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MEDIA RELEASE	Contact Person	Mr. V. Keenoo, Assistant to the Executive Director
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The Competition Commission investigates a suspected abuse of a monopoly situation by the Bhunjun Group and Betamax Ltd

The Executive Director of the Competition Commission has launched an investigation into a suspected abuse of a monopoly situation by the Bhunjun Group of Companies (the “Bhunjun Group”) and Betamax Ltd (or the “parties”) in the supply of transportation services, by sea, (or “freight services”) of petroleum products to the State Trading Corporation.

The Competition Act 2007 (the “Act”) empowers the Executive Director of the Competition Commission to investigate suspected restrictive business practices. One of those restrictive business practices is an abuse of a monopoly situation, which is provided under section 46 of the Act. Such abuse may take the form of exclusionary conduct, where it hinders the state of competition, or exploitative conduct, where it harms consumers.

This investigation was opened subsequent to a preliminary assessment on the matter, following which the Executive Director of the Competition Commission has reasonable grounds to believe that the Bhunjun Group and Betamax Ltd are party to a reviewable monopoly situation.

The investigation will assess whether the parties, in relation to the supply of freight services for petroleum products to the State Trading Corporation, have engaged in conducts which are contrary to the Act by, among others, requiring the State Trading Corporation for a guaranteed payment, at a predetermined escalating freight rate, of 100% of the freight capacity of its tanker, known as Red Eagle, regardless of the load carried for an uninterrupted period of 15 years as from year 2010; and requiring a right of first refusal to transport petroleum products imported by the State Trading Corporation over and above the freight capacity of Betamax Ltd’s tanker.

It will be assessed whether these conditions and their execution may constitute of:

- a) a disproportionate exclusivity requirement,
- b) a disproportionate termination clause, exit and switching cost,
- c) an exploitative pricing, and

- d) conditioning the contract subject to the acceptance of supplementary obligations¹ which have no connection with the subject of such contract,

having the object or effect of preventing, restricting or distorting competition in the supply of transportation services, by sea, of petroleum products imported into Mauritius for the period of 2010 to 2025, and constituting of an exploitation of a monopoly situation in the supply of transportation services, by sea, of petroleum products imported into Mauritius through a local tanker in Mauritius.

The investigation will assess, among others, the relevant markets concerned by the conduct, and the market behaviours from two perspectives. Firstly, it will assess its object or effect on competition and whether the conducts of the parties are capable of distorting or have distorted the state of competition in the supply of freight services for petroleum products in Mauritius including whether any anticompetitive effects are ongoing.

Secondly, it will assess whether the conducts amount to an exploitation of a monopoly situation to the detriment of interests of consumers.

If at the end of the investigation, the Executive Director is of the view that the conduct(s) of the Bhunjun Group and/or Betamax Ltd amounts to a reviewable monopoly situation and has the object or effect of preventing, restricting or distorting competition, or in any other way, constitutes exploitation of the monopoly situation, he may recommend the Commissioners to impose appropriate directions on the concerned enterprise(s). It will be for the Commissioners to make a determination.

Section 60 of the Act provides that the Commission may impose in the case of an abuse of a monopoly situation such directions *as it considers necessary, reasonable and practicable to remedy, mitigate or prevent the adverse effects on competition that the Commission has identified; or remedy, mitigate or prevent any detrimental effects on users and consumers so far as they have resulted from, or are likely to result from, the adverse effects on, or the absence of, competition.*

Alternatively, the investigation may find that there has been no contravention of the Act.

It should be noted that this is merely the start of the investigation and no conclusion has been reached at this stage.

Statement of the Executive Director:

“We have become aware of the conditions of supply between the parties and the State Trading Corporation, and they seem to have a bearing on competition. As such we conducted a preliminary assessment on the matter, and I opened an investigation after I had reasonable grounds to believe that the parties’ conducts may be in contravention with the monopoly provisions of the Act.

Competition law is concerned not only with the legal dimensions of behaviours of enterprises but with their economic effects on markets. Enterprises who are in monopoly situation must take special care to ensure their conduct does not hinder competition and is not exploitative of the monopoly situation.

¹ Mainly in the form of a right of first refusal to transport petroleum products imported by the State Trading Corporation over and above the freight capacity of Betamax Ltd’s tanker

The investigation is being conducted with due regards to the judgements of the Supreme Court and the Privy Council on the case involving Betamax and State Trading Corporation.

The investigation will assess the conducts in relation to markets and consumers and will consider whether they have been or may be adverse for efficiency, adaptability and competitiveness of the economy of Mauritius and whether they are detrimental to the interest of consumers.

In the assessment we will factor any objective justification of the conducts and whether it has been competition on merits.

In the event that the assessment finds that the parties' actions and behaviours are contrary to the monopoly provision of the Act, the Commission is empowered to take appropriate actions to remedy the situation."

End of Media Release
