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<p>MEDIA RELEASE</p>		
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<p>CCM launches investigation into Payment Cards</p>		

The Competition Commission of Mauritius (CCM) has today launched an investigation into potential breaches of the Competition Act 2007 (the ‘Act’) related to payment cards (debit, credit and prepaid cards).

Dr. Ennis said, “Consumers do not see all the costs associated with using a payment card, but merchants pay various fees for accepting and processing card payments, and these fees can be quite substantial. Some of the charges set for processing payment cards, and mechanisms for setting those rates, may be anti-competitive, which is why we launched an investigation. Ultimately, excessively high rates for payment card usage could act like a tax on transactions.”

Payment cards are an essential feature of the modern financial landscape. They also create a complex web of relationships between businesses, payment processors and consumers. There could be breaches of the monopoly situation provisions of the Competition Act, which are concerned with companies in a strong market position acting to ‘restrict, prevent or distort’ competition, or potentially breaches of other parts of the Act.

The concern is that there may be anti-competitive behavior in the payment cards industry resulting in excessive prices. At this stage, the Executive Director of the CCM, Dr Sean F. Ennis, has concluded that he has reasonable grounds to believe that some of the rates set by the payment card operators (card scheme owners, card issuing and card acquiring institutions) for point of sales transactions may be excessive.

Dr. Ennis emphasised, “At this stage, there is no presumption that card operators are breaching the monopoly situations or any other provisions of the Act. Conclusions can be drawn only when the investigation is completed. I look forward to the collaboration of all parties in this investigation to ensure its expeditious conclusion.”

Background for editors:

The Competition Act

The Competition Act 2007 (the Act) 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 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 or otherwise exploiting the monopoly situation.

Abuse of monopoly situation can be grouped in two broad categories, namely (i) exclusive abuse and; (b) exploitative abuse. CCM’s Guidelines on monopoly situations and non-collusive agreements (CCM 4) deal with these two types of abuses at para 3.1 – 3.36 and 4.1 – 4.14, respectively.

There are two broad categories of exploitative abuse: unilateral market power and coordinated effects (or ‘tacit collusion’).

Excessive pricing, reduced quality, choice or service when exercised by dominant enterprises that would not be possible for an enterprise facing competition would show unilateral market power.

Reduced rivalry between dominant enterprises that becomes aware of their mutual dependence to maintain profits or simply in the interest of a quieter life is termed as 'tacit collusion'.

Non-collusive agreements

Sections 44 and 45 of the Act define the second class of restrictive practice under the Act: non-collusive agreements. These agreements may be horizontal (between competing enterprises, or enterprises and their potential competitors) or vertical (between enterprises at different levels of the supply chain). These restrictive practices are treated more like monopoly situations than like collusive agreements.

Section 44 of the Act provides for review of a horizontal agreement that is not collusive "where

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(a) The parties to the agreement together supply 30 per cent or more, or acquire 30 per cent or more, of goods and services of any description on the market; and

(b) the CCM has reasonable grounds to believe that the agreement has the object or effect of preventing, restricting or distorting competition."

Section 45 of the Act states that "vertical agreement that does not involve resale price maintenance may be reviewed where the CCM has reasonable grounds to believe that one or more parties to the agreement is or are in a monopoly situation that is subject to review under section 46.

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.