

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*

*APRIL – JUNE 2015*



**TABLE OF CONTENTS**

**FOREWORD..... 3**

**SECTION A: COMPETITION LAW AND POLICY..... 4**

1. *Article 173(1) (a) – “apply the rules of competition in respect of anti-competitive cross-border business conduct” .....4*

**(A) ALL MEMBER STATES.....4**

2. *Article 173(1) (b) – “promote and protect competition in the Community and co-ordinate the implementation of the Community Competition Policy;” .....4*

**(A) CARICOM SECRETARIAT CSME UNIT 10TH EDF PROJECTS.....4**

**(B) CARIFORUM SECRETARIAT EPA IMPLEMENTATION UNIT 10<sup>TH</sup> EDF PROJECT .....5**

**(C) ALL MEMBER STATES.....5**

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” .....6*

**(A) SUPPORT FOR THE IMPLEMENTATION OF CHAPTER EIGHT OF THE RTC 6**

**SECTION B: CONSUMER WELFARE AND PROTECTION OF CONSUMER INTERESTS 7**

4. *Article 186 – “provide support in the promotion of consumer welfare and protection of consumer interests” .....7*

**(A) CARICOM SECRETARIAT CSME UNIT CONVENES THE FIRST MEETING OF CONSUMER AFFAIRS STAKEHOLDERS IN CARICOM.....7**

**(B) CONSUMER RESEARCH WORKING GROUP .....8**

**SECTION C: SHORT ARTICLES ..... 9**

*A Note on the Caribbean Community (CARICOM) Competition Commission’s Guidelines on Setting Fines for Cross-Border Anti-competitive Business Conduct ..... 9*

*“Putting Consumers First Makes Markets Work” - Is There Adequate Consumer Protection in the CSME? 14*

## FOREWORD

This report highlights the work of the CARICOM Competition Commission (Commission) for the second 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 May 2015, the Commission completed 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. At the time of writing, the Commission is in the process of conducting consultations with the Member States with a view to determining jurisdiction for the conduct of the investigation in accordance with Article 176.4 RTC. Based on the availability of the Member States, the Commission expects to complete these consultations in the second week of August 2015.

During the review period, the Commission continued to assist Member States in both areas of competition law and policy, and consumer welfare and protection. In the area of consumer welfare and protection, the CARICOM Secretariat CSME Unit convened the First Meeting of Consumer Affairs Stakeholders in CARICOM. At that meeting, the Policy Advice Forum was activated, and is tasked with advising COTED about the policy needs of the

Community in relation to consumer protection. Additionally, the Commission is currently administering a questionnaire which will guide the Consumer Research Working Group in developing a regional consumer complaints database.

In the area of competition law and policy, the Commission drafted a paper on the applicability of leniency programmes to small developing countries in CARICOM, which should be of interest to practitioners engaged in the enforcement of competition law and policy in the region. Additionally, the Commission completed a note on its Fining Guidelines Policy, which summarises the main factors that will be taken into consideration in determining the level of fines with respect to anti-competitive business conduct.

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

The Commission wishes to encourage all 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](mailto: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 May 2015, the Commission completed its Preliminary Examination of the CWC Agreement to Acquire Columbus pursuant to Article 176.1 of the Revised Treaty of Chaguaramas, and has concluded that an investigation is required. Consequently, pursuant to Article 176.4 RTC, the Commission is currently in the process of holding consultations with Member States in order to determine jurisdiction for the conduct of the investigation.

Based on the availability of Member States, the Commission expects the consultations to be completed by the second week in August 2015.

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**

During the months of May and June 2015, the Commission provided written comments on the Revised Merger Control Policy document arising from the Meeting of the Reconvened Task Force on Chapter Eight of the Revised Treaty of Chaguaramas (RTC), which was held in Barbados in March 2015.

The Revised Merger Control Policy document reflects the concerns expressed by the different stakeholder groups viz. the private sector, National Competition Authorities (NCA's), and the Commission. Final approval will be given by stakeholders in the third quarter of 2015 before the document is submitted to COTED in November 2015.

**(B) CARIFORUM SECRETARIAT EPA IMPLEMENTATION UNIT 10<sup>TH</sup> 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 Commission continued to liaise with the Lead Contractor, *Equinoccio* Compañía de Comercio Exterior, S.L., regarding the preparation of a draft training manual for delivery of Level 1 training on competition law and policy in CARICOM Member States. The Lead Contractor was represented by Dr. Taimoon Stewart.

The Level 1 training is expected to commence in September 2015.

**(C) ALL MEMBER STATES**

**PARTICIPATION IN EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY (ECTEL) 15<sup>TH</sup> ANNIVERSARY CONFERENCE, 11-12 MAY 2015**

The Commission delivered a presentation on the topic “**Regional Collaboration in Broadband and Open Access and ICT Development**” at ECTEL’s 15<sup>th</sup> Anniversary Conference which was held in Saint Lucia from May 11-12, 2015.

The presentation gave an overview of the existing legislative and institutional frameworks for collaboration in the CSME, and made recommendations to support greater collaboration.

The workshop highlighted the growing awareness of the important role that the Commission plays in the regulatory environment in the development of the CSME.

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

The Commission contributed to the discussions of the Technology and Economic Resilience Clusters, on the timelines for the delivery of outputs by CARICOM and Member State institutions as set out in the Operational Plan 2015-2019.

i. **Technology Cluster**

The Technology Cluster discussed elements of the regional plan geared towards creating a single regional telecommunications space in CARICOM.

ii. **Economic Resilience Cluster**

A number of deliverables in relation to competition law and policy and consumer protection, particularly those under the 10<sup>th</sup> EDF programme, are likely to be completed in 2016.

The Operational Plan 2015-2019 was developed to support the implementation of the CARICOM Strategic Plan 2015-2019. The Commission will continue to participate in the discussions with a view to ensuring that policy initiatives promote competition.

**DEVELOPMENT OF QUESTIONNAIRE TO SUPPORT AND STRENGTHEN COMPETITION ADVOCACY PROGRAMMES IN THE CSME**

The Commission has drafted a questionnaire to assist in the strengthening of its own advocacy programme, as well as the advocacy programmes of the national consumer protection agencies in the CSME. The questionnaire primarily seeks to ascertain the level of understanding of the public sector on the area of competition law and policy. Additionally, the questionnaire seeks to garner information on the interactions between government ministries and private business enterprises, as the former endeavour to formulate national policies for the sectors under their remit.

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*

**NOTE ON FINING GUIDELINES POLICY**

The Commission has finalised a note on its ‘Fining Guidelines Policy’. The note provides a summary of the factors which will be taken into consideration in determining the level of fines to be imposed on firms in breach of cross-border anti-competitive business conduct. Additionally, the note provides some background information used by the Commission in developing the policy.

## **RESEARCH PAPER ON THE APPLICABILITY OF LENIENCY PROGRAMMES TO SMALL DEVELOPING COUNTRIES IN CARICOM**

Leniency programmes are regarded as one of the most important tools used by competition authorities worldwide in the fight against cartels. However, in CARICOM there are no such programmes to support provisions in the existing competition legislations.

Mindful of this, the Commission has prepared a research paper which discusses the applicability of leniency programmes to the small developing countries of CARICOM. The analysis should be of interest to practitioners engaged in the enforcement of competition law and policy.

The findings of the research paper will be used as the basis for development of a draft regional policy on leniency programmes. The draft policy will be submitted to the Commissioners for their feedback and approval. The proposed draft regional leniency policy will then be presented to the COTED in November 2015 for approval.

### **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) CARICOM SECRETARIAT CSME UNIT CONVENES THE FIRST MEETING OF CONSUMER AFFAIRS STAKEHOLDERS IN CARICOM*

#### **ACTIVATION OF THE POLICY ADVICE FORUM ON 28 MAY 2015**

The main purpose of the meeting was to officially activate the Policy Advice Forum, which is tasked with advising COTED on the policy needs of the Community in relation to consumer protection. The meeting was convened pursuant to **Objective 4** of the CARICOM Strategic Plan on Consumer Protection, which was endorsed by the Thirty Fourth Meeting of the Council on Trade and Economic Development (COTED) in May 2014.

**Objective 4** of the Strategic Plan aims: “to strengthen the institutional framework for consumer policy-making in the CARICOM Region.” More specifically, Section **4.5.1.2** of the Strategic Plan mandates:

*“ the Meeting of Consumer Affairs Stakeholders to serve as a policy advice forum of Government Consumer Affairs Officials, supported by representatives of the CCS, the Competition Commission and the Caribbean Consumer Council”*

The Forum can therefore be seen in the context of a policy **Think Tank** on issues that affect consumers generally. Additionally, the Forum is expected to contribute to the attainment of broader national and regional objectives such as improved standards of living for CARICOM nationals and consumers.

Consumer NGOs also participated in the meeting along with representatives from Government consumer protection agencies. It is expected that these agencies will contribute significantly to the discussions regarding practical matters which they are asked to address by consumers.

Other agenda items discussed included:

- i. CARICOM’s Framework on the Consumer Protection Policy and the Five Year Strategic Plan of Action for Consumer Protection and
- ii. Training Needs of Consumer Agencies and NGOs.

***(B) CONSUMER RESEARCH WORKING GROUP***

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

The Commission is currently administering a questionnaire designed to identify the type of consumer complaints data being collected by national consumer protection agencies in CARICOM. Primarily, the stock-taking exercise will assist the Consumer Research Working Group in:

- Designing a template for the collection of consumer complaints data for those Member States which do not currently have a system for collecting data; and
- Guiding work towards the development of a regional consumer complaints database.

## SECTION C: SHORT ARTICLES

### **A Note on the Caribbean Community (CARICOM) Competition Commission's Guidelines on Setting Fines for Cross-Border Anti-competitive Business Conduct**

By  
Rommell Hippolyte  
Research Economist  
CARICOM Competition Commission

#### **Introduction**

Article 174.4(d) of the Revised Treaty of Chaguaramas (RTC) gives the CARICOM Competition Commission (CCC) the power to impose fines on any business enterprise(s) within the CARICOM Single Market and Economy (CSME) that engages in cross-border anticompetitive business conduct. These fines would be to the extent required to remedy or deter such practices.

In November 2014<sup>1</sup>, in order to operationalise Article 174.4(d) of the RTC, the CCC issued its Guideline on Fines (Guideline) for anti-competitive cross-border business conduct in the CSME. The Guideline sets out the analytical framework the CCC will apply to the setting of fines after it has determined that a business enterprise(s) or individual has engaged in anti-competitive cross-border business conduct. In considering how it determines fines, the CCC endeavoured to develop a system or procedure that is not only transparent, predictable<sup>2</sup> and procedurally fair, but also meets international best practices.

The adoption of a systematic procedure for determining fines for competition offenses is a departure from the use of predetermined or fixed fines observed in some of the national competition legislations in the CSME. These predetermined or fixed fines have a significant shortcoming as the same quantum of fine imposed on a small business enterprise could also be imposed on a large one. If these fixed fines are set too high they could be detrimental to small enterprises, while if too low may not be an effective deterrent for large enterprises. The procedure set out in the Guideline, therefore allows the CCC to impose fines based on the size of the infringing business enterprise(s) and the circumstances of each individual case that it investigates.

The purpose of this short article is to provide a summary of the factors the CCC will take into consideration as it determines the level of fines to be imposed on firms for cross-border

---

(2) The Guideline was presented to member states at the 39<sup>th</sup> COTED held 3-7 November, 2014 in Guyana.

(3) It is expected that the Guideline will facilitate self-regulation by business enterprises in the CSME. If business enterprises are able to predict the possible financial implications from engaging in anti-competitive conduct it may discourage such practices.

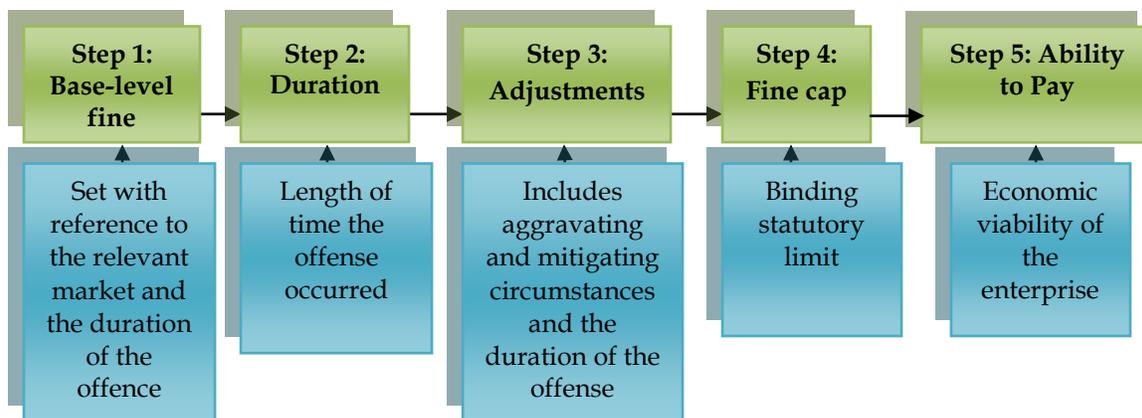
anti-competitive business conduct. Additionally, the article provides some of the background information gathered and used by the CCC in the development of its fining policy.

### CCC’s General Procedure for Determining Fines

A review of the fining regimes instituted in various countries to deter or remedy anti-competitive conduct by business enterprises revealed a common trend. Specifically, many countries have developed, or are in the process of developing, systematic procedures for calculating financial penalties for infringing business enterprises. These procedures, from which a structured formula can be developed, are subsequently published in Guidance documents that are available on the websites of the national competition agencies.

Similar to what exists in many jurisdictions, the CCC’s procedure for determining fines, as highlighted in its Guidelines, follows a systematic process (see Figure 1). This process involves five basic steps which include: the setting of a base-level fine to reflect the overall gravity of the anti-competitive offenses; the duration of the offense; reductions or increases to the fine based on mitigating factors and aggravating factors; a cap or upper limit to the amount of pecuniary penalties that can be imposed on infringing business enterprises; and lastly the ability of the business enterprise to pay the fine. These steps are explained in more detail below.

**Figure 1 – CCC’s Standard Process for Calculating Fines**



#### (a) Base-Levels of Fines

Establishing a base-level fine is the first step normally taken by the CCC in determining the magnitude of a fine it will impose on an infringing business enterprise. Base-level fines are usually calculated as a percentage of the turnover<sup>3</sup> achieved by a business enterprise in the

(4) The CCC uses turnover instead of the profitability of a business enterprise as a basis for determining fines. A firm engaging in exclusionary practices, such as predatory pricing, may not be recording high profits or any at all. In these cases there would be no basis upon which to determine a fine. It should therefore stand that a

market affected (otherwise known as the “relevant turnover”). By using a percentage of the relevant turnover the base-level fine is proportional to the size of the infringing business enterprise. In this regard, the base-level fine for a small enterprise in the CSME would be significantly less than that of a large one.

The percentage of the relevant turnover used to determine the base-level fine frequently varies across jurisdictions. For instance, in the United Kingdom the base-level fine has a limit of up to 10 percent of the relevant turnover. Conversely, in Germany, the Netherlands and in Colombia the base-level fine applied can go up to 30 percent of the relevant turnover depending on the seriousness of the offense investigated.

Similar to the United Kingdom, the limit on the base-level fine set by the CCC may not exceed 10 percent of the relevant turnover. However, the actual percentage used by the CCC to establish the base-level fine will depend on the seriousness of the infringement. As a result of this provision, the CCC has some flexibility at its disposal as it could apply the full 10 percent of the relevant turnover if the offense is deemed to be very serious. Alternatively, the percentage used could be zero where the CCC believes the offense is a minor one and, instead of imposing a fine, it can simply instruct the infringing business enterprise to terminate the conduct.

It is also important to note that in cases where the CCC is unable to determine the relevant turnover of an infringing enterprise(s), sanctions of a nominal form are outlined in the Guideline. These nominal sanctions are varied to provide the CCC with some flexibility as it considers the size of the enterprise and the seriousness of the offence, when determining the base-level fine.

### **(b) Duration of the Offense**

The second element that the CCC will consider when calculating the magnitude of a fine to be imposed is the length of time that an infringing business enterprise(s) had engaged in an anti-competitive practice. In doing so, the base-level fine will be multiplied by the number of years the infringement lasted. Consequently, an infringement that lasts for two years is therefore assumed to be twice as damaging to competitors and consumers as an infringement that lasts for only one.

### **(c) Adjustments**

In assessing the amount of the financial penalty to be imposed on an infringing business enterprise(s), the CCC will consider any aggravating or mitigating factors related to its investigation. Aggravating factors in this situation refer to any relevant fact or circumstance that increases the culpability of a business enterprise involved in committing an anti-competitive conduct. Such aggravating factors would serve to increase the level of fines

---

firm’s profitability, or lack thereof, should not be considered central to the calculation of fines for anti-competitive business conduct.

meted out by the CCC. In contrast, mitigating factors refer to any information or evidence presented to the CCC regarding the infringing business enterprise or the circumstances of the anti-competitive conduct that might result in reduced charges.

The Guideline contains a non-exhaustive list of factors deemed to be aggravating and mitigating circumstances. For example, aggravating actions would include, among others, attempts by a business enterprise to hide the anti-competitive conduct from regulatory authorities, or its refusal to cooperate with the CCC during an investigation. On the other hand, mitigating factors would constitute such issues as the termination of an infringement before or as soon as the CCC commences an investigation or cooperation with the CCC during the enforcement process.

#### **(d) Upper Limits or Caps of Fines**

Many jurisdictions apply maximum fine levels in their Guidance documents or competition legislations to ensure that the boundaries of fining activity are clearly delimited. For example, in the United Kingdom and other European Union jurisdictions the upper limits for fines are capped at 10 percent of the worldwide turnover of the infringing business enterprise. Singapore and Mauritius similarly impose limits of 10 percent of the total turnover of business enterprises that commit an anti-competitive offense.

In CARICOM, maximum fines also exist for competition offenses. In Jamaica and Guyana the maximum fines are fixed in the respective competition laws of the countries, while, in Trinidad and Tobago a fine may not exceed ten percent of the annual turnover of the enterprise concerned. In Barbados, however, the fine imposed for competition offenses is the greater amount between the specified fine in the competition law and 10 percent of the turnover of the infringing business enterprise.

In the Guidance, the magnitude of the fines to be imposed by the CCC may not exceed 10 percent of the net total global revenue of the enterprise in the last completed financial year preceding the determination of the CCC. This provision also applies to participants in an anti-competitive agreement as well as to trade associations that facilitate these agreements.

#### **(e) Ability to Pay**

Not all jurisdictions consider the economic viability of a business enterprise in their decisions on fines. In fact, the ability of a business enterprise to pay a fine that is imposed by a competition enforcement agency, or a Court, is rarely taken into consideration in most national competitions legislations.

Nonetheless, fines to deter anti-competitive business conduct may at times be quite large when compared to annual profits. Consequently, these huge fines may, at times, impact on market structures by forcing business enterprises to exit markets, resulting in fewer competitors which could present competition issues of their own. To avoid altering market

structures unnecessarily, some competition enforcement agencies therefore consider the ability of infringing business enterprises to pay a fine. This may particularly be the case when dealing with infringements by small and medium-sized enterprises.

Similarly, in exceptional cases, the Guideline contains a provision where the institution may, upon request, take into account an enterprise's inability to pay the fine which it imposes. The CCC could therefore grant a reduction in the fine based on objective evidence that its imposition would irretrievably jeopardise the economic viability of the enterprise concerned and cause its assets to lose all their value.

The CCC will also consider the payment of fines on a phased basis over an agreed period of time in consultation with a business enterprise to ensure that the payment of a fine has no adverse effect on its financial viability.

## **Conclusion**

The Guideline developed by the CCC should be viewed as a progressive step in competition law enforcement within the CSME. Notably, the systematic approach employed in determining fines for competition offences is transparent, procedurally fair, predictable and consistent with international best practices. At the same time the procedure retains a certain level of flexibility for the institution in its decision making process. These attributes could make the Guideline a useful model from which CSME member states without a competition framework can develop their fining regimes.

Additionally, the Guideline could be useful for those CSME member states that employ specific or predetermined fines to remedy anti-competitive business conduct. This is since the important short-coming of predetermined fines is well established. The Guideline would therefore allow national competition authorities or Courts<sup>4</sup> in the CSME to establish fines based on the circumstances of each individual case that is investigated.

---

(5) In some member states the fines for competition infringements are determined by the Courts. Amendments in national competition laws would have to be made to allow competition authorities to recommend to the Court the level of fines to be imposed.

## **“Putting Consumers First Make Markets Work” - Is There Adequate Consumer Protection in the CSME?**

By  
Barry Headley  
Senior Economist  
CARICOM Competition Commission

A robust consumer protection regime is important in the CARICOM Single Market and Economy (CSME) to create a more equitable relationship between individual consumers and the business community and to ensure the proper functioning of markets. It provides a useful mechanism to resolve claims of unfair trading practices by consumers against the business community in a cost effective and timely manner. Article 185(c) of the Revised Treaty of Chaguaramas requires that Member States enact harmonised legislation to provide, inter alia: *“for the prohibition of unfair trading practices, particularly such practices relating to misleading or deceptive or fraudulent conduct.”*

It is very important to acknowledge the collective harm that can be done to consumers by unfair trading practices which impact negatively on the proper functioning of markets, and the economies of Member States.

We are all consumers in our daily activities. A consumer is simply *“a person who purchases goods and services for personal use”* for example cellular phones, food and gasoline (goods) and voice calls, internet access, and electricity (services) from the business community.

The CARICOM Draft Model Consumer Protection Bill states that:

“consumer” –

(a) means a person who-

- (i) buys any goods under an agreement or transaction and includes any other user of the goods, when such use is made with the consent of the person who buys the goods; or
- (ii) hires or avails himself of a services under an agreement or transaction and includes any other beneficiary of such services, when such services is availed of with the consent of the hirer;

(b) does not include a person who -

- (i) obtains a good for resale or for any commercial purpose; or

- (ii) hires or avails himself of service under an agreement or transaction for any commercial purpose.

Practical experience has shown there is a lack of legislated redress mechanisms in a majority of CARICOM Member States which has traditionally imposed unnecessary financial losses on consumers. In addition to the Draft Model Consumer Protection Bill 2015 mentioned above, CARICOM has therefore recommended that Member States establish stand alone statutory consumer protection authorities to enforce any enacted national consumer protection law.

### **Consumer Rights and consumer protection**

Regionally, a common understanding of the basic tenets of consumer protection have been agreed and approved by Members States of CARICOM in Chapter Eight of the Revised Treaty of Chaguaramas (RTC). Articles 184-186 of the RTC place national and regional obligations on each Member State and the Caribbean Community to implement and enforce certain basic rights for consumers. The basic rights for consumers contained in the provisions of Article 184-185 are consistent with the United Nations Guidelines for Consumer Protection (UNGCP) agreed by Member States of the United Nations in 1985. The UNGCP were subsequently revised in 1999 to take account of changing technological, social and economic developments.

The eight basic rights for consumers contained in the UNGCP and the RTC have been recognised by the global consumer movement inclusive of Consumers International<sup>5</sup> as:

- **The right to satisfaction of basic needs** - To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
- **The right to safety** - To be protected against products, production processes and services that are hazardous to health or life.
- **The right to be informed** - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
- **The right to choose** - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
- **The right to be heard** - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.
- **The right to redress** - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
- **The right to consumer education** - To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.

---

<sup>5</sup> CI is an independent global campaigning voice for consumers established in 1960 with over 250 Member organisations in 120 countries., <http://www.consumersinternational.org/who-we-are/>

- **The right to a healthy environment** -To live and work in an environment that is non-threatening to the well-being of present and future generations.

Given the economic, social and technological changes of the past two decades, a process is now underway to once again amend the UNGCP.

The rest of the article will examine *“the right to redress”* in more detail.

### **Responsibilities of the CARICOM Competition Commission and the Member States**

At the Community level, the main role of the CARICOM Competition Commission (CCC) is that of a consumer advocate. This means that the CCC is responsible for monitoring and supporting the implementation of the framework for consumer protection in the Member States of CARICOM.

On the other hand, Pursuant to Articles 184 and 185 RTC, Member States of CARICOM are obligated to ensure that mechanisms are in place for consumers to seek and receive redress. The *“right to redress”* requires the creation of appropriate consumer laws as well as the establishment of institutions for enforcement, so that consumers can seek compensation for a loss incurred through the imposition of an unfair business practice. Compensation received can take the form of a refund of money spent, receipt of an item of similar value, or credit towards purchase of another item.

The RTC does not specify the manner or form by which Member States should fulfil their national obligations, thereby providing some flexibility in the local, legal and institutional arrangements used by Member States in meeting their national obligations. This is evident in the differences in the consumer protection regime practiced in Barbados, Guyana and Jamaica.

Given the current difficult economic environment in CARICOM, it is even more important that Member States create an effective consumer protection regime. As stated earlier, the CARICOM Secretariat has assisted in addressing the issue of limited and ineffective consumer protection by developing a Model Consumer Protection Bill. The Model Consumer Protection Bill provides a template for the Member States with regard to the critical areas in which consumers require protection, which serve to provide a minimum level of harmonisation and protection in the laws on consumer protection in Member States of CARICOM.

### **Status of Consumer Protection Regimes in Member States of CARICOM**

Consumers in the majority of Member States of CARICOM continue to have limited or costly avenues to seek appropriate redress for losses incurred as a result of unfair trade practices. An assessment of consumer protection legislations in CARICOM reveals that most laws were enacted during colonial times. They do not address issues such as e-commerce or internet-based sales from retailers such as Caribbean Airlines or Leeward

Island Air Transport (LIAT), and do not provide an effective redress and enforcement process.

**Table 1** provides a status of CARICOM countries without Statutory Consumer Protection Authorities or limited consumer protection legislation.

**Table 1: Status of CARICOM countries without Statutory Consumer Protection Authorities**

Country	National Consumer Organisation	Legal Authority	Independent Regulator
Antigua and Barbuda	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Consumer Protection and Safety Act</li> <li>Sale of Goods Act</li> <li>Unfair Contract Terms Act</li> <li>Distribution and Price</li> <li>Misrepresentation Act</li> <li>Hire Purchase Act</li> </ul>	NO
Belize	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Supplies Control Act (Chapter 293)</li> </ul>	NO
Dominica	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Standards Act</li> <li>Hire Purchase Act</li> <li>Supplies Control Act</li> </ul>	NO
Grenada	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Price Control Act</li> <li>Standards Act</li> <li>Hire Purchase Act</li> </ul>	NO
Montserrat	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Milk Act (1949)</li> <li>Sale of Goods Act</li> <li>Distribution and Price of Goods Act</li> </ul>	NO
St. Lucia	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Distribution Price of Goods Act 12/2006</li> <li>Hire Purchase legislation was amended – Consumer Credit Act (35/2006)</li> <li>Sale of Goods Act</li> <li>Standards Act</li> </ul>	NO
St. Kitts and Nevis	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Price and Distribution of Goods Act</li> <li>Sale of Goods Act</li> <li>Standards Act</li> <li>Weights and Measures Act</li> </ul>	NO
St. Vincent and the Grenadines	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Price and Distribution of Goods Act</li> <li>Sale of Goods Act</li> <li>Standards Act</li> <li>Weights and Measures Act</li> </ul>	NO
Suriname	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Decree E-47 Price Control law</li> </ul>	NO
Trinidad and Tobago	Consumer Affairs Department	<ul style="list-style-type: none"> <li>Consumer Protection and safety Act 1985 amended 1999</li> </ul>	NO

Source: CARICOM Competition Commission and national consumer authorities in CARICOM

## **Benefits of Consumer Protection**

A modernised consumer protection regime provides benefits to consumers by ensuring that redress for unfair trade practices can be accessed at minimal or no cost to consumers. It improves consumer welfare by providing a mechanism for monetary refund or receipt of a similar good or service of similar value. This creates a good consumer experience from their engagement in markets and the economy in general, and ensures value for money.

Consider a scenario where a consumer purchases a pair of shoes that are fit for purpose on Monday. The consumer uses the product as expected, however within a week the product shows significant defects or excessive wear and tear from the limited use. If there is no effective consumer protection regime in place to help that consumer seek redress from the retailer, then the business may not be penalised for selling shoes that were not fit for purpose. Modern consumer protection practice would require the consumer to engage with the retailer to seek satisfactory redress for the loss suffered. If there is no consumer protection law to require this first step, the consumer who purchased the shoes may only have recourse to the courts to claim damages. This is likely to be an impractical and economically unfeasible option for most individual consumers, and may only be pursued when the benefits clearly outweigh the cost. The same is also true for a business that wishes to seek redress from a consumer who sought to gain increased benefits through fraud or misrepresentation of facts.

## **Conclusion - Consumer Protection Impacts Positively on Consumers, Markets and Economic Development**

Modern consumer protection enforcement should not be viewed only in the context of individual consumer redress. It is also about ensuring that avenues for redress exist for businesses; that it is easily accessible; and provides the required deterrent effect. Consumers and businesses suffer in silence if there is no viable alternative for them to access efficient and cost effective redress. An effective consumer protection regime promotes consumer confidence, innovation and competition among businesses, improves the efficiency of markets and encourages economic and social development.

The CCC encourages consumers and the business community to visit its website [www.caricomcompetitioncommission.com](http://www.caricomcompetitioncommission.com) to obtain information on the consumer protection laws and national consumer organisations in their respective countries. The CCC also encourages consumers and businesses to visit their national consumer organisations websites on a regular basis.

Further information about the work of the CCC, can be accessed by contacting [admin@ccc.sr](mailto:admin@ccc.sr) with your questions or by utilizing the query facility on [www.caricomcompetitioncommission.com](http://www.caricomcompetitioncommission.com)