27th October 2010

Brief notes for ICN conference call on cartel awareness

Note: This is an informal note about the Competition Commission of Mauritius to assist participants in ICN’s conference call of 27th October 2010. The very short descriptions of the Act and CCM cases here should not be relied upon for more formal purposes. The Act, Guidelines and Procedural Rules and all CCM reports are available on its website, at www.ccm.mu

Background

Mauritius is an island economy in Africa with a population of about 1.3m and a GDP per capita of around $12,000. It is consistently recognized as one of the best (if not the best) of the countries in the region for good governance and for ease of doing business. It has a remarkably successful economy, based mainly on export-led development following consistent liberalization of trade and other controls from about the 1980s. Manufacturing and services have long since displaced agriculture as the main economic activities.

Until quite recently, competition policy was largely absent from this successful policy mix. However, it is recognized that competition policy can allow consumers to benefit more from the fruits of growth, provide a predictable climate for foreign investment consistent with international norms and promote economic development of this increasingly sophisticated economy. There have also been concerns that long-established business groups dominate the domestic economy to the exclusion of smaller rivals. Competition policy is seen as a way of providing greater economic opportunities for all.

A Competition Act was passed in 2007. The Competition Commission of Mauritius was established in June 2009. Once the core CCM staff and Commissioners were in place, the Act was brought fully into effect on November 25th 2009. The CCM began its first investigations in December 2009. To date, we have launched 8 formal investigations, of which two have been concluded. We have also carried out about 40 less formal enquiries, and launched a market study.

1 Indeed, in 2009 the Minister of Finance noted in his budget speech that the IT sector exceeded sugar as a component of GDP – an announcement rich in symbolism, given the country’s economic history.
Cartels

The Competition Act prohibits collusive agreements, using fairly standard terminology. If the Commission finds an agreement to be collusive, that agreement is null and void. If the Commission concludes that the breach of this section of the Act was deliberate or negligent, it can impose a financial penalty of up to 10% of the business’s turnover, over the duration of the breach, up to a maximum of five years. There are no individual or criminal sanctions for cartels (although there are for supplying false information to the CCM and so on).

The CCM can raid company premises, with a magistrate’s warrant, if it believes that evidence might be destroyed, or if an enterprise has refused to comply with an order to provide information.

Experience to date

One of the two cases concluded to date involved collusive agreements. The Commission found that Air Mauritius and travel agents had agreed a set of prices for service fees (to travel agents) for selling Air Mauritius tickets. The CCM received written evidence in the form of minutes of meetings between travel agents and Air Mauritius, at which service fees were agreed. Crucially, these meetings took place long before the Act came into effect. The CCM undertook analysis of all tickets sold by all travel agents on selected routes over a week in December 2009 – just after the Act came into effect – and found substantial clustering around the agreed values.

The Commission found that a collusive agreement was in effect. However, no fines were levied, as the absence of active communication after the Act came into effect was held to show that the breach was not ‘deliberate or negligent’.

Talking points for ICN conference call

We want to focus on the difficulties encountered when a cartel law is very new (and no equivalent legislation existed before). This causes all sorts of problems. Obviously, there is a general lack of awareness. But it goes beyond this, and I want to highlight:

1. We cannot use past cases and fines to alert businesses to the issue
2. Communication prior to the Act’s passing is not in itself a breach (but the effects may continue)
3. Fines for a cartel would be derisory, as they can only be proportional to the duration of the cartel since the law was brought into force
4. Leniency has little attraction for businesses, because the fines they avoid would be so small.
5. There is no real group of competition-focused lawyers in the private sector.

Given all these problems, our awareness efforts when the law came in were essentially focused around a theme of “don’t break the law by accident!”. We had radio, TV, billboards, newspaper ads and leaflets, mostly using the ‘warning sign’ image below (from an English language leaflet):