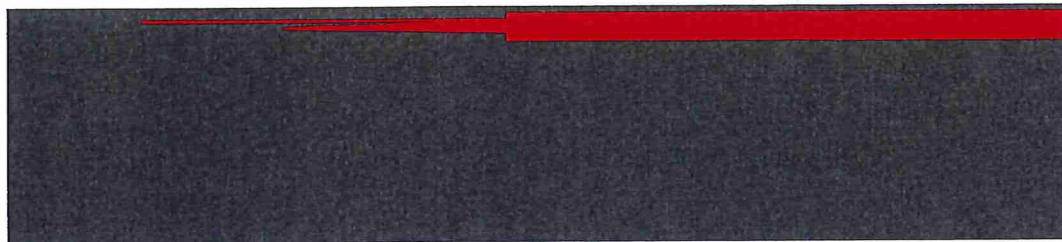
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UNDERTAKINGS

31. We take note of possibility to provide undertakings, as proposed by the CCM in in the CCM Letter, to address and alleviate the concerns of the CCM with regards to the proposed acquisition. We believe this might be an effective way to efficiently address the concerns of the CCM.
32. Without prejudice to our determination of the relevant markets and the market share estimates of MSCL, the subsidiaries of MSCL and GCC, as set out in the Joint Application, the separate cover letters from IBL and GCC dated 06 September 2019 and this letter, we hereby propose the following undertakings, set out in paragraphs 33 to 35 (the 'Undertakings') to address and alleviate the concerns of the CCM with regards to the proposed acquisition.
33. IBL undertakes to procure that, following the completion of the proposed acquisition:
 - (i) MSCL will comply with the Undertakings in so far as such Undertakings relate to MSCL; and
 - (ii) GCC will comply with the Undertakings in so far as such Undertakings relate to GCC.

6

Undertakings with respect to leveraging of market power

34. For the purposes of alleviating the competition concerns of the CCM with regards to the leveraging of market power, IBL will procure that, following the completion of the proposed acquisition:

MSCL

- (i) no change will be made to the sub-contractor agreements entered into by MSCL with the competitors of GCC, except as required in the ordinary course of business and in accordance with the terms of the sub-contractor agreements, and MSCL will continue to offer on a fair, reasonable and non-discriminatory basis its services for MEP Works to the competitors of GCC;

GCC

- (ii) GCC will continue to deal with all domestic sub-contractors and suppliers at arm's length and will not apply any discrimination policy in relation to the selection of such sub-contractors and suppliers and to the terms and conditions of the contractual agreement between GCC and MSCL and its subsidiaries, without the prior approval of the CCM; and

- (iii) no change will be made to the domestic sub-contractor and supply agreements entered into by GCC with the competitors of MSCL and its subsidiaries, except as required in the ordinary course of business and in accordance with the terms of the sub-contract and supply agreements, and GCC will continue to appoint such sub-contractors and suppliers on a fair, reasonable and non-discriminatory basis.

Undertakings with respect to exchange of information

35. For the purposes of alleviating the competition concerns of the CCM with regards to the exchange of information, IBL will procure that, following the completion of the proposed acquisition:
- (i) a firewall will be maintained between MSCL and GCC. MSCL will continue not to directly or indirectly access data held by GCC and GCC will continue not to directly or indirectly access data held by MSCL, other than data regarding construction projects to which both GCC and MSCL are appointed;
 - (ii) the employees, officers, directors and other personnel of GCC ('GCC Staff') will continue not to have access to the data of MSCL, and any such data will continue to be maintained on the premises of MSCL and/or on the data servers of MSCL only, and the employees, officers, directors and other personnel of MSCL ('MSCL Staff') will continue not to have access to the data of GCC and any such data will continue to be maintained on the premises of GCC and/or on the data servers of GCC only;
 - (iii) the IT systems and databases of MSCL and GCC will continue to be hosted independently, with independent system administrators. GCC Staff will continue not to have access to the database of MSCL, and MSCL Staff will continue not to have access to the database of GCC;
 - (iv) directors of MSCL will be informed of the Undertakings in writing and such directors will be requested to undertake not to request or disclose such data, as per the terms of these Undertakings; and
 - (v) the directors of GCC will be informed of the Undertakings in writing and such directors will be requested to undertake not to request or disclose such data, as per the terms of these Undertakings.
36. Kindly note that the information being shared with the CCM as part of this letter is confidential, commercially sensitive and valuable information and we would kindly request that such information be dealt with accordingly.
37. We would be pleased to meet with you to discuss our views, the clarifications sought and the Undertakings in more detail, if so required by yourselves.
38. We look forward to receiving your confirmation that the undertakings proposed resolve your concerns and that the proposed acquisition may proceed.

7
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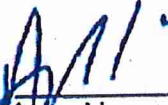
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39. [REDACTED]

Yours faithfully,



Arnaud Lagesse
Group Chief Executive Officer
For and on behalf of IBL Ltd

Copy to: Mr. Gérard Jean Paul Didier Adam
Managing Director
The General Construction Company Limited
Industrial Zone
Plaine Lauzun
Port Louis

0



10 February 2020

Mr Deshmukh Kovassur
The Executive Director
The Competition Commission of Mauritius
10th Floor Hennessy Court
Corner Suffren Road & Pope Hennessy Street
Port Louis

Dear Sir,

Re: Proposed acquisition of The General Construction Company Limited ('GCC')

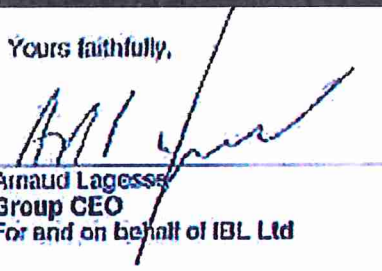


In connection with our commitment to report to the Competition Commission of Mauritius ('CCM') on the implementation and enforcement of the undertakings by GCC and Manser Saxon Contracting Limited, we propose to put in place the reporting mechanism described in the table set out in Annex 2 in relation to the undertakings.

Subject to the comments which the CCM may have on the reporting mechanism, we will report to the CCM in the manner we propose within six (6) months from the completion of the proposed acquisition and thereafter every year for a period of three (3) years.



Yours faithfully,


Arnaud Lagesse
Group CEO
For and on behalf of IBL Ltd

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GENERAL CONSTRUCTION

nou travay ek nou leker

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10 February 2020

Mr Deshmukh Kowlessur
The Executive Director
The Competition Commission of Mauritius
10th Floor Hennessy Court
Corner Suffren Road & Pope Hennessy Streets
Port Louis

Dear Sir,

Re: Proposed acquisition of The General Construction Company Limited ('GCC')

We refer to your letter dated 29 January 2020 bearing reference number INV051/29A20/NJ/2 sent to our representatives, and the representatives of TBL in connection with the above subject matter.

In connection with the Provisional Report of Undertakings, we hereby enclose a table setting out our consolidated comments and proposed amendments in Annex 1. We have also indicated in the table the information that we consider confidential and/or commercially sensitive to be redacted from the public version of the Final Report of Undertakings.

Should you have any questions in relation to our application, please feel free to contact me or any of our designated representatives on 202-2000.

Yours faithfully,


Didier Adam
Managing Director
For and on behalf of The General Construction Company Limited

Acquisition by IBL of 80% of the Shareholding of GCC

Reporting on the Undertakings

NB: All capitalized terms used in this table have the same meaning as ascribed to them in the letter dated 21 November 2019 from IBL to the Executive Director of the CCM.

Undertakings with respect to overcoming of market power		Proposed Course of Conduct
1.	<p>For the purposes of alleviating the competition concerns of the CCM with regards to the leveraging of market power, IBL will procure that, following the completion of the proposed acquisition:</p> <p>MSCL</p> <p>(i) no change will be made to the sub-contractor agreements entered into by MSCL with the competitors of GCC, except as required in the ordinary course of business and in accordance with the terms of the sub-contractor agreements, and MSCL will continue to offer on a fair, reasonable and non-discriminatory basis its services for MEP Works to the competitors of GCC;</p>	IBL will provide, on behalf of MSCL, a no change confirmation letter within six (6) months of the date on which the proposed transaction completes and thereafter every year for a period of three (3) years.
2.	<p>GCC</p> <p>(i) GCC will continue to deal with all domestic sub-contractors and suppliers at arm's length and will not apply any discrimination policy in relation to the selection of such sub-contractors and suppliers and to the terms and conditions of the contractual agreement between GCC and MSCL and its subsidiaries, without the prior approval of the CCM; and</p> <p>(ii) no change will be made to the domestic sub-contractor and supply agreements entered into by GCC with the competitors of MSCL and its subsidiaries, except as required in the ordinary course of business and in accordance with the terms of the sub-contractor and supply agreements, and GCC will continue to appoint such sub-contractors and suppliers on a fair, reasonable and non-discriminatory basis.</p>	IBL will provide, on behalf of GCC, a no change confirmation letter within six (6) months of the date on which the proposed transaction completes and thereafter every year for a period of three (3) years.
3.	<p>Undertakings with respect to exchange of information</p> <p>For the purposes of alleviating the competition concerns of the CCM with regards to the exchange of information, IBL will procure that, following the completion of the proposed acquisition:</p> <p>(i) a firewall will be maintained between MSCL and GCC. MSCL will continue not to directly or indirectly access data held by GCC and GCC will continue not to directly or indirectly access data held by MSCL, other than data regarding construction projects to which both GCC and MSCL are appointed;</p> <p>(ii) the employees, officers, directors and other personnel of GCC ("GCC Staff") will continue not to have access to the data of MSCL, and any such data will continue to be maintained on the premises of MSCL and/or on the data servers of MSCL only, and the employees, officers, directors and other personnel of MSCL ("MSCL Staff") will continue not to have access to the data of GCC and any such data will continue to be maintained on the premises of GCC and/or on the data servers of GCC only;</p>	<p>Please refer to draft reports of GCC and MSCL, set out in Annex 2a and Annex 2b respectively, as prepared by the Heads of the IT Departments of GCC and MSCL respectively, which address the undertakings listed in the preceding column. These reports will be submitted to the CCM within six (6) months of the date on which the proposed transaction completes. Thereafter, the Heads of the IT Departments of GCC and MSCL will each submit a no change confirmation letter to the CCM every year for a period of three (3) years.</p>

Understandings		Proposed Course of Conduct
(iii) the IT systems and databases of MSCL and GCC will continue to be hosted independently, with independent system administrators. GCC Staff will continue not to have access to the database of MSCL, and MSCL Staff will continue not to have access to the database of GCC;		
4.	<p>(i) directors of MSCL will be informed of the Undertakings in writing and such directors will be requested to undertake not to request or disclose such data, as per the terms of these Undertakings and</p> <p>(ii) the directors of GCC will be informed of the Undertakings in writing and such directors will be requested to undertake not to request or disclose such data, as per the terms of these Undertakings.</p>	<p>The attention of each director of GCC and MSCL will be drawn to the undertakings provided and these directors will be asked to acknowledge that they have taken cognizance of the undertakings and agree to abide by them by way of a letter. The same process will be followed upon the appointment of new directors of GCC and MSCL after the date on which the transaction completes.</p> <p>The letters will be maintained as part of the statutory records of each of GCC and MSCL.</p> <p>IBL will provide, on behalf of each of GCC and MSCL, a written confirmation to the CCM that the attention of all directors of GCC and MSCL has been drawn to the undertakings within six (6) months of the date on which the proposed transaction completes and thereafter every year for a period of three (3) years.</p>