



Competition Commission of Mauritius  
 1<sup>st</sup> Floor, GM Tower  
 7 Maupin Street  
 Port Louis  
 Tel. No. 211-2005  
 Fax No. 211-3107  
 email: info@ccm.mu

## MEDIA RELEASE

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INV001 – KRAFT &  
 GENERAL REBATES

### **CCM LAUNCHES AN INVESTIGATION INTO IBL CONSUMER GOODS' SALES CONTRACTS WITH SMALL AND MEDIUM SIZED RETAIL STORES**

The CCM has launched its first Investigation today, into sales contracts relating to soft cheese, biscuits and chocolate.

The matter concerns the nature of sales contracts being offered by IBL Consumer Goods, and possibly other distributors of fast moving consumer goods (FMCG) to retail outlets, including hypermarkets, supermarkets, and independent retail stores.

Only when the Investigation is finished can firm conclusions can be drawn. At this stage the Executive Director of the CCM has concluded that the Commission has reasonable grounds to believe that IBL Consumer Goods has a monopoly position in the wholesale market for the supply of soft cheese. This is not in itself any kind of breach of the law. However, there is some evidence to suggest that IBL Consumer Goods is attempting to use its monopoly position to further increase sales in soft cheese, also to increase its sales of other products in which IBL Consumer Goods does not enjoy an equally high market share, including biscuits and chocolate. This behaviour could result in a restriction, prevention or distortion of competition in the affected markets, ultimately to the detriment of consumers.

The CCM is also generally concerned about volume related discount schemes involving sales targets and applying to total sales volume. The CCM understands that such wholesale sales contracts may be relatively widespread across many wholesale Fast Moving Consumer Goods distributors and therefore considered the norm within Mauritius.

These terms and conditions might constitute a breach of the monopoly provisions of the Competition Act 2007, and so the CCM is investigating. The Executive Director will report his findings to the Commission. If the Commission concludes that the effect of these terms and conditions is to restrict, prevent or distort competition in any market, it may take steps to remedy the situation. No financial penalties can be levied for a breach of the monopoly provisions of the Act, the focus instead is on taking measures to promote competition.

John Davies, Executive Director of the CCM, said

“Following inquiries carried out by the staff of the Competition Commission, I have decided to initiate our first formal investigation. We would be concerned if companies are using a strong market position in one market to reduce competition in other markets, reducing choice and potentially resulting in higher prices to consumers. Competition agencies in other countries have often taken action over similar concerns. There is nothing special about this case; among our pre-investigation inquiries it happens to have been the first to reach the stage at which we are ready to begin a formal investigation. We will be launching more investigations in the forthcoming weeks.”

### **Background for editors:**

#### ***The Competition Act***

The Competition Act 2007 came fully into effect on November 25th 2009, and is enforced by the Competition Commission of Mauritius, the CCM. Sub-parts II and III of Part III of the Competition Act 2007, cover restrictive practices described under ‘Other restrictive agreements’ and ‘Monopoly situations’.

To take action, the CCM must find that the conduct of an enterprise in a monopoly situation restricts, prevents or distorts competition or otherwise exploits the monopoly situation. We refer to such conduct as ‘abuse of monopoly’. Where the Executive Director has reasonable grounds to believe that abuse is occurring, or will occur, he may launch an investigation.

#### ***Monopoly abuse:***

It is not in itself any breach of the law for an enterprise to be in a monopoly situation. However, as per Section 46(2) of the Competition Act, enterprises which hold monopoly positions may be in breach of the abuse or exploit any market power this position confers upon them. The question for the CCM is whether such enterprises are engaged in conduct which restricts, prevents or distorts competition (such as using their market position to exclude rival enterprises) or otherwise exploiting the monopoly situation.

‘Anticompetitive foreclosure’ is said to occur when the conduct of a monopoly enterprise restricts or eliminates the effective access of actual or potential competitors to customers or to supplies, to the detriment of consumers or the economy in general. ‘Foreclosure’ should be read to mean ‘exclusion of competitors in a manner that damages consumers or the economy in general’, not simply ‘exclusion of competitors’.

Anticompetitive foreclosure may arise through exclusive dealing – preventing competitors from selling to customers through the use of exclusive purchasing obligations or rebates. Retrospective rebates, such as a rebate on all wholesale purchases over a year if the sales exceed a target threshold, may have foreclosure effects because they can result in very powerful incentives for a wholesale buyer just below the threshold to increase sales volumes.

The CCM takes the view that, in most markets, free competition is an effective guarantor of the interests of consumers and is likely best to promote the efficiency, adaptability and competitiveness of the economy of Mauritius. Significant weakening of competition will therefore have adverse effects. Consequently, if the CCM finds evidence of behaviour that is preventing, restricting or distorting competition, on the part of an enterprise with market power, in a monopoly situation, it will normally expect that such behaviour will have adverse effects on consumers or the economy as a whole.

Following an Investigation, the CCM has the power to force changes in company behaviour and will consider behavioural undertakings offered by the investigated party or parties.

***Further information:***

For further information see the CCM's website at [www.ccm.mu](http://www.ccm.mu), and the CCM's Procedural Rules and Guidelines: 'CCM 1 - Procedural Rules', 'CCM 4 - Monopoly situations and non-collusive agreements' and 'CCM 6 - Remedies and Penalties', all available on the web site.