



Competition Commission of  
Mauritius  
10<sup>th</sup> Floor, Hennessy Court  
Cnr Suffren Rd & Pope Hennessy St.  
Port Louis  
Tel. No. 211-2005  
Fax No. 211-3107  
email: info@ccm.mu

## MEDIA RELEASE

**Date:** 11/09/2018

**Investigation Ref:** CCM/INV/028

### **GAMMA CIVIC LTD RELEASED FROM ITS UNDERTAKING WITH THE COMPETITION COMMISSION TO PROCURE CEMENT THROUGH AN AGREED TENDER EXERCISE**

In October 2015, for the purposes of acquiring the totality of the shares of Kolos Cement Ltd, and to obtain the clearance of the Competition Commission, Gamma-Civic Ltd offered undertakings (commitments) to the Competition Commission to address the competition concerns that could have arisen from such an acquisition.

One of the undertakings given by Gamma-Civic Ltd was that Kolos Cement Ltd will procure cement through an agreed tendering exercise (the 'Procurement Undertaking'). Given that Gamma-Civic Ltd was not active in the upstream market for the manufacture of cement, the Procurement Undertaking ensured that cement is procured by Kolos Cement Ltd in a competitive manner and that there remains competition in the market for the importation of cement. The tendering exercise provided for a specific mechanism in the event that Kolos Cement Ltd was to procure cement from LafargeHolcim Ltd, as it was its main downstream competitor. It ensured that cement is procured through a competitive exercise and that even if cement was bought from the supplier of Kolos Cement's competitor, it is the result of competition.

In March 2018, Gamma-Civic Ltd made a request to the Executive Director of the Competition Commission to be released from the Procurement Undertaking. Gamma-Civic Ltd substantiated its request by the fact that it has now entered into a strategic partnership in relation to Kolos Cement Ltd with WH Investments Pte. Ltd (a company incorporated in Singapore) which is active in the manufacture and trading of cement.

WH Investments Pte is an investment company incorporated in Singapore with assets and industrial capabilities of cement production. It is related to GamaCorp, an international player with interests ranging from palm and edible oil plantation and production, cement production, construction, property and hospitality. It is to be noted that WH investment Pte Ltd is also a shareholder of Kolos Cement Ltd.

The Competition Commission therefore assessed the request of Gamma-Civic Ltd in light of the proposed strategic partner to determine if there has been a material change in circumstances which justified the release of Gamma-Civic Ltd from the undertaking on cement procurement. The

assessment focussed on aspects such as independence of the proposed strategic partner from competitors of Kolos Cement Ltd and the potential competitive effects that the strategic partner might bring.

Following the assessment, the Executive Director determined that there has been a material change in circumstances and the very concern that required the Procurement Undertaking on cement procurement was, to an appreciable extent, resolved.

Following the Executive Director's assessment, the Commissioners decided there has been material changes to circumstances and therefore released Gamma Civic Ltd from its Procurement Undertaking.

The Decision of the Commissioners can be found at the following link:

<http://www.ccm.mu/English/Documents/Investigations/INV028-Decision-3.pdf>

**The Executive Director said:**

*"Markets are very dynamic, and so is the process of competition. Changes in market structures and competition dynamics may in certain circumstances call for the intervention of the Competition Commission while the same intervention may no longer be required by further changes in market structure.*

*In the case of Kolos Cement Ltd, at the time Gamma-Civic Ltd proposed to buy the totality of the shares of Kolos Cement Ltd from the then Holcim Ltd, the Competition Commission identified that there may be certain risks to the process of competition. There was need for a process that ensured that remained competition among those supplying cement to Kolos Cement Ltd and Lafarge (Mauritius) Cement Ltd. As such Gamma-Civic Ltd proposed a procurement mechanism to ensure that competition is maintained among exporters of cement to Mauritius. However, now that Gamma-Civic Ltd has a strategic partner who is active in manufacture and trading of cement, this undertaking is not required.*

*The strategic partnership of Gamma-Civic Ltd may enhance the competitive process in the market and thus the procurement process is now left to the market."*

-----**End of media release**-----

**Background for editors:**

**The Competition Act 2007**

The Competition Act 2007 (the 'Act') came fully into effect on 25<sup>th</sup> 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.*

Section 64(2) of the Act provides that:

*(2) 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.*