



COMMISSION CHARTER

February 2024



shaping markets, furthering progress

Commission Charter

1. Introduction

- 1.1 The Competition Commission of Mauritius Charter (the “Charter”) is to be read in conjunction with the Competition Act 2007 (the “Act”), the Competition Commission Rules of Procedure 2009 and the Competition Commission Code of Ethics (the “Code”). In case any inconsistency in content or meaning arises between this Charter, the Code or the relevant laws, the wording of the relevant laws shall prevail.
- 1.2 The Competition Commission is a statutory body established in 2009 under the Competition Act 2007 (The Act). The Competition Commission operates administratively under the Ministry of Commerce and Consumer Protection. However, it is independent of Government in its decision-making.
- 1.3 The Act establishes a competition regime in Mauritius, under which the Competition Commission is mandated to investigate possible anticompetitive behaviour by businesses and determine such penalty or other remedy as it thinks fit to impose in response to an identified anti-competitive practice and what action an enterprise should take to ensure compliance with the penalty or remedy.
- 1.4 The Competition Commission is quite unique in its kind. It comprises the office of the Executive Director, which has an investigating role, and the Commissioners (the “Commission”), who act as an adjudicative body. Both the Commission and the Office of the Executive Director have, under the Act, distinct functions and they operate in full independence of each other.
- 1.5 The Act empowers the Commission to employ staff, who is under the administrative control of the Executive Director. It also has the duty to prepare the estimates of the incomes and expenditure of the Competition Commission, to submit to the Director of Audit its statements of accounts, to issue an annual report on its activities and audited accounts, and to publish guidelines and procedural rules.
- 1.6 The Executive Director, supported by his staff, either on his own initiative or on the complaint of any person carries out investigations into any suspected anti-competitive conduct prohibited under the Act. Upon completion of an investigation, the Executive Director submits his report on the investigation to the Commission for adjudication.

2. The Objectives of the Competition Commission

- 2.1 The purpose of the Act is set out in its preamble as follows: *“To set up a Competition Commission, to make better provisions for the regulation of competition and for matters incidental thereto and connected therewith”*.

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2.2 The Explanatory Memorandum of the Competition Bill (Bill No.25 of 2007) further expatiates on the objectives of the Competition Commission which are to safeguard and promote competition in Mauritius by –

- a. creating a comprehensive competition regime to be administered by an independent Competition Commission;
- b. prohibiting the most serious anti-competitive restrictive agreements;
- c. providing for the investigation and control, where necessary, of other types of restrictive agreements, and of monopoly and merger situations;
- d. promoting the role, and understanding, of competition in enhancing efficiency and adaptability in the economy.

The Functions of the Commission

2.3 The functions of the Commission as laid out under Section 5 of the Act are to:

- a. conduct, as required, any hearings with interested persons or parties;
- b. determine whether a restrictive business practice is occurring or has occurred;
- c. determine such penalty or other remedy as it thinks fit to impose in response to an identified anti-competitive practice and what action an enterprise should take to ensure compliance with the penalty or remedy.

The Powers of the Commission

2.4 The powers of the Commission as laid out under Section 6 of the Act are to:

- a. issue orders and directions in accordance with this Act;
- b. impose financial penalties or remedies on any enterprise which conducts its business in breach of this Act;
- c. enter into such contracts as may be necessary or expedient for the purpose of discharging its functions under this Act;
- d. co-operate with other competition authorities in other countries entrusted with functions similar to those of the Commission;
- e. impose such charges or fees as may be required under this Act or regulations made under it.

Mission of the Competition Commission

To enhance market competition, creating more economic opportunities for the benefit of all Mauritians.

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Vision of the Competition Commission

An impactful institution within the Mauritian economy, shaping business landscape and driving economic progress through the force of competition.

3. Composition of the Commission

- 3.1 The Competition Commission is a body corporate established under section 4 of the Act which has the duty to be impartial and perform its functions without fear, favour or prejudice. The Commission may regulate its own proceedings. Section 7 of the Act sets out the composition of the Commission, the profile of commissioners in terms of qualifications, experience and field of activities and their mode of appointment.
- 3.2 The Act provides that the Commission shall consist of five members, including a Chairperson, a Vice Chairperson and three other Commissioners. The Commissioners must be persons from the public sector, private sector and academia, appointed by virtue of their qualifications and experience in law, economics, accountancy, or commerce and they are appointed by the President on the advice of the Prime Minister given after consultation with the Leader of the Opposition.
- 3.3 The Act also provides that every Commissioner shall hold office for a period of 5 years and may be re-appointed but shall not serve for more than 2 consecutive terms.
- 3.4 Pursuant to Section 15 of the Act, the Commissioners shall not engage in any activity that may undermine the integrity of the Commission; or participate in any decision concerning any matter in respect of which he has a financial interest, or any other personal interest, whether directly or indirectly.

4. Senior Governance Positions

The Chairperson

- 4.1 The Chairperson is appointed in line with Section 7 of the Act.
- 4.2 The Chairperson of the Commission is primarily responsible for the activities of the Commission and its Committees. He/she shall act as the spokesperson for the Commission and is the principal contact for the Executive Director. The Executive Director and the Chairperson of the Commission shall

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interact regularly and discuss all major issues, and emerging policies relating to the regulation of competition.

4.3 The Chairperson, inter alia, is responsible for ensuring:

- a. that the Commission fulfils its duties in accordance with the law;
- b. that the Commissioners receive all information necessary for them to perform their duties;
- c. the setting of the Commission agenda, taking into account the issues and concerns of all Commission members;
- d. that the Commission meetings are chaired and conducted in an effective manner;
- e. that the Commission has sufficient time for consultation and decision-making;
- f. that there is appropriate delegation of authority from the Commission to committees;
- g. that the minutes of the Commission and committee meetings are kept and the Secretary shall be the custodian of all the records of the Commission;
- h. that consultation takes place with external advisors appointed by the Commission;
- i. that proper and meaningful interaction between the Commission and the Executive Director is established.
- j. that new Commission members participate in a full, formal and tailored induction programme, facilitated by the Management; and
- k. the proper functioning of all committees.

The Executive Director

4.4 As per the provisions of Section 20 of the Act, the Executive Director is appointed by the President, on the advice of the Prime Minister given after consultation with the Leader of the Opposition.

4.5 Section 30 of the Act provides for the function and powers of the Executive Director which are to:

- a. keep the operation of markets in Mauritius and the conditions of competition in those markets under constant review;
- b. either on his initiative, or on the complaint of any person, open an investigation into a suspected breach of the prohibition of those restrictive agreements that fall within sections 41 to 43;
- c. either on his initiative or on the complaint of any person open an investigation on a matter that is subject to review under sections 44 to 48;
- d. gather information required for the assessment of each case on the basis of the powers conferred by Part IV;
- e. publish the reasoned decisions of the Commission once the latter has made a determination;
- f. monitor compliance with a penalty or remedy imposed by the Commission and take any step required to enforce compliance with this Act;

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- g. publish and otherwise promote and advertise the provisions of this Act and the activities of the Commission;
- h. undertake general studies on the effectiveness of competition in individual sectors of the economy in Mauritius;
- i. liaise and exchange information, knowledge, and expertise with competition authorities in other countries entrusted with functions similar to those of the Commission; and
- j. advise the Minister on international agreements relevant to competition matters and to this Act.

4.6 Section 32 of the Act provides that where the Executive Director exercises his power to investigate in a case involving a restrictive business practice, he shall not be subject to the direction, or control of, any other person or authority.

4.7 The Executive Director shall exercise all powers as attributed to him by law.

The Secretary

4.8 The Secretary shall act as the secretary to the Commission and assist them in their duties and shall be the custodian of all the records of the Commission.

4.9 All Commissioners may consult the Secretary for advice in respect of matters pertaining to Commission meetings and administrative procedures.

4.10 The Secretary shall assist the Chairperson of the Commission in organizing the Commission's activities such as providing information, preparing the agenda, reporting of meetings, and keeping the records of the meetings.

5. Commission Meetings

5.1 The Commission shall meet as often as is necessary or expedient for the discharge of its functions and, in any case, at least once every month and at such time and place as the Chairperson may determine. In principle, Commission meetings are generally held at the office of the Competition Commission, but it may also take place in another venue. In addition, meetings of the Commission may be held by conference call, video conference or by any other means of communication, provided all participants can communicate with each other simultaneously in confidence.

5.2 Meetings of the Commission are called by the Chairperson. Save in urgent cases, as determined by the Chairperson, the agenda for a meeting shall be sent to all Commissioners, as far as practicable, three calendar days before the meeting.

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- 5.3 As a matter of practice, the Executive Director may be present at each monthly Commission meeting so as to provide updates and to request for approvals from the Commissioners wherever their approval is warranted.
- 5.4 Each Commission member as well as the Executive Director has the right to request that an item be included on the agenda for a Commission meeting, provided that the item is notified to the Chairperson sufficiently in advance, prior to the meeting.
- 5.5 Where at least three Commissioners give notice in writing to the Chairperson to convene a meeting of the Commission for any purpose specified in the notice, the Chairperson shall, within three days of the receipt of that notice, convene a meeting for that purpose.
- 5.6 The quorum for a Commission Meeting shall be three.
- 5.7 In the absence of the Chairperson at a Commission Meeting, the Vice-Chairperson shall preside over the meeting, and in the absence of both the Chairperson and the Vice-Chairperson, the Commissioners present shall elect among themselves a Commissioner to preside over that meeting, and the member so elected shall, in relation to that meeting, exercise the functions and have all the powers of the Chairperson.
- 5.8 Minutes must be drawn up for every Commission meeting by the Secretary and submitted to the Chairperson for his vetting not later than two (2) weeks from the date of the holding of the meeting. Each member of the Commission and the Executive Director shall receive a copy of the minutes. The approved minutes are to be signed by the Chairperson and secretary of the meeting and shall be part of the records of the Commission. Any approval or decision taken by the Commissioners outside a meeting in cases of urgency, shall be tabled at the following Commission meeting and recorded in the minutes.

6. Committees

- 6.1 The following committees have been set up in line with the National Code of Corporate Governance to assist the Commission in the effective performance of its functions:
- a. Corporate Governance Committee
 - b. Audit & Risk Committee
- 6.2 The Commission may appoint committees from among its members to perform specific tasks.
- 6.3 The Committees established by the Commission shall make appropriate recommendations to it and the Commission remains collectively responsible for action taken on the basis of any recommendation

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by any committee. A committee may only perform the tasks expressly delegated to it by the Commission and may not exceed the authority or powers of the Commission.

6.4 Each committee must promptly inform the Commission of the actions it has taken and major developments of which it becomes aware of. Each Commission member shall have unrestricted access to all committee meetings and records. The Commission shall, as set forth in the Terms of Reference of the committee concerned, receive minutes of each committee at the next Commission meeting.

6.5 The Commission shall establish the Terms of Reference for each committee. The Terms of Reference shall indicate the role and responsibilities of the committee, its composition and how it should perform its duties.

6.6 The Terms of Reference and the composition of the committees shall be posted on the Competition Commission's website.

7. Supervision of Financial Reporting

7.1 The Commission, in consultation with the Audit & Risk Committee, supervises compliance with written procedures for the preparation and publication of accounts, the quarterly management reports and any other financial information. The Commission, through the Audit & Risk Committee, also supervises the internal control and audit mechanisms for external financial reporting.

7.2 The Audit & Risk Committee shall regularly provide the Commission with reports on the annual report and accounts, and the quarterly management reports, which will then be discussed at a meeting of the Commission. The accounts for the year just ended shall be discussed in a meeting with the Commission within three months of the end of the preceding financial year. The semi-annual and quarterly (if any) financial reports of the Competition Commission for the respective period just ended shall be discussed in a meeting with the Commission within two months of the end of the period.

7.3 The Commission, in consultation with the Corporate Governance Committee, supervises compliance with written procedures for the preparation and publication of the annual report. The annual report for the year just ended shall be discussed in a meeting with the Commission within three months of the end of the preceding financial year.

8. Accounts and Audit

8.1 The Commission shall, within 4 months of the end of the preceding financial year, submit to the Director of Audit for auditing, its statements of accounts for that year for audit purposes.

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9. Conflicts of Interests

9.1 The Commission shall be governed by the provisions of the Code of Ethics regarding conflict of interest.

9.2 Pursuant to Section 57 of the Act, a Commissioner shall not attend a hearing if the Commissioner has a direct or indirect interest in the outcome of the investigation to which the hearing relates.

10. Principles of Ethics

10.1 The Commissioners should adhere to the highest ethical standards including, but not limited to:

- a. **Duties of Commissioners:** The Commissioners shall act in good faith and make informed decisions and policies in the best interest of the Competition Commission. The Commissioners have the responsibility to carry out their duties diligently, in an honest manner, with reasonable competence and act within the scope of their authority. The Commissioners must consistently attend Commissioners' meetings and devote sufficient time to ensure familiarity with the Competition Commission's business and environment. The Commissioners shall ensure observance of confidentiality provisions of non-public information disclosed to them during and after their mandate. The Commissioners must act in a manner which enhances and maintains the reputation of the Competition Commission at all times.
- b. **Conflict of Interest:** The Commissioners must avoid conflict of interest and where a potential conflict or an actual conflict of interest arises, the same must be disclosed in accordance with this Charter.
- c. **Improper advantage:** The Commissioners shall not take improper advantage of their position or use the Competition Commission's property for personal gain. The Commissioners may not use any information or opportunity received by them in their capacity as Commissioners in a manner that would be detrimental to the Competition Commission's interest.
- d. **Compliance with Laws, Rules & Regulations: Fair Dealings:** The Commissioners must comply with laws, Rules and Regulations applicable to the Competition Commission. The Commissioners shall encourage the reporting of any illegal or unethical behaviour. Any suspected breach of ethics will be communicated promptly by Commissioners, investigated and appropriate actions will be taken, as necessary.

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- e. **Waiver of the principle of Ethics:** Any waiver of the principle of ethics may be made only by the Commissioners by simple majority of the members present in voting and must be promptly recorded.

11. Confidentiality

- 11.1 All matters involving or relating to confidentiality shall be governed by the Code of ethics and the Act.
- 11.2 Unless required to do so by law, no Commissioner shall, during his or her membership on the Commission or afterwards, disclose any information of a confidential nature regarding the affairs of the Competition Commission that came to his or her knowledge in the capacity of him or her being a Commissioner and which he/she knows or ought to know to be of confidential nature.
- 11.3 A Commissioner shall not use such confidential information for his/her personal benefit.
- 11.4 At the end of each Commissioner's term of office, he/she shall return all confidential documents in his/her possession to the Competition Commission or guarantee their disposal in a manner that ensures confidentiality is preserved.

12. Miscellaneous

- 12.1 **Interpretation:** In case of uncertainty or difference of opinion on how a provision of this Charter should be interpreted, the Commission may seek legal advice. In any event, the view/ decision of the majority of Commissioners shall prevail.
- 12.2 **Partial Invalidity:** If any provision of this Charter is or becomes invalid, this shall not affect the validity of the remaining provisions.
- 12.3 **Review of the Charter:** The Commission may review the Charter where any of the above provisions is or becomes invalid or as and when required.
