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MEDIA RELEASE

Date: 27/02/2012

Investigation Ref: INV 016

INVESTIGATION INTO AN ALLEGED ABUSE OF MONOPOLY POWER IN THE SUPPLY OF SECONDARY SCHOOL BOOKS

The Competition Commission of Mauritius (“CCM”) has launched an investigation on 12th January 2012, into an alleged abuse of monopoly power in the supply of secondary school books (“SSB”) by Editions Le Printemps (“ELP”). The Investigation Timetable can be found on the website: www.ccm.mu.

At this early stage, the Executive Director has reasonable grounds to believe that ELP might be using the monopoly power it has on the market for the importation, publishing and distribution of SSB to refuse to supply some bookshops with their stock of SSB, especially during the peak period of sales. This conduct of ELP might therefore be a breach of Section 46 of the Competition Act.

This is merely the start of the process, and there is no presumption that a breach of the Act has occurred. It is only at the end of the investigation that the breach will be verified. In case the investigation finds no infringement of any provision of the Act, the investigation will be closed down without action. It remains however the prerogative of the Commissioners to decide whether the conduct has been proved and to impose any remedies thereon, following a full investigation and Final Report by the Executive Director.

If other concerns related to the allegation are found in the course of the investigation, the main party will be notified accordingly.

Dr Sean Ennis, the Executive Director of the CCM, said: “The supply of secondary school books is dominated by a few players; for some books, there is only one distributor in Mauritius. This investigation is opening because there may be conduct that reduces competition for secondary school books, limiting access of some bookstores to books that are essential to students, and also linking of purchases of books distributed under monopoly to purchase of other books. A

reduction in competition is harmful to consumers and to businesses that provide that competition.”

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’ 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, to the detriment of consumers or the economy in general. ‘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’.

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.

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.