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MEDIA RELEASE

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COMPETITION COMMISSION CLEARS THE ACQUISITION OF SHOPRITE SUPERMARKET AT PORT LOUIS BY PICK AND BUY LTD (WINNER'S), SUBJECT TO CONDITIONS

In July 2018, the Competition Commission was informed by Pick and Buy Ltd and Shoprite (Mauritius) Ltd that the latter Ltd has resolved to exit from its retail activities in Mauritius, and Pick and Buy Ltd intended to acquire the supermarkets of Shoprite (Mauritius) Ltd.

At a later stage, the parties informed the Competition Commission that negotiations for the acquisition of the Shoprite supermarket located at Tamarin did not materialise due to external factors. Consequently, Pick and Buy Ltd proposed to acquire the Shoprite supermarket located at Port-Louis only (the 'proposed transaction').

Pick and Buy Ltd and Compagnie des Magasins Populaires Ltée are owned by Winhold Ltd and both operate respectively supermarkets under the names of Winner's and Monoprix. Shoprite (Mauritius) Ltd operates two supermarkets under the name of Shoprite located at Port Louis and Tamarin. It previously operated a hypermarket at Trianon.

Following an assessment of the proposed transaction, the Executive Director of the Competition Commission was concerned that competition in the area of Port Louis may be affected in that Winner's supermarket was closely located to the Shoprite supermarket in that location and consequently the transaction may increase the market power of Pick and Buy Ltd in Port Louis region.

As such, the Executive Director informed the parties that the proposed transaction may impede competition and it would be preferable for Shoprite (Mauritius) Ltd to look for an alternate buyer. Subsequently, Shoprite (Mauritius) Ltd informed the Competition Commission that it was unable to find a viable alternative buyer despite various attempts made.

In such circumstances, the Executive Director was of the view that to preserve competition in Port Louis, Pick and Buy Ltd would need to sell its existing supermarket in Port Louis to an independent operator such that the same number of supermarkets will remain in that region. Afterwards, Pick and Buy Ltd informed the Executive Director that it has considered this option, but could not materialise due to external factors.

The Executive Director verified the information supplied by the parties and was consequently of the view that there was no alternative solution than to allow the takeover and mitigate any competition concerns arising therefrom through behavioural undertakings.

The Competition Commission was further informed that there will be a short period of temporary closure of the Shoprite supermarket at Port Louis for logistical and administrative purposes of the acquisition, and that employees in that location will be temporarily relocated.

In particular, the Executive Director was concerned that:

1. Given the peculiarity of the Port Louis location, Pick and Buy Ltd may have market power in Port Louis and as such may have power to charge higher prices or reduce service level in the Port Louis supermarkets;
2. Pick and Buy Ltd may have an incentive to close one of the supermarkets in Port Louis and this may lead to inconveniences and increased costs to consumers.

Pick and Buy Ltd submitted its undertakings to allay the concerns of the Competition Commission on the 3rd October 2018. The undertakings may be summarised as follows:

1. Pick and Buy Ltd has committed that it will continue the operations of the existing Winner's supermarket situated at Reverend Jean Lebrun, Sir Celicourt Antelme Street, Port Louis up to the expiry of the current lease agreement for that location, with sufficient offers and service standards;
2. Pick and Buy Ltd will align its pricing policy for both supermarkets in Port Louis with that of its national pricing policy, unless otherwise approved by the Commission;
3. Pick and Buy Ltd will ensure that Shoprite supermarket located in Port Louis being acquired starts operations in January 2019 at the latest, with adequate service level.

After assessing the undertakings, the Executive Director was of the view that the undertakings address the competition concerns identified and as such submitted his report on the undertakings to the Commission on the 10th October 2018, recommending the Commission to accept the undertakings.

On the 24th October 2018, the Commission issued their decision on the matter. The Commission determined that the undertakings offered by Pick and Buy Ltd indeed satisfactorily addressed the competition concerns that the proposed transaction may raise and as such accepted the undertakings, giving it the form of a direction of the Commission.

The Executive Director said:

"The retail sector is fast evolving with the emergence of shopping malls, online purchases and larger retailers. Given the increased concentration in the sector worldwide, mergers in the retail sector has been a subject matter of much interest to competition agencies around the world.

At this stage, there appears to be enough independent operators of supermarkets and hypermarkets in Mauritius to be able to maintain competition at the national level.

In this particular case of the takeover of the Shoprite supermarket located at Port Louis, competition at national level is unlikely to be affected as there would remain sufficient competitors. However, the market in Port Louis may be affected.

Through the undertakings provided by Pick and Buy Ltd it would be ensured that the transaction does not harm consumers, while allowing for the benefits that this transaction may have in terms of employment and continued operation of the Shoprite supermarket in that location.

The Competition Commission appreciates the approach taken by Pick and Buy Ltd and Shoprite (Mauritius) Ltd to notify the Competition Commission of the transaction and ensuring that they are compliant with the law. Indeed, we encourage parties subject to mergers to notify the Competition Commission to ensure that the merger is compliant with the law rather than taking risks on the legal certainty of the transaction.”

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Background for editors:

The Competition Act 2007

The Competition Act 2007 (the ‘Act’) came fully into effect on 25th November 2009, and is enforced by the CCM.

Section 48 of the Act provides that:

A merger situation shall be subject to review by the Commission where-

- (a) All the parties to the merger, supply or acquire goods or services of any description, and will following the merger, together supply or acquire 30 per cent or more of all goods or services on the market; or*
- (b) One of the parties to the merger alone supplies or acquires prior to the merger, 30 per cent or more of goods or services of any description on the market; and*
- (c) The Commission has reasonable grounds to believe that the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.*

Section 63 subsections (1) ,(2) and (3) of the Act provides that:

(1) an enterprise may offer a written undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation in respect of a restrictive agreement subject to investigation, a monopoly situation or a merger situation.

(2) The undertaking may be offered before the start of the investigation or at any stage during the investigation.

(3) The Commission may, after having taken cognizance of the report of the Executive Director on the matter, determine a case on the basis of an undertaking if it considers that the undertaking

satisfactorily addresses all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition.