



Undertakings to the CCM by APT

**UNDERTAKINGS GIVEN BY THE ASSOCIATION PROFESSIONNELLES DES TRANSITAIRES DE  
L'ILE MAURICE, HAVING REGISTERED OFFICE SITUATED AT, MCCI OFFICE 6, ADOLPHE DE  
PLEVITZ STREET PORT LOUIS, ON BEHALF OF ITS MEMBERS, TO THE COMPETITION  
COMMISSION PURSUANT TO SECTION 63 OF THE COMPETITION ACT 2007.**

**17<sup>th</sup> JANUARY 2019**

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**ASSOCIATION PROFESSIONNELLE DES TRANSITAIRES**

Siège social : MCCI • 6, Adolphe de Plevitz Street • Port-Louis • Tel : (230) 203 4830 • Fax : (230) 208 0076  
apt@mcci.intnet.mu • www.aptmauritius.com

## 1. Statement of facts

On 29<sup>th</sup> June 2017, the Executive Director of the Competition Commission launched an investigation under section 51 of the Competition Act 2007 (the "Act"), into a potential breach of section 41 of the Act by the Association Professionnelle des Transitaires de l'Île Maurice' (the "Association") and its members in relation to the provision of freight forwarding and related services supplied in/from Mauritius.

During a factual meeting held at the office of the Competition Commission on 24<sup>th</sup> August 2018 the representatives of the Association informed the Competition Commission that they will collaborate with the Competition Commission and are willing to amend their conduct to be compliant with the Act and to address any competition concern that the Competition Commission may have.

## 2. Details of competition concerns

The Executive Director informed the Association that he has the following concerns:

Certain clauses in the Association's Standard Trading Conditions that may amount to an agreement between the members of the Association of the kind prohibited by section 41 of the Act, relating to horizontal collusive agreements, namely the following clauses:

### Clause in relation to Charges, etc

*20. c. On all amounts overdue to the Company, the Customer shall pay to the Company interest, calculated from the date such amounts are overdue until payment thereof, at the rate of one and a half percent. Per month together ...*

### Clause in relation to the Amount of Compensation

*30. Except in so far as otherwise provided by these Conditions, the liability of the Company howsoever arising and notwithstanding that such liability shall have arisen from the neglect or default of the Company, of any extent or gravity, shall not exceed:*

*(a) In respect of all claims other than those subject to the provisions of Clause 30(b) below, the lesser of*

- (i) the value of the Goods lost, damaged, misdirected, mis-delivered or in respect of which a claim arises; or*
- (ii) MUR 80 per gross kilogram of the said Goods, and shall not exceed MUR 300 000 in any event whatsoever in respect of any one claim; and*

(b) *In respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges for the services in respect of the Goods delayed.*

The Executive Director was also concerned that members of the Association may have engaged in an agreement which have the object or effect of fixing co-loading and related services rates. The Association informed the Competition Commission that since the coming into force of the Act, it has taken measures to cease such agreement, and in particular it can be found that in a minutes of meeting of the management committee of the association held on Thursday 18 March 2010 section 4 heading Competition Act : The chairperson stated that under the provisions of the competition Act, it is strictly forbidden for members to negotiate, agree, or even to discuss prices during APT meetings as it may be considered as a collusive between Members. The Chairman of APT also sent a notice on the 7<sup>th</sup> April 2010 to all members to inform them about the enforcement of the Competition Act.

### **3. Measures proposed as Undertakings**

Pursuant to Section 63 of the Competition Act 2007, the Association and its members provides the following undertakings to the Competition Commission in order to address the above concerns of the Competition Commission in relation to the investigation INV 038.

#### **3.A. Behavioural Undertakings**

I. To amend clause 20.c of the Standard Trading Condition of the Association to read as below:

*20. c. On all amounts overdue to the Company, the Customer shall pay to the Company the amounts overdue on terms and conditions agreed with the Company.*

II. To amend clause 30 (a) (ii) to read as below:

*The liability of the Company howsoever arising and notwithstanding that such liability shall have arisen from the neglect or default of the company, shall be determined as per international agreements/conventions to which Mauritius is a party and as determined by the company.*

III. To amend section 3.1.1 and 3.1.2 of the APT Constitution to read as follows:

**3.1.1** To promote cooperation and understanding between its members and to further the interests of its members in any matter that appears desirable to the APT in conformity with the Competition Act of Mauritius.

**3.1.2** To deal with all matters concerning the welfare of members and their membership.

**IV.** The Association will start to implement a practice similar to the International Federation of Freight Forwarders Association (FIATA), namely, to read or otherwise communicate a Competition Compliance statement before any meeting with its members as follows:

Statement to Comply with Competition Act of Mauritius:

*APT Competition Compliance Statement*

*The APT strictly prohibit any discussion or other communication among members the purpose of effect of which is to set prices, allocate markets or customers, engage in tying arrangements or refrain from purchasing any goods or services from any particular supplier or vendor. It is mandatory that you familiarize yourself with the Competition Act 2007 of Mauritius available on:*

*[http://www.ccm.mu/English/Documents/Legislations/Competition\\_Act.pdf](http://www.ccm.mu/English/Documents/Legislations/Competition_Act.pdf) . In case of any doubt, we kindly request you to contact the President of the APT for guidance.*

**V.** Members of the Association shall not engage in any discussion, during any Association meeting or event or otherwise nor use such meetings or events as a means to enter into any contact or communication, between or among themselves that has the object of effect of fixing or otherwise agreeing on prices or pricing policy of services offered by the members.

**VI.** The Association shall use its best efforts to ensure that the present Undertakings are disseminated to and understood by all existing Members.


**VII.** Members of the Association shall take all necessary measures to disseminate the present Undertakings to their respective officers, employees, agents or any other person representing them at the Association meetings to ensure that these are understood and complied with by them in their dealings with other Members.

### 3B. Reporting

The Association shall, within 4 months from effective date of these undertakings, submit a written report to the Commission that *inter alia*, detail how the undertakings have been implemented.

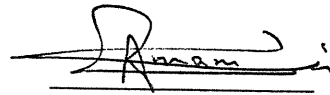
### 3C. Entry into force

The present undertakings shall take effect on the date it is accepted by the Commission in the form of a decision and shall be implemented within 3 months from the date of its acceptance by the Commission.



Hemrazlall Gopaul

President APT



Amil Emamdin

Secretary APT