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MEDIA RELEASE

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COMPETITION COMMISSION OF MAURITIUS LAUNCHES AN INVESTIGATION INTO PRIVATE MEDICAL / HEALTH INSURANCE SCHEMES

The Competition Commission of Mauritius (CCM) has launched an investigation into potential breaches of the Competition Act 2007 (“the Act”) in the provision of private medical/health insurance by BAI Co. Ltd along with any affiliated companies (“BAI”), and the administration of private medical/health insurance schemes by Momentum (Mauritius).

Private medical/health insurance is a product which is offered by insurance companies operating in the general insurance segment. For some of these insurance companies however, the administration of the claim is, for convenience purposes, done by a Third Party Administrator.

The CCM will investigate whether private medical/health insurance schemes having a list of preferred optometry service providers, such as optometrists, opticians, and other eyewear suppliers, may be restricting, preventing or distorting competition among optometry service providers.

Dr. Sean Ennis, the Executive Director of CCM, said:

“Optometry services, in general, are one of the most sought after medical services by insurance customers. Optometry service providers have to be able to compete on a level playing field in order to provide the best service to consumers who are subscribed to a private medical/health insurance scheme. We think that the preferred list of providers as well as the restrictions to obtain such services from particular optometry service providers may not only restrict consumer choice but also unduly close markets to optometry service providers.

‘Anticompetitive foreclosure’ is said to occur when the conduct of a monopoly enterprise restricts or eliminates the effective access of actual or potential competitors to customers or to supplies – such as creating incentives for customers not to buy from rivals, to the detriment of consumers or the economy in general. Anticompetitive foreclosure will only be held to occur if competitors are excluded in a manner that damages consumers or the economy in general – not simply because competitors are harmed.”

At this stage, the Executive Director has concluded that he has reasonable grounds to believe that such behaviour on the part of BAI and Momentum Mauritius may constitute a breach of the monopoly provisions under Section 46 of the Act. The Executive Director will report his findings to the Commission. If the Commission concludes that the effect of these terms and conditions is to restrict, prevent or distort competition in any market, it may take steps to remedy the situation. Alternatively, the investigation might find no infringement of the Act, in which case the investigation would be closed down without further action. No financial penalties can be levied for a breach of the monopoly provisions of the Act; the focus instead is on taking measures to promote competition.

If other concerns related to the same business activity are identified during the course of the investigation, the parties will be notified in the Statement of Issues. If other concerns relating to other areas of insurance activity are identified, the CCM reserves the right to launch separate investigations.

Background for editors:

The Competition Act

The Competition Act 2007 came fully into effect on November 25th 2009, and is enforced by the Competition Commission of Mauritius, the CCM. Sub-parts II and III of Part III of the Competition Act 2007, 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 Competition 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.

Anticompetitive foreclosure may arise through exclusive dealing – preventing competitors from selling to customers through the use of exclusive purchasing obligations or rebates. Retrospective rebates, such as a rebate on all wholesale purchases over a year if the sales exceed a target threshold, may have

foreclosure effects because they can result in very powerful incentives for a wholesale buyer just below the threshold to increase sales volumes. 'Foreclosure' should be read to mean 'exclusion of competitors in a manner that damages consumers or the economy in general', not simply 'exclusion of competitors'.

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 CCM has the power to force changes in company behaviour and will consider behavioural undertakings offered by the investigated party or parties.

Further information:

For further information see 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 web site.