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MEDIA RELEASE

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INV029 – THE COMMISSION ACCEPTS COMMITMENTS OF WESTERN UNION AND MONEYGRAM TO ALLOW AGENTS TO SELL COMPETING SERVICES

On 21st May 2018, the Commissioners of the Competition Commission issued their decision on the investigation into exclusivity clauses put in place by each of the Western Union Company (hereafter ‘Western Union’) and MoneyGram Payment Systems Inc. (hereafter ‘MoneyGram’), with their respective agents in Mauritius, for the provision of cross-border money transfer services. These exclusivity clauses prevented agents from selling competing services and thus limited the ability of agents to offer a choice of competing services to their customers. A non-confidential version of the Decision has been produced and issued on the website of the Competition Commission (www.ccm.mu).

The Decision follows an investigation by the Executive Director of the Competition Commission, who was concerned that Western Union and MoneyGram may each have entered into agreements (separately) with their representatives/agents in Mauritius which prevented the latter from selling competing services. Such agreements may raise costs and barriers to entry into the market, and may foreclose access to the market to competitors. Consumers’ choice between various operators might have been reduced as the agents would only be able to offer the services of only one operator at a time.

Both Western Union and MoneyGram collaborated during the investigation and offered undertakings (commitments) to the Competition Commission to address the concerns of the Competition Commission. Both Western Union and MoneyGram committed that they will offer their agents in Mauritius a choice for either a non-exclusive or an exclusive agreement. Therefore, agents who want to offer competing services will be able to do so by choosing the non-exclusive agreement.

However, Western Union and MoneyGram may charge different commissions for agents choosing non-exclusive contracts. Nonetheless, after assessment, it seems that the undertakings proposed are likely to address the concerns of the Competition Commission, more so given that such models have worked in other countries. Therefore, the Executive Director recommended the Commissioners to accept the

Undertakings, and through their Decision dated 21st May 2018, the Commissioners accepted the Undertakings of MoneyGram and Western Union, which is now binding on them.

This said, the Competition Commission will continue to monitor the sector, and should the need arise, it may intervene on the market to address any remaining or new competition issues.

Mr. Deshmuk Kowlessur, the Executive Director, said:

“Going forward agents and sub-agents of Western Union and MoneyGram will have the option of providing the services of competing providers of cross- border money transfer services. The services of MoneyGram and Western Union are widely used by expatriates in Mauritius to send money to their families in their country, and by Mauritians with family members outside the country to send money outside Mauritius or receive money from outside of Mauritius.

Previously agents were restricted in their ability to offer competing services to those of Western Union and MoneyGram. The undertakings will allow agents who opt for the non-exclusive agreement to offer the services of several providers simultaneously. In such instances, there will be wider choice for consumers, services will be more accessible, and this will increase competition to the benefit of consumers and the economy at large.

Agents choosing the non-exclusive agreement will also be in a position to provide the services of new entrants while continuing to offer those of the more established players, namely MoneyGram and Western Union. This will facilitate entry of other service providers in the market.

Such model of choice has been implemented in other countries and appears to have been effective. Therefore, I believe that this will also be the case in Mauritius. However, I will conduct an assessment of the situation after about 2 years and if the undertakings provided by the parties have not been effective, I will take appropriate measures within the ambit of the law.”

[End of Media Release]

Background for editors

The Competition Act

The Act came fully into effect on 25th November 2009, and is enforced by the Competition Commission of Mauritius (the CCM). Sub-parts II and III of Part III of the Act, cover restrictive practices described under ‘Other restrictive agreements’ and ‘Monopoly situations’.

To take action, the CCM must find that the conduct of an enterprise in a monopoly situation restricts, prevents or distorts competition or otherwise exploits the monopoly situation. We refer to such conduct as ‘abuse of monopoly’. Where the Executive Director has reasonable grounds to believe that abuse is occurring, or will occur, he may launch an investigation.

Monopoly abuse

It is not in itself any breach of the law for an enterprise to be in a monopoly situation. However, as per Section 46(2) of the Act, enterprises which hold monopoly positions may be in breach of the abuse or exploit any market power this position confers upon them. The question for the CCM is whether such enterprises are engaged in conduct which restricts, prevents or distorts competition (such as using their market position to exclude rival enterprises) or otherwise exploiting the monopoly situation.

The CCM takes the view that, in most markets, free competition is an effective guarantor of the interests of consumers and is likely best to promote the efficiency, adaptability and competitiveness of the economy of Mauritius. Significant weakening of competition will therefore have adverse effects. Consequently, if the CCM finds evidence of behaviour that is preventing, restricting or distorting competition, on the part of an enterprise with market power, in a monopoly situation, it will normally expect that such behaviour will have adverse effects on consumers or the economy as a whole.

Following an investigation, the Commission has the power to impose changes in the behaviour of the enterprise concerned by the investigation and will consider behavioral undertakings, where offered by the investigated party or parties.

Undertakings

Section 63 of Part VI of the Act states that 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 into a restrictive business practice.

An undertaking is a commitment which is offered by an enterprise to address the competition concerns of the CCM. The undertakings offered are assessed by the Executive Director in order to conclude whether the latter may address the competition harms. Upon completion of the assessment of the undertakings, the Executive Director submits a Report of Undertakings which includes his recommendation on whether the undertakings may or may not be accepted by the Commission under Section 63 of the Act.

If an undertaking is accepted by the Commission, it is published in the form of a decision of the Commission, and the enterprise must comply with its terms. The undertaking then operates like a direction issued by the Commission under Section 60. If the enterprise does not comply with the undertaking (without reasonable excuse), Section 65 of the Act permits the Commission to apply to a Judge in Chambers for a mandatory order requiring the enterprise to make good its default.

Further information

For further information please refer to the CCM's website at www.ccm.mu, and the CCM's Procedural Rules and Guidelines: 'CCM 1 - Procedural Rules', 'CCM 4 - Monopoly situations and non-collusive agreements' and 'CCM 6 - Remedies and Penalties', all available on the website.