

# **Competition Scenario in Mauritius**

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## 1. Introduction

Economic theory demonstrates that welfare is greatest when markets are perfectly competitive. However, perfect competition does not exist in the real world, but the closer markets are to perfect competition, the greater the gains in welfare. This is because competition directs resources to their most productive uses in the economy and motivates firms to adopt the most efficient processes of production. Competition also ensures that the increased efficiency do not lead to increased profits for firms only, but reach consumers as well.

As such, an effective competition policy should prevent the existence of anti-competitive practices. Indeed, a competition policy encompasses governmental measures that affect the behaviour of enterprises and the structure of the industry. It covers the broad spectrum of economic policies that have an impact on competition in the economy including trade policy, sectoral regulation, privatisation etc. A competition law forms an integral part of the competition policy of an economy. It can be seen as a legal tool that allows competition principles to be enforced. By keeping a check on concentration of economic power, outlawing rent-seeking behaviour, preventing anti-competitive business practices by dominant firms, eliminating artificial restrictions on entry, exit, and pricing in industries where they exist, competition law and policy ensure the competitive operation of the market, thereby providing entrepreneurs, including small and medium sized enterprises, with opportunities for participation in the economy and providing consumers with reduced prices, better quality and wider choices, all with the goal of achieving efficiency, growth, and equity.

In a small economy like Mauritius, one would expect market concentration to be higher on average than a larger economy as a certain minimum scale of operation must be achieved to obtain acceptably low unit production costs. Moreover, a notable feature of the Mauritian economy is the concentration of economic powers in the hands of a small number of enterprise groups, most of them family-controlled. The operations of these large, extensively diversified companies have had a pervasive influence on the commercial and industrial development of the island. However, judging the extent of competition on static data as number of firms in the market and market share is not totally right. An important concept related to analysing the competitiveness of a market relies in assessing its contestability. It is to be noted that it is relatively easy for firms to enter many private sector activities in Mauritius especially those operations, which are small-scale and labour-intensive.

It should be acknowledged that several key economic reforms introduced over the years have helped foster stronger competition in the domestic market. Mauritius has witnessed important economic changes, which have made competition policy more important. These include privatisation and liberalisation with a view to achieving higher economic growth. However, to ensure that this outcome is achieved, there is a need for regulatory reform and clearly defined competition policy in place. For instance, liberalisation of controls on

foreign direct investment can come in the form of acquisition of domestic firms, which can have the effect of reducing competition in the market. Similarly, the government has significantly reduced the number of goods subject to the price-control mechanism. However, there is a risk that the market might not operate efficiently such as a cartel fixing prices and imposing significant price increases onto consumers.

The adoption of the Competition Act in 2003 was a major landmark in the field of competition. However, it is regretful to note that up till now, it has not been put into application. Lack of political will seems to have delayed the implementation of the law. In addition, as suggested by journalist, Shyma Soondur of *L'Express Dimanche*, the business community has connived to cause the Competition Act to be destined to failure. However, following a recent government decision to subject milk powder to a maximum mark-up and its intention to include other basic products under the same regime has encouraged the private sector of the economy to give the go-ahead to the application of the Competition Act (ICP Policy Brief No.3, Aug 2005). The law is currently being reviewed with the help of consultants from the Commonwealth Secretariat and the Minister of Industry and Commerce, SMEs, and Co-operatives, and will hopefully present the new Competition Bill to the National Assembly by the end of July 2006.

The study has been formulated by the Consumer Unity Trust Society's centre for Competition, Investment and Economic Regulation (CUTS C-CIER). It is part of a regional project called "Capacity Building on Competition in Select Countries of Eastern and Southern Africa". The study is being carried out in Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia, and Uganda. The project is intended to help all policy makers, regulators, civil organisations particularly consumer groups, academics and the media to understand and appreciate competition concerns from national, regional and global perspectives.

During the course of the project, the report has been enhanced by comments from different local economic actors from two National Reference Group meetings organised by the advocacy partner namely the Institute for Consumer Protection (ICP). In addition, comments from regional meetings and from CUTS itself have greatly helped in improving the report. All the more, a survey has been carried out among different stakeholders to gauge their views on the issue of competition. Based on the questionnaires from CUTS, two sets were prepared; one in Creole (the native language) addressed to consumers and the other in English and was addressed to firms in the private sector and government institutions, including parastatal bodies. Firms in the private sector and the government institutions were chosen so as to have a balanced spread of entities in the following sectors: Agriculture, Manufacturing, Tourism, Construction, Energy, and Retail and Distribution. It must also be pointed that the questionnaire from CUTS was modified to take into account the realities of the local context. A purposive sampling method was adopted for the survey. The questionnaires were given to 200 consumers as well as to 50 firms in the private sector and to 50 government institutions.

The study report has seven sections including the introduction. It starts by drawing a picture of the Mauritius economy followed by some selected economic policies that affect

competition. An in-depth analysis of different sectors of the economy in terms of their structure and the level of competition is presented in the fourth section of the report. This section also incorporates findings from the questionnaire with regards to the nature of anti-competitive practices in Mauritius and the sectors most affected by them. The fifth chapter examines the existing laws and regulations that protect consumers. Moreover, it includes an analysis of the Competition Act (2003) and competition law at the regional level. All the more, the findings of the survey on the adequacy of existing laws and the kind of competition authority desired is also reported. Section Six presents the interface between regulatory institutions and competition regime while analysing two important regulatory institutions in the financial sector and in the utilities sector. Lastly, Section Seven concludes by formulating some policy recommendations.

## 2. General Background of the Mauritian Economy

Mauritius is regarded as a fast developing small island economy with an area of 2040 square kilometers. It is located in southern Africa; east of Madagascar in the Indian Ocean with geographic co-ordinates (20 17) south and (57 33) east. Since Independence in 1968, it has developed from a low-income, agriculturally based economy to a middle-income diversified one with growing industrial, financial, and tourism sectors. Mauritius has a population of about one million and two hundred thousand people from different ethnic and religious group consisting of Indo-Mauritian (68 percent), Creole (27 percent), Sino-Mauritian ( three percent) , Franco-Mauritian ( two percent), Hindu (52 percent), Christian [28.3 percent (Roman Catholic 26 percent, Protestant 2.3 percent)], Muslim (16.6 percent) and others 3.1 percent. For most of the period, annual growth has been in the order of five percent to six percent. Mauritius has benefited from the preferential markets under the Lome convention and the Sugar Protocol.

This remarkable achievement has been reflected in more equitable income distribution, increased life expectancy, lowered infant mortality, a much-improved infrastructure and simultaneously has been well poised to take advantage of the Africa Growth and Opportunity Act (AGOA). It has achieved rapid growth and an enviable development transformation to become a significant exporter of manufactures with an emerging service sector within a short space of time. The Gini co-efficient was 0.387 in 1997 and fell to its lowest to 0.371 in 2002 in order to represent a more equal spread of wealth and in terms of quality of life, Mauritius was ranked 62 out of 175 in 2003. GDP was Rs 117 billion in the year 2000 and attained a value of Rs 174 billion in 2004, bringing along a per capita GDP value of Rs 9,995 in 2000 to Rs 14, 0856 in 2004. However, the GDP growth has fallen from 9.3 percent in 2000 to reach 1.8 percent in 2002 and slightly rising to 4.5 percent in 2004. Inflationary pressures were 5.3 percent in 2003, increased to 6.2 percent in 2002 and fell to 3.9 percent in 2004. The ratio of budget deficit to GDP rose from 3.8 percent in 2000 to reach 5.6 percent in 2004, signaling government expansionary policies on the Mauritian economy. The following table gives some other economic variables on the Mauritian economy since 1968.

**Table 1: Selected Economic Indicators: 1968-2003**

Year	1968	1980	1990	2000	2002	2003
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GDP at basic prices (Rs Millions)	827	8697	39629	119529	124954	137206
Real GDP Growth (%)		-10.1	7.3	9.3	2.0	4.4
Inflation rate	7	42	13.5	4.2	6.4	3.9
Population	794746	969872	1058800	1186873	1210196	1222811
Unemployment (%)	-	-	2.8	8.8	9.8	10.2
Per capita income (Rs)	104846	7719	37429	100680	117256	128314
Tourist arrivals (thousands)	15553	115080	278010	656453	681648	702018
Literacy rate (%)	-	-	81	85	86	86
Total external debt (Rs. M)	-	-	14234	28408	30046	28658
Debt service ratio (%)	-	-	-	9.7	8.5	8.2

*Source: CSO and BOM reports*

During recent years, the Mauritian economy has been under severe stress following the phasing out of the preferential markets and the need for diversification in order to prevent a slow down in economic activity. Unfortunately, the rate of unemployment kept on rising from 8.8 percent in 2000 to 10.7 percent in 2004, showing the government's inability to create employment. All lands are fully cultivated, bringing along a scarcity of land resources in Mauritius.

As regards the political history of the island, the Dutch settled on Mauritius in 1598. The French took control of the island in 1715, and ruled the island until it was ceded to Britain under the treaty of Paris in 1814. It became independent from Britain on the March 12, 1968, and a Republic within the Commonwealth on March 12, 1992. It has an unbroken record since Independence in 1968 as a working democracy with a good human rights record, an active free press, and an independent judiciary. The President is a non-executive appointment, elected by the National Assembly for a fixed five-year term. There are three main political parties, namely the MMM, the MSM and the Labour party as well as others willing to acquire position. However, ever since the first election conducted in the country, elections have been conducted in a fair and friendly manner.

### **3. Select Policies Affecting Competition**

This section tries to analyse a broad spectrum of economic policies that have had a direct bearing on competition in the Mauritian economy over the years.

#### **3.1 Trade Policy**

##### ***3.1.1 Trade Liberalisation***

Trade policy regime in Mauritius can broadly be categorised into two periods. The period before trade liberalisation – the 1980s and early 1990s – where the major thrust of trade policy in Mauritius has been on the one hand, the promotion of an export-led growth strategy with regards to the sugar industry, the EPZ and the tourism industry and on the other hand, import-substitution with regards to domestic markets, particularly in agriculture. With the trade preferences under the Lome Convention and under the Multi-Fibre Agreement, an Export Processing Zone was established as from the 1970s and the manufacturing sector is today one of the major pillars of the Mauritius economy, employing around one-fifth of the labour force and representing around one-fifth of the

GDP. The share of agriculture in GDP (mainly dominated by sugar exports) has declined to around six percent, and that of tourism industry is around eight percent.

The period of trade liberalisation, from around mid 1990s, trade policy has been dictated by important changes in our major export markets and by the need to comply with various trade reforms due to commitments taken at the World Trade Organisation (WTO). With the 'Everything But Arms' (2003) initiative and important changes likely to affect the Sugar Protocol and the phasing out of the MFA in December 2004, trade policy on the external front is aimed at expanding the economic space and restructuring of the sugar industry and the textile industry in the EPZ. The Mauritius economy has also diversified into the financial services sector, which has become another pillar of the economy, and is recently promoting the ICT sector while at the same time consolidating and projecting the tourism industry on a higher growth path. In this changing international context, trade policy has become so crucial that a Trade Policy Unit has been set up since 1996.

Mauritius is also putting emphasis on the non-sugar agricultural sector, particularly, exports of fruits and flowers, promotion of food processing, and the fishing industry. Investment opportunities in the African region are also being tapped to benefit better from AGOA.

Trade policy has also aimed at promoting a more regional industrial development strategy. Mauritius is a member of the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Indian Ocean Rim (IOR) and the Regional Integration Facilitation Forum (RIFF). For instance, a special economic zone has been set up in Mozambique, where memorandums of understandings (MoUs) have been signed in agriculture, fisheries, horticulture, and livestock production. Similar initiatives are being undertaken in Madagascar.

Mauritius is also working upon garnering support for recognition of the vulnerability of 'small island development states' (SIDS) at the WTO. As such, a SIDS conference was held in Mauritius, in January 2005. The peculiarities of SIDS will be used as an important criterion in future trade negotiations.

On the domestic front, with the phased reduction in external tariffs, domestic producers are facing more competition from imports. Trade is therefore guided by the need to improve productivity at all levels. However, it is considered that companies producing for the domestic market are still fairly highly protected, as there are still many high tariff rates with high dispersion. The simple average tariff is 20.5 percent on agricultural imports and 19.8 percent on imports of non-agricultural products. Moreover, import quotas still apply to a number of products such as potatoes, onions, garlic, and salt. The State Trading Corporation, the Agricultural Marketing Board and the Meat Authority have import monopoly and fix the maximum prices of some strategic products such as flour, low-grade rice, cement, petroleum products, potatoes, onions, garlic, and meat.

The phase of import liberalisation and reduction of protection for local firms started in the period 1986-1988, with the progressive dismantling of quantitative import restrictions. In 1991, import licensing, once applied to the vast majority of imports, was eliminated for all

except a limited range of products subject to health, sanitary or strategic controls. But the number of categories of prohibited goods has increased from 13 in 1995 to 24 in 2001. Imports of controlled goods are subject to permits issued by the Permanent Secretary of the Commerce Ministry. Specific conditions and restrictions are imposed on the imports of certain controlled goods. For example, imports of potatoes and table salt are subject to quotas. However, it was only in July 1994 that a major revision of the tariff structure was introduced. In 1994, a three-column tariff consisting of fiscal duty, general customs duty and a preferential duty was consolidated into a one-column import duty and the number of tariff rates reduced from 60 to eight. Maximum customs duty was lowered to 100 percent and for preferential countries the maximum was set at 80 percent. The maximum customs duty was 600 percent before June 1994. Tariffs were lowered on more than 4000 items in June 1994. In June 2000, tariffs have been removed on an additional 1,300 items. However, it is still considered that there are too many high rates and many exemptions, to the extent that the exemptions represent a loss of around 90 percent of tariff revenue. This year, the government has announced to bring down the top tariff rates of 65, 55, and 40 percent to 30 percent such that the tariff structure will have only three non-zero bands, i.e., 10, 15, and 30 percent. Such measures are in line with the process of tariff liberalisation to transform Mauritius into a globally competitive economy and move to a Duty Free island to serve the African and Indian Ocean Region.

### **3.1.2 Participation in Regional Trade Blocs**

It is part of the trade policy of Mauritius to expand regional trade and to sign memorandum of understandings (MoUs) with neighbouring countries in different areas of trade and commerce, which are mutually beneficial. Mauritius is a member of the regional blocs mentioned below:

#### The Indian Ocean Commission

Mauritius is a founding member of the Indian Ocean Commission (IOC), created in 1984. The Commission comprises the Comoros Islands, the French Reunion Island, Madagascar, and the Seychelles. The EU is the major funding partner in the various projects/programmes of the IOC. The IOC, with the financial support of the EU, has established a regional project, '*Programme Regionale Intégré de Developement des Echanges*' (PRIDE) with a view to make dynamic intra-IOC trade and providing support to the private sector. Accordingly, the four IOC Member-States belonging to the ACP group, are committed to eliminate tariff and non-tariff barriers on reciprocal basis. So far, Mauritius and Madagascar are already applying 100 percent tariff reduction between themselves.

#### Indian Ocean Rim Association for Regional Co-operation

Mauritius is a member of the Indian Ocean Rim Association for Regional Co-operation (IOR-ARC), which is a platform of economic co-operation among countries of the Indian Ocean basin at the inter-continental level. However, the IOR-ARC has not yet elaborated a framework for tariff liberalisation. It is currently focussing on the development of the business sector and on trade facilitation projects.

## Southern African Development Community

The SADC Protocol on Trade was signed in August 1996 by 11 member states, including Mauritius. In broad terms, this protocol aims at the establishment of a Free Trade Area (FTA) within a period of eight years from its entry into force. The Protocol became operational in February 2000 with effective tariff phase down as from September 1, 2000. In this context, members have agreed to reduce their tariff on a linear basis taking into account the different levels of development of members. Liberalisation is being carried out on the basis of the variable geometry approach. Tariffs on about 85 percent of intra-SADC trade will be liberalised within a period of eight years (i.e 2000 – 2008) whilst the remaining 15 percent will be eliminated around year 2008 to year 2012.

## Common Market for Eastern and Southern Africa

The Common Market for Eastern and Southern Africa (COMESA) was established in 1994 as a replacement to the former Preferential Trade Area (PTA), which had existed from the earlier days of 1981. It has at present 19 members. A Free Trade Area (FTA) now operates in the COMESA region as from October 2000, including nine members. COMESA also envisages the establishment of a Common External Tariff by the year 2004. So far the rates of duty proposed are as follows:

- Raw Materials – 5 percent
- Capital goods – 0 percent
- Intermediate goods – 15 percent
- Final goods – 30 percent

All goods are freely traded between Mauritius and other COMESA members that have met the free-trade area (FTA) commitments; Mauritius grants preferential treatment of 90 percent tariff reduction, on a reciprocal basis, on imports from COMESA members that are not yet parties to the FTA.

It is part of the country's trade policy to expand regional trade and to sign the MoU with neighbouring countries in different areas of trade and commerce, which are mutually beneficial.

### **3.2 Investment Policy**

Investment policy measures have been guided by the need to give appropriate fiscal and monetary incentives in order to promote the different sectors and to support the trade policies. In general, a liberal investment policy has underpinned the economic development agenda. In fact, various incentive schemes have been set up over time and the most important ones are:

- Agricultural Development Scheme/Freight Rebate Scheme;
- Export Enterprise Scheme;



- Health Development Certificate Scheme;
- Hotel Management Scheme;
- Industrial Building Enterprise Scheme;
- Information and Communication Technology Scheme;
- Integrated Resort Scheme;
- Modernisation and Expansion Scheme;
- Pioneer Status Enterprise Scheme;
- Regional Development Certificate Scheme; and
- Technology Diffusion Scheme.

The incentives given under these schemes are broadly, tax rebates, companies paying corporation tax<sup>1</sup> of only 15 percent, dividends exempt from income tax, free repatriation of profits and capital, generous investment tax credits, investment and export finance at preferential interest rates and import duty exemptions on plant, machinery and raw materials.

Though Mauritius performed reasonably well in the 1980s in attracting FDI, in the last decade net FDI flows have been quite erratic. One of the main reasons has been due to rising labour costs. In order to reverse the trend, the Board of Investment has been set up in March 2001 to act as a one-stop-shop for all investment. In fact, apart from some specific activities in the tourism sub-sector, acquisition of real state and activities under state monopoly, foreigners are free to invest in all areas.

Mauritius has consolidated its legislation on the development of its industrial sector, since 1993, with the Industrial Expansion Act, with a view to provide a new legal framework for industrial modernisation, transfer of technology, upgradation of small and medium enterprises, integration of non-export-processing zone sub-sectors into the export-processing-zone sector, and for protection of the environment. Incentives granted under the schemes range from customs duty and VAT exemptions to a reduced corporate tax of 15 percent instead of the standard rate of 25 percent. Moreover, all industrial companies receive an initial investment allowance for machinery and equipment of 50 percent, and an additional 20 percent investment allowance annually for new machinery or equipment in the year the expenditure is incurred. Capital expenditure on environmental protection technology is eligible for a higher than average initial investment allowance. The Development Bank of Mauritius Ltd., grants long-term loans for the implementation of projects in various sectors. These loans carry interest at varied rates depending upon the nature of the project. Concessionary interest rates are normally charged for certain

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<sup>1</sup> Initially companies in the EPZ sector were given tax holidays for a ten-year period.

agricultural projects, micro-credits, and personal loan schemes. Industrial policy has been driven by the need to promote both local and foreign investment to assist the twin objectives of export-led growth and import-substitution.

In the 2006 budget speech, the government recognises that the existing framework for doing business and its incentive system works against democratising the economy and competitiveness because the tariff, tax and labour laws favour large firms over SMEs, discriminate against new entrants in favour of the established firms. As such, except for a limited number of activities such as gambling and liquor sales, new measures will be introduced to allow entrepreneurs especially micro-enterprises and SMEs to start new activities within three working days compared to at least 46 days currently and sometimes up to two years. The 2006/07 Budget mentions a series of measures designed to facilitate investment. These include among others getting rid administrative delays with respect to trade licences and development permits, facilitate foreign investment by establishing clear guidelines that allow starting up without government clearance, integrate the EPZ and non-EPZ sectors, and do away with all investment certificates except for Integrated Resort Scheme and the Freeport, and eliminate the discretion and powers of remission of the Minister of Finance, and have clear rules and regulations that will be enforced uniformly.

These measures indicate that the government is trying to harmonise investment in different sectors by creating a level playing field, and as such promoting free and fair competition in investment across sectors and industries. The actual system of corporate tax is a dual system of 15 percent and 25 percent. This tends to distort the economic environment and investment climate and also act as a severe impediment to the creation of a fully-integrated and competitive economy. The 2006/07 Budget announces the decision to move to a flat single rate of 15 percent in July 2009 such that all sectors and activities in the economy, including the Freeport, will pay the same corporate tax of 15 percent.

All the more, a series of new measures or existing ones reinforced with the objective to further promote the development of the SMEs. The Budget aims to promote greater synergy between large and small enterprises so that the latter can exploit out-sourcing and sub-contracting opportunities. Moreover, to start a business, administrative constraints and red tape and bureaucracy are being dealt with so that business permits can be issued within three working days. This will benefit both small and large enterprises and encourage more entry into different market segments. The institutions, which traditionally tend to support SMEs such as the Development Bank of Mauritius, SEHDA, Enterprise Mauritius, State Investment Company and Mauritius Trading Houses are being prompted to play a more pro-active role.

Training is also another issue, which is being seriously addressed. Consultants will be trained and placed at the disposal of SMEs. The Mauritius Employers Federation and the Human Resource Development Council have come up with a project on mentoring of SMEs with the involvement of a pool of businessmen and professionals. A tax holiday of four years is being granted to start SMEs. Another crucial factor for the promotion of SMEs is the production of quality products and services. In fact, this motto has been hailed

as the linchpin to promote SMEs on a much higher growth path than they have known so far.

### **3.3 Government Procurement Policy**

As far as Government Procurement is concerned, Mauritius is neither a member of, nor an observer to, the WTO Plurilateral Agreement. In October 2000, a new Central Tender Board Act replaced existing legislation deemed stringent, administratively cumbersome, and difficult to implement. All ‘public-purchasing’ entities must notify the Central Tender Board (CTB), in writing, of any ‘major contract’ they intend to execute, and submit all the relevant documents to the CTB. Within a reasonable delay after having been informed, the Board may call for tenders in respect of the contract. General guidelines on tendering procedures (including advertisement of calls for tenders in the local and, as appropriate, in the international press) have been issued by the Board. Under the guidelines, procurement of less than Rs 500,000 by ministries and government departments is allowed without reference to the CTB; purchases of Rs 500, 000 or more (major contracts for ministries and government departments) must be made through the CTB.

Specific thresholds apply to procurement of civil engineering works and capital goods by government agencies and state-owned companies, depending on their activities: Rs10 million for local authorities and certain parastatal bodies; and Rs 25 million for other parastatal bodies and state-owned companies. Decisions regarding procurement procedures are made by the CTB in consultation with the purchasing entity. There is no *de jure* prescription in this regard; the CTB is free to choose between open tenders, selective tenders, and direct purchases. In principle, only local firms and local agents of foreign suppliers are eligible for open tenders. Price preferences of up to 15 percent are granted to local suppliers when tenders are open to foreign firms. Where an international development agency is providing the financing, its own procurement guidelines (including provisions on preferential margins) apply. The legislation states that the acceptance of ‘kick-back’<sup>2</sup> would render the person liable for a fine or a term of imprisonment. However the operations of the CTB does not apply to the private sector.

However, some of the major weaknesses of the current procurement legislation are the following:

- It describes which party tenders or purchases, but not how. There are no specific rules concerning the methods to be used in case of international donor financing and when to use various procurement methods and what to do in exceptional circumstances;
- There is a lack of standardisation of the bidding documents;
- There is no public bid opening and publication of awards;
- Evaluation procedures are at times too general;
- There are no time limits for various actions;
- There are no special rules on how to procure services of an intellectual and advisory nature;

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<sup>2</sup> Agreement or understanding among contractors on which firm would submit the lowest tender for particular contracts.

Though the CTB Act and The Manual provide for more than one procurement method for tenders but there is not enough guidance as to what method of procurement is appropriate under what circumstances. As a result, there is too much discretion. The CTB Act 2000 is rigidly numerical: all contracts above Rs one million have to be tendered and reviewed by the CTB. A heavy workload combined with a general lack of support staff have prevented the CTB from concentrating fully on enforcement of the Central Tender Board Act 2000 and assertion of its authority.

With regards to the Financial Management Manual, it applies to low value procurement of the Central Government, that is, to ministries and departments. In practice, the Manual's rules are widely extrapolated, and interpreted for low value procurement. For instance, the Manual basically leaves it up to an Accounting Officer of a Tender Committee to use direct purchase, selective tendering or open tendering as they deem fit. In addition, when a tender is estimated to value under Rs 500,000 but one bidder's bid exceeds the Rs 500,000 limit, the Manual provides that the tender be referred to the CTB.

In practice, this is seldom done, especially where referral of tenders between Rs 500,000 and Rupees one million is a gray area. Though generally, for most projects it is open international/national tendering, it is seen that there is a lack of procurement planning. Public bodies are said to utilise lack of planning and the ensuing year-end pressure to avoid open tendering in favour of selective tendering or direct contracting. As a result, the general public is entirely left in the dark as to the actual amount of public money spent on a given contract, although they may be able to get information on larger contracts that have attracted the attention of the Director of Audit, several years after the award.

The government recognises that sometimes, excessively high and unjustified costs overruns on capital projects. The last budget speech mentions that ways to identify and bar dishonest contractors and suppliers from applying for government and public sector contract need to be devised. Moreover, the government intends to increase competition in bidding for government contracts and expand opportunities for SMEs to benefit. The 'Empowerment Programme' is designed to build the capacity of SMEs to participate and raise their standards and grading over time, thus increasing the pool of eligible contractors.

### **3.4 Wages Policy**

The IMF in its country report study has repeatedly criticised the out-mode tri-partite wage negotiation process still in place in Mauritius. No government has been bold enough to change this wage determination process, fearing that in the short term, the political costs are too high. On one hand, relentless efforts are being made to propel the economy into high-value added, sophisticated niche production. On the other hand, the country is still burdened by a wage compensation policy, which is out of tune with a dynamic and forward-looking economy. Massive efforts and resources are being devoted towards attracting foreign investors so as to strengthen traditional economic pillars and give shape to budding sectors like Information Communication technology (ICT). While our fiscal, monetary and trade policies have been modernised with the aim of creating a more business-friendly environment, Mauritius is still saddled with an investment-unfriendly and

rigid labour legislation and a system characterised by a high degree of state intervention. Yet, what should be recognized is that the only asset is the people.

The Industrial Relations framework is an impediment to the maximisation of the potential of our human resources through, for instance, modern work practices such as multi-skilling, performance management systems based on productivity-related wage increases. The present wage determination system in Mauritius is not conducive to productivity improvement and long-term economic progress as it suffers from inherent weaknesses and rigidities. The system is fragmented and lacks co-ordination as organisations responsible for determination of wages and salaries in the public and private sectors operate quite independently. Sectoral productivity and economic performance are often not taken on board in the determination process. In view to achieving greater mobility and higher productivity and improved competitiveness in the economy, there is an urgent need to review the current wage and salary determination mechanism.

In the 2006/07 budget, the Minister has announced measures to reform the labour market which include linking wages to productivity, reduce the cost of releasing workers and integrating various labour markets into one regime with same rules and procedures for all. As such the present tri-partite mechanism for wage compensation will be abolished for wage compensation and will be replaced by the National Wage Council, which will ensure that wages and compensation are linked to productivity and capacity to pay. Moreover, there will be reforms in labour laws and regulations in order to achieve flexibility needed to create demand for labour together with security needed to protect workers as they switch across jobs. These measures will help to promote productivity and enhance competitiveness across the economy. Besides, firms, including small ones will face fewer difficulties in hiring and firing workers.

### **3.5 Industrial Policy**

The Government, since the structural adjustment period, has always considered the promotion of the small and medium enterprises. In fact with directed credit programmes and interest rates regime in the early 1980s, many small farmers and small entrepreneurs, would not meet the lending criteria required by commercial banks. Therefore, appropriate schemes were set up under the Development Bank of Mauritius to finance such projects, usually at subsidised interest rates. The objective was not only to promote self-employment but also to tap all opportunities to reduce the relatively high rate of unemployment prevailing. In fact, SMEs have been generating a higher number of jobs than large enterprises. Over the years 1990-2003, employment generation by SMEs increased annually at the pace of three percent as opposed to the meagre 0.3 percent for large enterprises.

However, it is important to recognise the vulnerability of SMEs which are hampered by poor management and marketing structures. As a result, many are not financially sustainable ventures. The report on the 'Proposal for a New Incentive Framework for SMEs' (2001) identifies some general and internal constraints faced by SMEs including access to credit facilities, as SMEs are discriminated against large enterprises in loan applications, because of collateral requirements, lack of general policy, insufficient

provision of Business Development services, international competition, and lack of forward and backward linkages.

The Government set up the Small Industries Development Organisation (SIDO), which in 1994 became SMIDO (Small and Medium Industries Development Organisation). The objective is to provide direct support to small and medium enterprises in upgrading managerial, technical, and marketing skills. The SMIDO provides several incentives and support schemes such as export credit guarantee schemes, export assistance schemes, start-up schemes, business counseling and training and consultancy as well as feasibility studies. The Government has also extended fiscal incentives including the abolition of custom duties on raw materials, reduction in corporate tax to 15 percent to all manufacturing companies and all fiscally promoted companies, tax exemptions on dividends, 25 percent investment allowance, free repatriation of capital as well as 10 percent investment relief.

## **4. Market Structure in Mauritius**

This section analyses the state of competition in different sectors of the Mauritian economy that have evolved through time. It shows how competition has been gradually introduced in some sectors such as telecommunications, while others such as the banking sector remain very concentrated.

### **4.1 Market Concentration in Mauritius**

In a small economy like Mauritius, one would expect the market concentration to be higher on average than a larger economy as a certain minimum scale of operation must be achieved to obtain acceptably low unit production costs. Moreover, a notable feature of the Mauritian economy is the concentration of economic powers in the hands of a small number of enterprise groups, most of them family-controlled. The operations of these large, extensively diversified companies have a pervasive influence on the commercial and industrial development of the island. However, judging the extent of competition on static data as number of firms in the market, and market share is not entirely correct. An important concept related to the analysis of the competitiveness of a market relies in assessing its contestability. It is to be noted that it is relatively easy for firms to enter many private sector activities in Mauritius especially those operations, which are small-scale and labour-intensive.

Upon the request of the Government of Mauritius, the United Nations Conference on Trade and Development (UNCTAD) Secretariat, with the co-operation of the Ministry of Economic Planning and Development, engaged a high-level expert from Australia who undertook a study related to market concentration and restrictive business practices in Mauritius, in the year 1995. The study found that market concentration exists in many sectors and certain types of restrictive business practices also 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);
- In beer manufacture, tobacco products, flour, fertiliser, pharmaceutical products, edible oils, livestock feed, paint, soft drinks and poultry;
- Import and distribution of cement (the sole private importer and distributor is a consortium of local and foreign investors);
- In the importation of petroleum products (a monopoly of the State Trading Corporation); and
- In services such as commercial banking, equipment leasing and car rental and duty free shopping.

Businesses surveyed for the study were especially concerned at the high prices and/or poor quality of key services in air freight, telecommunications, and insurance and attributed this to lack of competition. The introduction of a competition law could be especially beneficial in the services sector, which accounts for over 60 percent of the GDP, and in the supply of some intermediate goods for business. Greater openness to new entrants in highly concentrated industries could attract new FDI that will be beneficial for the competitiveness of the economy (UNCTAD (2000) Investment Policy Review). Ten years later, market concentration can still be observed in the above-mentioned sectors, despite some efforts to liberalise the telecommunication sector.

The liberalisation of retail prices started in the early 1980s. However, price controls based on a fixed maximum price system and a maximum percentage markup system are also maintained on some strategic products such as flour, rice, cement, pharmaceutical products, and so on. The re-introduction of a maximum percentage markup on import of milk was recently criticised by the private sector. Indeed if a competition law was operational, such controls might not necessarily be needed.

In order to understand the present level of competition in the domestic markets, two important factors must be taken into account: first, the process of economic development in Mauritius and second, the peculiarities of a small island developing state. The owners of the sugar industry, benefiting from the boom years of that industry in the early 1970s, were the major investors in different sectors of the local economy. Moreover, two important aspects of the local market are; its smallness in terms of demand and the fact that importers face high costs of freight and transport, given our faraway location from major international markets. Therefore, for the local market, the minimum efficient scale is often reached with a low number of firms and this is characteristic of many sectors in domestic markets. However, with significant reforms of the external tariff regimes, local producers

are facing more and more competition from imported substitutes. There are also several factors, which help to promote competition in our domestic markets. These are:

- the liberalisation of current account and capital account transactions has encouraged the entry of overseas-owned companies into several activities such as construction, grocery, wholesaling and retailing;
- the number of goods subject to government regulation of maximum prices or maximum permissible mark-up has declined;
- the State Trading Corporation (STC) has become a direct competitor of private sector enterprises by diversifying its activities into other commodities besides the imports of petrol and cement;
- strong brand preferences on the part of some consumers favouring imported products; and
- the risk that a new entrant will come into the market may also force an existing monopoly to maintain its efficiency and avoid raising prices.

Competition is weak or non-existent in some important service industries. Public monopolies are responsible for the provision of traditional public utility services such as electricity, water supply. Some efforts have been seen recently in liberalising the telecommunication sector with the entry of an additional provider of fixed line facilities.

The number of small units covered in the Republic of Mauritius during the first phase 2002 was 75,267. Of these 60.6 percent (45,586) were establishments and the remaining 39.4 percent (29,681) consisted of itinerant units. The majority, 82.0 percent (61,681), of the units was involved in four major activity groups: 39.8 percent in 'Wholesale and Retail Trade; repair of motor vehicles, motorcycles, personal and household goods', 15.8 percent in 'Manufacturing', 15.4 percent in 'Transport, Storage and Communication' and 11.0 percent in 'Construction'. The total value of goods and services produced or gross output at basic prices, in 2002 by the small units, amounted to Rs 29,596 million. Investment made by the small units represented around 5.2 percent of Gross Domestic Fixed Capital Formation (Rs 31,549 million). The two activity groups 'Wholesale and Retail Trade; repair of motor vehicles, motorcycles, personal and household goods', and 'Transport, Storage and Communication', together accounted for Rs 1,199 million or 73.0 percent of the total investment incurred by the small productive units.

It is observed that the units were almost equally distributed in rural and urban regions. However the following activities were predominant in the urban region: 'Real estate, Renting and Business Activities' (75.4 percent), 'Financial Intermediation' (70.0 percent), 'Health and Social Work' (73.4 percent).



#### 4.2 The Role of State Owned Enterprises (SOEs) and Parastatals

The share of the entire public sector, that is, SOEs and central and local government services, in the GDP is around 24 percent. SOEs contribute almost 100 percent of the water output, around 60 percent of electricity production and, about half of the total production in transport and communications and about a fifth in finance and related activities. SOEs account for some 23 percent of gross domestic investment. They employ about 4.5 percent of the total labour force and around 16.8 percent for the entire public sector.

Several parastatal bodies purchase, import, and store ‘strategic products’ (including commodities subject to price control), and/or supply certain services. The State Trading Corporation (STC), with a turnover of around Mau Rs 6 billion<sup>3</sup>, imports the whole of the island’s requirements for petroleum products, flour and ration rice (rice with 25 percent broken)<sup>4</sup>, and 50 percent of cement requirements. These products are considered as ‘essential’ goods for which regularity and reliability of supply must be assured. The authorities also justify the STC’s monopoly, citing the sustainable quantities of the goods it enables Mauritius to import and the resultant cheap prices (due to bulk purchases) that the STC obtains from foreign suppliers. STC sells the staple food (flour, ration rice) to private wholesalers and bakers, who then distribute the products to retailers. The retail prices of ration rice and flour are subsidised. Imports of ‘luxury’ (*Basmati*) rice were liberalised in 1997. Therefore, the monopoly formerly held by STC over the importation of this product has been abolished. Currently, the STC competes with private traders in the importation of *Basmati* rice. As for cement, the Mauritius Portland Cement Company (MPCC), and the *Ciments de l’Océan Indien Limitée* (since 2000) import 50 percent of Mauritius’ requirements for cement; the STC’s import price serves as the basis for the local price. Petroleum products are sold by STC to local distributors at a set price, with price controls maintained along the distribution chain.

The Agricultural Marketing Board (AMB) still holds a monopoly over, or still monitors, the importation and/or marketing of the main controlled agricultural products, such as table potatoes, onions and garlic, and maize, turmeric, and cardamom. Other parastatal bodies through which the State intervenes in economic activities (e.g., bodies that market or supply products or services) include the Tea Board, the Tobacco Board, the Mauritius Meat Authority, the Central Electricity Board, the Central Water Authority, the Waste Water Authority, the Development Works Corporation, the National Transport Corporation, Air Mauritius, the Sugar Bulk Terminal Corporation, the Cargo Handling Corporation, the Mauritius Freeport Authority, the State Investment Corporation.

The Mauritius Sugar Syndicate (a private association) is in charge of sugar marketing, including export, in Mauritius. The State Investment Corporation Limited (SIC) is the Government’s main investment arm. It invests in sectors considered to be of strategic importance for the socio economic development of the country, and participates in the equity capital of selected pioneering enterprises, and does not benefit from any preferential

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<sup>3</sup> STC employs 290 persons. Its turnover is estimated at Mau Rs 6.6 billion, its total purchases at Mau Rs 5.9 billion, and its value-added to the economy at Mau Rs 700 million for 2000-01.

<sup>4</sup> The vast majority of imported rice (two thirds of domestic consumption).

regime. It is incorporated under the Companies Act, operates along commercial lines and is subject, like any company, to taxation and other statutory and fiduciary obligations.

### **4.3 Sectoral Analysis of Competition**

#### **4.3.1 Telecommunications**

Mauritius brought forward the commitment it took with the WTO to open up its telecommunication market in January 2003. This included the ending of all monopoly rights in domestic and international telecommunication services. Mauritius Telecom is the primary supplier of telecommunication services in Mauritius<sup>5</sup>. It was established in 1992 following a merger between Mauritius Telecommunication Services and Overseas Telecommunication Services. The other domestic player is Emtel Limited providing mobile phones. Emtel Limited shares the mobile-phone market with Cell Plus, which is a subsidiary of Mauritius Telecom. The Telecommunications Act 1998<sup>6</sup> has divided the industry into three main players: the operators, Mauritius Telecom and Emtel, a regulatory body (the Information Communication and Technology Authority). On November 24, 2000, MT entered into a strategic partnership with France Telecom, where the government sold 40 percent of its stake in MT for US\$261mn. Of the remaining 60 percent, the State Bank of Mauritius (SBM) owns 19 percent, the employees of MT, one percent, and the Government, 40 percent. The local tariffs structure was not changed in 2002. In fact, there has even been a 15 percent reduction with the introduction of 'billing by seconds' in December 1997. It is the turnover from overseas calls, which used to compensate for the shortfall on the local market. However, as from October 01, 2002, the domestic tariff has been increased by an average of 30 percent given that international tariffs have been reduced by 50 to 60 percent.

Any revision in tariffs must be submitted by MT to the ICTA, which will then consider the request before making its recommendations. The ICTA also has the important task of granting licenses to new players in the telecommunications industry. Moreover, new firms coming in the market will most probably in the short term use the existing network established by Mauritius Telecom and as a result they will have to pay a connection rate to MT, which will directly influence their tariffs. The ICTA has the important task of ensuring that the connection rate set by MT does not affect the level playing field and as a result keep competitors out of the market. It is being argued that the connection rate is still too high.

As from the end of January 2006, Mauritius Telecom no longer has monopoly position in the provision of fixed line operations. A new player, Mahangar Telephone Mauritius Limited (MTML) has started its operations. It is expected that its tariffs will be lower than those practiced by MT. However, as far as international calls are concerned, the tariff practiced by Data Communications Limited is the lowest (from Rs 9.40 to 7.20 per minute) compared to, from Rs 10.80 and 9.60 for MT. As regards to ADSL Internet connection

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<sup>5</sup> Mauritius has the highest teledensity among SADC countries and MT is connected to the SAFE network.

<sup>6</sup> It has been superseded by the Information Communication and Technology Act 2001

rate, the latter has been reduced by around 33 percent recently, but it has been observed that the operators have not yet adjusted their tariffs downwards. Overall, with MTML on the market, it is expected that there will be more competition and tariffs will come down for the benefit of consumers.

#### **4.3.2 Central Electricity Board**

Electricity in Mauritius is generated from three main sources: from hydropower, from diesel/gas turbines, and from coal/ bagasse generators. The Central Electricity Board (CEB) currently accounts for around 58 percent of the total production. The balance is produced by the Independent Power Producers (IPPs), from bagasse of the sugar factories. The Bagasse Energy Development Programme initiated in 1991, is today considered as a major success of the government's objective of diversifying the source for the production of electricity. The CEB has monopoly position with respect to transmission and distribution. The first step towards the privatisation of CEB is 'corporatisation', that is, making the CEB becomes a private company under company law. To that effect, the 'CEB Transfer Bill' will be passed in Parliament. The next stage will be to open the market with respect to electricity generation to competition.

The CEB has and will have power purchase agreements with the Independent Power Producers (IPPs). The purchase agreements will be monitored and approved by the new regulatory body, the Utility Regulatory Authority. It is presently being claimed however, that the purchase price from the IPPs is too high, which finally gets passed onto consumers in terms of higher tariffs. A consultancy report entitled '*Audit of Optimal Generation Capacities*' by a South African firm, PB Power, concludes that the purchase price per KWh from the IPPs should be around Rs 1.20, instead of Rs 1.87 and makes it clear that the price being paid by the CEB is too high. The report also states that a fixed quantum of electricity must be purchased from the IPPs irrespective of the fact that the CEB own generators are as a result being under utilised (Institute of Consumer Protection, 2002).

With the continuous increase in the price of petroleum products and the bad financial position of the CEB, the latter is considering various options, which are both short term and medium term. These are:

1. To review the purchase price of electricity from the IPPs so as to bring it more in line with CEB's own cost of production. It is argued that the CEB is paying at least one rupee above what they should be paying to the IPPS per KWh of electricity purchased. The government is fully supportive of this re-negotiation of the contracts with the IPPs, though the latter are quite unwilling. Given the trends in the price of oil, it seems most probable, that they will get back to the negotiation table.
2. To diversify the source of supplies for the production of electricity, considering using more charcoal where price volatility is much lesser and bagasse and using wind energy.
3. To improve operating efficiency and financial management at the CEB, particularly relating to purchase of parts and management of contracts. In fact, the CEB has plans to set up a contract management unit in the near future.

### **4.3.3 Central Water Authority**

In March 1999, the Government requested the Central Water Authority (CWA) to enter into an agreement with a private undertaking with proven experience in the water sector with a view to concluding a long-term strategic partnership for the modernisation and development of the water sector. The terms of reference provided for a management contract during Stage One and followed by a long-term strategic partnership of 30 years during Stage Two. The main criteria for selection of the best offer, was the supply of potable water at the consumer's tap on a 24-hour basis at a competitive rate. Other criteria included the proposals for the transfer of technology and technical know-how and investments in the water supply infrastructure, assisting the CWA in improving its financial viability, and improving the level of service to customers. The CWA concluded that the best offer was from *Consortium Suez Lyonnaise des Eaux/Vivendi*. In August 1999, the CWA entered into an agreement with the *Consortium* for a pilot stage of six months from September 1999 to February 2000, which was renewed until December 2000.

When the *Consortium* was queried about the source of their investment of about Rs six billion in our water sector, to the astonishment of the government and other parties concerned, the claim was, they were going to raise the money from the local market by a progressive increase in tariffs and from 'soft' government loans. This has turned out not to be acceptable.

The government sought the views of the International Finance Corporation (IFC) to advise on the modalities of the long-term partnership agreement, given our lack of expertise in terms of concession agreements. In July 2000, the IFC said that it would not have advised in favour of adopting the approach that has been taken. Also a United Nations Development Programme (UNDP) consultant advised that the financial structure of the project was extremely favourable to the *Consortium* and there was a need to completely redraft the concession agreement. As expected, the contact for stage 1 was terminated and the Consortium was not allowed to proceed to stage 2.

### **4.3.4 Cargo Handling Corporation**

Given the strategic location of Mauritius, there is a great opportunity to substantially increase transshipment activities from the Far East countries to Africa *via* Mauritius. However, for that to be achievable, the Cargo handling corporation (CHC) must in the first place seek a partner with an international reputation. The CHC is currently in the process of privatisation and the government is considering selling 40 percent of its equity to a strategic partner. Other reasons to have a strategic partner can be to increase the capital of CHC, as the port will also need significant investment for its state-of-the-art plant and equipment, if it is to increase its operating activity substantially – besides transferring technology and know-how. It is being proposed that 40 percent of state investment in the CHC be sold to the strategic partner.

#### **4.3.5 Construction and the Cement Industry**

Three of the leading enterprise groups in Mauritius (The Rogers Group, the Espitalier Noel Group, and the Hand Group) are shareholders in a major construction company REIHM – GRINAKER Construction. While considerable capital is required to establish a successful construction company capable of tendering for very large projects, regulatory barriers to the entry of new firms seem relatively low. Although the market structure may be conducive to competition, the possible existence of restrictive business practices in the industry may inhibit the same, leading perhaps to higher tender prices and reduced efficiency in some individual firms. There is a probability of bid-rigging in this sector.

A monopoly to import and distribute cement was in the hands of the privately owned Mauritius Portland Cement Co. Ltd from 1957. However, in 1984, the Government decided that the State Trading Corporation should take over the importation of 25 percent of the country's cement requirement and in the following year the STC share of import was raised to 50 percent. At present the STC remains responsible for 50 percent of cement imports, which it obtains through annual tenders. These imports are then sold back to the Mauritius Portland Cement Company (MPCC) for distribution. The Ministry of Commerce fixes the maximum prices for cement.

#### **4.3.6 Tourism and Air Transport**

FDI policy towards the tourism sector is quite restrictive. The Government became concerned about the fact that over-capacity in hotel rooms was developing. It introduced restrictions on new investment that fell more heavily on foreign than national investors. 100 percent foreign ownership of new developments was permitted only for hotels of more than 100 rooms. Foreign participation in smaller hotels was restricted to 49 percent. There is no FDI restriction for hotel management companies. The remainder of the tourist sector is almost entirely reserved for national investors. Foreign participation in restaurant operations is limited to 49 percent and only where investment exceeds MUR 10 million (US\$400,000), which would be a rare occurrence. No foreign investment is permitted in travel agencies, tour operators, tourist guides, car rental, yacht charters, and duty-free shops.

Despite fears of over-capacity, tourism has grown rapidly and there has been significant investment in new hotels by both national and foreign investors. Approximately 40 percent of the 25 larger hotels (with more than 100 rooms) are partly foreign-owned. Most major restaurants and car rental chains are represented through franchises or agencies. According to the final report on the Master Plan for Air Transport in Mauritius (2004), stagnation in the tourism industry has been observed. In addition, hotel occupancy rates are declining, but rates have increased significantly in recent years. This raises the question whether there is substantial competition among hotels.

Also among the other contributors to the tourism product, the airlines, there is limited competition. Although at key routes there is, besides Air Mauritius, a second carrier from the counter part state, these two carriers mostly operate in code share and other agreements with each other. The report recommends that air access policy be liberalised in a step-by-

step manner. All the more, it advocates that government ensure that the market structure between hotels be competitive in order to meet challenges from other competing destinations including Seychelles, Dubai, etc. It is to be noted that the Government of Mauritius is at present the major shareholder (51 percent) of Air Mauritius Company Ltd. Other shareholders are private and foreign companies. Local private firms include Rogers Company Ltd and the employees of Air Mauritius. Foreign shareholders include British Airways, Air France, and Air India. The company is also quoted on the official market of the Stock Exchange.

In order to achieve the goal of two million tourists by the year 2015, the Government has decided in the last budget to continue opening up air access to increase the carrying capacity, diversify the sources of visitors and bring down travel cost to Mauritius through greater competition.

#### **4.3.7 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 a 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 confidence. The use of information technology in the financial services industry has significantly improved the competitiveness of financial services organisations.

**Banking Sector** - There are currently 11 commercial banks in Mauritius. However, there is evidence that the market is highly concentrated with the two largest banks namely, The Mauritius Commercial Bank and State Bank of Mauritius, accounting for 70 percent of the market. New legislations namely Banking Act 2004 and Bank of Mauritius Act 2004 have consolidated the legal order to create the legal framework in order to modernise and increase competition in the banking industry; regulate risks; supervise new activities generated by e-banking and ensure the protection of bank customer. There are various complaints from customers with respect to bank charges.

Far from being a contestable market, there are many barriers to entry such as high capital requirements, goodwill and others. With development of money markets, increasing use of open market operations, fostering of deposit taking institutions and enhancing the financial infrastructure, there is a lot of scope for enhancing competition. The major innovations in the recent Banking Act are the provision for a deposit insurance scheme to protect customers, appointment of an ombudsperson to deal with complaint and prohibiting mergers between financial institutions that might not be in the public interest, the need for approval of the central bank for significant transfer of ownership, composition of board of directors, provisions of information on monetary policy committees, and establishment of a credit bureau. Good governance and international competition are expected to reduce concentration in the Mauritian banking sector and increase efficiency for the benefit of

customers. It is to be noted that the financial sector is one, which is included in the schedule of commitments of the GATS.

The Mauritian banking industry consists of 10 commercial banks and this number has varied considerably over the years with the consolidation processes. A simple analysis of bank market shares, both in terms of deposits that they hold in the deposits market or in terms of loans that they share in the loan market, shows that such a distribution is rather skewed towards two large banks (MCB and SBM) that control over 70 percent of the total output.

A summary of the means (1983-2002) calculated confirms that over the years, the two banks MCB and SBM, have been dominating the entire market with values 0.41 and 0.28 respectively, when measured by deposits, 0.43 and 0.27 respectively, as measured by loans. Such findings are striking facts in our markets, as disparities in market shares have been rather the same over the years.

#### Summary of Means of Market Shares (1983-2002)

Bank	Market share (as measured by deposits)	Market share (as measured by loans)
MCB	0.41	0.43
Baroda	0.03	0.02
IOIB	0.03	0.02
SBM	0.30	0.27
Barclays	0.08	0.07
Habib	0.01	0.007
HSBC	0.08	0.09
SEAB	0.01	0.008
Delphis	0.01	0.01
MCCB	0.01	0.009
BNPI	0.04	0.04
UIBL	0.0043	0.006
Means	0.083	.0083

(Source: Author's calculation)

An analysis of market concentration of banks shows a clear case of monopolistic competition in the banking market with two largest banks controlling the whole market.

#### Levels of Market Concentration (1983-2002)

Years	Output Measurement: Deposits		Output Measurement: Loans	
	Herfindahl-Hershman (HH) index	2 bank Concentration Ratio (CR)	Herfindahl-Hershman (HH) index	2 bank Concentration Ratio (CR)
1983	0.2308	0.6179	0.2567	0.6736
1990	0.2368	0.6457	0.2699	0.7040
1995	0.2699	0.6988	0.2860	0.7130
2000	0.2679	0.6779	0.3308	0.7720
2001	0.3100	0.7315	0.3820	0.8250
2002	0.2954	0.6948	0.3082	0.5080
Means	0.2696	0.6909	0.2881	0.7020

(Source: Author's calculation)

***Insurance Sector*** – The insurance sector is also characterised by heavy market concentration with three companies (SICOM, Anglo-Mauritius, and Island-Insurance) holding the major share of the market. There are also barriers to entry in terms of first-mover advantage, economies of scale and so on. Moreover, it has been reported that in certain instances, when contracting loans, banks propose to clients the taking of insurance cover from certain sister companies. The Financial services commission (FSC) regulates insurance activity and protects the interests of consumers. It is a member of insurance securities and non-bank financial authorities (CISNA). It has also signed a number of MoUs on the exchange of information and surveillance to enhance supervisory regime of the non-banking activity in the SADC.

The FSC has come up with a code of business conduct to sets standards of market practices for insurers and insurance intermediaries in relation to the sale of insurance contracts. The Code aims to ensure that all insurers and intermediaries under the supervision of the FSC adhere to high standards of financial soundness and business conduct. In essence, it reflects what the FSC considers are minimum standards of good business practice and ethical behaviour on behalf of its licensees. The code also caters for consumer interests and the fair treatment of consumers. Standards have been developed that require service providers to act conscientiously, honestly and with diligence in handling insurance business; to ensure that consumers are properly informed and that their claims and complaints are handled effectively.

Two insurance companies started their operations in Mauritius back in the late 1950's and since then the insurance industry has proved to be a prospective business over time. The insurance industry is classified as either Long term insurances, which provide life assurances and pensions funds. The other type is General business which specialises in fire, motor, personal accident and transport insurance. Another type of insurance, which is gaining prominence, is the reinsurance sector where insurance companies reinsure themselves against risks. Out of the 20 existing companies, New India Assurance Company and the Life insurance Corporation of India are local branches of Indian companies, while the Ceylincostella insurance company is a subsidiary of the Sri Lankan Company.

Long term insurance is a dominating market in Mauritius – Sicom, Anglo-Maurituis, and British American specialise in specific segments of the market. For example, SICOM's main business is that of pension funds of statutory bodies while the British American mainly markets low premium insurance to low-income households. The general insurance business comprise fire, motor, personal accident, transport and miscellaneous insurance. Motor insurance accounts for nearly 45 percent of premiums out of general insurance companies in Mauritius. This share continues to rise with time, along with that of fire and miscellaneous classes. Other products offered by insurance companies are: personal accident insurances, children Health policy, various pension plans or the BA Lady policy of the British American insurance.



**Table 6: Market Concentration of General Insurance Business (1995-2003)**

<b>Years 1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Means</b>
Herfindahl-Hershman index	0.250	0.295	0.265	0.285	0.321	0.325	0.296	0.258	0.963	0.295
3 firm concentration	0.725	0.702	0.698	0.725	0.698	0.714	0.7154	0.702	0.687	0.765

*Source: Computed*

**Table 7: Market Concentration of Long-term Insurance Business over the Years (1995-2003)**

<b>Years 1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>Means</b>
Herfindahl-Hershman index	0.258	0.258	0.269	0.289	0.378	0.369	0.258	0.298	0.298	0.285
Three firm concentration	0.695	0.702	0.714	0.745	0.754	0.798	0.748	0.702	0.768	0.754

*Source: Computed*

An analysis of market concentration over the years shows a mean HH value of 0.295 and for the concentration ratio, it is 0.765. The latter imply that four largest insurance companies namely Anglo-Mauritius, SICOM and BAI dominate the market. The HH index implies that the market shows a monopolistic tendency and monopoly is rejected. The largest companies in this line of business are the Swan group followed by Albatross, Mauritius Union, and SICOM. These together account for more than 50 percent of the market in the sample. These market shares in line of business indicate that each firm has economies of scale in a particular product.

#### **4.3.8 Agricultural Sector**

With the removal of trade preferences the sugar industry has undergone major structural reforms with many factories closing down. Sugar production has become concentrated in the hands of a few large sugar mills. These are Mont-Desert-Alma, FUEL and that of Belle-Vue. This economic concentration is supposed to cut down cost and benefit from economies of scale especially in light with developments regarding the erosion of preferences in the context of the WTO. This can be seen by analysing data from the MSIRI both from the number of planters as well as production. In 2003, production from these three factories amounted to 410,000 tonnes in a total of 645,000 tonnes produced.

The oligopolistic tendency in sugar production in the country has increased given the policies adopted by the government namely that of the Voluntary Retirement Scheme especially designed for the small planters in the country. As for food crops (vegetables) there is a lack of competition in the sense that production power is concentrated. 60 percent of the market is taken over by five largest producers (see MSIRI annual report, 2003). Tea production is also in the hands of a few large producers such as Corson and La

Chartreuse. Consequently, the price can ultimately suffer. There is a need to democratise the market so that small producers also gain in the production process.

#### **4.3.9 Wholesale and Retail Trade Sector**

Wholesale and retail distribution is a large and important sector of the economy accounting for about 11 percent of the GDP in recent years and employing about 70,000 people in 2004. The rise in real income in Mauritius has attracted many foreign investors in the retail sector with Courts Ltd., as the first operator to enter the domestic market and supply furniture and household appliances. The hire purchase facility was popularised with the coming of that foreign company. Later, many other large foreign hypermarkets have come into Mauritius as investors or through franchises. They include Jumbo stores, Shoprite, Spar and Game, Kentucky Fried Chicken, Mac Donald, Spur among others. Following these developments, the distribution sector seemed to be characterised by large hypermarkets which are largely foreign-owned; supermarkets and large self-service stores, which are local family-owned belonging to one of the conglomerates and the traditional street corner shops which are mostly present in rural areas. The competitive nature of the sector has resulted in many developments including the setting up of mid-sized stores in order to benefit from economies of scale such as when undertaking bulk-buying as with big hypermarkets. Consumers have also benefited from lower prices and wider choices, (MCCI Publications, 2005).

However, a recent article by the Institute for Consumer Protection (August 2005) highlight the fact that some foreign companies have brought with them anticompetitive practices in particular backdoor commercial practices including selling specific locations on gondolas, advertising space on trolleys and on brochures. Such activities bring in a significant amount of money and allow hypermarkets to offer certain fast-moving products below cost price. Such a practice, known as *la marge arriere* in France, allow firms to capture a large market share and drive other enterprises out of business and afterwards they increase prices after achieving a dominant position in the market.

#### **4.4 Views of Respondents on Competition and Anti-competitive Practices**

Overall, around 92 percent of the respondents considered that anti-competitive practices are quite prevalent in the Mauritian markets. At the dis-aggregated level, the results are quite similar with 92 percent of consumers, around 93 percent of firms and 90 percent of government institutions, who participated in the survey agreeing that such practices are widespread in Mauritian markets. 94 percent of the respondents do agree that consumers are adversely affected by such practices.

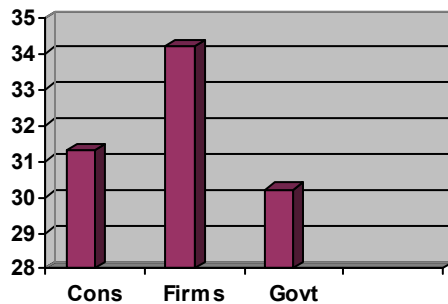
The participants were also given 11 categories of anti-competitive practices, namely:

- 1.) collective price fixing,
- 2.) market sharing,
- 3.) bid-rigging,

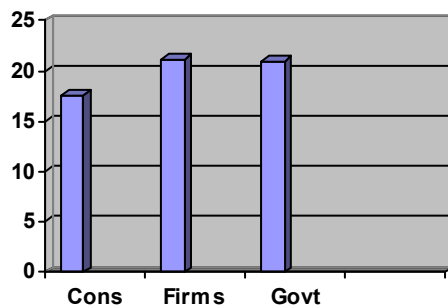
- 4.)tied-selling,
- 5.)exclusive dealing,
- 6.)concerted refusal to deal,
- 7.)resale price maintenance,
- 8.)price discrimination,
- 9.)entry barrier,
- 10.)predatory pricing and
- 11.)any other.

They were required to list the most three important ones by order of importance.

31. Six percent of the total sample considered price fixing as the most prevalent anti-competitive practice in Mauritian markets. When the results are disaggregated by category, consumers share this view along with the private sector and the government, ranging from 30 to 34 percent as can be observed from the chart below.



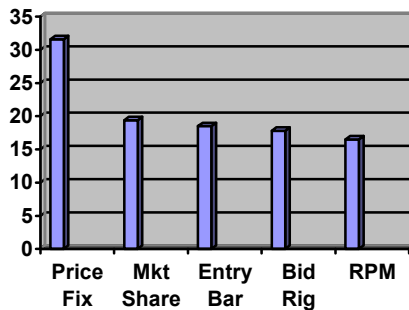
The second most prevalent anti-competitive practice is market sharing, according to the respondents (17 percent). From the disaggregated results, the same response is observed for consumers (17.5 percent) and the government sector (20.9 percent). But according to the private sector, it is exclusive dealing (21.1 percent). This is shown in the bar chart below.



Entry barrier is seen as the third most prevalent anti-competitive practice for the whole sample (18.5 percent). Firms and the government, 24.3 percent and 20.9 percent respectively, give the same responses. However, according to consumers, it is resale price maintenance (19 percent).

Overall, the survey results tend to confirm collective price fixing, market sharing and entry barriers as the most common factors affecting competition in the Mauritian markets. This is not surprising given that many markets in Mauritius exhibit oligopolistic characteristics where entry barriers are high and with some form of collective price fixing through price leadership. However, from the survey we see that bid-rigging, resale price maintenance and price discrimination are also important factors affecting competition.

### Most Prevalent Anti-competitive Practices



At the local level the overall results show that collective price fixing (36.8 percent) is the most prevalent anti-competitive practice. The same is observed for all three categories, ranging from 25 percent to 39.7 percent. The second most prevalent is resale price maintenance (20.7 percent). Consumers share this response as well (24.7 percent). However, for the government and private sector, it is market sharing, 19 to 22.2 Percent. The third most widespread practice is price discrimination for the whole sample (15.5 percent). Most consumers also share this view (21.9 percent). However, for the private sector and the government, it is entry barrier (20 percent) and resale price maintenance (20 percent), respectively. The response by consumers that price discrimination is prevalent in different parts of the country is not surprising, given that there is significant market segmentation particularly in the retail sector.

At the national level, bid rigging is observed as the most prevalent anti-competitive practice (23 percent). From the disaggregated results, consumers give the same response (25.3 percent). However, for firms and the government sector, it is collective price fixing, 30.6 percent and 22 percent respectively. The number of consumers participating in the sample might have influenced the overall result here. Taking this into account, the results confirmed the earlier results obtained that collective price fixing is most prevalent.

The second most important anti-competitive practice at the national level is market sharing (19.6 percent). The same result is confirmed by all three categories. The third most important practice is entry barrier (14.8 percent). The private sector and the government, 22.9 percent to 16.7 percent, give the same response. For consumers they consider exclusive dealing as the third most prevalent, 17.1 percent.

Overall, we see that the survey confirms that in the Mauritian markets at both the local level and at the national level, the three most anti-competitive practices are collective price fixing, market sharing, and entry barrier and to a marginally lesser extent, bid-rigging and

price discrimination. We see that the results at the local and national level support the findings regarding anti-competitive practices in Mauritian markets.

The first most important sector where such practices are prevalent is the consumer goods sector (35.2 percent). The consumers and the private sector, 38.7 percent and 42.9 percent respectively, also shares this view. But according to the government sector, it is services which is most affected. The second most important sector is manufacturing (22.4 percent). Consumers and the government sector confirm this with 25.3 percent and 21.9 percent respectively. For the private sector, it is the construction industry, 28 percent. This is expected as views have been expressed that there is considerable bid-rigging in this sector. The third sector where such practices are prevalent is agriculture. This response is shared by consumers, but not by the private sector and the government.

Around 63 percent of the respondents agree that some of such practices originate outside the country. At the disaggregated level, it is not surprising the private sector and the government seem to apportion most of these practices to multinational corporations than to locally based firms with around 67 and 86 percent, respectively. On the other hand, consumers allocate the practices as 56 percent overseas and around 44 percent home-based. So for consumers, many of these practices originate from the local business environment.

## **5. Legislations**

### **5.1 Consumer Protection Law**

There is a wide range of legislations to protect consumers in various sectors of the economy. The Protection (price & supplies control) Act 1998 provides for better protection for consumers and establishment of a profiteering division of the Supreme Court. The law makes provisions for the Minister to fix the maximum mark-up and establish a code of practice to provide for the method to be adopted for the determination of the maximum recommended retail price of goods other than controlled goods. Traders should do proper labeling. Traders should not charge VAT illegally, sell goods higher than the indicated price, and also mislead price indication. A number of measures have also been taken to prevent hoarding such as registration of warehouse, duty to maintain and produce register, regulations on storage, closure of premises, and exposition of goods.

The Permanent Secretary may designate any public officer to be an authorised officer for the purpose of ensuring that the provisions of this Act.

The authorised officer is given power to search so as to examine goods, inspect documents, seize and detain goods, and obtain a warrant from the Magistrate. Moreover, there is protection of officers from liability. No liability, civil or criminal, shall attach to the Permanent Secretary or an authorised officer in respect of anything done in good faith in the exercise of his powers under this Act.

There is provision for the purposes of this Act, the establishment of a division of the Supreme Court to be called the Profiteering Division of the Supreme Court and which shall have exclusive jurisdiction to try any person charged with an offence under this Act and the Fair Trading Act.

The Competition Act (2003) provides for the establishment of the legal framework for the control of restrictive business practices with a view to enhancing competition in Mauritius through measures designed to promote efficiency, adaptability, and competitiveness in the economy for the end purpose of widening the range of customer choice in obtaining goods and services at a fairer and more competitive price. In addition to the creation of an office of fair-trading, it establishes a competition appeal tribunal and a competition advisory council. Provisions are made to deal with, monopoly exploitation and restrictive trade practices.

According to the Food Act (1998), and Food Amendment Act (2003), Section 16, a number of measures have been introduced to safeguard the interest of consumers. Amongst others, any person who imports, prepares, supplies, distributes or sells any food which

- (a) is poisonous, harmful or injurious to health;
- (b) contains any foreign matter;
- (c) is unfit for human consumption;
- (d) is the product of a diseased animal or an animal which has died otherwise than by slaughter;
- (e) is the product of a decomposed vegetable or vegetable substance; or
- (f) is adulterated, shall commit an offence.

In order to protect consumers, there is a consumer protection unit (CPU) under the commerce division of the Ministry of Commerce and Cooperatives. It was formed in 1996 with the responsibilities of consumer education and enforcement of consumer laws. The duties falling under the responsibility of CPU are as follows: checking trade premises and price monitoring, conduct surveys, enquire about trade practices, deal with complaints from consumers and consumer organisations, preparing and delivering talks to different groups of people. The CPU collaborates with other departments and ministries to fulfill their duties.

In addition to consumer protection laws, the government to instill competition in the economy and to control the prices of strategic and essential commodities has established a number of institutions. There are several parastatal bodies which purchase, import and store strategic products and supply some services. The State Trading Corporation (STC) plays an important role in importing petroleum products, rice, flour and cement, considered essential for the economy.

## **5.2 The Competition Act 2003**

The Competition Act (2003) aims at providing the legal framework necessary to control restrictive business practices and to regulate competition in Mauritius in order to promote

the efficiency, adaptability and competitiveness of the economy and to provide consumers with a range of choices at fair and competitive prices.

The Act establishes an Office of Fair Trading as the competition authority, which would be a public office that shall establish its own procedures. The Director will be responsible for the day-to-day control, operation, and management of the Office. The latter will be assisted by public officers as may be required or by specialised persons appointed on a temporary basis. The officers shall be under the direct control of the Director. The duties of the Director include:

- i. the investigation of any allegation or suspicion of restrictive business practices or any matter relating to such allegation or suspicion either on his own initiative or after receiving complaints or information which give rise to such suspicion;
- ii. gather, process and evaluate information which give rise to such suspicion; and
- iii. take measures to prevent or terminate any restrictive business practices including issuing directives for remedial action

The Director shall apprise the Minister, in writing, before starting an investigation. In addition, he shall arrange for dissemination of any information and reports that he may consider necessary for the discharge of his duties.

The Competition Appeal Tribunal which will be established for the purposes of the Act shall consist of a Chairperson and a vice chairperson who has to be a barrister or an attorney-at-law to be appointed by the Prime Minister. In addition, the tribunal would include four other members who are knowledgeable in consumer affairs, business, finance, economics or management but would be appointed by the Minister. Members of the Tribunal would be appointed for a period not exceeding two years, which shall be renewable on such terms and conditions as the Prime Minister or Minister, as the case may be, thinks fit. Moreover, the Minister may designate such public officers as he thinks fit to assist the conduct of the business of the tribunal.

The tribunal has the power to give directions to prevent or eliminate such practice including the direction that any line of business or area of activity of any person engaging in such practice be separated and carried out by another person. The Tribunal shall establish its own procedures, act expeditiously and even in an informal manner. The tribunal has the power to request the director of the Office of Fair Trading or any public officer or other person to produce any document or evidence that may be required.

The Competition Act also establishes a Competition Advisory Council which shall consist of a Chairperson to be appointed by the Minister, a representative of the Ministry responsible for commerce, the Director of the Office of fair Trading, a representative of the attorney-general's office, a representative of Mauritius Chamber of Commerce and Industry (MCCI), a representative of JEC, two representatives of consumer organisations, and not more than five persons who are knowledgeable in consumer affairs, business, finance, economics or management but would be appointed by the Minister. The Council shall establish its own procedures and meet at least once every three months. The Council needs to advise the Minister on matters relating to restrictive business practices, promote

activities to raise awareness of the business community and consumers on competition and related matters, maintain communication with the business community and consumer associations and promote research in emerging trends in the field of fair competition and best business practices.

The Act identifies four categories of restrictive business practices including, the abuse of monopoly power, collusive agreements, anti-competitive agreements, and bid-rigging. Monopoly is defined as a situation where competition is nonexistent or where the enterprise enjoys a dominant position taking into account the availability of substitutable goods/service or supply source. Dominance is defined with respect to the ability to influence price or output in a given market. Any act or behaviour which:

- imposes unfair purchase or selling prices or other unfair trading conditions such as below cost pricing;
- limits supply, production, markets or technical development to the prejudice of consumers;
- discriminates among trading partners thereby placing them at a competitive disadvantage; and
- conclude contracts subject to acceptance by the other parties to supplementary obligations which have no connection with the subject of the contract shall be considered in the determination of an abuse of monopoly power.

However, the provision of certain goods and services are excluded from the above. These include aviation and harbour services, broadcasting services, electricity services, financial services, Freeport services, information and communication technologies services, postal services other than courier, goods and services supplied by state enterprises, and water other than water for retail sale.

Any agreement, which amounts to, a collusive agreement is prohibited and void. Collusive agreements include any agreement where the parties acquire or supply the goods or services of the same description with the objective of: fixing the selling or purchase prices of the goods/services; share markets or sources of supply; restrict supply or acquisition from any person; and agreements whose effect significantly prevents, restricts or distorts competition. Agreements between members of a professional or trade association are excluded from the provisions relating to collusive agreements.

Anti-competitive agreements include those where parties supply or acquire a substantial share of the market and that whose effect significantly prevent, restrict, or distort competition. However, if the Minister is satisfied that such an agreement is beneficial to consumers, it could be exempted from the provisions of the law

Bid-rigging is also considered as restrictive business practice. As such, any agreement whereby one party agrees not to submit a bid in response to an invitation or a party agrees upon the price, terms or condition of a bid or tender to be submitted in response to a call shall be considered as bid-rigging. These exclude agreements where parties are interconnected bodies corporate as well as cases where the person who makes the invitation



knows the terms of the agreement. Any person undertaking bid rigging shall, if convicted, be liable to a fine up to MR 500,000 or to imprisonment for a term not exceeding five years.

Where the Director finds that a person has been involved in bid-rigging, he shall inform the police about it.

### **Control of Restrictive Business Practice – The Role of the Office of Fair Trading**

Where an investigation has revealed the existence of an abuse of monopoly situation, or existence of anti-competitive agreement or that there has been a breach of prohibition to enter into collusive agreement, the Director of the Office of fair Trading may accept an undertaking from the person he considers appropriate to prevent or terminate such restrictive business practice. The Competition Act defines an ‘undertaking’ as an obligation or commitment given in writing by an enterprise to and which has been accepted by the director of the Office of Fair Trading to prevent or terminate a restrictive business practice.

Moreover, he can give the direction that any line of business or area of activity of any person engaging in such practice be separated and carried out by another person. If the Director finds that no undertaking has been made, or that the latter is unacceptable for some reasons or that the undertaking has not been complied with, he shall refer the matter to the Competition Tribunal, which will issue direction to resolve the matter. The Director is responsible for the monitoring of compliance with any undertaking and direction given by the tribunal. In addition, when the director is satisfied that there has been a material change in circumstances subsequent to an undertaking, he may accept to vary the undertaking conditions or even release a person from the undertaking. He may also refer to the Competition tribunal to vary or terminate directions issued.

The Director is responsible for the publication of any undertaking and directions and any variation or termination of such undertaking and directions. In performing the duty of controlling restrictive business practices, the Director shall consider the desirability of maintaining and encouraging competition as well as the positive effects of absence or preventing competition which might arise including benefits in terms of safety of goods, efficiency in production supply and distribution as well as development and use of new and improved goods and services as well as means of production and distribution. In addition, the sharing of benefits between consumers and business has to be considered. Any person aggrieved by the Director’s decision regarding measures taken to prevent or terminate any restrictive business practices including issuing directives for remedial action, can appeal to the Competition tribunal within 30 days. Any party dissatisfied with the determination of the Competition tribunal may appeal to the Supreme Court within 21 days of the date of determination informing both the Tribunal and the other party, in writing, the grounds on which appeal is being made.

The Director may, in writing, request any person whose business is being investigated to attend and answer questions or furnish information or produce documents with respect to

any matter relevant to an investigation. Furthermore, the Director can make such a request to a public officer as well to furnish any information or reproduce document, in which the law does not prevent him from disclosing. The Director can make copies of documents and solicit explanation on them as well where that information has been stored in a computer, disc, cassette or microfilm or any mechanical or electronic device, the person shall produce or give access to it in a form that can be taken away and which is legible. The Director may designate any officer to enter and search any premises and take possessions of any specified documents.

The Director must, within six months, report to the Minister on the activities of the Office of Fair Trading as well as those of the Competition Advisory Council. The Minister shall present the report at the National Assembly. In the annual budget 2004/05, the Office of Fair Trading would be allocated a sum of MR one million annually for its operations.

The Ministry of Industry, Commerce, SMEs, and Co-operatives have asked the consultants from the Commonwealth Secretariat to work on a new legislation. However, for the time being, the report from the latter is 'confidential'. The new Competition Bill will be presented by the end of July 2006 to the National Assembly.

### **5.3 Competition Law at Regional Levels**

#### **COMESA**

The Common Market for Eastern and Southern Africa (COMESA) launched a Free Trade Area (FTA) on October 31, 2000, and plans to become a Customs Union. The absence of tariff and non-tariff barriers under the FTA has enhanced competition in the COMESA region. In order to ensure fair competition and transparency among economic operators in the region, COMESA, in accordance with Article 55 of the Treaty, has formulated and will implement a regional competition policy. The policy is consistent with internationally accepted practices and principles of competition, especially the *Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices*.

Existing national competition policies shall be harmonised and brought in line with the regional policy to ensure consistency in regional policies, avoid contradictions and provide a regionally predictable economic environment. Primarily, the formulation of the regional competition policy is seeking to promote fair competition aimed at boosting regional trade and investment and maximising consumer welfare in the COMESA region through an effective regional competition framework and competition and consumer protection culture. The regional competition policy will contribute to the adoption, improvement, and effective implementation of competition policies as an integral part of Member States' economic reforms. The policy has taken into account the effects of economic reforms already undertaken or planned by the Member States such as price liberalisation, privatisation programmes, dismantling of public sector monopolies, and the liberalisation of foreign investment and trade at the national level. The regional competition policy is also intended to provide a mechanism for technical co-operation among national competition agencies and strengthening of information exchange, consultations and joint

operations in the enforcement of competitive standards and thwarting of anti-competitive practices at the bilateral, regional and multilateral levels.

The laws create an effective regional competition framework for the promotion of fair competition and an active consumer protection culture. They are thus key instruments for boosting regional trade and investment and maximising consumer welfare throughout the region. They set out the role of the COMESA Competition Commission in ensuring fair competition across the region. They are thus concerned with cross-border effects and only address the enforcement of competition within Member States borders to the extent necessary to ensure fair competition across the region. Potential breaches of the law may be brought before the COMESA Competition Commission, which will investigate the complaints, in conjunction with the Relevant Authorities of the Member States, as defined under article 5 (2)(b) of the COMESA Treaty. In this context, Member States will find it useful to establish their own Competition Authority with the powers and expertise to both co-operate with the COMESA Competition Commission and to promote fair competition within their borders.

At the regional level, within the COMESA, the establishment of a common Competition Law and Policy is one of the means to promote further economic integration and development among its members. However, in practice, it has proven difficult to have a uniform competition policy given the disparity in the level of economic development across countries. This regional competition law is applicable for all COMESA members involved in trans-border transactions. However not all member countries have adopted this law including Mauritius which Mauritius believes that it is not yet ready to abide by the regional competition rules and regulations given the difficulties it is facing in putting in place institutional mechanisms and its lack of experience in administration of this subject.

### **SADC**

The South African Development Community (SADC) is also contemplating the possibility of having a competition framework for its members. The promotion of trade and investment with the SADC regional arrangement has placed an increasing emphasis on the development of a suitable competition policy. To this effect, the Special Advisory Division is assisting the SADC Secretariat in developing a competition law. The development of competition policy and law is very important and of great concern as markets become further integrated especially given different market structures and geographical sizes. A suitable competition regime will help in assisting the private sector and to deal with anti-competitive behaviour and arrangements through appropriate regulatory and institutional mechanisms.

### **5.4 Views of Respondents with Regard to the Legislature**

It is surprisingly to note that only about 56.8 percent are aware that there are laws and regulations to check anti-competitive practices. The consumers' group might influence this result, where only 50 percent are aware of such laws and regulations. For the private sector and government 77 and 65 percent are aware of such laws and regulations.

As far as actions taken when such laws are violated, around 67 percent of the total sample point out that actions to sanction such practices are taken sometimes only. The disaggregated results for the three groups show that whilst only 15 percent of consumers state that “no action” is taken, a greater percentage of the private sector (31.4 percent) and the public sector (37.5 percent) believe that no action is taken if the rules are violated. The table below shows the results regarding “action to sanction”.

**Response to the Question on Whether Action is Taken if Rules against Anti-competitive Practices are Violated**

( % )	SECTOR		
	Consumer	Private	Government
Yes,always	7.7	17.1	29.2
Yes, sometimes	76.9	51.4	33.3
No	15.4	31.4	37.5

*Source: Computed*

From the survey, it seems that consumers are aware of the most important legislations, which exist to check such practices, namely the Consumer Protection Act (44.4 percent), the Fair Trading Act (37.8 percent) and the Hire Purchase Act (11.1 percent). Thus there could be practical difficulties for them to seek remedies, as awareness of the legislation does not seem to be an issue. The present framework for consumers and other stakeholders to address their complaints/grievances most probably must be revisited.

Most consumers believe that it is the Ministry of Commerce, which should provide redress (33 percent). But many also are aware of ICP (27.6 percent), ACIM (25.2 percent) and the consumer protection unit (11 percent).

The 1980 Fair Trading Act (as amended in 1988), and the 1998 Consumer Protection (Price and Supplies Control) Act, which replaced the 1991 Act currently covers certain competition aspects. The Ministry of Industry, Commerce, and International Trade is responsible for enforcement of the Acts. The Fair Trading Act aims at ensuring that trade practices do not mislead or confuse consumers that they are not detrimental to consumer interests, and that fixed prices are not exceeded. The Act prohibits agreements, including exclusive sales arrangements or monopolies likely to prevent or distort competition in the production and supply of goods (branded or not) and services. The 1998 Consumer Protection (Price and Supplies Control) Act deals primarily with monitoring prices and supplies of goods. Administered by the Price Control Unit (PCU) within the Ministry of Industry, Commerce and International Trade, price controls in Mauritius still consist of a fixed maximum price system and a maximum percentage markup system.

The markup system applies only to imports, and the fixed maximum price system applies both to imports and locally produced goods. The controlled prices are computed by the PCU and approved by the Minister of Industry, Commerce and International Trade; the Consumer Protection Unit within the Ministry ensures that traders comply with the pricing regulations. The survey reveals that 78 percent agree that existing rules, regulations and

laws are not sufficient to check anticompetitive practices prevalent in Mauritius. The table below shows the breakdown in response to question 13.

**Response to Adequacy of Existing Laws and Regulations to check Anti-competitive practices**

( % )	SECTOR		
	Consumer	Private	Government
Yes	15.5	23.1	44.2
No	84.5	76.9	55.8

*Source: Computed*

Moreover, above 85 percent of the private and public sector and above 70 percent of consumers are in favour of introducing a more comprehensive law on anti-competitive practices. Such a law, that is the Competition Act (2003) has already been drafted but has not yet come into force to date. The Competition Act provides for the establishment of the legal framework for the control of restrictive business practices with a view to enhancing competition in Mauritius through measures designed to promote efficiency, adaptability and competitiveness in the economy for the end purpose of widening the range of customer choice in obtaining goods and services at a fairer and more competitive prices. The Act identifies four categories of anticompetitive practices including, the abuse of monopoly power, collusive agreements, anti-competitive agreements, and bid-rigging.

According to the investigation carried out, about 80 percent think that the Competition Act should focus on economic efficiency and only 20 percent believe that the law should also consider other socio-economic issues as well. The survey also shows a divided opinion on whether there should be exemptions to the application of the Competition Act. Indeed 59 percent of the sample agrees that the law should cover all enterprises and persons, that is, no company is to be exempted from the law. In case, there are exemptions, Small and Medium sized enterprises (SMEs) are the first to be given preference according to 52% of the sample. SMEs are followed by Public Utilities Companies (22 percent), State-Owned Enterprises (19 percent) and only three percent believe that Import/Export enterprises are to be exempted. However, whilst 24 percent of consumers view that state-owned enterprises should be exempted from the law, this view is shared by only 11 percent of the business sector and about five percent of government bodies.

**Response to Exemption from the Competition Law**

( % )	SECTOR		
	Consumer	Private	Government
SME	43.5	66.7	75
State-Owned	24.4	11.1	4.5
Public Utilities	24.4	18.5	13.6

Import/Export Oriented	4.2	0	2.3
Other	3.6	3.7	4.5

Source: Computed

As per the Competition Act 2003, no exemption to the law applies specifically to SMEs. However, certain goods and services are excluded from provisions of the law relating to monopoly situations. These include aviation and harbour services, broad casting services, electricity services, financial services, Freeport services, information and communication technologies, postal services other than courier, goods and services supplied by state enterprises, and water other than for retail trade. In addition, agreements between members of a professional or trade association are excluded from the provisions relating to collusive agreements. As regards to anti-competitive agreements, if the Minister is satisfied that such an agreement would be beneficial to consumers, it would be exempted from the provisions of the law. Lastly, concerning bid-rigging practices, which are considered to be the fourth type restrictive business practices in the Act, exception is made to agreements where parties are inter-connected bodies corporate as well cases where the agreement whose terms are made known to the person making the invitation for bids or tenders at or before the time the bid or tender is made by a party to the agreement.

The survey also reveals that 51 percent prefer an autonomous competition authority whereas 45 percent prefer a competition authority that is an agency under the relevant Ministry. The preference for an autonomous competition authority is clear from the private sector and government institutions as well. In fact, 72 percent of the private firms and 77.6 percent of government institutions interviewed prefer an autonomous competition authority. On the other hand, about 56 percent of consumers prefer a competition authority that falls under the Ministry as opposed to 39 percent who prefer an autonomous CA. This may reflect the fact that consumers view government as an authority who protect their interest *vis a vis* private profit-making enterprises, especially given the existing Price Control Unit of the Ministry of Commerce. The table below shows the response regarding the kind of competition authority should have.

#### Views of Respondents on the Desired Kind of Competition Authority

( % )	SECTOR		
	Consumer	Private	Government
Autonomous	39.3	72.1	77.6
Under Ministry	56.0	25.6	18.4
Other	4.7	2.3	4.0

Source: Computed

As regards to the kind of power that the Competition Authority should have, 35 percent believe that it should have both investigative and adjudicative powers against 64 percent who believe that the Competition Authority should be empowered to carry out investigations only leaving the power to judge to either a separate authority (43 percent) or to courts (21 percent). In Mauritius, the Competition Act (2003) establishes an Office of Fair Trading as the competition authority, which, would be a public office that shall establish its own procedures. The Director will be responsible for the day-to-day control, operation and management of the Office. The duties of the Director include the investigation of any allegation or suspicion of restrictive business practices, gather, process and evaluate information which give rise to such suspicion and take measures to prevent or terminate any restrictive business practices including issuing directives and proposals for remedial action.

However, the Director must apprise the Minister, in writing, before starting an investigation. If the Director finds that no undertaking has been made, or that the latter is unacceptable for some reasons or that the undertaking has not been complied with, he shall refer the matter to the Competition Tribunal, which will issue direction to resolve the matter. The Director is responsible for the monitoring of compliance with any undertaking and direction given by the tribunal. The Competition Tribunal has the power to give such directions it deems fit for the purpose of preventing or terminating an anticompetitive practice. This includes a direction that any line of business or area of activity of any person engaging in anticompetitive practices be separated and carried out by another person.

The majority of consumers (76 percent) and 64 percent of the private sector believe that the Competition Authority should also deal with unfair trade practices and consumer protection issues whereas 40 percent of state-owned enterprises think the contrary. All the more, about 68 percent of the sample think that the competition Authority should involve different stakeholder groups in its functioning especially advocacy/publicity people.

Concerning sectoral regulators for electricity, telecommunication etc, 70 percent of the sample concur with the view that sectoral regulators are needed in certain sectors only with the CA either having power over them (43 percent) or co-ordinating with them (27 percent). The remaining 30 percent prefer many sectoral regulators with the CA controlling or coordinating with them. The table below shows the answer to need for specialised sectoral regulators and interaction between the competition authority and those regulators.

**Response to the Interface between Sectoral Regulators and the Competition Authority**

	( % )
Yes for some sectors with CA having power over them	45
Yes for some sectors with CA co-ordinating with them	25
Yes for many sectors with CA having power over them	17.9
Yes for many sectors with CA co-ordinating with them	11.4
Other	0.7

*Source: Computed*

One of the issues which has caused problems in implementing the law in some countries is the inter-relationship between the competition authority and sectoral regulators .By looking at the first schedule of the Competition Act, it seems that such disputes might not arise in Mauritius as it is stated that the law will not apply to “any practice or agreement expressly required or authorised by an enactment or by some scheme or instrument made under an enactment”. This will imply that regulatory regimes established by statute and administered by regulatory bodies are outside the scope of the law. Besides, the second schedule of the Act excludes certain goods and services excluded from provisions relating to monopoly situations include aviation and harbour services, broadcasting services, electricity services, financial services, freeport services, information and communication technologies, postal services other than courier, goods and services supplied by state enterprises and water other than for retail trade.

Above 90 percent of the sample are of the opinion that there should be criminalization prescribed in case the law is violated including about 30 percent who specify that it should be in some cases only.

Regarding the question of exemption from criminalisation, 66 percent share the view that some should be exempted on public interest grounds, that is when it comes to objectives such as technological advancement, protection of SMEs or socially disadvantaged groups and employment. However a breakdown of the table shows that about 55 percent of the private sector and 62.5 percent of government bodies want equal treatment to all, that is, no exemption with regard to criminalisation, if the law is violated.

**Response to Desirability of Criminalisation in Case the Law is Violated**

( % )	SECTOR		
	Consumer	Private	Government
Yes	77.7	45.2	37.5
No	22.3	54.8	62.5

*Source: Computed*

In case there is a provision for exemption given to criminalisation penalty, about 70% believe that well-defined guidelines would be needed to protect against the misuse of such provisions .The remaining chose to solve the issue through judicial scrutiny.

According to the Competition Act, any person engaging in bid rigging (excluding exemption cases) is liable to a fine not exceeding MR 500,000 or to imprisonment not exceeding five years. All the more, any person who fails to comply without any reasonable excuse to the Act, or gives false information, or destroys information, obstructs to the execution of a warrant, refuse to take oath, fails to answer satisfactorily to the Director or the Tribunal or insults / commits any contempt to the tribunal shall commit an offence and be liable to a fine not exceeding MR 500,000 or to imprisonment not exceeding two years or both. As indicated in Section 16 of the Competition Act, the Director of the competition authority as well as the competition tribunal should have regard to certain aspects in controlling restrictive business practices.



Indeed, they should pay attention to the desirability of maintaining and encouraging competition and the benefits to be gained in respect of price, quantity, variety and quality of goods and services. In addition, they should consider the positive effects of absence or preventing competition which might arise including benefits in terms of safety of goods and services, efficiency in production supply and distribution as well as development and use of new and improved goods and services and means of production and distribution. In addition, the sharing of benefits between consumers and business sector has to be considered.

As per the survey, 74 percent agree that the law should have provisions for the right to private action. A person can make a complaint about restrictive business practices to the Office of Fair Trading, which will investigate the allegation or suspicion. Furthermore, any person aggrieved by the Director 's decision regarding measures taken to prevent or terminate any restrictive business practices including issuing directives for remedial action, can appeal to the Competition tribunal within 30 days. Moreover, any party dissatisfied with the determination of the Competition tribunal may appeal to the Supreme Court within 21 days of the date of determination informing both the Tribunal and the other party, in writing, the grounds on which appeal is being made.

One of the main concerns of the Authority is to know whether other stakeholders should take part in the consultation decision process. This will normally enhance the process and provide fair and adequate remedies. Advocacy and publicity are the main ways through which different stakeholder groups can participate in the functioning of the Competition Authority. 60 percent prefer that such member views be heard through a structured consultative committee against 40 percent who prefer the views to be heard through occasional hearings. As per the Competition Act, the Office of fair Trading comprises of public officers.

However, the Act establishes a third agency, namely the Competition Advisory Council. The Council would have the function of advising the Minister on matters relating to restrictive business practices with emphasis on consumer protection, promote activities o raise awareness of the business community and consumers on competition and related matters, maintain communication with the business community and consumer associations and promote research in emerging trends in the field of fair competition and best business practices. The Council will comprise of members with different backgrounds including a chairperson, the director of the competition authority, representatives of the Ministry, Attorney-General Office, the Mauritius Chamber of Commerce and Industry, the Joint Economic Council, 2 representatives of Consumer organizations and five members knowledgeable in consumer affairs, business, finance, law, public affairs or economics.

## **6. Interfaces Between the Regulatory Institutions and Competition Regime**

In the next section, an analysis of the function of regulatory institutions in the financial services sector as well as the utilities sector is undertaken. Regulatory bodies are very important especially in markets, which have a tendency to be characterised by monopolies

or oligopolies. They act as institutions that must ensure efficiency and no abuse of dominant position.

- **Financial Services**

The regulatory framework in the financial services in Mauritius consists of mainly, Bank of Mauritius (BOM) and Financial Services Commission (FSC). Both institutions have been mandated to foster financial sector development so as to make Mauritius a regional financial center with international standards and reputation. The diversification of the financial system and promotion of competition has ranked high on their agendas. The BOM has been developing the financial infrastructure in terms of payment mechanism, money markets development and introduction of financial instruments. In order to reap the full benefits of financial liberalisation and competition, the BOM has shifted its techniques of monetary policy implementation from direct to market-based instruments.

The BOM recently launched the ‘Trading of Treasury/Bank of Mauritius Bills’ on the Stock Exchange of Mauritius (SEM) Ltd where the trading of Bills will be restricted to Mauritian citizens dealing a maximum amount of MR two million per order. This would ultimately aim at promoting competition in the money market. Moreover, the BOM has set the following guidelines to regulate and promote competition in the market; Guidelines on credit risk management; credit concentration, credit classification, internet banking, corporate governance, on Related Party Transactions, Public Disclosure of information, various notes on Anti-Money Laundering with the essence of Customer Due Diligence paper. All these, set standards to promote competition in the market as well as to, protect consumers’ interest. Under the new Banking Act, no distinction between category one and category two banks are made and a unique banking license to both categories of banks are granted in order to enhance competitive behaviour in the market. There is the recent setting up of Banking Ombudsperson within the BOM (Bank of Mauritius Act 2004) and more transparencies in commercial banks are meant to cater for the protection of consumers in banking institutions. The BOM, together with the Financial Markets Committee, are acting as forum for discussions on developments in domestic markets in order to regulate competition and make the regime fair and sound.

The Credit information bureau as a repository of credit information from which credit borrowers can have access to symmetric information on various aspects acts as another competition policy. Furthermore, there exists the Foreign Exchange Dealers Act 1995 to regulate the activities of moneychangers and foreign exchange dealers and to protection depositor’s interest. The Anti-Money Laundering Act 2003 is meant to report suspicious transactions to the Financial Intelligence Unit and protect consumers. The Board of Investment has set the Investment Promotion Act 2002 and the Finance Act 2004 (providing restrictive trade and investment practices), thereby regulating competition and consumer protection.

The FSC also has the Financial Services Development Act (2001) and the Companies Act (2001) to regulate the behaviour of companies, competitors and consumer protection. Some other Acts are the Trusts Act 2001 in order to protect stakeholders in various trusts set up in the country. This is achieved also with the Stock Exchange (conduct of trading operations by dealer's authorised clerks) rules 1992, the Stock Exchange Act 1988, the Stock Exchange Rules 1994 in order to regulate competition from foreign investors in the stock market, the Stock Exchange (Licensing) regulations. Various legislations dealing with the insurance, securities markets, and moneylenders are being enacted in order to enhance the regulatory framework.

- **Utilities Sector**

Telecommunications

The mission of the Information and Telecommunications Authority (ICTA) is to ensure universal access to ICT at reasonable and affordable price. The main objectives of the authority include the democratisation of access to information through the use of ICT; creation of a level playing field for all operators in the market, licensing and regulating information and communication services; encouraging optimum use of ICT in education, business and services; promoting the competitive edge of Mauritius as an international player and facilitating Research and Development (R&D) in ICT and advise on new technologies. The ICTA enjoys considerable powers in the furtherance of its objectives. The Authority is empowered to ensure that services are reasonably accessible at affordable cost and to investigate complaints from consumers and take appropriate corrective measures thereon.

The setting up of ICTA comes at a time when Mauritius is undergoing profound changes in the field of communications and broadcasting. After decades of State Control, the electronic media has recently been liberalised and three private radio stations are actually operating. In telecommunications too, the process of liberalisation has already been initiated with the coming into play of competing providers of cellular phone, Internet services and fixed lines telephony. Given the new context of liberalisation and competition and the convergence of Information, Telecommunications and Broadcasting technologies and services, the ICTA is destined to play an effective role in regulating and licensing the activities of present and future players. It will also be instrumental in the choice of new technologies in the best interests of the country

Utility Regulatory Authority

The Utility Regulatory Authority has to 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 promote competition to prevent unfair and anti-competitive practices in the utility services industry. Subject to the relevant Utility legislation, the Authority may implement the policy of the 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; mediate or arbitrate disputes between a customer and a licensee, or between two or more licensees; determine whether a licensee has an obligation; establish an appropriate procedure for receiving and enquiring into complaints by customers in relation to any utility services; and establish and implement adequate systems for monitoring the compliance by licensees with standards and applicable regulations, and making such information publicly available.

The Authority shall not, in the exercise of its functions under this Act or a Utility legislation, be subject to the direction or control of any other person or authority. It is not only important for the regulatory bodies in the Telecommunications and the Utilities sector to see to it that there is no abuse of monopoly or market leader positions but they must also regularly liaise with the Competition Authority to ensure future developments in these sectors safeguard consumers' interest while maintaining an adequate and cost effective standard of service

## **7.0 Conclusion**

1.0 In a small economy like Mauritius, one would expect the market concentration to be higher on average than a larger economy. Moreover, a notable feature of the Mauritian economy is the concentration of economic powers in the hands of a small number of enterprise groups, most of them family-controlled.

2.0 Several key economic reforms have helped foster stronger competition in the domestic market including the elimination of protective tariffs, the liberalisation of foreign exchange controls on foreign direct investment and foreign exchange transactions, the partial deregulation of the financial system, reduction in the number of goods subject to maximum prices or mark-ups and the State-trading Corporation competing with the private sector in the import of certain goods.

3.0 In addition, there is a lot of variation in the level of competition in the different sectors of the Mauritian economy. A number of institutional factors have contributed towards greater competition during the recent decade such as legislations, domestic liberalisation and internationalisation. However, certain types of restrictive business practices still exist in certain sectors analysed in this report.

Overall, the survey results tend to confirm collective price fixing, market sharing and entry barriers as the most common factors affecting competition in the Mauritian markets. This is not surprising given that many markets in Mauritius exhibit oligopolistic characteristics where entry barriers are high and with some form of collective price fixing through price leadership. However, from the survey we see that bid-rigging, resale price maintenance and price discrimination are also important factors affecting competition. The sectors where such practices are most prevalent are the consumer goods sector, manufacturing, services and construction.

According to consumers, many of these practices originate from the local business environment. Therefore, having an efficient and independent Competition Commission cannot be more relevant in order to regulate and ensure healthier competition, where not only business and consumers but also the country will gain at large.

4.0 From the survey, it seems that consumers are aware of the most important legislations, which exist to check such practices, namely the Consumer Protection Act (44.4 percent), the Fair Trading Act (37.8 percent) and the Hire Purchase Act (11.1 percent). Thus there could be practical difficulties for them to seek remedies, as awareness of the legislation does not seem to be an issue. The present framework for consumers and other stakeholders to address their complaints/grievances most probably must be revisited.

5.0 Moreover, above 85 percent of the private and public sector and above 70 percent of consumers are in favour of introducing a more comprehensive law on anticompetitive behaviour. Such a law, that is the Competition Act (2003) has already been drafted but has not yet come into force to date.

6.0 In this era of deregulation and liberalisation of trade and capital, Mauritius needs an appropriate competition law and policy. Competition institutions can play a valuable role in shaping the structure of economies to stimulate efficiency, growth to the benefit of consumers. A concerted political effort along with real involvement of all stakeholders is needed as lack of political will together with resistance from the private sector has impeded the implementation of the law.

7.0 The survey showed a divided opinion on the autonomy of the competition authority. Indeed 51 percent of the sample prefers an autonomous competition authority whereas 45 percent prefer a competition authority that is an agency under the relevant Ministry. The preference for an autonomous competition authority is clear from the private sector and government institutions as well. On the other hand, about 56 percent of consumers prefer a competition authority that falls under the Ministry as opposed to 39 percent who prefer an autonomous CA. This may reflect the fact that as an authority who protect their interest *vis a vis* private profit-making enterprises especially given the existing Price Control Unit of the Ministry of Commerce. The survey also reveals varying opinion on the power of the competition authority to investigate and adjudicate.

8.0 Many lines of business activities and agreements are presently excluded from the provisions of the Competition Act. About 60 percent of the sample believes that no enterprises should be exempted from the law and in case there should be exemptions the majority believe that it should be SMEs who should benefit. The current law does not make such provisions.

9.0 One of the issues, which caused problems in implementing the law in some countries, is the inter-relationship between the competition authority and sectoral regulators. By looking at the first schedule of the Competition Act, it seems that such disputes might not arise in Mauritius as it is stated that the law will not apply to “any practice or agreement expressly required or authorised by an enactment or by some scheme or instrument made under an

enactment". This will imply that regulatory regimes established by statute and administered by regulatory bodies are outside the scope of the law.

10.0. Like in many other developing countries, in Mauritius, competition law and enforcement is a difficult and little-known issue. While benefiting from several trade agreements, Mauritius has been shielded from 'real' competition. But nowadays, with the dismantling of trade barriers and phasing out of such preferential agreements, there is even greater need to develop a competition culture in business, government and the general public.

11.0 Civil Society should have a greater role to play in fostering competition by creating, stimulating and sustaining active consumer movement. Moreover, consumer organisations should have the right to bring cases forward. All the more, they can use their knowledge and networks to assist the competition authority in gathering information.

## **ANNEXURE 1**

### **Pharmaceutical Industry**

The wholesale and retail mark- up in the prices of pharmaceutical products are controlled in Mauritius. The maximum mark up for the wholesalers is fixed at 11 percent on the landed costs of the products. In return, the maximum mark up for retailers is fixed at 22 percent. The issue relating to the pharmaceutical products can be discussed from two angles. First is the exchange rate depreciation, which has a direct impact on prices, adversely affecting consumers. There is too much volatility observed in the changes of these prices and sometimes, shops do not sell at the same prices because of differences in stocks. Moreover, some unfair pricing and manipulations also take place leading to a lot of complaints from consumers.

The next issue, which is attracting a lot of attention, is the prices of brands versus generic products. Generic products are cheaper, but are not the first choice of consumers due to lack of information and also, prejudices. This issue is important from the consumer's point of view in terms of prices and competition. Consumers should be educated so as to facilitate the shift from branded products to generic products.

## **ANNEXURE 2**

### **Survey On State Of Competition In Mauritian Markets From Perceptions of Consumers, The Private Sector And The Government Sector.**

#### **I. MAIN OBJECTIVES**

The survey has been conducted with the following main objectives:

- to analyse the extent of anti-competitive practices prevalent in the country;
- to determine the most common types of anti competitive practices;
- to gauge the level of awareness regarding existing laws regulations and institutions to combat such practices and protect consumers;
- to analyse the present inadequacies and assess the need for an independent Competition Authority.

#### **II. METHODOLOGY**

Based on the questionnaires from CUTS, two sets were prepared; one in Creole addressed to consumers and the other in English addressed to firms in the private sector and government institutions, including parastatal bodies. Firms in the private sector and the government institutions were chosen so as to have a balance spread of entities in the different sectors of the economy. It must also be pointed that the questionnaire from CUTS was modified to take into account the realities of the local context.

#### **III. SAMPLE**

A purposive sampling method was adopted given the time constraint for conducting the survey. The questionnaires were addressed to 200 consumers, to 50 firms in the private sector and to 50 government institutions. The sample size for the private and government sectors are as suggested by CUTS. The response rates were as follows: 193 consumers, 44 firms in the private sector 49 government institutions.



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