

FOREWORD

Economic integration within the Caribbean Community (CARICOM) progressed steadily over the past 30 years and has accelerated since the turn of the Century. The Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (CSME) has created the space and conditions for a new momentum towards closer economic integration. CARICOM has taken a number of steps to progressively reorganise the market economy of the Community. Deregulation, demonopolisation and withdrawal of the State from direct involvement in business organisations were followed by a broad swathe of trade liberalisation and active harmonisation of laws, regulations and administrative procedures and practices, thereby improving market access by businesses.

Today, the Community has effectively created new rights under the Treaty which have been successfully implemented in the areas of production and trade in goods and services, the movement of capital and skills and the freedom of establishment of business enterprises anywhere in the Community. The CSME is the framework within which these were achieved. These measures have gone some distance toward creating open, free and competitive markets.

A good example of competition within a market could be the actions taken relating to mobile phones in the telecommunications sector. Those actions have opened that area of the sector to competition and this has brought benefits in both the quality and the price of services to consumers throughout the Community. This type of action must now spread to as many sectors and industries as possible. This is where competition policy and law come in.

Competition policy and law must reinforce the other measures which have already been taken to ensure that the benefits derived from deregulation, demonopolisation and trade liberalisation are not undermined by anti-competitive business conduct. To ensure that this does not happen, special Rules of Competition have been agreed and drafted into Chapter Eight of the Revised Treaty and an enforcement apparatus is in the process of construction. At the centre of the enforcement system are the CARICOM Competition Commission and the Caribbean Court of Justice (CCJ). The Commission was inaugurated on 18 January 2008. Its principal function is to apply the rules of competition, promote competition and assist Member States to protect consumers.

This publication is only one of the measures undertaken by the Community in a broad campaign to inform and educate stakeholders in the CSME about this latest initiative in the development of the CSME generally, and specifically in the area of competition.

Edwin W. Carrington
Secretary-General
Caribbean Community

ESTABLISHMENT OF THE COMMISSION AND ITS HEADQUARTERS

The Commission was established under Article 171 of the Revised Treaty and was inaugurated in Paramaribo, Suriname on 18 January 2008. Persons interested in serving as Commissioners were required to apply in a competitive process and be selected on merit by the RJLSC.



The Headquarters of the CARICOM Competition Commission (Suriname)

*President of Suriname
H.E. Drs. Rinaldo Venetiaan
unveiling Plaque at the inauguration
of the Commission.*



His Excellency the President of Suriname, Rinaldo Venetiaan and Secretary-General of the Caribbean Community His Excellency Edwin Carrington with members of the CARICOM Competition Commission in front of the Commission's logo shortly after the swearing-in of the Commissioners.

In photo:

President Venetiaan (nearest logo to the right) Commission Chairman Dr Kusha Haraksingh; Commissioner Dr. Trevor Farrell; Her Excellency Manorma Soeknandan, Chair of the Task Force on the Implementation of CARICOM Competition Policy; the Honourable Clifford Marica, Minister of Trade and Industry of Suriname; Commissioner Dr Barton Scotland; from left of logo: Secretary-General Carrington, Mr Justice Michael de la Bastide, Chairman of the Regional Judicial and Legal Services Commission; Commissioner Dr Maureen Paul; Commissioner Ambassador Arthur Stephenson; Commissioner Hans Lim A Po and Commissioner Patterson Cheltenham.

FUNCTIONS OF THE COMMISSION

These are some of the functions the Commission is authorised to discharge in respect of the CSME

- Apply the rules of competition
- Promote and protect competition
- Coordinate implementation of competition policy in the CSME
- Monitor anticompetitive business conduct in the CSME
- Investigate and arbitrate cross-border cases
- Promote the establishment of institutions and harmonisation of competition law
- Cooperate with national competition authorities

POWERS OF THE COMMISSION

The Commission is authorised to exercise the following powers under the Revised Treaty –

- May secure the attendance of any person before it to give evidence
- May require the discovery or production of documents relevant to an investigation
- May make determinations regarding the compatibility of business conduct with the rules of competition
- Shall order the termination of agreements, decisions or activities prohibited under the Treaty
- Shall direct an enterprise or person to cease or desist from anti-competitive business conduct
- Shall order the payment of compensation
- Shall impose fines for breaches of the rules
- Adopt such other measures as may be appropriate in order to end anti-competitive conduct.

ADMINISTRATIVE SUPPORT TO COMMISSIONERS

In order for the Commissioners to effectively discharge their duties, a Secretariat is being created and will be housed at the Headquarters of the Commission in Suriname. It will be headed by an Executive Director who will be supported by professional staff comprising persons with legal, economics, registry and administrative skills. The Secretariat, under the direction of the Commissioners, will –

- receive complaints and requests for investigations
- open and maintain case files
- organise and conduct investigations
- prepare investigation reports
- represent the Commission in Court
- follow up cases, and
- maintain records.

FINANCING THE OPERATIONS OF THE COMMISSION

The Commission will draw its financing for recurrent expenditure from subventions by the Member States. This source of funding will be supplemented by earnings from fines imposed by the Commission for breach of the rules of competition. The limits of such fees will be determined by the Competition Acts in Member States and more definitively, by the Courts, when judicial settlement is the only remedy.

Capitalisation of the Commission was facilitated by the European Commission which has generously supported the Community by providing substantial resources under the Ninth European Development Fund (EDF) and the Twenty-Eighth Meeting of the CARICOM Conference of Heads of Government has acknowledged this support.

ENFORCEMENT OF COMMUNITY RULES

There are two basic groups of rules under Article 177 of the Revised Treaty which the Commission will apply (*See Article 177 on page 8*).

Group I includes prohibited agreements, decisions and concerted practices which have as their objective or effect the prevention, restriction or distortion of competition within the Community, for example, price fixing, predatory pricing, bid rigging and price discrimination.

Group II includes prohibited abuses of a dominant position. An enterprise holds a dominant position in a market if by self or together with an interconnected enterprise, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors. Prohibited abuses include such conduct as restricting the entry of an enterprise into a market, the elimination or removal of an enterprise from a market and limiting the production of goods or services to a market to the prejudice of consumers.

“Enterprise” means any person or type of organisation, other than a non-profit organisation, involved in the production of or the trade in goods, or the provision of services.

Optimal enforcement of Community Rules requires complementary national competition authorities and competition law.

ARTICLE 177

Prohibition of Anti-Competitive Business Conduct

1. A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:
 - (a) agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community;
 - (b) actions by which an enterprise abuses its dominant position within the Community; or
 - (c) any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME.
2. Anti-competitive business conduct within the meaning of paragraph 1 includes the following:
 - (a) the direct or indirect fixing of purchase or selling prices,
 - (b) the limitation or control of production, markets, investment or technical development;
 - (c) the artificial dividing up of markets or restriction of supply sources;
 - (d) the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby causing a competitive disadvantage;
 - (e) making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by their nature or according to commercial practice, have no connection with the subject matter of the contract;
 - (f) unauthorised denial of access to networks or essential infrastructure;
 - (g) predatory pricing;
 - (h) price discrimination;
 - (i) loyalty discounts or concessions;
 - (j) exclusionary vertical restrictions; and
 - (k) bid-rigging.
3. Subject to Article 168, a Member State shall ensure that all agreements and decisions within the meaning of paragraph 1 of this Article shall be null and void within its jurisdiction.
4. An enterprise shall not be treated as engaging in anti-competitive business conduct if it establishes that the activity complained of:
 - (a) contributes to:
 - (i) the improvement of production or distribution of goods and services; or
 - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
 - (b) imposes on the enterprises affected only such restrictions as are indispensable to the attainment of the objectives mentioned in subparagraph (a); or
 - (c) does not afford the enterprise engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.

NATIONAL COMPETITION AUTHORITIES AND LAWS

The Community Rules must be expressed in the competition law in each CARICOM Member State. Enactment of competition legislation by Member States has been facilitated by the development of the CARICOM Model Competition Bill, which was approved by the CARICOM Legal Affairs Committee (LAC) in October 2003.

Each of the following Member States has enacted, or will enact a national Competition Law that creates a national Competition Authority. The following national authorities and law will, in addition to national enforcement action, specifically cooperate with, complement and facilitate enforcement action by the CARICOM Commission:

<i>Organisation of Eastern Caribbean States (Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines)</i>	Sub-Regional Competition Commission under the Agreement Establishing The Eastern Caribbean Competition Commission and the Uniformed OECS Competition bill [ongoing]. These will enable application and enforcement of competition rules in each of the following States - Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines.
Barbados	Barbados Fair Trading Commission, established under the Fair Trading Commission Act, 2000 - 31
Belize Draft	Competition Bill – in progress
Guyana	The Competition Commission, established under the Competition and Fair Trading Act, 2005
Jamaica	The Jamaica Fair Trading Commission, established under the Fair Competition Act, 1993.
Suriname	“Surinaamse Mededingingautoriteit” afgekort “SMA” established under the Mededingingswet; 2007
Trinidad and Tobago	The Fair Trading Commission, established under the Fair Trading Act, 2006

REGULATING COMPETITION AND ENFORCING THE CARICOM RULES OF COMPETITION

Competition Commissions regulate competition using their prerogative powers. The CARICOM Competition Commission will exercise its prerogative powers in collaboration with national commissions and with the support of national courts and the CCJ. **Regulating competition** means that the Commission, in appropriate circumstances, will intervene and take action to ensure that markets remain open and competitive. The Commission takes action by intervening on a case by case basis in the **relevant market**.

The Commission will treat each case on its merits, usually on the basis of a complaint from Member States' officials, competitors or consumers. **A complaint requires supporting evidence of anticompetitive conduct.**

The Commission is also authorised by the Revised Treaty to act on the basis of its own monitoring and market intelligence and related evidence of anti-competitive conduct.

ENFORCEMENT ACTIONS BY THE COMMISSION

In order for the CARICOM Competition Commission to act effectively, its powers must be recognised in the domestic law of every Member State.

For example, Section 54 of the Guyana Competition and Fair Trading Act, 2005 gives the CARICOM Competition Commission the same powers given to the Guyana Competition Commission.

This enables the Commission to legally investigate anti-competitive conduct in Guyana and similarly, in any other Member State identified as the origin of an enterprise which has engaged, or is engaging in anti-competitive conduct. It can, according to the law of Guyana, take action either

- on its own initiative, or
- at the request of the Minister responsible for Competition in Guyana or the Guyana Competition Commission.

This power may therefore be used where national authorities have communicated that anti-competitive conduct has been, or is being perpetrated in the CSME by an enterprise, or where the Commission, by its own information sources, has reason to believe that cross border anti-competitive conduct has occurred. In such circumstances, the Commission may launch an investigation.

During an investigation by the Commission -

- (i) any of the persons or enterprises involved can challenge the action of the Commission before a Court in the State of origin of the complaint and/or in each of the other Member States involved; or
- (ii) the Commission can approach a Court in any of the Member States involved to obtain an order to secure the cooperation of any of the persons or companies which may be relevant to the investigation.
- (iii) If, during such proceedings, there are issues relating to interpretation of the Treaty, the issue would have to be referred to the Caribbean Court of Justice for an opinion.

It is important to note that the CCJ has 'concurrent jurisdiction' with the Commission therefore a Member State may initiate proceedings before the CCJ at any time.



What Happens Next?

After the Commission investigates and finds that a conduct complaint of is anti-competitive: and has cross border effect,

- (i) It will make a decision. How will it make decisions?
- (ii) The Commission will determine its own Rules of Procedure, under which it will divide itself into two groups. One group of Commissioners will be responsible for investigations; and the second group will adjudicate after hearing from both sides of the case being considered.
- (iii) The Commission can instruct the persons or companies involved to take corrective action or actions which it deems necessary and it will give notice to the enterprises to comply within 30 days of the notice.

If the persons or companies cannot comply and do not notify the Commission, or refuse to comply, the Commission can apply to the CCJ for an order to enforce its decision.

Where an order is issued by the CCJ in favour of a request by the Commission to enable the Commission to enforce its decision, that order will be grounded in the domestic law of the Member State in which the enterprise found in breach of the competition rules is located.

Where a Member State or enterprise is dissatisfied with a decision of the Commission any one of these parties can apply to the CCJ for a review of the Commission's decision. A natural or juridical person may appear directly before the CCJ by special leave of that Court.



The Headquarters of the Caribbean Court of Justice (CCJ) Trinidad and Tobago

THE COMMISSION'S ROLE IN CONSUMER PROTECTION

The Treaty does not give the Commission authority to directly enforce consumer protection laws. This function, is the responsibility of the national authority in each Member State. The Commission will, through its regulatory actions and market interventions, cause consumers to benefit from the maintenance of competitive markets.

Some of the Commission's functions nevertheless address consumer issues. Two generic functions are-

- Providing support to Member States in promoting and protecting consumer welfare
- Developing and disseminating information in the CSME about competition policy and consumer protection policy.

Article 185 of the Revised Treaty spells out the types of support which the Commission is required to provide to Member States in order to ensure that consumers benefit from the competitive process and the broader functioning of the CSME. These include:

• CONSUMER EDUCATION

Education is a key to effective participation by consumers in the competitive process in a market economy. The more educated consumers are about competition policies, law, regulations, their rights and conditions in the market place, the more empowered they will be to make decisions in their best interest and take action, when disadvantaged. The Commission is well positioned to promote Consumer education and will do so.

• CONSUMER PROTECTION POLICY AND LAW

The Commission is required to support Member States in the development, implementation and enforcement of laws and regulations, to protect consumers from unfair trading practices such as misleading and deceptive conduct; false and bait advertising and pyramid selling.



• DEVELOPMENT OF DOMESTIC INSTITUTIONAL CAPACITY TO PROTECT CONSUMERS

The Commission must provide advice and deliver technical assistance to Member States in the formulation of consumer policy; development of legislation and regulations; policing the market; and strengthening or building domestic non-governmental consumer organisations.

• RESEARCH, PUBLICATION AND DISSEMINATION OF CONSUMER INFORMATION

The Commission must, in collaboration with responsible departments of government and non-governmental organisations, conduct research and produce, publish and disseminate information relevant to facilitating informed decision-making by consumers in the market.

• MONITORING, EVALUATING EFFECTIVENESS OF CONSUMER PROTECTION AND ADVICE TO THE COTED

The Commission must continually review the development of policy, legislation and regulations and advise the Council for Trade and Economic Development (COTED) on measures which should be taken to increase the effectiveness of consumer protection policy and laws and the provision of services which will enhance the effectiveness of choices and decisions made by consumers.

ARTICLE 185

Protection of Consumer Interests in the Community

The Member States shall enact harmonised legislation to provide, inter alia:

- (a) for the fundamental terms of a contract and the implied obligations of parties to a contract for the supply of goods or services;
- (b) for the prohibition of the inclusion of unconscionable terms in contracts for the sale and supply of goods or services to consumers;
- (c) for the prohibition of unfair trading practices, particularly such practices relating to misleading or deceptive or fraudulent conduct;
- (d) for the prohibition of production and supply of harmful and defective goods and for the adoption of measures to prevent the supply or sale of such goods including measures requiring the removal of defective goods from the market;
- (e) that the provision of services is in compliance with the applicable regulations, standards, codes and licensing requirements;
- (f) that goods supplied to consumers are labelled in accordance with standards and specifications prescribed by the competent authorities;
- (g) that hazardous or other goods whose distribution and consumption are regulated by law are sold or supplied in accordance with applicable regulations;
- (h) that goods or materials, the production or use of which is likely to result in potentially harmful environmental effects, are labelled and supplied in accordance with applicable standards and regulations;
- (i) that producers and suppliers are liable for defects in goods and for violation of product standards and consumer safety standards which occasion loss or damage to consumers;
- (j) that violations of consumer safety standards by producers or suppliers are appropriately sanctioned and relevant civil or criminal defences to such violations are available to defendants.

- The progress towards preparation of new policy or reform of existing policies;
- Action taken by Member States to implement laws and regulations,
- Development in the Member States of the institutional capacity to provide services to producers, sellers and consumers and for regulations and enforcement of protection measures;
- Make recommendations on forms of intervention that will improve the efficiency of the operation of markets within the CSME and the effectiveness of competition and consumer protection policies, in particular.

Contact details

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RELATIONSHIP OF THE COMMISSION TO THE COUNCIL FOR TRADE AND ECONOMIC DEVELOPMENT

The COTED is the regional oversight and policy-making body responsible for the development and implementation of competition policy and rules and consumer protection in the CSME.

The Commission must report to the COTED on the achievement of competition policy and rules and consumer protection policy within the framework of Chapter Eight of the Revised Treaty, with respect to their contribution to the effectiveness of operation of the CSME and in regard to the achievement of the goals of economic integration. In this regard the Commission must monitor, undertake continuous reviews and evaluation of the measures set out in the Treaty or agreed by decision of the COTED and report to the COTED on the following, among others:



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