Decision of the Competition Commission

CCM/DS/0026

Non-confidential

Cross-border money transfer

29th March 2018

Decision of the Commissioners of the Competition Commission of 29th March 2018

relating to a proceeding under section 63 of the Competition Act 2007 further to an investigation opened by the Executive Director referred to as 'INV029 – Supply of cross-border money transfer services'

(CCM/DS/0026 – Cross-border money transfer)

THE COMMISSION -

Mr. A. G. Pillay - Chairperson,

Mr. D. P. A. Mariette - Vice-Chairperson,

Mr. C. Seebaluck - Commissioner,

Mrs. M. B. Rajabally - Commissioner,

Mrs. V. Bikhoo - Commissioner,

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to undertakings offered by Western Union Network (France) and by MoneyGram International B. V. respectively,

Having regard to a report of the Executive Director dated 23rd February 2018,

WHEREAS:

I. Introduction

1.1 This Decision relates to undertakings that have been offered to the Commission by Western Union Network (France) ('Western Union') and MoneyGram International B. V. ('MoneyGram'), in the course of an investigation opened by the Executive Director and referred to as 'INV029 – Supply of cross-border money transfer services'.

1.2 Having taken cognizance of a report of the Executive Director dated 23rd February 2018 on the matter, the Commission has determined the case on the basis of the undertakings, pursuant to section 63(3) of the Competition Act 2007 (the 'Act').

II. Background

i. Parties

1.3 Western Union is a public company which operates as a subsidiary of The Western Union Company. It is currently represented by two agents [redacted].

1.4 MoneyGram International B. V. is a public company which currently [redacted].

ii. The services concerned

1.5 The investigation pertains to money transfer services which are offered by agents of Western Union and MoneyGram to and from Mauritius.

iii. Investigation

1.6 In April 2015, the Executive Director opened an investigation pursuant to section 51 of the Act. The investigation followed an enquiry carried out under rule 5 of the Competition Commission Rules of Procedure 2009 (the 'Rules') in 2015.

1.7 The Executive Director targeted certain business practices put in place by Western Union and MoneyGram, which he considered to be restrictive in that the latter's conduct might prevent their respective agents from supplying competing services (exclusive dealing) or from supplying competing services for a certain period after the termination of their agreement (post-termination non-compete clause), thus foreclosing access to the market and adversely affecting competition.

1.8 In August and October 2015 respectively, Western Union and MoneyGram offered written undertakings to the Commission in pursuance of section 63 of the Act and as per the requirements set out under rule 28 of the Rules.

1.9 In February 2018, the Executive Director submitted a report on the matter to the Commission, following his assessment of whether the proposed undertakings address all the concerns identified by him.

III. Legal framework

1.10 Having found reasonable grounds to believe that Western Union and MoneyGram were engaging in restrictive business practices, the Executive Director opened an investigation pursuant to section 51(1) of the Act.

Determination based on undertakings

1.11 Under section 63(1) of the Act, enterprises may offer undertakings 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".

1.12 Pursuant to section 63(3) of the Act, the Commission may determine a case on the basis of an undertaking. The threshold for the acceptance of undertakings under section 63(3) is that the Commission must be satisfied that the undertakings address "*all the concerns it has about any prevention, restriction [or] distortion (...) of competition*" which may arise from the matter at hand.

IV. Determination

1.13 Having regard to the concerns which have been identified by the Executive Director in his report, and the undertakings offered by Western Union and MoneyGram, the Commission determines, as per section 63(3) of the Act, that those undertakings satisfactorily address all its concerns.

V. Decision

NOW THEREFORE,

For the reasons set out in this Decision, the Commission decides as follows:

1) We accept the undertakings offered by Western Union and MoneyGram, which are being published as per section 63(4) of the Act (see Annex).

2) The undertakings must be fully implemented within a period of six months as from the date of signature of this Decision.

Done at Port-Louis this 21 May 2018,

Mr. A. G. Pillay (Chairperson) .....

Mr. D. P. A. Mariette (Vice-Chairperson) .....

Mr. C. Seebaluck (Commissioner) .....

Mrs. M. B. Rajabally (Commissioner) .....

Mrs. V. Bikhoo (Commissioner) .....

Competition Commission of Mauritius

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15 December 2016
Non-Confidential Version

INVESTIGATION BY COMPETITION COMMISSION INTO CROSS-BORDER MONEY TRANSFER SERVICES

UNDERTAKINGS GIVEN BY WESTERN UNION TO THE COMPETITION COMMISSION PURSUANT TO SECTION 63 OF THE COMPETITION ACT 2007.

On 17 April 2015, the Executive Director of the Commission informed Western Union that following a preliminary enquiry an investigation under Section 51 of the Act had been launched into a potential restrictive business practice that may exist in relation to the supply of cross-border money transfer services, in Mauritius, in the form of exclusivity clauses put in place by Western Union and others.

Western Union currently has two Agents in Mauritius. [Redacted for confidentiality].

Pursuant to Section 63 of the Act and Rule 28 of the Rules of Procedure, Western Union hereby gives to the Commission the following undertakings in respect of the above concerns of the Commission.

1) Western Union undertakes that it will offer Agents the following choice with respect to Agency Agreements with Western Union:

   a) To offer Competing Money Transfer Services in all of the Agent's Outlets;

   b) To offer Western Union Money Transfer Services exclusively in all of the Agent's Outlets.

2) Western Union will place no restrictions on its Agents as to whether or not their Sub-Agents offer Competing Money Transfer Services.

3) [Redacted for confidentiality].

4) These choices may be exercised at any time either for the purpose of entering into a New Agreement or, on three months' Notice, during the currency of an Existing Agreement.

5) These Undertakings are without prejudice to other terms of Agency Agreements, including but not limited to the Remuneration paid by Western Union to Agents.

6) These Undertakings shall take effect on the Effective Date and shall remain in force for a period of four years from that date.

7) During the currency of these Undertakings, Western Union will report to the Commission on a confidential basis every six months on:

   a) The number of New Agreements;

   b) Any modifications to Existing Agreements made pursuant to these Commitments;

   c) The way in which Agents have exercised the choice provided for by these Commitments; and

   d) [Redacted for confidentiality].

8) Western Union

a) will not include in any New Agreement any provision relating to the provision of Competing Money Transfer Services following the termination of the agreement in question, and

b) will remove from any Existing Agreement any provision relating to the provision of Competing Money Transfer Services following the termination of the agreement in question, if any.

9) These Undertakings comprise the entirety of Western Union's commitments to or agreements or understandings with the Commission.

10) Western Union may request the Commission at any time during the currency of these Undertakings to consider modifying these Undertakings where there has been a material change in the facts.

11) These Undertakings are without prejudice to Western Union's rights of defence should any other party decide to assert claims, open proceedings or commence any legal action against Western Union.

12) For the purpose of these Undertakings, the following terms have the following meanings:

a) "Act" means the Competition Act 2007.

b) "Agency Agreement" means a representation agreement entered into by Western Union and a third party relating to the provision of Western Union Money Transfer Services in Mauritius.

c) "Agent" means duly-appointed Western Union agent providing Western Union Money Transfer Services in Mauritius.

d) "Commission" means the Competition Commission of Mauritius.

e) "Competing Money Transfer Services" means money transfer services other than Western Union Money Transfer Services.

f) "Effective Date" means the date on which Western Union is notified of the final decision of the Competition Commission to accept these Undertakings.

g) "Existing Agreement" means any Agency Agreement entered into by Western Union on or before the Effective Date.

h) "New Agreement" means any Agency Agreement entered into by Western Union after the Effective Date.

i) "Notice" means notice in writing given in accordance with the terms of the relevant Agency Agreement.

j) "Outlets" means locations and facilities from which Western Union Money Transfer Services are provided by Agents.

k) "Remuneration" means the amount of the commission fee paid by Western Union to the Agent in respect of Western Union Money Transfer Services consumer send and receive and commercial transactions effected by the Agent together with other payments made by Western Union to the Agent.

l) "Rules of Procedure" means the Competition Commission Rule

m) "Sub-Agent" means a sub-agent appointed to provide Western Union Money Transfer Services in Mauritius by an Agent and approved by Western Union.

n) "Western Union Money Transfer Services" means Western Union branded money transfer and related services provided in Mauritius.

o) "Western Union" means Western Union Network France SAS represented by James Carroll duly authorized by The Western Union Company. For clarity, this entity is the only Western Union entity that engages Agents in Mauritius. Western Union acknowledges that, should any other entities in future engage Agents in Mauritius, those entities would be bound by these Undertakings.

Signed:

UNDERTAKINGS ADRESSED BY MONEYGRAM TO THE COMPETITION COMMISSION OF MAURITIUS IN RESPECT OF THE CCM INVESTIGATION ON THE SUPPLY OF MONEY TRANSFER SERVICES IN MAURITIUS (INV/029) UNDER SECTION 63 OF THE COMPETITION ACT AND RULE 28 OF THE COMPETITION COMMISSION RULES OF PROCEDURE 2009

1. Definitions

"Act" means the Competition Act 2007

"Agent" means an agent licensed and regulated in Mauritius to offer the MoneyGram Services.

"Agreement or Agreements" mean the Exclusive and Non-Exclusive Agreements.

"Exclusive Agreement" means an International Money Transfer Services Agreements entered into between MoneyGram and its Agents whereby an Agent offers exclusively the MoneyGram Services.

"Non-Exclusive Agreement" means International Money Transfer Services Agreements entered into between MoneyGram and its Agents whereby an Agent may offer the MoneyGram Services along with any other money transfer services provided by any competitor of MoneyGram.

"CCM" means the Competition Commission of Mauritius.

"Investigation" means the formal investigation launched by CCM into a potential restrictive business practice that may exist in relation to the supply of cross-border money transfer services in Mauritius in the form of exclusivity clauses put in place by MoneyGram (INV/029).

"MoneyGram" means MoneyGram International B.V. (Branch)

"MoneyGram Services" mean the proprietary money transfer services offered by MoneyGram through its Agents in Mauritius.

"Sub-Agent" means a person licensed and regulated in Mauritius to offer the MoneyGram Services and who offers the MoneyGram Services under a Sub-Agent Agreement.

"Sub-Agent Agreement" means an agreement between an Agent and a Sub-Agent under which the latter provides the MoneyGram Services.

"Undertakings" mean the undertakings contained herein and provided to the CCM in order to address the concerns that the CCM has raised during the Investigation.

2. Scope of the Investigation conducted by CCM

CCM is conducting an investigation on Agreements for the provision of money transfer services offered by the Agents in Mauritius and whether such Agreements were likely to breach the monopoly provisions of the Act and more particularly its Section 46 (2), pursuant to which such Agreements may have the object or effect of preventing, restricting or distorting competition in Mauritius, or in any other way constitutes an exploitation of a monopoly situation. The Investigation also encompasses the activities of the competitors of MoneyGram in Mauritius.

3. The Concerns of the CCM

The concerns raised by the CCM are as follows:

3.1 the CCM apprehends that the exclusionary clause in the Agreements may potentially restrict business practices in the market of cross-border money transfer services in Mauritius;

3.2 the CCM apprehends that the Agreements may prevent the Agents from providing competing services and that the Agents may be discouraged from shifting supplier of money transferring services;

3.3 the CCM apprehends that the Agreements may constitute barriers to entry in the provision of money transferring services in Mauritius.

4. Proposed undertaking

4.1 Existing agreements

4.1.1 Option between exclusive and non-exclusive

In order to address the concerns of the CCM, MoneyGram undertakes to apply the measures outlined under this section. The Agents will be given the possibility of choosing between (i) retaining an Exclusive Agreement; or (ii) entering into a new Non-Exclusive Agreement.

Should an Agent choose a Non-Exclusive Agreement, the following amendments will be brought to agreements currently in force.

4.1.2 Proposed commission structure

The commission structure under an Exclusive Agreement may be different from the commission structure applicable under a Non-Exclusive Agreement.

4.1.3 Non-compete clause

MoneyGram standard non-compete provision prevents an Agent to offer competing services during the term of the Agreement and for a limited period of time following termination of the Agreement.

Should an Agent elect the option of a Non-Exclusive Agreement, MoneyGram undertakes that the non-compete clause will not be applicable. As further developed in section 4.2.3, the same standard will apply to Exclusive Agreements.

4.1.4 Timeline for implementation

The proposed structure described herein may become effective (i) upon the renewal of the Exclusive Agreement, i.e. at the end of the current term or (ii) upon request from CCM following the publication of an ad hoc decision related to the current Investigation.

When these Undertakings shall become effective, MoneyGram will notify the Agents of the possibility for them to change Agreement (that is from an Exclusive Agreement to a Non-Exclusive Agreement, and vice-versa) between MoneyGram and them.

The notification sent to the Agents will imply that the Agents shall be able to change from one type of agreement to the other within a given timeframe by notice to MoneyGram. The shift from an Exclusive Agreement to a Non-Exclusive Agreement will however depend on the Agent accepting certain other terms of the Agreement.

4.2 Future agreements

4.2.1 Option between Exclusive Agreements and Non-Exclusive Agreements

For future prospect Agents, MoneyGram is undertaking to offer to the Agents the choice between (i) entering into an Exclusive Agreement or (ii) entering into a new Non-Exclusive Agreement.

4.2.2 Proposed commission structure

The details shall be agreed between MoneyGram and the Agent.

4.2.3 Non-compete clause

Should the Agent decide to enter into a Non-Exclusive Agreement, the Non-Exclusive Agreement will not contain any non-compete clause.

Should the Agent decide to enter into an Exclusive Agreement, MoneyGram undertakes that it will not insert a non-compete clause that will prevent the Agent from providing services in competition with those of MoneyGram for a limited period of time after termination of an Exclusive Agreement.

The non-compete clause in Exclusive Agreements currently in force will also become non-enforceable as a result of the Undertakings.

5. Sub-Agents

The terms of the agreements in respect of MoneyGram Services carried out by Sub-Agents, on the premises of the latter and through the latter's own infrastructure, will not be affected by the nature of the Sub-Agent Agreement, that is, whether the Sub-Agent Agreement is an exclusive agreement or a non-exclusive agreement for the provision of MoneyGram Services.

6. Reporting to CCM

These Undertakings shall become effective on the date they are accepted by the CCM and shall remain in force for a period of four (4) years.

MoneyGram undertakes to communicate to the CCM on a confidential basis on its request.

7. Proposal for a uniform money transfer market in Mauritius

MoneyGram respectfully suggests that the CCM decision further to the current Investigation becomes binding for all money transfer operators in Mauritius, regardless of their size, market share or network.

Yours sincerely,