



GAMBIA COMPETITION & CONSUMER PROTECTION COMMISSION

Leveling the Field for Development

19th March 2024

DIRECTIVE /DR/002/2024

SUBJECT: CONCERTED PRACTICE (NON-COMPETE)

APPLICANT: THE GAMBIA COMPETITION AND CONSUMER PROTECTION
COMMISSION

RESPONDENT: I-CARE OPTICS LIMITED

PARTIES: THE GAMBIA COMPETITION AND CONSUMER PROTECTION
COMMISSION AND I-CARE OPTICS

BEFORE: COMMISSIONERS

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| 1. Yassin Senghore | - | Chairperson |
| 2. Foday Ceesay | - | Commissioner |
| 3. Hamidou Jawara | - | Commissioner |
| 4. Yusupha Kah | - | Commissioner |
| 5. Abdou Touray | - | Commissioner |

ISSUE FOR CONSIDERATION

1. On the 25th of September 2023, the Commission received a complaint from Calia Group through its co-owner and Managing Director, Raul Dos Santos alleging that he was invited to a meeting at the Village Complex in Senegambia by Muhammad Allam of I-Care Optics and the said meeting was premised on the need to limit competition between Calia Group and I-Care market sharing and acquisitions.
2. The Secretariat of the Commission investigated the complaint by Calia Group. Following a consideration of the Investigation report, the Commission determined that there was sufficient evidence to convene a hearing. The hearing took place on the 16th of February, 2024. At the hearing, the Complainant was represented by the said Raul Dos Santos whilst the Respondent was represented by Muhammed Allam. The Commission heard the testimony of Raul Dos Santos during the hearing and received evidence an audio recording between him and Muhammad Allam of I-Care which recording was transcribed. The Commission also heard the testimony of Muhammad Allam, who confirmed that he made the following proposals to Calia Group:
 - a. Market Sharing Proposal (Calia and I-Care): An agreement for market sharing in which Calia Group will not enter the Basse eye-care market in exchange for I-Care not to enter the Farafenni eye-care market; and
 - b. An acquisition offer, where Calia Group can either acquire four of I-Care's branches or I-Care will acquire three of Calia Group's branches.
3. The above proposals are confirmed by a transcribed audio recording of the parties at page 18. Such proposals are collusive in nature and are contrary to section 25 of the Competition Act which provides that:

“A provision of an agreement by virtue of which it is a collusive agreement as defined by subsection (2) is prohibited and void. An agreement is a collusive agreement if-
(a) It is a horizontal agreement; and
(b) It has the object or effect of preventing, restricting or distorting competition, by in any way- (i) fixing the selling or purchase price of goods or services, or (ii) sharing markets or sources of supply”.
4. On the basis of the investigation conducted by the Commission and the overwhelming evidence received from the Commission in the form of audio recordings, interview sessions and the evidence of Raul Dos Santos and Muhammed Allam, the Commission is convinced that the proposals made by I-Care to Calia Group clearly violate the provisions of Section 25 of the Competition Act. The Commission therefore finds and holds that the I-care Optics are in breach of the provisions of the Competition Act.

5. The European Court of Justice (the ECJ) essentially confirmed the decision of the Dutch competition authority in the case of five mobile telephone network operators in the Netherlands namely Ben Nederland (now T- mobile), KPN, Dutch tone (now orange), Libertel-Vodafone NV (now Vodafone) and Telfort Mobile BV who held a meeting on 13 June 2001 and discussed amongst other things, the reduction of remunerations for subscription. The ECJ held that "a single meeting between companies may constitute a concerted practice in breach of competition. In particular, the ECJ assumes that if anti-competitive behavior takes place (in this case illegal information exchange), that behavior is capable of affecting the market even after only one meeting, as the participants are assumed to take account of the information they have received".¹ Although the complainant did not agree to the proposals made by the respondent, the mere fact that the meeting was conducted with the object of restricting competition is in itself a concerted practice which is a violation of the Competition Act 2007.
6. In view of violation of the Competition Act 2007 and its effects on competition and consumer welfare, the Commissioners unanimously resolve and direct as follows:
- I care Optics shall:
- i) immediately cease and desist from present and future concerted practices and any forms of anti-competitive practice(s); and
 - ii) compete fairly with its competitors henceforth.
7. The Commission shall continue to review and monitor compliance with the directives in accordance with section 54 of the Competition Act. Failure to comply with the directives shall lead to enforcement of same in accordance with section 55 of the Act.

Dated this.....28th.....day of March 2024

SIGNED BY COMMISSIONERS-

1. Ms. Yassin Senghore
2. Foday Ceesay
3. Mr Abdou Touray
4. Mr Yusupha Kah
5. Mr Hamidou Jawara


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¹ <https://www.lexology.com/library/detail.aspx?g=a184e8c2-477b-411a-a976-e89143b6c7a6>
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