



Mauritius ❖

Kiran Meetarbhan[†]

Discovered by the Portuguese in 1505, Mauritius was subsequently ruled by the Dutch, French, and British respectively, before independence was attained in 1968. It is an island nation in the Indian Ocean about 2000 kms off the south east coast of the African continent and includes the islands of Mauritius, Rodrigues, Agalega and Saint Brandon. The islands of the Republic of Mauritius form part of the Mascarene islands.

Mauritius is a Parliamentary Republic and a member of several regional organisations, including the African Union, the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC).

The dismantling of the EU-ACP sugar protocol which offered the country with a guaranteed market and price for its sugar, the global crisis of 2008 and the recent turmoil in the Eurozone, a key export market for its tourism and textiles sectors, have impacted the growth of the economy. Nevertheless, the economy has successfully implemented several economic restructuring measures that have reinforced its resilience to these adverse external conditions.

Economy

Mauritius has emerged from a monocrop economy, depending mainly on sugar, into a diversified one with a well-developed manufacturing sector and a fast expanding services sector, which include tourism, information and communications technologies, financial services, offshore services and freeport activities.

It is one of the few countries in sub-Saharan Africa to have steadily maintained a real growth rate of around 5 percent per annum, on average over the last three decades. As a result, the standard of living has improved significantly and the country has now a life expectancy rate of 73.4 years and an adult literacy rate of 84.9 percent.

PROFILE

Population:	1.29 million*
GDP (Current US\$):	11.31 billion*
Per Capita Income: (Current US\$)	8,240 (Atlas method)* 14,760 (at PPP.)*
Surface Area:	2,040 sq. km*
Life Expectancy:	73.4 years*
Literacy (%):	84.9 (of ages 15 and above)*
HDI Rank:	77*
<i>Sources:</i> - World Development Indicators Database, World Bank, 2012 - Human Development Report Statistics, UNDP, 2011 (* For the year 2011)	

For the year 2011, the estimated GDP of Mauritius is around US\$11,310mn and the GNI per capita is US\$8,240. Mauritius is considered to be an upper middle income country.

The main sectors in terms of percentage contribution to GDP for the year 2011 are manufacturing (17.7), real estate, renting and business activities (13), wholesale and retail (11.9), financial intermediation (10.1) and hotels and restaurants (7.1).

Foreign Direct Investment (FDI) started entering Mauritius since the mid-1980s. With the help of a transparent and well-defined investment code and legal system FDI inflows have since then increased to peak to around US\$440mn in 2010. There is a competitive and efficient tax system at a flat 15 percent and no capital gains tax is levied.

Poverty level whether measured in terms of relative, absolute, or with respect to food poverty is low. Using the relative poverty measure, the poverty headcount is estimated to be 8.7 percent.

❖ Original paper written by Reshma Peerun, Sunil Bundoo and Kheswam Jankee (2006-07) & updated (September 2012).

Employment in 2011 stood at 536,700 with an activity rate of 59.3 percent. The tertiary sector accounted for 63 percent of the total employed while 28.2 percent were in the secondary sector. The unemployment rate in 2011 was 7.9 percent or 46,100.

Mauritius is highly ranked in terms of competitiveness, investment climate and governance. In 2011-2012, the country ranked 54 out of 133 countries in the World Economic Forum's global competitiveness index, and 2nd for the African Region. For the year 2011, Mauritius occupied the first place in the Mo Ibrahim Index of African Governance, and 36th in the AT Kearney Global Services Location Index 2011. The country also occupied the 46th place in the 2011 Transparency International Corruption Perceptions Index and 23rd globally in the 2011 World Bank Doing Business report.

This remarkable performance of the economy can be attributed to the sound economic governance and accelerated reforms implemented by the Government that have contributed in strengthening the resilience of the private sector. These factors together with timely and targeted responses by both the public and private sectors have helped the country to weather through the global crisis.

The current economic challenges facing the country, amongst others, are lower growth prospects and rising unemployment, particularly among the youth (below 25 years). These are mainly due to the adverse external conditions in Europe, its traditional trade partner. In view of the several economic challenges, the country is working towards diversifying its economy, both in terms of moving up the value chain and tapping new exports markets in the Middle East, Asia and Africa.

Competition Law and Policy

The Competition Act was passed in the National Assembly in 2007 and was fully proclaimed in November 2009. The objective of the Act is to establish the legal framework for investigating and remedying restrictive business practices, with the view to enhance competition in Mauritius. The Act covers three main types of restrictive business practices, namely:

- collusive agreements;
- abuse of monopoly and monopoly situations; and
- mergers resulting in substantial lessening of competition.

The Act also establishes the Competition Commission with two different arms, namely the investigative arm and an adjudicative arm.

The investigative arm is headed by the Executive Director whose functions and powers are defined as:

- keeping the operation of markets in Mauritius and the conditions of competition in those markets under constant review;

- open investigations into suspected breaches of the prohibition of restrictive agreements, namely cartels and resale price maintenance;
- open investigations into matters concerning mergers, abuse of monopoly, non-collusive agreements and other vertical agreements not involving resale price maintenance;
- order the production of information;
- publish reasoned decisions of the Commission after determination;
- monitor compliance with a penalty or remedy imposed by the Commission and take any step required to enforce compliance with the Competition Act;
- publish and otherwise promote and advertise the provisions of the Competition Act and the activities of the Commission;
- undertake general studies on the effectiveness of competition in individual sectors of the economy in Mauritius;
- liaise and exchange information, knowledge and expertise with competition authorities in other countries; and
- provide advice to the Minister on competition matters and the Competition Act.

The adjudicative arm of the Competition Commission lies with the Commissioners. The Competition Act provides for the appointment of a Chairperson, Vice Chairperson and three other Commissioners, with qualifications in law, economics or accountancy.

The functions of the Commission are to:

- determine whether a restrictive business practice is occurring or has occurred;
- conduct any hearings with interested persons or parties; and
- determine such penalty or other remedy as it thinks fit to impose in response to an identified anti-competitive practice and what action an enterprise should take to ensure compliance with penalty or remedy.

The Commissioners are empowered to:

- issue orders and directions;
- impose financial penalties or remedies on any enterprise;
- enter into such contracts as may be necessary or expedient for the purpose of discharging its functions under the Act; and
- co-operate with other competition authorities in other countries entrusted with function similar to those of the Commission.

Competition Law at Regional and International Levels

At the regional level, in order to ensure fair competition and transparency among economic operators in the COMESA region, the COMESA has adopted a regional competition policy – namely the COMESA Competition Regulations. The Regulations establish the COMESA

Competition Commission as a body corporate responsible for promoting fair competition and penalising uncompetitive practices in the region.

The statutory objectives of the COMESA Competition Commission include¹ *inter alia*:

- monitor and investigate anti-competitive practices of undertakings within the Common Market, and mediate disputes between Member States concerning anti-competitive conduct;
- regularly review regional competition policy so as to advise and make representations to the Council with a view to improving on the effectiveness of the Regulations;
- help Member States promote national competition laws and institutions, with the objective of the harmonisation of those national laws with the regional regulations to achieve uniformity of interpretation and application of competition law and policy within the Common Market;
- co-operate with competition authorities in Member States;
- provide support to Member States in promoting and protecting consumer welfare; and
- developing and disseminating information about competition policy and consumer protection policy.

The establishment of a common competition law and policy is the means to promote further economic integration and development amongst COMESA member states. COMESA Competition Commission (CCC) has already appointed its Director and Board of Commissioners.

Anticompetitive Business Practices

Market Concentration

Upon request of the Government of Mauritius, the UNCTAD Secretariat, with the cooperation of the Ministry of Economic Planning and Development, engaged a high-level expert from Australia who undertook a study related to market concentration and RBPs in Mauritius, in 1995. The study found that market concentration exists in many sectors and some types of RBPs may occur. A high degree of market concentration was found in the following industries:

- public utilities, including telecommunications, electricity (excluding generation), radio and television broadcasting and air transport (airlines and airports operations);
- manufacture of beer, tobacco products, flour, fertiliser, pharmaceutical products, edible oils, livestock feed, paint, soft drinks, and poultry;
- import and distribution of cement by two multinationals, namely Holcim and Lafarge, and the importation of petroleum products (monopoly of the State Trading Corporation); and

- services, such as commercial banking, equipment leasing, car rental, and duty free shopping.

State Owned Enterprise (SOEs)

SoEs have been set up for a number of reasons. Many of these SoEs have been set up due to the failure of the private sector to provide for certain basic goods and services; for strategic and reasons of national interest; to alleviate the problem of unemployment or to create more competition in some sectors of the economy. They are briefly illustrated below:

- to meet supply deficiencies of certain essential goods led to the establishment of SoEs, like the Agricultural Marketing Board and the State Trading Corporation;
- to provide bus transport services, the National Transport Corporation was set up to give employment to the employees of the former Vacoas Transport Co. Ltd;
- to promote more competition in the financial system, the State Bank of Mauritius was set up; and
- to set up services, which are considered vital to the national interest, such as electricity and water, health care, education, air transport and sea-port operations.

[Aubeeluck, (1997)].

The share of the entire public sector, that is, SoEs and central and local government services, in terms of GDP, is around 19 percent. SoEs contribute almost 100 percent of the water output, around 41 percent of electricity production and about half of the total production in transport and communications; and about a fifth in finance and related activities. The public sector, including SoEs accounts for some 25 percent of gross domestic investment. A number of reasons have been advanced for the performance gap of some SoEs. They include mainly a lack of clarity between financial and social objectives, poor monitoring systems and weak accountability mechanisms, a lack of good management and financial practice, constant bailing-out by the Government to cover operational deficits and to meet capital expenditure and the over-manning of many SoEs. It must be pointed out, however, that these criticisms do not really apply to SoEs operating in a competitive business environment (for instance, the State Bank of Mauritius) or those exposed to international competition (such as Air Mauritius).

Sectoral Regulation

Telecommunication

Following liberalisation in 2002, the telecommunication sector was quickly revamped into a wider ICT sector, with the regulator ICT Authority (ICTA) being given a wide range of responsibilities from telecom to IT regulation and postal service regulation.

¹ <http://www.comesacompetition.org/about>

A sound regulatory framework was instituted hinging on the legal, technical, social, service and economic regulations. These, in turn, were then translated into the following pragmatic instruments used by the ICTA to ensure a level-playing field amongst the various players:

- first-come-first-serve mechanism for granting of commercial license where eligibility criteria are used instead of selection ones;
- determination of cost-based interconnection usage charges through an open, transparent and public consultation approach;
- allocation of spectrum based on the ITU-R recommendations and following public consultations;
- management of the scarce numbering resources in line with ITU-T recommendations and stakeholders' consultation;
- operation of an ICT observatory for market research and monitoring;
- consumer protection through consumer information and complaints handling mechanism;
- developing a public key infrastructure (PKI); and
- strengthening competitive safety-net in the ICT regulatory framework through a statutory MoU with the Competition Commission of Mauritius.

As a result of policy actions taken by Government combined with regulatory interventions from the ICTA and the market dynamics established there has been over the past ten years, reduction in the price of international voice telecommunication by over 90 percent. Interconnection charges between different networks have been reduced drastically. The calling party pays (CPP) principle has been introduced and as a result the mobile penetration has exceeded the 100 percent mark in December 2011, while Broadband, which is admittedly growing quite slowly, has reached 22 percent of the population in December 2011, the highest in Africa.

Furthermore, the Government has developed an e-Government platform to encourage the use of electronic communication between Government and citizens as well as Government and businesses. This is in line with the established vision to move towards a paperless transactions which is currently being enhanced through the establishment of an authenticated Government Services Platform, based on the PKI.

This is a clear indication of the effectiveness of the regulatory framework and that liberalisation is effectively delivering its promises.

As a matter of fact the ICT sector has since 2011 become the **third** most important pillar of the Mauritian economy on account of its contribution to the GDP in that year to the tune of 6.8 percent. The target is now to move up the value chain of ICT in general so as to make of ICT the most important pillar of the Mauritian economy by 2015.

Central Electricity Board

Electricity in Mauritius is generated from three main sources: heavy fuel plants and from coal/bagasse generators. The Central Electricity Board (CEB) currently accounts for around 58 per cent of the total production. The balance is produced by the independent power producers (IPPs) from coal and coal bagasse plants by the sugar factories. Government has recently approved the setting up of a coal-fired plant funded by the Malaysians.

Nonetheless, the CEB has a monopoly position with respect to transmission and distribution. The power sector reforms have now been implemented. To that effect, the Utility Regulatory Act has been proclaimed and the New Electricity Act enacted in 2005. However, the Authority has not yet been set up.

The regulatory body to regulate electricity tariffs is yet to be operationalised. Its operationalisation will make the market for electricity generation open for more competition.

The CEB will still have a monopoly with respect to transmission and distribution given its existing network and the size of the market. The other producers of electricity will sell their output to the CEB, as is currently the case with respect to the IPPs. The CEB has power purchase agreements with IPPs. The purchase agreements will be monitored and approved by the Utility Regulatory Authority. Government has, since last year, introduced incentives to consumers so that they invest in solar panels for their own energy consumption. The CEB invites consumers to sell the excess power generated to it by a direct flow into its grid against payment to the consumers/generators.

Construction and the Cement Industry

In Mauritius, the construction sector has been growing at higher rate of around 6 percent per annum over the last few years. High value projects, like public sector buildings and infrastructure, shopping malls and hotels are undertaken by larger companies including, Rehm-Grinaker Construction Co. Ltd, General Construction Co. Ltd, Allied Builders, A & J Maurel Construction Ltee, Gamma Civic Ltd and Bhunjun & Sons Ltd. There are also a growing number of smaller and medium sized construction firms which cater for lower value public and private works.

A key input for the construction industry is cement. The local cement market, both in terms of importation and distribution was solely in the hands of a privately owned company known as Mauritius Portland Cement Co. Ltd since 1957 (now Lafarge Mauritius Ltd). However, in 1984, the Government decided that the State Trading Corporation (STC) should later take over the importation of 25 percent of the country's cement requirement which in subsequent year was increased to 33 percent. A new private company was incorporated in 2000 in the name of

Holcim Mauritius Ltd. From 2008, STC had been importing 50 percent of the country's requirements and the balance was imported by the other two cement companies until the cement market was liberalised in July 2011. However, the Government decided to continue control over retail price of cement for Rodrigues.

The Competition Commission of Mauritius (CCM) conducted a market study in the cement industry in 2010 and published its report in 2011. The reports pertaining to this market study are available on the website of the CCM (www.ccm.mu). The CCM published a new report on the Cement Market in 2012.

Financial Sector

The overall strategy of financial liberalisation pursued in the economy since the late 1980s is based on the premise that market forces lead to more efficient pricing, mobilisation and allocation of financial resources. Diversification and internationalisation of the financial sector are the major objectives of policy makers. The development of the financial sector is a continuous process of institutional changes and policy shifts in order to promote business activities in the financial services industry, maintain public and international reputation and confidence. The use of information technology in the financial services industry has significantly improved the competitiveness of financial services organisations.

Furthermore the Mauritius International Financial Centre has developed a solid reputation of being a credible, regulated and secure Centre consisting of a number of key verticals which include banking, global business, insurance and re-insurance, capital markets, international legal services and other non-banking activities. With a need to ever broaden its product offering and thus ensure a competitive edge, Mauritius has recently launched two products namely the Limited Partnership and the Foundation. The country has embarked on a strategy of further enhancing its financial services products to graduate to high end value added services.

Consumer Protection

Certain aspects of consumer protection are still handled by the Ministry of Industry, Commerce and Consumer Protection.

The 1998 Consumer Protection (Price and Supplies Control) Act which deals primarily with monitoring prices and supplies of goods is administered by the Price Control Unit (PCU) within the Ministry of Industry, Commerce and Consumer Protection. Price control in Mauritius consists of a maximum price system, a maximum mark-up system and a Maximum Recommended Retail Price (MRRP) system. The main operation of the Price Control Unit is to fix the prices of:

- six essential commodities such as ration rice, flour, etc. under the maximum price regulations;

- eight commodities under the maximum mark up regulations (pharmaceutical products, infant milk, etc.);
- 16 Commodities applicable to Rodrigues Island; and
- cement for Rodrigues Island.

The controlled prices are computed by the PCU and approved by the Minister of Industry, Commerce and Consumer Protection. The aim is to protect the interests of the consumers and prevent traders from profiteering. Price controls are maintained because of lack of competition in respect of those specific products, so as to protect consumers against unreasonable prices for strategic imports, staple commodities and other 'essential' products.

Box 1: Consumer Goods' Sales Contracts with Retail Stores

Ireland Blyth Consumer Goods (IBL) commenced a sales initiative called Top Store Programme (TSP) in or about June 2009. The TSP related specifically to the offering of volume-related discounts to retailers on Kraft block processed cheese coupled with the allocation of specified shelf-space to in the stores of those retailers to Kraft block processed cheese and other Kraft-branded products. The volume-related discounts offered to retailers by IBL on Kraft block processed cheese via the TSP ranged from 2-4 percent. The other Kraft-branded products that benefitted from the shelf placement were other types of cheese, chocolates, biscuits and powdered flavoured juice.

The Executive Director of the Competition Commission of Mauritius launched an investigation into the conduct of IBL and concluded that the TSP is likely to distort competition in the said products. IBL sought a hearing as per the Competition Act that was held on August 23, 2010. The Commissioners held the practice of TSP by IBL in contravention of Section 46 of the Competition Act. IBL was found abusing its dominant position in the market and that abuse has had or is likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius and has been or is likely to be detrimental to consumers.

Source: www.ccm.mu/English/Documents/Investigations/INV001%20-%20Commissioners_Decision.pdf accessed on March 19, 2013

Concluding observations and future scenario

The importance of a competition regime is increasingly being recognised in developing countries. Markets need to be regulated, and efficiency promoted, through appropriate competition law and policy. Moreover, the deregulation movement and opening up of sectors of the economy, to private initiatives need appropriate governance to prevent abuses of market power.

Privatisation of public monopolies in the utilities sector has already begun in Mauritius, such as in telecommunications; and the Government has expressed the willingness to privatise other sectors, such as electricity and water. Although this can lead to increased competition, it also implies a transfer of public monopoly into private hands. The case becomes more complex, especially when the private sector involves foreign-based companies as has been happening in Mauritius.

All the more, Mauritius is an open economy where imports and exports form a major share of its national income. With the dismantling of trade barriers and opening of markets to foreign trade, Mauritius further increases its exposure to the world market. The impact of trans national corporations (TNCs) becomes important. TNCs can have many positive effects on competition but

sometimes anticompetitive practices and abuse of dominant positions, by them, can act as significant barriers to economic efficiency.

In addition, the small size of the domestic market in Mauritius leads to high level of market concentration across many industries in different sectors of the Mauritian economy. The need for an appropriate competition regime is highlighted again to foster greater efficiency in resource allocation and the promotion of consumer welfare. Like in many other developing countries, in Mauritius, competition law and enforcement is a difficult and little-known issue. With the dismantling of trade barriers and phasing out of such preferential agreements, there is an even greater need to develop a competition culture in business, Government, and society, in general.

† *Kiran Nandinee Meetarbhan is the Executive Director of the Competition Commission of Mauritius. She is a Barrister at Law and holds a Master Degree in Business Administration.*

Since the inception of the Commission Kiran has held the post of Deputy Executive Director and Chief Legal Adviser. She has previously worked as Legal Manager for the offshore Regulator, as lecturer in Law and Finance and as Legal Executive and then Head of Surveillance for the Insurance and Pension Industry at the Financial Services Commission. In 2007-2009, she joined the Ministry of Finance as an Adviser. Recently, she has worked as an International Fellow for the US Federal Trade Commission.

Kiran has drafted several legislations relating to financial services and competition.