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**MEDIA RELEASE**

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## **THE COMPETITION COMMISSION INVESTIGATES A POTENTIAL PRICE-FIXING CARTEL IN THE PHARMACEUTICAL SECTOR**

The Executive Director of Competition Commission ('the Commission') has launched an investigation into potential price-fixing collusion (cartel) in the pharmaceutical sector in Mauritius. It is suspected that importers/wholesalers of pharmaceutical products may have illegally agreed to fix the wholesale markup to be applied when selling their pharmaceutical products to retail pharmacies. The investigation, at this stage, concerns seven importers/wholesalers of pharmaceutical products. However, the list of parties under investigation may be called upon to expand as the investigation progresses.

Pharmaceutical products are price-controlled goods whose maximum mark-up is fixed by regulations. In 2023, the regulations were revisited<sup>1</sup> to introduce a new form of price control for pharmaceutical products referred to as 'regressive mark-up system'. Under this system, lower-priced medicines (at import level) are attributed higher mark-up and *vice versa* in view of encouraging importation of more affordable medicines to the benefit of consumers. While the new regulations fixed the maximum mark-ups for different categories of medicines, it did not fix the mark-ups that importers/wholesale pharmacies may practice for the different medicines. Each importer/wholesale pharmacy has the commercial freedom to decide upon the wholesale mark-up it will apply (subject to the prescribed maximum) considering its market operations. Any coordination among importers/wholesalers of pharmaceutical products on wholesale markup eliminates price competition, which is a crucial aspect of the process of rivalry that should exist between them as independent businesses.

If proven, such an agreement would constitute a form of price-fixing in breach of section 41 of the Competition Act, which is a prohibited business practice. Businesses that are found in breach of section 41 of the Act may be liable to financial penalties of up to 10% of their turnover (over a maximum of five years).

The Executive Director has powers of investigation under sections 52 and 53 of the Competition Act, namely, to request any person to provide information (through meeting interviews or submission of documents) and to enter and search premises for gathering information. As part of the investigation, an unannounced entry and search exercise (dawn raid) was conducted, pursuant to section 53, at the premises of one pharmaceutical importer/wholesaler under investigation in June 2024.

Deshmuk Kowlessur, the Executive Director of the Competition Commission said:

*"The calculation of wholesale mark-up for any business entity is an important pricing strategy that affects its competitive positioning vis-à-vis rivals. Such strategies should not be discussed with competitors given their commercial sensitivity. Although price controls exist in the pharmaceutical sector, market rivalry exists and ought to prevail in such a manner as to cause operators at all levels – import, wholesale and*

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<sup>1</sup> The Consumer Protection (Pharmaceutical Products) (Maximum Mark-Up) (No. 2) Regulations 2023, GN No. 59 of 2023, Government Gazette of Mauritius No. 40 of 12 May 2023 in force since 31 May 2023.

*retail – to competitively set their mark-ups in such a manner as to drive down prices and win business to the benefit of consumers.*

*However, the fact that an investigation has been initiated does not mean nor prejudge that the companies under investigation have breached the law, such finding can only be made upon completion of the investigation.”*

Upon completion of the investigation, the Executive Director will submit his report of investigation to the Commission for determination of the matter. The report will contain findings on whether there is evidence of a breach, and in case of a finding of breach, the Executive Director will also make recommendations on remedies (directions) and financial penalties. The adjudicative function of the Commission is carried out by Commissioners who are vested with the power to determine cases, issue decisions and impose directions/penalties.

The Commission invites any person having information on the suspected collusion in this case to come forward and provide same (Tel: 211 2005, Email: [info@competitioncommission.mu](mailto:info@competitioncommission.mu)) to us.

To encourage whistleblowing of suspected anticompetitive practices such as collusion, **Section 51A** of the Act affords statutory protection to any informer (including a public official) reporting such practice, upon request made. This protection covers treating as confidential the identity of the informer, which will not be disclosed in any proceedings before the Commissioners or any Court, tribunal or other authority except by order of a Judge in Chambers.

**End of media release**