

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE COMPETITION COMMISSION



AND

THE UTILITY REGULATORY AUTHORITY



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The Aim and Coverage of the Memorandum of Understanding

1. In certain aspects of utility regulation, the Competition Commission (CC) and the Utility Regulatory Authority (URA) may have common interests. This is because the URA, pursuant to section 5 of the Utility Regulatory Authority Act 2004 ('the URA Act'), is also mandated to promote competition and ensure that its licensees do not engage in anti-competitive practices in the utility services industry, which falls under the purview of the CC, pursuant to the Competition Act 2007 ('the Competition Act').
2. The URA is under the URA Act responsible to, inter alia:
 - ensure the sustainability and viability of utility services;
 - protect the interests of both existing and future customers;
 - promote efficiency in both operations and capital investments in respect of utility services; and
 - take measures to suppress any abusive, illegal or dishonourable practices in relation to any activity of a licensee and promoting competition to prevent unfair and anti-competitive practices in the utility services industry.
3. The CC has the powers to investigate and take enforcement action against restrictive business practices which fall within sections 41 to 48 of the Competition Act. Sections 41 to 43 cover collusive agreements, namely horizontal agreements, bid rigging which are collusive and vertical agreements involving resale price maintenance. Sections 44 to 48 cover other restrictive agreements, monopoly situations and merger situations which have the effect of preventing, restricting or distorting competition or resulting in a substantial lessening of competition.
4. The CC and the URA have therefore agreed in this Memorandum of Understanding ('MOU') which aims to:
 - promote co-operation and coordination between the CC and the URA when dealing with cases of anti-competitive behaviour where they may have common interests;
 - facilitate the treatment of cases of anti-competitive behaviour within the utility sector with technical expertise from both institutions;
 - minimize the duplication of activity, wherever possible; and
 - improve understanding of the respective roles of the CC and the URA.
5. This MOU between the two institutions, pursuant to section 66 of the Competition Act, aims at ensuring effective, efficient and adequate enforcement of competition policy in the utility sector.

The Role of the CC in relation to this MOU

6. The CC has been established as an independent body corporate under the section 4 of the Competition Act. Its goal is to make the market work optimally in the interests of consumers and the economy of Mauritius and to make better provisions for the regulation of competition and for matters incidental thereto and connected therewith. To this end, the CC is empowered to, inter alia:

- keep the operation of markets in Mauritius and the conditions in those markets under constant review;
- investigate anti-competitive collusive agreements, monopoly situation and mergers;
- take actions against identified restrictive business practices; and
- undertaking general studies on the effectiveness of competition in individual sectors of the economy in Mauritius.

The Role of the URA in relation to the MOU

7. The URA has been established as a body corporate in accordance with section 4 of the URA Act (as amended). Its goal is to carry out such regulatory functions as may be assigned to it under the URA Act or any utility legislation whereby the URA shall promote competition to prevent unfair and anti-competitive practices in the utility services industry. The URA has inter alia powers under the URA Act to:

- implement the policy of Government relating to applicable utility services;
- grant, vary, and revoke licences in respect of a utility service;
- enforce the conditions laid down in an undertaking authorisation;
- regulate tariffs and other charges levied by a licensee in accordance with any rules specified in the relevant utility legislation;
- take measures for the better protection of customers in relation to any utility services.

Matters of mutual interest

8. The CC and URA are both committed to conduct their regulatory responsibilities in the public interest. They recognise the importance of mutual consultation across a wide range of issues relevant in the utility services industry. In entering into this MOU, the CC and the URA give due recognition to the need to:

- promote co-operation and coordination between the CC and URA when dealing with cases of anti-competitive behaviour;
- facilitate the treatment of cases of anti-competitive behaviour within the utility services industry;
- share information relevant to the exercise of their functions; and
- improve understanding of the respective roles of CC and the URA.

9. As is the case within other regulated sectors with sector-specific legislation, a framework of collaboration between the CC and URA is provided hereunder to facilitate the treatment of anti-competitive behaviour under both the Competition Act or the URA Act



10. The CC and the URA would apprise each other on proposed enforcement actions in relation to anti-competitive behaviour in relation to utility services. This would be done soon after receipt of a complaint or before the beginning of a formal investigation or shortly after launching an informal review to identify whether there are reasonable grounds that the Competition Act has been infringed in order to determine whether a matter should be investigated. However, it may not always be possible to make such a decision in the early stages as there may be instances where the decision on how best to proceed can only be made once significant progress has been made in considering a complaint or in an own-initiative investigation. This will require close cooperation between the CC and the URA until sufficient information is obtained for a decision to be taken.

11. Where the URA is in receipt of a complaint or had identified any matter which it considers might infringe the URA Act or the Competition Act, it may request the CC to launch a formal investigation. The CC shall apprise the URA in so far as possible within one month whether there are reasonable grounds to initiate an investigation under the Competition Act or if such is not the case, refer the matter back to the URA for action it may deem appropriate under the URA Act or other relevant utility legislations. The CC may in this regard share its expertise with the URA on competition analysis.

12. Where the CC proceeds with an investigation related to the utility sector, it may consult the URA. The URA shall be able to contribute to the report of the Executive Director of the CC before the report is referred for a decision to the Commissioner of the CC. Any action taken under the Competition Act shall not preclude any further action by the URA under the URA Act, based on the report of the CC.

The responsibilities of URA under the MOU:

13. The URA will, with respect to competition matters:

- inform the CC of formal complaints it receives alleging that its licensee's conduct infringes the competition provisions under the URA Act or the Competition Act;
- inform the CC of any course of conduct that the URA adopts to investigate under the URA Act or any other utility legislation;
- consult CC whenever it considers that action under the Competition Act is more appropriate than enforcement action under the URA Act;
- provide the CC with any views when notified of an investigation under the Competition Act that directly involves a licensee of URA;
- consider the views of the CC as to the analytical approach to take concerning any relevant issue in relation to which it carries out an investigation under the URA Act to ensure consistency in approach across the economy, and have regard to the CC's guidelines on competition; and
- inform the CC of any action it takes under the URA Act or any utility legislation where both the CC and URA may have concurrent jurisdiction.



The responsibilities of the CC under the MOU:

14. In relation to the utility sector, the CC will, with respect to competition matters:

- inform the URA of formal complaints it receives from any person alleging that the conduct of a licensee of the URA infringes the competition provisions under the URA Act or the Competition Act;
- inform the URA prior to launching an investigation or a market study under the relevant sections of the Competition Act;
- consider any views of the URA when an investigation or market study is launched as per the Competition Act which involves the utility sector. The CC will also further inform the URA if it disagrees with certain aspects of the proposed advice;
- inform the URA of the issue of any written notices that the CC may propose to make a decision that section 41-48 of the Competition Act has been infringed;
- inform URA prior to making a decision under section 41-48 of the Competition Act that the Act has been infringed;
- consult URA whenever it considers that action under the URA Act is more appropriate than enforcement action under the Competition Act;
- inform the URA of cases in other markets which it believes may have consequences for the utility sector.

Sharing of information

15. The CC and the URA shall, where appropriate, share information relevant to competition and efficiency in the utility services industry.

16. The CC and the URA agree that information available to one which is relevant to the responsibilities of the other will be shared on request.

17. Each party shall, to the extent it is authorised by law, provide relevant information to the other on a best endeavours basis, with due regard to the urgency of doing so. This obligation is subject to any relevant legislation, operational considerations and any conditions placed by the original provider of the information upon its use or disclosure.

Disclosure of confidential information

18. Each party will respect the confidentiality and/or secrecy of information exchanged and which has been obtained as a result of the other party's statutory powers or other legal obligations and which relates to the affairs of any individual, business or undertaking. Each party will comply with any non-disclosure obligations that are binding on the other, in particular, those set out in sections 70 of the Competition Act and section 33 of the URA Act.



19. It is agreed that the CC shall publish its decisions with reasons and as such may have to disclose information exchanged between the two parties. However, in no event shall any party disclose any information which is protected as confidential under the Competition Act or section 33 of the URA Act.

Unsolicited assistance

20. Each party recognises that in the course of carrying out its functions and exercising its powers, it will come into possession of information which would, if provided to the other party, be likely to assist that other party in administering or enforcing particular laws for which it is responsible.

21. Each party agrees to use its best endeavours to notify the other party, with due regard to the urgency of doing so, of the existence of any information of a kind referred in paragraph 20, notwithstanding that it may not have received a request from the other party for such information.

Review and Implementation

22. The MOU is not intended to create binding obligations on either party and it may be reviewed as the need arises, or by written request of either party. Any changes will be subject to the agreement of both parties.

Made in two originals on 26 June 2020



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