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MEDIA RELEASE

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Investigation Ref: **INV038 & INV039**

Two Trade Associations, in the freight logistic sector, commit to terminate practices in contravention of the Competition Act

The Executive Director had investigated two associations in the freight logistics sector namely the Association of Freight Forwarders and the Customs House Brokers Association. It has been found that certain of their practices were not in line with the competition law in Mauritius.

Both associations collaborated with the Competition Commission and offered undertakings on behalf of their members to amend their conducts to be compliant with the Competition Act 2007 (hereinafter “the Act”). The Commissioners, on 20th February 2020, accepted those undertakings and as such these associations and the concerned members must now change their conduct in line with the decision.

The Contested Conducts

Standard trading conditions are common in the shipping and logistic sector. They are standardized terms and conditions which are designed by accredited agencies or by trade associations. They state the contractual terms and conditions between two parties, usually a service provider and its client. Service providers which adopt the standard trading conditions apply those terms and conditions in their dealings with their clients. Standard trading conditions in themselves are not a breach of the Act. However, where the standard trading conditions extend to the parameters of competition, such standardizing pricing elements or limiting supply or other elements of competition, then such trading conditions may be in breach of section 41 of the Act.

The Association of Freight Forwarders is an association which regroups around 40 freight forwarders in Mauritius. The Association of Freight Forwarders, registered under the Registration of Associations Act, regroups as members local freight forwarding agents.

The Executive Director was concerned that the standard trading condition which has been set by the Association of Freight Forwarders for use by its members, contained some clauses which distorted competition. One of the clauses of the standard trading condition fixed the interest rate which customers had to pay on overdue amounts to the members of the Association of Freight Forwarders. In addition to the standard trading condition, the Executive Director was concerned that the Association of Freight Forwarders had fixed the prices of co-loading services prior Act coming into force. Co-loading refers to arrangements of group shipments of two or more clients or freight forwarders, normally in one container.

However, this agreement was not discussed at the level of the association after March 2010 and no evidence was found to demonstrate that this agreement continued.

Similarly, the Customs House Brokers Association is an association of customs house brokers in Mauritius. The Customs House Brokers Association registered under the Registration of Associations Act, regroups as members, customs house brokers operating in Mauritius.

The Customs House Brokers Association has its own standard trading condition. The Executive Director was concerned that certain clauses of the standard trading condition of the Customs House Brokers Association might be in breach of section 41 of the Act. It was found that one such clause fixed a disbursement fee to be charged to the client based on the disbursement value for custom clearance. Another clause, similar to that of the Association of Freight Forwarders' standard trading condition related to interest rates on credit facilities offered by the members of the Customs House Brokers Association to their clients.

The Executive Director also found that independent of the standard trading condition, the Customs House Brokers Association had prior to the coming into force of the Act, established a minimum pricing policy for services provided by its members. Such a minimum pricing policy was not a breach before the Act came into force, but the Executive Director was of the view that nothing was done to terminate that policy and as it may have continued to affect the market after the Act came into force.

The above conducts by members of each of the Association of Freight Forwarders and Customs House Brokers Association were found to be in contravention of the Act. Each player must set its own credit terms, price or pricing component independently and these cannot be established by trade associations. Such practices distort competition among players as they limit competition on the agreed component.

Outcome and Findings

During the course of the investigation, the Association of Freight Forwarders and the Customs House Brokers Association individually expressed their willingness to collaborate with the Competition Commission to resolve the matter and each association submitted undertakings on behalf of their members to resolve the arising competition concerns of the investigation.

The Associations undertook to revise the contested clauses of their respective standard trading condition. They further proposed additional measures to ensure that the proceedings of each of the association are in line with competition law.

While submitting that the agreement on co-loading rates had ceased since March 2010 and that any potential continuing effects of such agreements are likely to have ceased, the Association of Freight Forwarders nonetheless offered undertakings to the Competition Commission to ensure that such conduct does not recur in the future.

The Customs House Brokers Association also undertook to inform all its members that there is no minimum pricing policy and that each member is free to set its own pricing policy to ensure that any remaining effect of the policy ceases.

The conducts under investigation could attract financial penalties. However, the Executive Director deemed that financial penalties were not warranted in these cases because, among others, most of the agreements were set prior to the coming into force of the Act, a significant part of the agreements had very limited duration, the parties were collaborative, the standard trading conditions were not secretive, actions were taken by the parties to be compliant with the Act prior to the intervention of the Competition Commission, and although the agreements were likely to affect competition such effect are unlikely to be very serious. The Executive Director deemed that the matter could therefore be resolved through the undertakings submitted.

The Commissioners agreed to the recommendations of the Executive Director and accepted the undertakings of the parties. The associations must now ensure the implementation of the measures they have proposed. The decisions can be accessed from the following links:

[Decision relating to the Association of Freight Forwarders](#)

[Decision relating to the Customs House Brokers Association](#)

Statement of the Executive Director

Deshmuk Kowlessur, Executive Director of the Competition Commission, said

“The development of industry and product standards and codes of conduct are often initiated by trade associations. They can bring benefits to the industry and customers but in certain circumstances they may be harmful.

Trade associations usually set such standards, guidelines or code of conducts. While the setting of such standards, guidelines or codes are not in themselves anticompetitive, care must be taken that they do not limit competition. When this happens, trade associations can facilitate cartels.

Setting standards should not extend to elements of competition like price, pricing components or even certain terms and conditions. Members of trade associations must remain and conduct themselves as competitors on the market. Trade associations must also be cautious in their dealings to ensure that sensitive information is not exchanged. The Competition Act prohibits collusive agreements and decisions of associations which are collusive.

In these two investigations, it was seen that the respective trade associations had clauses in their trading conditions which might have been in breach of the horizontal agreement provisions of the Act and additionally, members also concluded agreements to fix prices.

In these particular cases, financial penalties were not imposed given the peculiarity of the investigations and the gravity of the breach. However, where the breach is serious, members of such associations can be fined. As such, trade associations must ensure that they comply with the provisions of the Competition Act.’

End of Media Release