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Decision of the Commission

CC/DS/0061

Non - Confidential

In the Matter of -

INV 020 – Investigation into Payment Cards

15 May 2026

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Decision of the Commissioners of the Competition Commission of Mauritius (the 'Commission') of 15 May 2026

THE COMMISSION

Mr. Jim Seetaram	-	Chairperson
Mr. Sandiren Reddi	-	Vice-Chairperson
Mr. Thierry Chellen	-	Commissioner

Having regard to –

the Competition Act 2007 (the 'Act'),

the Competition Commission Rules of Procedure 2009,

the report of the Executive Director of the Commission (the 'Executive Director') dated 12 December 2016 (the 'Report') submitted under Section 51 of the Act upon completion of the Executive Director's Investigation into payment cards in Mauritius, referenced as INV 020 (the 'Investigation'),

the decision of the Commission dated 14 June 2019 referenced as CCM/DS/0024, with respect to the above investigation INV 020 (the '2019 Commission Decision'),

the Supreme Court's judgement of 30 August 2024 in the case of **MasterCard International Incorporated v Competition Commission of Mauritius & Ors [2024 SCJ 375]** (the 'Judgement'), whereby the 2019 Commission Decision was quashed by the Supreme Court and the matter was remitted back to the Commission to be determined anew,

We, the Commissioners, have accordingly considered the matter anew and have, on this day, proceeded to issue the following decision (hereinafter the 'Decision').

I INTRODUCTION

1. Following an investigation into the payment cards industry in Mauritius launched on 23 May 2012 (the 'Investigation'), the Commission was presented with a final report of the Executive Director dated 12 December 2016 (the 'Report') pursuant to Section 51(2) of the Act. A public hearing was held on 25 July 2018. Subsequently, the Commission rendered its decision on the matter referenced as CCM/DS/0024 on 14 June 2019.

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2. The investigation focused on the level of Issuer Interchange Fees ('IIFs') set by Visa International Service Association ('Visa') and MasterCard International Incorporated ('MasterCard') for certain categories of debit and credit cards used at point of sale ('POS') terminals in Mauritius. The Executive Director found that the IIF of around 1% being charged at that time inflated the base on which acquirers set the Merchant Service Commission ('MSC'), effectively creating a floor to the MSC and restricting competition in the acquiring market.

3. The 2019 Commission Decision directed Visa and MasterCard to cap default IIFs at 0.5% for a period of 5 years, alongside other behavioural directions.

4. Appeals were lodged against the 2019 Commission Decision by MasterCard, Visa and BCP Bank (Mauritius) Limited ('BCP Bank') (the 'Appeals'). On 30 August 2024, the Supreme Court delivered the Judgements on the matter.

5. In the Judgement of the case of **MasterCard International Incorporated v Competition Commission of Mauritius & Ors [2024 SCJ 375]**, the Supreme Court quashed the 2019 Commission Decision on procedural grounds, and the matter was remitted back to the Commission to be determined anew.

6. Given that the 2019 Commission Decision was quashed in the abovementioned Judgement, the appeals of Visa and BCP Bank were set aside.

7. Pursuant to the Judgement and by virtue of Section 68 (b) of the Act, the Commission is now determining the matter anew.

II THE COMMISSION'S JURISDICTION AND LEGAL BASIS

8. The matter was reviewed by the Executive Director under provisions of Sections 45 and 46 of the Act which are reproduced below.

9. Section 45 of the Act provides that:

   'A vertical agreement that does not involve resale price maintenance may be reviewed where the Commission has reasonable grounds to believe that one or more parties to the agreement is or are in a monopoly situation that is subject to review under section 46.'

10. Section 46 of the Act provides that:

   '(1) A monopoly situation shall exist in relation to the supply of goods or services of any description where –

   (a) 30 per cent or more of those goods or services are supplied, or acquired on the market, by one enterprise; or
   (b) 70 per cent or more of those goods or services are supplied, or acquired on the market, by 3 or fewer enterprises.

(2) A monopoly situation shall be subject to review by the Commission where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that –

(a) has the object or effect of preventing, restricting or distorting competition; or

(b) in any other way constitutes exploitation of the monopoly situation.

(3) In reviewing a monopoly situation, the Commission shall take into account –

(a) the extent to which an enterprise enjoys or a group of enterprises enjoy, such a position of dominance in the market as to make it possible for that enterprise or those enterprises to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors;

(b) the availability or non-availability of substitutable goods or services to consumers in the short term;

(c) the availability or non-availability of nearby competitors to whom consumers could turn in the short term; and

(d) evidence of actions or behaviour by an enterprise that is, or a group of enterprises that are, a party to the monopoly situation where such actions or behaviour that have or are likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius, or are or are likely to be detrimental to the interests of consumers.'

11. Section 5 of the Act provides that the Commission shall –

(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.

12. At the time of the Appeals , Section 67 of the Act provided that:

(1) (a) Any party who is dissatisfied with an order or direction of the Commission may appeal to the Supreme Court against that order or direction.

(b) Any party wishing to appeal to the Supreme Court under paragraph (a) shall, within 21 days of the date of the order or direction of the Commission, lodge with the Registry of the Supreme Court and the Commission a written notice of appeal.

(2) An appeal under this section shall be prosecuted in the manner provided by rules made by the Chief Justice.

13. Section 68 of the Act states that on appeal, the Supreme Court may-

    (a) affirm, reverse, amend or alter an order or direction of the Commission;

    (b) ***remit the matter to be further determined by the Commission with its opinion on the matter****; or*

    (c) make such orders as it thinks fit.

14. By virtue of the provisions of Section 68(b) of the Act, in view of the functions of the Commission under Section 5 of the Act and given the Judgement the matter is being determined anew.

III FACTUAL CONTEXT

15. The Investigation was initiated on 23 May 2012 by the Executive Director of the Competition Commission, upon having reasonable grounds to believe that a restrictive business practice was occurring within the payment cards market in Mauritius at that material time. The Executive Director had reasonable grounds to believe that the rates set for the IIF at that material time could potentially be restricting, preventing or distorting competition related to payment cards market in Mauritius.

16. The Executive Director's Final Report of 12 December 2016 concluded that the setting of the IIF of around 1% on card-present domestic POS transactions restricts competition in the acquiring market. The IIF of 1% inflates the base on which acquirers set the MSC, effectively creating a floor to the MSC at that point in time. The Executive Director found that the level of the IIF of 1% was harming competition in the acquiring market, which was characterized by asymmetry in market shares.

17. On the basis of those findings, the 2019 Commission Decision determined that a restrictive business practice was occurring at that point in time. To remedy the situation, the Commission issued directions requiring the legal entities representing Visa and MasterCard in Mauritius to cap the default IIFs on certain cards at 0.5% for all card-present POS transactions, effected in Mauritius for a period of 5 years along with other ensuing related remedies.

18. The 2019 Commission Decision was quashed on appeal by the Judgement.

19. Paragraph 74 of the Judgement reads as follows:

    "Having come to the considered conclusion that the Commission is effectively in breach of its statutory duty to give reasons for its Decision, we can only allow the appeal, quash the Decision and remit the matter to be determined anew by the Commission with a direction that the appellant be given a fair hearing for the purposes of the Act and comply with ***section 18 of the Act*** *when giving its decision. We need not in the circumstances consider the remaining grounds of appeal."* [Underlining is ours]

20. The Commission further notes that in the conclusion of the Judgement at paragraphs 70 and 71, the Supreme Court states as follows:

    "70. The appellant invited this Court to quash the Decision in view of all the flaws in the investigation and the hearing. He referred at first to flawed data from the investigation but later agreed that the matter could be remitted to the Commissioners for a hearing with "certain evidence"".

    "71. Grounds 3 and 11, and indeed the other grounds, do not challenge the investigation per se although submissions were made on behalf of the appellant to the effect that the ED referred to flawed data and surveys. Representations were made after the Report and at the hearing precisely on this matter. <u>We consider that it is for the respondent in the course of an eventual new hearing to consider such representations and to decide whether the investigation data and findings may be relied upon</u>." [Underlining is ours]

21. The Supreme Court further clarified in paragraph 75 of the Judgement that:

    *"We need hardly add that our direction to the respondent would only apply if the hearing on the Final Report of 12 December 2016 is to be proceeded with. Our direction does not preclude the ED from deciding, pursuant to his powers under **section 30 of the Act,** whether the Investigation should be proceeded with, or be purely and simply discontinued, or even that a new investigation should be opened in view of the passage of time or for other reasons, and notifying the respondent Commission accordingly."*

22. In the cases of **Visa Worldwide Pte Limited v Competition Commission of Mauritius & Ors [2024 SCJ 377]** and **BCP Bank (Mauritius) Ltd v Competition Commission of Mauritius & Ors [2024 SCJ 376]**, the Supreme Court noted that the Decision of the Commission, which was the subject matter of the appeals, has been quashed in **MasterCard International Incorporated v The Competition Commission of Mauritius & Ors [2024 SCJ 375]**. Consequently, both appeals were set aside.

IV. COMMISSION'S ASSESSMENT OF THE MATTER

23. While remitting back the matter to the Commission to be determined anew, the Supreme Court directed the Commission that the party *"be given a fair hearing for the purposes of the Act and comply with **section 18 of the Act** when giving its decision".*

24. The Commission further observes the remarks of the Supreme Court in its conclusion at paragraphs 70 and 71 of the Judgement whereby reference is made to arguments of the party on flawed data used in the Investigation and the fact that the party *"agreed that the matter could be remitted to the Commissioners for a hearing with "certain evidence"".*

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25. The Commission further notes that the Supreme Court considered that it is for the Commission *"in the course of an eventual new hearing to consider such representations"* (to the effect that the Executive Director relied on flawed data and surveys in his investigation) *"and to decide whether the investigation data and findings may be relied upon".*

26. The Supreme Court further noted that the direction of a fair hearing *"would only apply if the hearing on the Final Report of 12 December 2016 is to be proceeded with".*

27. The question before the Commission is whether to proceed with a hearing on the matter (the 'Hearing') in order to, inter alia give the party an opportunity to make submissions on the reliability of the data used in the Investigation and on the findings of the Investigation themselves . Subsequently, depending on the findings of such Hearing, the Commission will render a decision on the matter.

28. Section 5 (b) of the Act provides that *"[t]he Commission shall determine whether a restrictive business practice is occurring or has occurred."* What was assessed in the Investigation was whether the conduct of MasterCard and Visa may constitute a restrictive business practice, within the meaning of Section 46 of the Act, which was occurring at that point in time. The purview of the review was to determine whether a restrictive business practice "is occurring". Indeed, the remedies proposed by the Executive Director in his report for the investigation were to address the effects of the conducts of the parties going forward. The purpose of those directions was to amend the conduct of the parties and to ensure that the restrictive practice identified at that period of time did not persist going forward.

29. The purpose of the Report was not to enable an assessment of whether a restrictive business practice has occurred. For instance, the Report does not contain information on whether the restrictive business practice has ceased or is continuing and the effect of such restrictive business practice .

30. Now, in 2026, the findings of the Investigation, through an investigation report dated 12 December 2016 no longer enable the Commission to determine whether a restrictive business practice is still occurring.

31. One of the contentions of MasterCard was that the data relied on by the Executive Director in the Investigation (the 'Data') was flawed. Indeed, the Supreme Court stated that should the Commission decide to conduct a hearing, MasterCard may raise the point and submit evidence to demonstrate that the Data was flawed. It would be then for the Commission to decide *"whether the investigation data and findings may be relied upon".* [Underlining is ours]

32. The Commission observes from the Bank of Mauritius statistics that there have been changes in the markets over the past years. For instance, yearly card-based transactions rose from approximately 71.2 million in 2016 to 144.2 million in 2024, with values increasing from Rs 157 billion to Rs 364 billion over the same period. Similarly, mobile banking and payments surged from Rs 2.4 billion in 2016 to Rs 295 billion for the eleven months ending November 2025. This indicates that the market dynamics and the structure of the market have changed over the years.

33. The Data thus dates nearly 10 years back. Therefore, it would be inappropriate for the Commission to rely on the Data and findings of the year 2016 to make a determination whether a restrictive business practice is occurring now in 2026.

34. Due to passage of time, the alleged conduct, the monopoly situation, the market shares and the broader market context cannot be assumed to have remained as they were in 2016. Therefore, it would be erroneous to make a finding of whether a restrictive business practice in the form of an abuse of a monopoly situation is occurring now based on data that dates 10 years back.

35. Therefore, irrespectively and independently of whether or not the parties are able to demonstrate that the Data was flawed or not, such data can no longer be relied upon by the Commission to make a finding on whether a restrictive business practice is occurring now.

36. It is noted that the direction in the 2019 Commission Decision itself was for a duration of 5 years, on the basis, among others, that relevant market context has materially changed after 5 years further indicating that a determination on that basis is not appropriate.

37. We take note of paragraph 75 of the judgement of the Supreme Court that its direction *"does not preclude the ED from deciding, pursuant to his powers under* ***section 30 of the Act,*** *whether the Investigation should be proceeded with, or be purely and simply discontinued, or even that a new investigation should be opened in view of the passage of time or for other reasons."*

V DECISION

<u>NOW THEREFORE</u>,

38. For the reasons given above, the Commission decides as follows:

    a. The investigation report of the Executive Director for INV 020 dated 12 December 2016 can no longer be relied upon to make a determination on whether a restrictive business practice of the kind mentioned in the report is occurring now in 2026, and, given the substantial passage of time and the consequent obsolescence of the data relied upon in the investigation report, it would be inaccurate, unfair and procedurally improper for the Commission to make a definitive determination on the existence of a restrictive business practice.

b. Accordingly, and for the reasons mentioned above and set out in the Decision, the proceedings in matter INV 020 are hereby closed.

39. In reaching this conclusion, the Commission further takes note of the reasoning and conclusion of the Supreme Court in **Mastercard International Incorporated v The Competition Commission of Mauritius & Ors (2024 SCJ 375)**, where the Court expressly recognised that its direction did not preclude the Executive Director from deciding whether the investigation should be proceeded with, be purely and simply discontinued, or from carrying out a new investigation pursuant to his powers under Section 30 of the Act.

40. We therefore leave it for the Executive Director to decide on his way forward in relation to the matters mentioned in the preceding paragraph.

41. We decide accordingly.

Mr. Jim Seetaram
(**Chairperson**) ....

Mr. Sandiren Reddi
(**Vice-Chairperson**) ....

Mr. Thierry Chellen
(**Commissioner**) ....

Made on **15 May 2026**