

2015



"...to promote and maintain fair competition within the CARICOM Community for the enhancement of economic efficiency and consumer welfare."

CARICOM COMPETITION COMMISSION

QUARTERLY REPORT

JANUARY – MARCH 2015



FOREWORD

This report highlights the work of the CARICOM Competition Commission (Commission) for the first quarter of 2015, in the areas of competition law and policy, and consumer welfare and protection in the CARICOM region. The work of the Commission is guided by the institution's mandate under Chapter VIII of the Revised Treaty of Chaguaramas (RTC). Consequently, the document is structured to highlight the relevant provisions within the RTC under which each activity falls.

Work continued on the preliminary examination into the agreement by Cable and Wireless Communications Plc (CWC) to acquire Columbus International Inc. (Columbus) pursuant to Article 176 of the RTC. The Commission expects to complete its preliminary report in the first week of May 2015 after reports from the National Competition Authorities and competent authorities in Member States have been received and analysed.

During the review period, the Commission also continued to assist Member States in both areas of competition law and policy, and consumer welfare and consumer protection. Emphasis was mainly on providing technical assistance to the Belize Competition Project, (BCP), the Guyana Competition and Consumer Affairs Commission (CCAC), and the Suriname Chamber of Commerce (KKF). Assistance was also given to the

CARICOM Secretariat CSME Unit regarding the 10th EDF Project for the Consultancy to Strengthen the CSME Regulatory and Market Regimes, and the CARIFORUM Secretariat EPA Implementation Unit regarding the 10th EDF Project for Capacity Building to Support the Effective Implementation of the CARIFORUM-EU Economic Partnership Agreement.

In the area of regional and international cooperation, two activities deserve special mention. Firstly, the historic meeting between the Competition Department of the East African Community (EAC) Secretariat and the Commission, as the latter seeks to operationalize the EAC Competition Authority. Secondly, the draft Memorandum of Understanding (MoU) prepared for discussions between the heads of the Commission and the national competition authority of the Dominican Republic, Procompetencia.

The Commission takes this opportunity to thank the regular contributors to its quarterly report, and wishes to encourage other national competition and consumer authorities in CARICOM to submit articles of interest for future publication. For information on how your work can be featured in one of our future quarterly reports kindly contact admin@ccc.sr.

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SECTION A: COMPETITION LAW AND POLICY

1. *Article 173(1) (a) – “apply the rules of competition in respect of anti-competitive cross-border business conduct”*

(A) *ALL MEMBER STATES*

CWC AGREEMENT TO ACQUIRE COLUMBUS

In February 2015, the Commission wrote to the National Competition Authorities (NCAs) and other competent authorities in Member States pursuant to Articles 176.1 and 173.2 (e) respectively, to request a preliminary examination of the potential impact of the agreement between CWC and Columbus on their national telecommunication markets. Further to this initiative, the Commission also engaged industry stakeholders in order to obtain sufficient information to complete a preliminary examination of the business transaction.

The Commission is currently in the process of assessing the submissions received to date, and will complete the preliminary examination of the matter once all the information requested is received.

2. *Article 173(1) (b) – “promote and protect competition in the Community and co-ordinate the implementation of the Community Competition Policy;”*

(A) *CARICOM SECRETARIAT CSME UNIT 10TH EDF PROJECTS*

MEMBER OF THE PROJECT REVIEW COMMITTEE (PRC) ON THE CONSULTANCY TO STRENGTHEN THE CSME REGULATORY AND MARKET REGIMES, AND THE RECONVENED TASK FORCE ON THE IMPLEMENTATION OF CHAPTER VIII OF THE REVISED TREATY OF CHAGUARAMAS

As a member of the PRC, the Commission provided comments on the Interim Report for the “*Consultancy to Strengthen the CSME Regulatory and Market Regimes*” which covered the status of execution at January 2015.

The Commission also provided feedback on the “*Revised Policy and Rules Framework for the Control of Mergers and Acquisitions in the CSME*”, which was considered at the Second Meeting of the Re-convened Task Force on the Implementation of Chapter Eight of the RTC, in Barbados from March 19-20, 2015.

The membership of the Task Force comprises representatives from Member States, the private sector, the Commission, NCAs, and staff of the CARICOM Secretariat.

The Task Force discussed in-depth the proposed amendments to Chapter Eight of the RTC as presented by the Commission. The private sector representative was keen to stress the need for transparency and timeliness of action on procedural, investigative and adjudicative matters. The NCAs and the Commission reiterated their commitment to meeting the stated timelines in all cases as far as practicable.

The Commission's Fining Guidelines and Draft Rules of Procedure were discussed briefly, and the documents were accepted as a useful guide for NCAs.

Additionally, the meeting discussed the request from the OECS Member States for consideration to be given to the Commission functioning as their NCA in competition matters. The meeting agreed that this request needed further input from the Attorneys General/ Solicitors General of Member States, and that a sub-group of the Reconvened Task Force be formed comprising the OECS Secretariat, the Commission, the CARICOM Secretariat's Legal Department, and representatives from Belize and Suriname to review the legal and procedural issues relating to this proposal.

Other areas identified for further work include:

- (a) a review of the entities eligible to submit complaints to the Commission;
- (b) a review of the administrative process for administering these complaints;
- (c) the inclusion of new definitions, and amendments to definitions already inserted in the RTC; and
- (d) an examination of the exemptions from competition law viz. development of methodologies for determining the criteria for permission to allow exemptions at the national and regional level.

The next meeting of the Task Force is likely to be held in June 2015.

**(B) CARIFORUM SECRETARIAT EPA IMPLEMENTATION UNIT 10TH
EDF PROJECT**

**MEMBER OF THE PROJECT REVIEW COMMITTEE (PRC) FOR THE CAPACITY
BUILDING PROJECT TO SUPPORT EFFECTIVE IMPLEMENTATION OF THE
CARIFORUM-EU ECONOMIC PARTNERSHIP AGREEMENT**

The Commission has been nominated to be part of the Project Review Committee (PRC) for the Capacity Building Project to Support Effective Implementation of the CARIFORUM-EU Economic Partnership Agreement (EPA). The Project is financed from the 10th European Development Fund (EDF) Caribbean Regional Indicative Programme (CRIP) and is valued at €3,099,915.

The Project will provide support to CARIFORUM States to implement commitments undertaken with respect to the CARIFORUM-EU EPA, and will assist in building capacity in all Member States. The areas identified for capacity building at the basic, intermediate and tertiary levels are Competition, Public Procurement, Customs and Trade Facilitation. The project's overall objective is to support the beneficial integration of the CARIFORUM States into the world economy.

As part of the PRC, the Commission met with a representative for the Lead Contractor of the Project, Equinoccio Compañía de Comercio Exterior, S.L., in order to gain a better understanding of the modalities for delivering the expected outcomes. The Commission was also able to share its experiences in delivering education sessions to diverse stakeholder groups in the CSME.

The Commission also participated in a sensitisation, and needs assessment workshop in March 2015, and expects to be a direct beneficiary of the capacity building programme for competition law and policy. Other key stakeholder groups such as the NCAs, competent authorities in Member States, national judiciary, the Caribbean Court of Justice (CCJ), and business organisations will also benefit.

(C) SURINAME

SURINAME CHAMBER OF COMMERCE- PROMOTION OF ENTREPRENEURSHIP

Given the fact that Suriname is in the process of enacting its national competition law, the Commission welcomed the opportunity to promote its work, by participating in an information session organized by the Suriname Chamber of Commerce for embassies and international organisations in Suriname, in February 2015. The Commission's presentation highlighted its mandate, functions and work, as well as the importance of competition law and policy to Suriname.

3. ***ARTICLE 3 173 (2) (C) "promote the establishment of institutions and the development and implementation of harmonised competition laws and practices by the Member States to achieve uniformity in the administration of applicable rules"***

(A) BELIZE

BELIZE COMPETITION PROJECT

The Commission convened a meeting with the Ministry of Foreign Trade and the Belize Competition Project (BCP) via video conference. The meeting discussed the status of the project being funded by the 10th EDF to establish a national legislative and institutional framework for competition in Belize.

The Commission was updated on the challenges currently being faced by the Government of Belize. The Commission in turn provided an overview of the work being executed to facilitate Member States' implementation of their national requirements under Chapter VIII of the RTC.

The parties have agreed to meet on a regular basis with a view to ensuring more effective information sharing and continued support to the efforts of the Government of Belize, towards the establishment of its national competition commission.

SECTION B: CONSUMER WELFARE AND PROTECTION OF CONSUMER INTERESTS

4. *Article 186 – “provide support in the promotion of consumer welfare and protection of consumer interests”.*

(A) GUYANA

TECHNICAL ASSISTANCE ON COMPLETING DRAFT RULES OF PROCEDURE FOR CONSUMER PROTECTION TO THE GUYANA COMPETITION AND CONSUMER AFFAIRS COMMISSION (CCAC)

The Commission provided technical assistance to the Guyana CCAC from February 19-20, 2015, with respect to its Rules of Procedure for Consumer Protection.

The two-day session involved meetings with the Office of the Attorney General and the Guyana CCAC. The meeting with the Office of the Attorney General dealt with the basic premises and objectives of the legislation and addressed a number of concerns raised by the Attorney General. The meeting with the CCAC, on the other hand, was devoted to providing further support/advice on a number of technical and administrative matters currently being addressed by the CCAC as a young competition agency.

(B) ALL MEMBER STATES

STRENGTHENING THE RELATIONSHIP BETWEEN NATIONAL AND REGIONAL CONSUMER ORGANISATIONS IN THE CSME- FIRST REGULAR MEETING OF NATIONAL CONSUMER OFFICIALS IN CARICOM

The First Regular Meeting of CARICOM Consumer Officials (“Regular Meetings”) was held in March 2015. The objective of the first session was to adopt a framework for conducting subsequent meetings. This included formalising the mission, long-term goals, and work that will be achieved through the regular sessions between the consumer officials. The Commission was confirmed as Chair of the Regular Meetings. It was also agreed that the CARICOM Secretariat CSME Unit would have responsibility for providing the technology platform necessary to facilitate the meetings. A Strategic Plan for 2015-2017 that was developed by the Commission to guide the work of the Regular Meetings was accepted and approved by the CARICOM Consumer Officials subject to refinements based on the discussions of the meeting.

Additionally, in response to a request made by national consumer officials, the Commission informed the session that a portal has been created on its website to enable National Consumer Protection Agencies to share sensitive information in a confidential manner.

REVIEW OF THE DRAFT RESOLUTION ON THE UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION

The Commission provided feedback on the draft resolution developed by the Competition and Consumer Protection Division of the United Nations Conference on Trade and Development (UNCTAD), as a continuation of the process which begun in 2014. The areas under consideration for inclusion and modification are similar to those now being incorporated in the Draft Model Consumer Protection Bill for CARICOM.

SECTION C: REGIONAL/INTERNATIONAL COOPERATION

(A) DRAFT MEMORANDUM OF UNDERSTANDING WITH DOMINICAN REPUBLIC PROCOMPETENCIA

Bearing in mind that the Dominican Republic is a signatory to the CARIFORUM-EU EPA, the Commission drafted an MoU outlining possible areas of cooperation between the Commission and Procompetencia, the national competition authority for the Dominican Republic. The MoU was drafted to specifically account for differences in the competition laws and policy of CARICOM and the Dominican Republic, and outlines the grounds upon which the two parties can build a relationship based upon mutual respect for their national laws.

(B) EAST AFRICAN COMMUNITY (EAC) SECRETARIAT

In February 2015, the Commission convened a meeting with the Competition Department of the EAC Secretariat via video conference. This historic meeting was held at the request of the EAC Community Secretariat. The purpose of the meeting was to gain insight into lessons learnt by the Commission during its first five years of operations, and its institutional processes with regard to guidelines, procedures and policies used to support implementation of Community Competition Policy.

Following the meeting, the Commission furnished the EAC Secretariat with its Model Rules of Procedure, Internal Guidance to Staff on Administrative Procedures for Investigations, and a copy of the 2010 study prepared by the consultants on a merger control policy for CARICOM. The EAC Secretariat has stated its intention to prioritize formalization and further cooperation with the Commission, as it seeks to operationalize the EAC Competition Authority. The EAC Secretariat in turn shared with the Commission a copy of its competition law and relevant regulations.

SECTION D: SHORT ARTICLES

The Price of Finished Petroleum Products Rises faster than it Falls

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January 2015

When it comes to Jamaica's energy options, the narrative is changing! In December 2014, Nestle Jamaica Limited announced that it would cease local production in January 2015, due to unfavourable energy costs; reducing the price of energy has been an unwavering demand of both residential and commercial consumers alike. There is a noticeable shift, however, in the nature of the discussion surrounding the way out of Jamaica's energy crisis as short-term policy proposals have now been introduced into the hitherto bag of long-term prescriptions.

Long-term Prescription

The price of crude oil on the world market is largely under the influence of a powerful group of sovereign oil-producing nations formally known as the Organisation of Petroleum Exporting Countries (OPEC). Given the position held by OPEC, it was reasonable for the public to presume that the price of imported petroleum in Jamaica is ostensibly outside of the influence of domestic suppliers since domestic demand for petroleum products is satisfied entirely through importation.

Accordingly, previous prescriptions aimed at alleviating the high cost of energy in Jamaica were confined to long-term proposals such as calls for the government to diversify its energy base to reducing its dependency on fossil-based fuels thereby avoid the relatively high price of finished petroleum products. Other proposals called for a restructuring of the electricity sector to ensure that our energy needs are satisfied more efficiently from fossil-based fuels.

Game Changing Trends in the Global Price of Oil

Recent trends in the price of crude oil have ‘fueled’, for want of a better word, a change in the tone of this important conversation. The presumption that the price of finished petroleum products is outside the control of domestic suppliers appears to be no longer tenable among key stakeholders in the business community--the narrative has changed. Pointing to alleged “discrepancies” between movements in the ex-refinery price of finished petroleum products from Petrojam and the price of crude oil on the world market, the Private Sector Organisation of Jamaica (PSOJ) has implicated Petrojam’s pricing strategy as a significant contributor to the high price of finished petroleum products in Jamaica. In particular, the PSOJ argues that the percentage reduction in the ex-refinery price during the latter half of 2014 was not commensurate with the percentage reduction in the price of crude oil on the world market over the same period. In December 2014, the PSOJ called for a more transparent pricing mechanism—one which allow for a greater pass through of cost reductions when the global price of oil declines. In what follows, we argue that greater competition offers the best environment to encourage such transparent prices.

Competition as a Short Term Solution

Using the jargon of competition law, the PSOJ is arguing that in the absence of proper competitive constraints, Petrojam has been exercising significant market power in the upstream (wholesale) market to the detriment of its customers in the downstream (retail) market. While not commenting on the main conclusion stated by PSOJ, the main purpose of this note is to document the influence of competitive constraints on the transmission of

cost movements in the ex-refinery price on the retail price. In particular, we compare movement in the ex-refinery price on the movement of pump prices in three areas in Kingston: Norman Manley International Airport (NMIA), Heroes Circle and Liguanea. In the Heroes Circle area, we track the prices of four dealers operating in close proximity with each other. At the Liguanea location, we track the price of six dealers operating close to each other. At the NMIA, we track the price of the sole dealer location, with its nearest rival located approximately 8 kilometers away at the Harbour View Round About. These areas were selected for comparison due to the difference in localized competitive dynamics observed to be operating therein. All other things constant, greater competitive constraints should be reflected by lower average prices and smaller price differentials among competing dealers. The competitive dynamics are reflected in Table 1 below.

Table 1 Prices during Jan-Oct 2014 for E10-87 petroleum

	Heroes Circle	Liguanea	Airport
Number of dealer locations	4	6	1
Average Price (\$/litre)	127.06	135.66	133.55
Average Price Differential (\$/litre)	0.64	1.35	---

Data Source: Consumer Affairs Commission

Comparison of Pump Prices

Using monthly data on pump price for 87 Octane fuel gathered January-October 2014 by the Consumer Affairs Commission, we observe at least three trends which are consistent with the common perception that dealers in the Heroes Circle region face greater competitive constraints than dealers in the other areas.

Firstly, we observe that the average price in the Heroes Circle area is consistently below the average price within the other two areas. In particular, the fuel in the Heroes Circle region was, on average, \$6.49 per litre more affordable than the fuel sold at the Airport, and \$8.60 per litre more affordable than the fuel sold in the Liguanea area. Secondly we observe that the fuel sold at dealers located in the Heroes Circle Area was more affordable than identically branded locations in the other two areas. Specifically, the Petcom-branded location at Heroes Circle was, on average, \$6.60 per litre more affordable than the fuel sold at the Petcom-branded location at the Airport. Similarly, the Total-branded location at the Heroes Circle was, on average, \$8.22 per litre more affordable than the fuel sold at the Total-branded location in the Liguanea area. Finally, the difference

between the most affordable and the least affordable dealers ('price differential') was, on average, 64 cents per litre in the Heroes Circle while it was as much at \$1.35 per litre in the Liguanea area.

Pace of Gasoline Price Pass-Through

The central focus of the recent discussions is the pace at which changes in the global oil price is reflected domestically at the point of consumption by motorists, electricity producers, manufacturers etc. The data show that there was a general upward trend in the ex-refinery price of 87 Octane during the period January-June 2014. During this period, the ex-refinery price increased by \$12.08 per litre. It is also observed that during this period, dealers in the Heroes Circle area increased the pump price within seven days ('immediately') by \$0.80 per litre, on average, for every dollar increase in the ex-refinery price. By way of comparison, the dealers located in the Liguanea area and Airport areas increased pump price immediately by \$1.04 cents per litre and \$0.82 per litre respectively, for every dollar increase in the ex-refinery price.

The data also confirm that prices tend to increase at a faster pace than they tend to fall. In particular, during July-October 2014, the ex-refinery price of 87 Octane fuel decreased by \$12.99 per litre. During this period, dealers located in the Heroes Circle region reduced pump prices by \$0.70 per litre for every dollar reduction in the ex-refinery price, whilst dealers in the Liguanea and Airport Areas reduced pump prices by \$0.71 per litre and \$0.68 per litre respectively. These results are summarized in the table below.

Table 2 Showing that Competition offers "More transparent" retail pricing.

Ex-Refinery Price...	Heroes Circle	Liguanea	Airport
...increased by \$1.00	Pump price increased by \$0.80	Pump price increased by \$1.04	Pump price increased by \$0.82
...reduced by \$1.00	Pump price reduced by \$0.70	Pump price reduced by \$0.71	Pump price reduced by \$0.68

Conclusion

This study highlights four important points. Firstly, it is more appropriate to use dollar-valued, rather than percentage, changes to measure the extent to which reduction in global oil prices are passed through to domestic consumers. Secondly, only a fraction of movements in ex-refinery price is reflected immediately in the pump price. Thirdly, dealers

pass through increases in the ex-refinery price at a faster pace than they pass through reductions in the ex-refinery price. Finally, customers of dealers facing more restrictive competitive constraints secure more benefits from movements in the ex-refinery price, relative customers of dealers facing less restrictive competitive constraints; this, as the disparity in the pace at which price increases and reductions are reflected in the pump price is less pronounced in the more competitive area.

Based on the results of this study, the PSOJ's call for "more transparent" can be answered by promoting greater levels of competition at wholesale and retail segments of the distributive trade.