

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[competition Commission, Mauritius]

The following template is submitted by **Competition Commission** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Please add brief presentation/link to agency website.

The Competition Commission is a statutory body established in 2009 to enforce the [Competition Act 2007](#). This 2007 Act established a competition regime in Mauritius, under which the Competition Commission can investigate enterprises for anticompetitive behavior (termed as ‘Restrictive Business Practices’ in the Act).

The Commission is a parastatal, under the aegis of the Ministry of Financial Services and Good Governance. However, the Commission is independent of Government in its decision-making. The Executive Director of the Commission, supported by his staff, decides independently what to investigate and carries out the investigation. Decisions are then taken by five Commissioners, headed by a Chairman. The Executive Director is not a Commissioner.

The mandate to start investigations is vested solely in the Executive Director as directed by the provision of section 51 of the Act under which the Executive Director is duty bound to launch an investigation where he has reasonable grounds to believe that a restrictive business practice is occurring or about to occur, he shall investigate, or cause to be investigated, such restrictive business practice.

The mission statement of the Competition Commission is: To enhance market competition, creating more economic opportunities for the benefit of all Mauritians

The vision of the Competition Commission is to be: An impactful institution within the Mauritian economy, shaping business landscape and driving economic progress through the force of competition

The Competition Commission has recently launched its new [website](#) (www.competitioncommission.mu) as an interactive communication tool for a better understanding of the law and procedures both for businesses and the public at large.

The [Competition Act 2007](#) and the [Rules of Procedure 2009](#) as well as the [Guidelines](#) issued under section 38 of the Act are all available in digital format on the website.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for

the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

There are no discriminatory provisions in the Competition Act 2007, the Rules of Procedure 2009 and the Guidelines. The same procedures apply to any person being investigated, whether a local or foreign firm and irrespective of its legal domicile.

The procedural rules of the Mauritian legal system afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*

v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

i. The [Competition Act 2007](#) and the [Rules of Procedure 2009](#) as well as the Guidelines issued under section 38 of the Act are all available in digital format on the website.

The [Competition Act 2007](#) and the [Rules of Procedure 2009](#) were also published in the Government Gazette

Link to the Guidelines are –

[CC1- Competition Commission Rules of Procedure 2009,](#)

[CC2 – Market definition and the calculation of market shares](#)

[CC3 – Collusive agreements](#)

[CC4 – Monopoly situations and non-collusive agreements](#)

[CC5 – Mergers](#)

[CC6 – Remedies and Penalties](#)

[CC7 – Guidelines general provisions](#)

ii. The [Rules of Procedure 2009](#) was adopted in November 2009 and at the same time as the Competition Commission started operating. The procedural rules was once amended in 2011 ([Competition Commission \(Amendment\) Rules of Procedure 2011](#)). The [Rules of Procedure 2009](#) apply in relation to a merger, a monopoly situation, collusive agreements and any other restrictive business practice falling under the Act (section 3).

iii. As noted in points i and ii above, all relevant laws and procedural rules related to competition law are publicly available.

iv. The [Rules of Procedure 2009](#) concern the functions of the Executive Director and the Commission, and are binding on the Commissioners, the Executive Director, the staff of the Commission and on any person or enterprise who or which is a main party or auxiliary party to an investigation. The Executive Director follows the procedural requirement set out in the Rules whilst carrying investigations, The Commissioners abide by the procedural requirements whilst determining a case and during hearing proceedings.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

- i. It is the general practice at the Competition Commission to inform parties about the launch of an investigation at the start of the process, especially in merger and monopoly abuse cases. The start of investigation letters issued to parties set out the basis for starting the investigation in terms of the relevant sections of the law concerned, the market or focal product concerned, and the alleged restrictive conduct imputed. In cartel cases, the parties are not informed right away upon the start of the investigation but as soon as practicable taking into consideration the need for unannounced search or for gathering of information from other sources rather than the main parties.

It is also a practice at the Commission to carry out procedural meeting with parties. The procedural aspects of the investigation are explained to the parties and a file note of the meeting is also circulated with the parties. The merit of the case is not discussed during procedural meetings, but the staff is open to listen to the views of the parties. The Commission is Currently working on sending procedural notes explaining the procedural aspects of the investigation to parties together with the notice of start of the investigation.

- ii. The Executive Director provides the parties with various opportunities at various stages of the investigation to make representations, submit information and to provide comments. Moreover, the parties can make submissions at any time during the investigation on voluntary basis and these are taken into consideration. The Executive Director will as per section 9 of the Rules of Procedure 2009 sets out an administrative timetable for the investigation which is communicated to the parties. The timetable sets out the major stages of an investigation and the different reports to be issued to the parties before finalization of a Final report of investigation and submission of same to the Commissioners for determination of the case. Normally after the initial information gathering the Executive Director will issue statement of issues setting out the legal basis of the investigation and the matters that will be investigated in more details than the start of investigation letter. The statement of issues includes a legal background, a background to the industry, and the competition concerns based on

information gathered. The parties are invited to make submissions on the Statement of Issues. The investigation will proceed to gather information and make assessment within the legal framework for the relevant alleged breach and then prepare a report with his findings and recommendations on remedies and fines. The parties are given 21 days to submit their views, comments and any information as to why the report should not become final. The submissions are analyzed and incorporated in the report. The report is then finalized and submitted to the Commissioners.

- iii. Information request orders are issued under section 52 of the Act to any person including the party under investigation. However, reasonable delay is provided for the parties to respond and the deadline may be moved if there are any reasonable justifications. Information requests are always in respect of the matter under investigation, other information will be requested if it is required to better understand the market and the conduct at issue.

e) *Timing of Investigations and Enforcement Proceedings*

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

As per section 9 (5) of the Rules of Procedures, the duration of an investigation by the Executive Director is expected not to -

- (a) not to exceed 6 months, in the case of a merger;
- (b) not to exceed 18 months, in the case of any other restrictive business practices.

However, exceeding the above deadlines is not fatal to an investigation since the timetable and the duration investigation can be varied if needed.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

- i. Confidentiality of information is provided both in the [Competition Act 2007](#) and the [Rules of Procedure 2009](#). These documents are publicly available in the Government Gazette and on the website of the Competition Commission.

Section 70 of the Act provides that no Commissioner, nor the Executive Director or any other staff of the Commission shall disclose any information relating to the affairs of the Commission, any particular business or the affairs of an individual, which he has obtained under or by virtue of any of the provisions of the Act. Disclosure is only possible with written authorization of the relevant person, for the purpose of the administration or enforcement of this Act; in connection with the investigations of any criminal offence; for the purpose of responding to a request made by a foreign or multinational competition authority for the production of information in circumstances where Mauritius is a party to an international agreement providing for the production or exchange of such information; and in compliance with the requirements of any Court or the provisions of any other Enactment.

Unlawful disclosure of information is a criminal offence under the Competition Act 2007.

Section 30 of the [Rules of Procedure 2009](#) buttresses the primary legislation and provides that the Executive Director may edit the document to remove information, or may disclose figures in aggregate, when disclosing a document to a party.

- ii. Section 31 of the [Rules of Procedure 2009](#) stipulates that any party may submit a request in writing to the Executive Director that a document be treated as confidential. A request shall only be considered if the document, or a part or parts thereof, is made public and this will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected

to cause serious prejudice. The Commission or the Executive Director may also consider the following while arriving at a decision regarding confidentiality -

- (a) the extent to which the information is known to the public;
- (b) the extent to which the information is known to the employees, suppliers, distributors and others involved in the party's business;
- (c) the measures taken by the party to guard the secrecy of the information; and
- (d) the ease or difficulty with which the information could be acquired or duplicated by others.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Section 70 (1) (b) of the [Competition Act 2007](#) provides that No Commissioner, nor the Executive Director or any other staff of the Commission shall use, for his own personal benefit or for the benefit of any other person, make use of any information, whether directly or indirectly, which has been obtained by him under or by virtue of any of the provisions of this Act.

Section 15 of the [Competition Act 2007](#) provides that No Commissioner shall 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. Every Commissioner who has any direct or indirect financial interest in any matter to be considered by the Commission shall, immediately after the relevant facts have come to his knowledge, disclose in writing the nature of the interest to the Minister and shall not be present during any deliberation of, or take part in any decision of, the Commission with respect to that matter.

Section 57 of the [Competition Act 2007](#) provides that 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.

It is also the practice at the Competition Commission for each staff to sign a disclosure of interest form before starting to work on case. If there is a conflict of interest the case is reallocated.

The Competition Commission has also adopted a Code of Ethics whereby it is stipulated that employees shall avoid situations in which their private interests conflict, or might reasonably be perceived to conflict, with the impartial fulfilment of their duties and the public interest. The Code of Ethics also defines the parameters of a conflict of interest.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

- i. The main party is given notice of the start of an investigation, it is notified of the competition issues being investigated in details through the issue of a statement of issues, the findings of the investigation is notified to the main party by way of a preliminary report and the report is finalized after taking into consideration all information submitted by the party. At each stage of the investigation the parties are given the opportunity to make submissions and provide comments.

Section 14 of the Rules of Procedure 2009 provides that the provisional fining should be notified to the main parties within 7 days from date of finalization of the report and the parties must be invited within such period being not less than 21 days, to provide the Executive Director with reasons in writing as to why such provisional findings should not become final. The Executive Director who may hold additional meetings or carry out further investigation as required to complete his investigation pursuant to any new information received in the comment.

- ii. The report of investigation contains all information upon which the Executive Director bases his findings and same are communicated to the parties concerned. Access to file is granted both at investigation level at preliminary findings stage (before final report) and at hearing stage at the level of the Commission.

The Commission may also employ confidentiality rings and data or disclosure rooms for disclosure of confidential information for purposes of achieving due process and allowing parties under investigation to effectively exercise their rights of defense. The procedures are set out in chapter 6 of [CC7 – Guidelines general provisions](#).

In considering whether the disclosure is necessary, the Competition Commission will have regard to the need to protect the legitimate interests of confidentiality of the enterprises or persons from which it has obtained the information (the "Data Providers"), the function or purpose for which the information is required and the scope of the information requested. The Competition Commission will generally seek to inform the party claiming confidentiality or the party to whom the information relates

of its intention to make and the form of its intended disclosure of confidential information.

- iii. The Final report of investigation is communicated to the main parties at the same time they sent to the Commissioners for determination. Section 55 of the [Competition Act 2007](#) provides that Upon receipt of a report under section 51, the Commission may, if the party under investigation so requests, convene a hearing at which the Commissioners can hear the views of any person they consider to have a relevant interest in the case. Moreover section 56 provides that The Commission shall not impose a penalty on, or give a direction to, an enterprise, unless it has held a hearing in relation to that enterprise. During hearings the parties are given the opportunity to make both oral and written representations to the Commission.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

- i. The Competition Commission will not deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing. It is a practice that parties are accompanied by legal representatives during meetings and legal representatives are also allowed to engage with the Commission both at investigation level and at hearing stage.
- ii. See point I, above.
- iii. Section 54 of the Act provides that - Nothing shall require a person to disclose or produce information or a document that the person would in an action in a court be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or*

sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.

- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.

- | |
|---|
| <p>i. Section 18 of the Act provides that The Commission shall prepare and publish its decisions together with the reasons for such decisions.</p> <p>ii. The commitments proffered forms part of the Final Report of the Matter and is also included in the Decision taking into account confidentiality issues.</p> |
|---|

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

<p>In this respect, section 69 of the Competition Act 2007 provides that no appeal under this Part shall operate as a stay of an order or direction given by the Commission, except for an order imposing a financial penalty on an enterprise.</p>
