

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

OCTOBER – DECEMBER 2015



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FOREWORD

This report highlights the work of the CARICOM Competition Commission (Commission) for the fourth 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.

In December 2015, the Commission completed the consultation process required under Article 176.4 of the RTC to determine jurisdiction, with the Member States of the Organisation of Eastern Caribbean States (OECS) impacted by the Cable and Wireless (CWC) Agreement to Acquire Columbus. A report has been prepared and submitted to the Chairman of the Commission, and it is expected that a determination will be made in the first quarter of 2016 as to whether the Commission will launch a full investigation.

In the area of competition law and policy, the Commission continued to work with the CARICOM Secretariat CSME Unit regarding the 10th EDF Project for the Consultancy to Strengthen the CSME Regulatory and Market Regimes, specifically towards the completion of Merger Review Policy; the CARICOM Secretariat regarding support for strategies related to the CARICOM Single Market and Economy (CSME); 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 preparation for the capacity building sensitisation programme in competition law to be held in the region in 2016; and discussions were held with the representatives of the CSME Unit and the OECS Secretariat to explore the options available for OECS Member States to meet their national obligations under Chapter VIII of the RTC.

In the area of consumer protection, the Commission launched an online survey on beer consumption with the assistance of the Organization for Economic Cooperation and Development (OECD) and the national competition authorities of Barbados and Jamaica. Additionally, in the final quarter of 2015, two projects which relate to the beverage sector generally were developed, and will be executed in the first quarter of 2016.

The Commission takes this opportunity to encourage 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.

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 the final quarter of 2015, the Commission completed the consultation process required under Article 176.4 of the RTC to determine jurisdiction, with the Member States of the Organisation of Eastern Caribbean States (OECS) impacted by the Cable and Wireless (CWC) Agreement to Acquire Columbus.

Having received no objections from the Member States regarding the investigation by the Commission into the CWC/Columbus agreement, a report has been submitted by the staff of the Commission to the Chairman for consideration and a determination on whether:

- (a) there is sufficient information to warrant a competition investigation under Article 175.6 of the RTC; **or**
- (b) no further action should be taken by the Commission regarding the CWC agreement to acquire Columbus.

It is expected that the Commission will make a decision on the merits of the matter known to the general public in the first quarter of 2016.

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 EIGHT OF THE REVISED TREATY OF CHAGUARAMAS

The staff of the Commission were recipients of a 5-day training programme delivered by consultants BKP Development in the areas of Consumer Protection, Competition Law and Policy, and the CARICOM Rapid Exchange System for Dangerous non-food Consumer Goods (CARREX).

The programme content emphasized the procedural and practical aspects of enforcement of Community Competition Law and Policy in the CSME, and also included a review of the process for competition determinations by competition authorities in other jurisdictions and the applicability to CARICOM.

MEETING OF THE RE-CONVENED TASKFORCE ON CHAPTER EIGHT OF THE RTC

The Commission participated in a meeting of the Taskforce which was convened to continue work towards completing the CSME Merger Review Policy. The completed Merger Review Policy will guide the development of the Merger Review provisions expected to be incorporated into Chapter VIII of the RTC. These provisions will be considered further through the mechanism of the Inter-Governmental Taskforce on the RTC, before the final document is submitted to the Council on Trade and Economic Development (COTED) for consideration and approval.

(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

EPA Capacity Building Project Review Committee

As a member of the PRC, the Commission reviewed manuals which will be used for the regional training in the area of competition law.

The Commission also participated in the first meeting of the PRC which was held on 10 November, 2015 in Guyana. The meeting reviewed the Terms of Reference which outlines the functions of the Committee, as well as the comments on the draft training manuals on competition law, public procurement and trade facilitation.

EPA Capacity Building Level 1 Sensitisation-Competition Law

Under the EPA Capacity Building Project, the staff of the Commission will conduct Level 1 Sensitisation workshops in the area of competition law to various stakeholders within the CSME Member States during 2016. In this regard, the staff of the Commission prepared and submitted presentations of the training sessions to Equinoccio, the consulting firm contracted for the Project.

(C) *ALL MEMBER STATES*

MARKET RESEARCH INTO THE BEVERAGE SECTOR IN THE CSME

The Commission is undertaking a number of research activities into the beverage sector in the CSME. One of these research projects will focus more specifically on consumer preference for beer.

The particulars of current and future research activities are outlined below.

- **EXAMINATION OF THE DETERMINANTS OF BEER CONSUMPTION AND CONSUMER REACTION TO CHANGES IN BEER PRICES IN THE CSME**

In collaboration with Professor Frederic Jenny of the OECD, and senior officers of the national competition authorities in Barbados and Jamaica, the Commission designed an online questionnaire for a regional survey on beer consumption. The survey is aimed at examining the determinants of beer consumption and consumer reaction to changes in beer prices in the CSME. The survey was launched on 23 December, 2015 and will run until 29 February 2016.

- **APPLICATION OF PRICE TESTS TO DELINEATE THE RELEVANT PRODUCT MARKET FOR BEER IN THE CSME**

Additionally, the Commission designed two projects for execution in 2016 viz. an application of price tests in order to delineate the relevant product market for beer using Barbados as a case study; and a survey aimed at obtaining the views of beverage companies in the region on overlapping markets and products which are close substitutes.

With regard to the applications of price tests, the Commission notes that defining the relevant market is an important step in competition law enforcement. The most conventional method adopted by competition authorities in the exercise of market definition is the Hypothetical Monopolist Test (HMT). In some of the more mature competition jurisdictions heavy emphasis is placed on developing sophisticated economic models to assist with this exercise. The aim of this project is to determine whether the use of price tests will lead to the same conclusions on the relevant market for beer found in the decisional practices of the competition enforcement agencies in the EU and the US, which would have applied the HMT. If the results are consistent, it would indicate that in some cases where information required to develop an economic model is not available, price tests can be used in the region to build a framework within which competition rules can be applied.

- SURVEY OF THE VIEWS OF BEVERAGE COMPANIES IN THE CSME

The second project is a survey aimed at obtaining the views of beverage companies in the region on overlapping markets and products which are close substitutes. It is expected that the results of this survey will be useful for future competition law enforcement purposes, especially as it relates to defining the relevant markets in the beverages sector. The survey will also focus on the distribution practices of the beverage companies with a view to determining the possible existence of anticompetitive conduct in the region. In that regard, a draft questionnaire was developed during the fourth quarter of 2015, and will be administered to the beverage companies in the region in the first quarter of 2016.

**IMPLEMENTATION OF THE CARIBBEAN COMMUNITY STRATEGIC PLAN 2015-2019
– OPERATIONAL PLAN 2015-2019 “SETTING THE FOUNDATION FOR SUCCESS”**

The Commission submitted its scorecard on implementation of the activities in its 2015 work programme to the Strategic Management Unit of the CARICOM Secretariat. The Commission also incorporated its 2016 approved work programme into the 2016-2017 Operational Plan in direct support of strategies ECN 1 and ECN 4 viz. “Accelerate Implementation and use of the CARICOM Single Market and Economy” and “Build Competitiveness and Unleash Drivers to Transition to Growth.”

In 2016, the Commission will continue to participate as a member of the Economic Resilience and Technological Resilience Virtual Clusters.

**MEETING TO DISCUSS THE OPTIONS FOR THE OECS MEMBER STATES TO MEET
THEIR OBLIGATIONS UNDER CHAPTER EIGHT OF THE RTC FOR THE
ESTABLISHMENT OF A NATIONAL COMPETITION AUTHORITY**

In November 2015, the Commission was participated in a meeting convened by the CARICOM Secretariat and the OECS Secretariat, to discuss the options for the OECS Member States to meet their national obligations under Chapter VIII of the RTC.

This process will continue in 2016, with administrative, legal and institutional issues still to be resolved that would potentially allow the Commission to operate as the national competition authority for the OECS Member States.

3. *Article 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) ***SUPPORT FOR THE IMPLEMENTATION OF CHAPTER EIGHT OF THE RTC***

DISCUSSION PAPER ON ADMINISTRATION AND ENFORCEMENT OF COMMUNITY COMPETITION POLICY – ARTICLE 173.2 (A)

In fulfilment of its mandate to keep under review the implementation and enforcement of Chapter VIII of the RTC pursuant to Article 173.2 (a), the Commission identified a number of pertinent issues which needed to be brought to the attention of the COTED for consideration and action.

These issues which were highlighted during the preliminary investigation by the Commission into the acquisition of Columbus by CWC pursuant to Article 176 of the RTC, fell into two broad categories:

- a) delineation of jurisdiction between the Commission and a Member State on potential cross-border anti-competitive business conduct and
- b) the efficacy of the administrative arrangements for the enforcement of Chapter VIII of the RTC viz.
 - i) timeliness of response from competent authorities in the Member States to the Commission
 - ii) transfer/exchange of information between competent authorities and the Commission and
 - iii) notification mechanism for competition complaints with potential cross-border effects

The intervention of the COTED with respect to policy and rule making was sought pursuant to Article 182 which states:

“Subject to this Treaty, COTED shall develop and establish appropriate policies and rules of competition within the Community including special rules for particular sectors”.

The paper covered the following areas:

- Overview of Article 176 RTC.
- Background on the consultation process.

- Review of best practice and legislative frameworks in the European Union (EU).
- Principles used to guide the consultation process with Member States in the CWC/Columbus acquisition.

The COTED approved the recommendations proposed by the Commission, except for one Member State which required additional time to make a determination. It is expected that feedback will be received by the end of February 2016.

COMMISSION GUIDELINES FOR SETTING FINES FOR ANTI-COMPETITIVE BUSINESS CONDUCT SUBMITTED TO FORTY-FIRST MEETING OF THE COTED, NOVEMBER 2015

Article 174.4(d) of the RTC gives the Commission the power to impose fines on any undertaking that engages in anti-competitive behaviour as defined in Article 177 of the RTC. Accordingly, the Commission submitted its policy paper on Guidelines for Setting Fines for Anti-competitive Business Conduct to the Forty-First Meeting of the COTED in November 2015 for noting.

These Fining Guidelines describe the approach of the Commission in calculating fines for anti-competitive business conduct, and may be revised from time to time as needed. In applying these Fining Guidelines, the facts and circumstances of each case will be considered.

It should be noted that fines can be levied against a business or employees of a business. Therefore, businesses with concerns about how their commercial activities may be affected by application of Article 174.4 (d) of the RTC are advised to seek legal advice.

The Fining Guidelines are available on the Commission’s website, and can be downloaded by clicking on the following link:

http://www.caricomcompetitioncommission.com/images/pdf/guide_setting_fines.pdf

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) **CONSUMER RESEARCH WORKING GROUP**

SURVEY INSTRUMENT DESIGNED TO ASSIST IN IDENTIFYING THE MAIN TYPES OF CONSUMER COMPLAINTS DATA COLLECTED BY NATIONAL CONSUMER PROTECTION ORGANISATIONS AND CONSUMER NGOS

As Chair of the CARICOM Consumer Research Working Group (RWG), the Commission completed the report on the stocktaking exercise which was conducted with national consumer organisations in CARICOM on consumer complaints with respect to data collection, storage and usage.

The main purpose of the stocktaking exercise was to utilize the information gathered to guide the development a regional consumer complaints database, as well as to develop or strengthen the national consumer complaints databases in the CARICOM Member States.

In October 2015, the RWG turned its attention to consumer complaints data collection, storage and usage by Consumer NGOs. When all the information from the Consumer NGOs is collected and analysed, the RWG will prepare an updated report that reflects the circumstances of both the national consumer organisations and the Consumer NGOs in the region. The updated report will be circulated to all parties for their comments, and the Commission will seek agreement from both the national consumer organisations and the Consumer NGOs to publish the results on its website for public viewing.

SECTION C: SHORT ARTICLES

A. DEVELOPING A COMPETITION CULTURE IN CARICOM

The Role of the CARICOM Competition Commission

(English version)

Economists and legal scholars around the world have long recognised the benefits of competition to consumers and to the economy in general. However, also acknowledged is that in order for effective competition to take place, an environment that supports rivalry among firms must first be created.

Many perceive competition culture to be closely related to the age of the market economy and subsequently the experience of the competition authority. The CARICOM Competition Commission (CCC) on the other hand takes a wider view of what competition culture entails. For this agency, competition culture relates to the manner in which firms, consumers and the public sector act in given market situations. Based on this broader idea of competition culture, the CCC sees competition enforcement as only part of a larger set of components that collectively determine individual or group behaviour in product markets. The full set of components comprising competition culture is illustrated in the diagram below.



Since its establishment in 2008, the CCC has sought to take a leading role in the development of CARICOM's competition culture by dealing with each of the above mentioned components.

In the area of competition law, the CCC continued to encourage Member States to enact the necessary legislation and to establish national competition authorities in accordance with Article 170 of the Revised Treaty of Chaguaramas. To date, the agency has provided technical support to the countries of Suriname and Belize. For Suriname, support came in the form of assisting the country in drafting its national competition legislation. This legislation is expected to be presented to the country's parliament in 2014. Regarding Belize, technical assistance was provided in finalising the documents needed to access funding under the 10th European Development Fund so that the country could soon establish its national competition authority.

Given that competition culture also involves developing the society's awareness to the advantages of implementing competition rules, the CCC has made this activity an annual component in its work plan. Over the years, the CCC has carried out educational activities, utilised printed and visual media channels, and published pamphlets in relation to the potential benefits of competition law and policy in the region. In the upcoming months the CCC will add to its information sharing platform by establishing its own website. In this way, general information and regional developments on competition policy and consumer protection will be readily available to the public.

Moreover, the CCC intends to coordinate with the competition agencies in CARICOM to establish a regional advocacy programme. This advocacy programme would seek to develop work products that illustrate the benefits of competitive product markets to specific target groups such as the media, consumers, businesses and government agencies. Also planned will be the drafting of a document highlighting the experiences of competition agencies in the region in the area advocacy.

The CCC also notes that preserving competitive markets in CARICOM is also largely dependent on the availability of skilled economists and legal professionals who are familiar with the intricacies of competition law and policy. In this regard, the agency has committed itself to ensuring that modules on competition law and the economics of competition are included in the curricula of the universities located in the region. In the interim, however, over the past 5 years the CCC has held several workshops for the judiciary, government officials, and businesses aimed at enhancing the knowledge on competition law of these respective groups. The workshops conducted for the judiciary in 2010 were especially recognised by the ACP/EU Trade.Com facility as a “best practice” and as a model for other African, Caribbean and Pacific (ACP) regions to follow.

This year the CCC intends to resume its work in capacity building. Several workshops are already planned for the promotion of the CCC’s Rules of Procedure in the countries of Jamaica, Belize and Trinidad and Tobago. At these workshops other presentations will be made to sensitize various interest groups about competition law and Chapter VIII of the Revised Treaty of Chaguaramas.

For any more information about the work of the CCC please feel free to direct your queries to admin@ccc.sr or visit our website www.caricomcompetitioncommission.com for more information.

B. HET ONTWIKKELEN VAN EEN MEDEDINGINGSCULTUUR IN CARICOM

De Rol van de CARICOM-Mededingingscommissie (CCC)

(Dutch Version)

Economisten en rechtsgeleerden over de hele wereld erkennen reeds lang dat mededinging (concurrentie) voordelen heeft voor de consument en voor de economie in het algemeen. Maar, ook wordt erkend dat voor een effectieve mededinging, allereerst een milieu moet worden gecreëerd dat rivaliteit tussen bedrijven ondersteunt.

Velen hebben het idee dat er een nauwe samenhang bestaat tussen mededingingscultuur en de structuur van de lokale markteconomie en de ervaring en leeftijd van de nationale mededingingsautoriteit. De CARICOM -Mededingingscommissie (CARICOM Competition Commission-CCC) neemt daarentegen een ruimer standpunt in over wat de mededingingscultuur inhoudt. Voor dit instituut, houdt een mededingingscultuur verband met de wijze waarop bedrijven, consumenten en de publieke sector handelen in marktsituaties. Op basis van deze ruimere opvatting van de mededingingscultuur ziet de CCC een mededingingshandhaving als slechts een onderdeel van een grotere verzameling componenten die collectief het gedrag van het individu of de groep op de productenmarkt bepalen. De gehele verzameling van componenten die de mededingingscultuur vormen, wordt geïllustreerd door onderstaande afbeelding.



Sedert haar oprichting in 2008, heeft de CCC ernaar gestreefd een hoofdrol te vervullen in de ontwikkeling van het mededingingscultuur van de CARICOM door zich bezig te houden met elk van de bovengenoemde componenten.

Op het gebied van het mededingingsrecht, blijft de CCC de lidstaten aanmoedigen de nodige wetgeving aan te nemen en de nationale mededingingsautoriteiten op te zetten in overeenstemming met artikel 170 van het Herzene Verdrag van Chaguaramas. Tot op heden heeft dit instituut technische ondersteuning verleend aan Suriname en Belize. In het geval van Suriname nam de ondersteuning de vorm aan van assistentie aan het land bij het formuleren van zijn nationale mededingingswet. Deze wet is intussen aangeboden aan de Staatsraad in Suriname. Aan Belize is technische assistentie verstrekt bij het afronden van de documenten die nodig waren om toegang te krijgen tot financiering uit het 10^{de} Europees Ontwikkelingsfonds zodat het land zijn nationale mededingingsautoriteit vlot zou kunnen oprichten.

In overweging nemende dat de mededingingscultuur tevens inhoudt dat de publieke bewustzijn van de voordelen van de tenuitvoerlegging van mededingingsregels moet worden ontwikkeld, heeft de CCC deze activiteit tot een jaarlijks onderdeel van haar werkprogramma gemaakt. Door de jaren heen heeft de CCC, gebruik makend van gedrukte en visuele mediakanalen en gepubliceerde dagbladen, educatieve activiteiten ontplooid aangaande de potentiële voordelen van het mededingingsrecht en beleid in de regio. Door de opzet van een eigen website, is de algemene informatie alsook informatie over regionale ontwikkelingen op het gebied van het mededingingsbeleid en consumentenbescherming gemakkelijk toegankelijk voor het publiek

De CCC zal verder de mededingingsinstanties in CARICOM betrekken bij het instellen van een regionaal programma inzake bewustwording. Dit programma is bedoeld voor het ontwikkelen van informatie materiaal voor specifieke doelgroepen zoals de media, consumenten, bedrijven en overheidsinstanties. Dit programma zal de voordelen aangeven van concurrerende markten. Ook opgenomen in de planning is het opstellen van een

document voor het belichten van de ervaringen van mededingingsinstanties in de regio op het vlak van bewustwording.

De CCC merkt verder op dat de instandhouding van concurrerende markten in CARICOM grotendeels afhangt van de beschikbaarheid van ervaren economen en juristen die vertrouwd zijn met de fijne kneepjes van het mededingingsrecht en beleid. In dit verband heeft het instituut zich ertoe verbonden te garanderen dat de modules inzake het mededingingsrecht en de economische aspecten van mededinging worden opgenomen in de curriculum van de universiteiten in de regio. Ondertussen, heeft de CCC de afgelopen 5 jaar diversen workshops gehouden voor de rechterlijke macht, overheidsfunctionarissen en het bedrijfsleven die erop gericht waren de kennis van deze groepen omtrent het mededingingsrecht te vergroten. De workshops voor de rechterlijke macht in 2010 werden in het bijzonder erkend door de ACP/EU Trade.Com faciliteit, als “best practice” en als voorbeeld dat navolging verdient in andere regio’s in Africa, het Caraïbisch gebied en de Stille Oceaan (ACP).

Dit jaar is de CCC voornemens haar werk op het stuk van capaciteitsopbouw te hervatten. Diverse workshops zijn gepland voor het promoten in de lidstaten in het mededingingsrecht en het CCC Orderelement. Op deze workshops zullen ook andere trainingen worden verzorgd om diverse belangengroepen bekend te maken in het mededingingsrecht en Hoofdstuk VIII van het Herziene Verdrag van Chaguaramas.

Voor meer informatie over de activiteiten van de CCC kunt u uw vragen opsturen naar admin@ccc.sr of onze website www.caricomcompetitioncommission.com bezoeken.

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