

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

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.

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 adjueicate 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.

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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