

MEDIA RELEASE

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Investigation Ref: **INV 062**

ASCENCIA ADDRESSES LIKELY ABUSE OF MONOPOLY SITUATION CONCERN BY REMOVING RESTRICTIVE CLAUSE IN TENANCY AGREEMENTS FOR ITS BAGATELLE MALL

In February 2022, the Executive Director of the Competition Commission opened an investigation into restrictive clause allegedly imposed by Ascencia Ltd ('Ascencia') on tenants of Bagatelle Mall of Mauritius ('Bagatelle').

Bagatelle is one of the largest malls in Mauritius in terms of leasable area, investment property value, number of shoppers, parkings and the number of retail outlets. It is owned by Ascencia through its subsidiary, Bagaprop Limited.

The investigation followed complaints that Ascencia had recently introduced a 5-km radius clause in its agreements with tenants of Bagatelle. The said clause contractually prevented tenants of Bagatelle from owning, operating, or having any interest (financial or otherwise) in retail outlets within a distance of 5 km from the mall. As a result, the tenants of Bagatelle could not open outlets in competing malls within a distance of 5 km, and thus this clause allowed Bagatelle to maintain exclusiveness of its tenant mix. This was likely to affect the ability of other shopping malls to attract popular retail outlets and compete on level playing field to the benefit of consumers.

Upon being notified of the investigation, Ascencia offered undertakings pursuant to Section 63 of the Competition Act. Ascencia offered to unconditionally remove the restrictive clause and not subject any existing or new tenants to such conditionality.

The Executive Director assessed the undertakings offered by Ascencia and concluded that same effectively address the competition concern identified. The removal of the restrictive clause will enable tenants of Bagatelle to operate retail outlets in other shopping malls, irrespective of distance. This is likely to incentivise competition among shopping malls. Consumers would thus benefit from the increased rivalry among shopping malls in terms of prices, choice, and mall amenities.

The Executive Director therefore submitted his report with recommendation for its determination. Pursuant to Section 63(3) of the Competition Act and having regard to the Report of Undertakings, the Commission has determined the matter and accepted the undertakings submitted by Ascencia.

The decision of the Commission can be accessed from the following link:

[Link to the decision of the Commission](#)

Mr. Deshmuk Kowlessur, Executive Director of the Competition Commission, said

“Shoppers do not directly pay for the enhanced shopping experience offered by malls. Rather, malls derive their revenue and profits from tenants. The ability of shopping malls to derive the revenue through rental of outlets depends very much on the extent to which retail outlets (tenants) can attract visitors to the malls. This depends on the attractiveness of the shopping mall to customers. In this regard, a key factor is the commercial mix in terms of retail outlets as well as facilities provided by the mall.

Over the recent years, we have witnessed significant development in the sector of shopping centres which has transformed the commercial landscape and shopping behaviour in Mauritius. It is important to ensure that market conditions are conducive to competition amongst mall operators. Competition ensures that malls offer competitive rental rates to tenants and shopping facilities to customers. Exclusivity in the form of radius clause when practised by a dominant operator may impede actual and prospective competition in the supply of commercial spaces in shopping mall.

We commend the fact that Ascencia, at an early stage of the investigation, came forward with commitments to address the concerns identified. The Commission's decision is significant for tenants that wanted but could not extend their commercial presence at other neighbouring malls. Existing malls or those intending to open soon, such as Tribeca Mall near Ebene, should compete on the merits including through their tenancy offers if they seek to attract the right mix of shops and brands for the benefit of shoppers, consumers and the economy at large.”

[End of Media release]

Background for editors:

The Competition Act

The Competition Act 2007 came fully into effect on 25th November 2009 and is enforced by the Competition Commission. 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 Competition Commission 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.

Abuse of monopoly situation

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 Competition Commission 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.'

The Competition Commission 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.

Section 63 -Undertakings:

Section 63 of Part VI of the Act states that an enterprise may offer a written undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation into a restrictive business practice.

An undertaking is a commitment which is offered by an enterprise to address the competition concerns of the Competition Commission. The undertakings offered are assessed by the Executive Director in order to conclude whether the latter may address the competition harms.

Upon completion of the assessment of the undertakings, the Executive Director submits a Report of Undertakings which includes his recommendation on whether the undertakings may or may not be accepted by the Commission under Section 63 of the Act. If an undertaking is accepted by the Commission, it is published in the form of a decision of the Commission, and the enterprise must comply with its terms. The undertaking then operates like a direction issued by the Commission under Section 60.

Further information:

For further information see the Competition Commission's website at www.competitioncommission.mu, and the Procedural Rules and Guidelines: 'CC 1 - Procedural Rules', 'CC 2 – Market definition and the calculation of market share', Procedural Rules 'CC 4 - Monopoly situations and non-collusive agreements' all available on the web site.