

MEDIA RELEASE

08/07/2020

**MEDIA RELEASE – GUIDANCE TO BUSINESS ON POTENTIAL COLLABORATION
(BETWEEN COMPETITORS), IN THE WAKE OF THE COVID19 CRISIS**

The Executive Director of the Competition Commission has initiated a temporary **‘guidance to business on proposed Covid19-related collaboration (the ‘Guidance Programme’)** under which businesses will - upon request made to the Executive Director - be provided with guidance on their proposed Covid19-related collaborations on a fast track basis and within 21 working days.

The Guidance Programme has been developed in the context of the current Covid19 situation affecting businesses and with the view to spur recovery of the economy in general and to ensure that markets continue to deliver for consumers. The Competition Commission is alive to the fact that businesses may seek to collaborate with each other with a view to address market failures or disruptions triggered by in the current COVID19 situation. However, businesses should bear in mind that such collaborations especially if it is between rival businesses (competitors), may still be captured by the prohibition on collusive agreement (cartel) of the Competition Act 2007. Moreover, businesses found to have participated in a cartel are liable to financial sanction.

Under the Guidance Programme, the Executive Director will provide non-binding guidance as to whether the proposed collaboration (agreement) may be pursued or whether it is likely to be contrary to the prohibition on cartels. The Guidance Programme thus offers businesses with an opportunity to have their proposed collaborations reviewed before they implement it and therefore help in ensuring that their activities remain within the remit of the Competition Act.

The main conditions of the Programme are that the collaboration must be in response to the Covid19 situation and secondly, the collaboration is only at proposal stage and has not yet been implemented.

Requests for review and guidance will be on a fast-track basis and will be dealt as far as practicable within 21 working days. Thus, Guidance will be provided on the basis of the information submitted by the applicants and without any need for the Executive Director to gather further information.

An application form has been published by the Executive Director on the website of the Competition Commission, so that businesses may understand what information they need to provide. The application form must be used for a request for Guidance. Thus, businesses seeking guidance are urged to make a

full and complete disclosure so that they may receive a more comprehensive reply from the Executive Director.

Statement of Mr Deshmuk Kowlessur, Executive Director of the Competition Commission:

“the aftermath of the confinement period and the ongoing COVID19 situation is likely to have created some uncertainty both in the minds of consumers as in the boardrooms of corporate enterprises and especially for entrepreneurs running small and medium enterprises. There is also a likelihood that businesses may feel the need to co-operate with each other to face the current circumstances and to make sure that there is no disruption of supply. Pulling of resources together may very well be acceptable under the Competition Act 2009, however, businesses must be extremely cautious that their collaboration does not stray into cartels. What I mean is that any collaboration should not lead to agreements or understandings or exchange of information between enterprises on their respective selling prices, level of production or supply, or on their customer bases or territories. For that very reason we have adopted this Guidance Programme where businesses including competitors can have their proposed collaboration reviewed and receive guidance from my office. Although, the Guidance given will be non-binding, it will provide enterprises intending to collaborate with clarity as to how the Competition Commission will view the collaboration if it is taken forward. Further to the guidance obtained from my office, businesses may then be in a better position to decide whether to implement the collaboration or refrain from collaborating.”

Website link to the Guidance Programme – (<https://competitioncommission.mu/guidance-to-business-on-proposed-covid19-related-collaboration/>)

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. Sub-parts I of Part III of the Competition Act 2007 cover collusive agreements restrictive including price fixing, market sharing, restriction of output, bid rigging and resale price maintenance. Collusive agreements are prohibited under the Act and carries financial penalties of up to 10% of annual turnover over the period of the collusion over a maximum of five years.

The new website of the Competition Commission (www.competitioncommission.mu) contains concise description of the various forms of collusive agreement as well as more detailed information in dedicated Guidelines :

Horizontal agreement – (<https://competitioncommission.mu/horizontal-agreements/>)

Bid rigging – (<https://competitioncommission.mu/bid-rigging/>)

Vertical agreements (RPM) – (<https://competitioncommission.mu/vertical-agreements/>)

Fines and Leniency – (<https://competitioncommission.mu/fines-and-leniency/>)