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*AN EMPIRICAL EXAMINATION OF COMPETITION  
POLICY ISSUES IN SIX SELECTED CARIBBEAN  
COUNTRIES – Towards Policy Formulation*

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P R E S E N T I N G  
C O N F E R E N C E



# **AN EMPIRICAL EXAMINATION OF COMPETITION POLICY ISSUES IN SIX SELECTED CARIBBEAN COUNTRIES - Towards policy formulation**

## **EXECUTIVE SUMMARY**

This project was undertaken in response to the urgent need to develop an understanding of competition issues in CARICOM countries, based on empirical information. All members of the CARICOM Single Market and Economy are in the process of drafting competition legislation in fulfillment of obligations under Chapter VIII of the revised Treaty of Chaguaramas.

CARICOM countries are currently negotiating a chapter on competition policy within the proposed Free Trade Area of the Americas (FTAA) Agreement. The findings of this study could provide a basis for policy formulation in shaping and implementing the CARICOM competition regime, and in responding to the demands of external trade negotiations.

Six (6) countries, representing the different types of economies in CARICOM, were chosen for the case studies. They are: Belize, The Bahamas, Jamaica, St. Lucia, St. Vincent and the Grenadines (SVG), and Trinidad and Tobago (T&T). The research team consisted of a Lead Researcher, a representative from each country, and a member of staff of the Jamaican Fair Trading Commission. The major questions posed in the research were as follows:

1. Is Competition Law relevant for small economies and is it important for economic development?
2. Are there features in small economies that are peculiar to small size and which can impact on the dynamics of competition in the market?
3. How applicable to small economies are the theoretical underpinnings of competition law and policy?
4. How should the competition regime be shaped to fit the needs of the economies?
5. Given the research findings, how do CARICOM countries respond to provisions in the FTAA Draft Chapter on Competition Policy?

A review of the literature on competition policy in small economies yielded little that could be conclusively taken to provide a full prognosis for CARICOM countries, primarily because the countries studied (Israel, Australia, Canada, Hong Kong, Singapore, and South Korea) are much larger and very different in structure and orientation from the small economies in CARICOM. It

was therefore decided that empirical work in these latter economies was needed in order to develop a basic understanding of competition issues in small Caribbean economies.

As a first step, the researchers developed a profile of each economy, in order to determine how much competition local firms faced from imports and foreign direct investment, as well as to identify the major non-tradable sectors (not exposed to foreign competition). Based on these findings, specific sectors were chosen for closer examination through interviews and desk research. These were **banking; tourism; the production of goods:** poultry, flour, cement, beer, steel; and **the services sector:** import, distribution, and retail businesses, public transport and downstream services in the petroleum sector. An attempt was also made to discern intra-regional competition issues. A brief examination of public utilities was undertaken with greater emphasis on the telecommunication sector. The experience of the Jamaican Fair Trading Commission was reviewed for lessons, which other CARICOM countries may learn from.

The research confirmed that CARICOM countries are micro-economies compared to Canada, Israel, Australia and the Asian Newly Industrialized Countries (NICs), with limited geographic size, population, natural and human resources. Most CARICOM countries are island states and this feature increases the per capita cost of infrastructure as well as production and distribution costs because of high freight charges (compared to inland transport), and this is further exacerbated by diseconomies of scale and long distances (e.g., Belize). The economies were created by European expansion and colonialism, and shaped to produce in response to the needs of the colonists. As such, commodity production (sugar, bananas, bauxite, petroleum) has dominated these economies and, with the exception of petroleum, remains very much at the low end of the global product value chain.

Export earnings are declining (except oil) and volatile. Tourism is increasingly the mainstay of most of the economies, which rely heavily on international trade for their consumption needs, and for income generation. They are largely open, and highly penetrated by foreign investors who control the major export sectors, and have made significant inroads in some economies in the production of goods and services (e.g., T&T). Local firms are mostly small family owned concerns that are commerce oriented and operate at low technological levels. Little research and development and innovation take place in the region. Vulnerability to natural disasters increases the fragility of these economies, with hurricane damage being the most serious.

While Trinidad and Tobago, Jamaica and the Bahamas are largely open to imports, there are restrictions in the smaller economies (St. Lucia, SVG, and Belize), based primarily on the special and differential provision of the Treaty of Chaguaramas, Article 56. As such, Belize has extensive restrictions on imports of agricultural products which sector is the mainstay of the economy, providing near self-sufficiency in food and exporting citrus and bananas to provide significant foreign currency earnings. Tourism nevertheless is a fast growing sector, and like all of the other five (5) economies studied, has steadily increased its contribution to GDP, foreign exchange earnings and employment.

St. Lucia and SVG protect the basic needs basket through import restrictions or price controls. Foreign Direct Investment can enter most sectors in the economies, subject to work permits for foreign staff and compliance with general regulations. However, the smaller economies varyingly reserve the tourism downstream services sector and some others for locals. The non-tradable sector was found to be primarily in the provision of services to locals: distribution, retail, transport and other services (travel agencies, shipping agents etc.), the production of protected foods such as poultry, flour and the legal and natural monopolies such as utilities.

An in-depth exploration of the banking sector was undertaken because of the widespread perception of duopolistic price fixing by the banks with their high service charges and unusually wide interest rate spreads. Most economies have between six and eight banks, most of them foreign owned. Bankers were careful not to “rock the boat” with the leader unwilling to take more market share because of the high level of risk. Close interpersonal relations in small economies lead to some bypassing of the lending rules, as loans are sometimes recklessly provided to family and friends, thus increasing risks.

The findings were that while there seem to be a fair amount of cooperative behaviour amongst the banks to keep the “equilibrium” without sending the rates too low, outright collusion seemed unlikely. The economies are so small and transparent that it is very easy to adopt a follow the leader tactic. Moreover, there seems to be a need for greater margins than exist in developed economies because of the peculiar constraints faced by banks in small economies. Some of these are:

1. High default rates on loans.
2. Limited investment opportunities for surplus funds.

3. Vulnerability to loss of income because of volatile exchange rates and export earnings, plus damage cause by natural disasters, particularly hurricanes, which can threaten the viability of businesses.
4. High Statutory Reserve Requirements that results in loss of income because money is idle and unproductive.
5. Small client base, leading to diseconomies of scale.
6. Unsophisticated clientele and lack of minimum efficient scale pose a hindrance to technology upgrading.

Be that as it may, the conclusion was that banks in the Caribbean have too great a profit margin, exceeding those in developed countries, and that more effort should be made for a fairer sharing of the surplus with consumers.

In the tourism sector, serious competition problems were found in the ground transportation of tourists, with hostility between taxi and tour bus operators. There are gross inefficiencies in many of the countries. However, this is an overly sensitive sector, with employment considerations for disadvantaged groups being a high priority, and politicians finding it difficult to rationalize the sector along market principles.

Another area where there are competition concerns is in the organizing of the tourist experience in the country, which is now being dominated by Tourism Destination Management Companies. Smaller companies are being squeezed out, and this is partly because of pressure being exerted from the International Tour Operators (ITO's) who are managing the tourist experience by determining issues ranging from choice of destination to the restaurants in which the tourists dine. The European ITO's for instance prefer to deal with large companies who can comply with the European Union Directives on Tourism.

International Tour Operators have such large buying power now that they manage to put downward pressure on costs of airline tickets, hotel rooms, meals in restaurants and other tourist services, while creaming off large profits for themselves, allegedly. These vertical links between International Tour Operators, airlines, hotels and tourists make it very difficult for smaller hotels and establishments to share in the pie. Apart from Jamaica and SVG, the tourism sector is dominated by foreign investors.

The production of goods in the non-tradable sector is fairly small relative to the export sector, but this is where opportunities for anti-competitive conducts are most prevalent. Trade Associations have been engaging in price fixing as normal business practice, and without any notion that this is illegal in jurisdictions where there is competition legislation. Thus, the Baker's Association in T&T raised prices on certain types of bread in January 2003 when the price of flour was increased, and announced it in the newspapers. Subsequent decrease in the price of flour was not followed by a reduction in the price of bread. Similarly shipping Agents in T&T increased their handling charges for clearing shipments.

While anti-competitive cartel activity seems to be present in the larger economy of T&T, in the smaller economies, pro-competitive cooperative behaviour was discerned in the import cartels found particularly among newly migrant ethnic groups such as the Chinese, Taiwanese, and East Indians. The Syrian-Lebanese population control the textile trade throughout the region and collaborate very closely in import and distribution.

The research findings show that the small economies are prone to heavy concentrations because of the need to achieve minimum efficient scale, but also as a result of historically derived concentration of wealth in the hands of the descendants of the white plantocracy class. In the Bahamas, for instance, a few white Bahamian families control the import and distribution of food and building supplies and the shipping industry. Economic activities of this group centre around commerce (import, distribution, retail), and now, there are inroads into the tourism downstream services sector. Control by this group in the commercial sector has been so entrenched that market entry is difficult for smaller enterprises. However, the collaboration of ethnic groups in importing and retailing has now led to good competition and a healthy challenge to the incumbents. This is particularly so in the smaller territories of SVG, St. Lucia and Belize. In T&T, there has been a shift in the allocation of resources as Syrians consolidated their growing wealth and bought out businesses previously owned by the plantocracy class. They are now included in the elite business sector.

Abuse of a dominant market position seems to be more likely to occur in these small economies than cartelization, primarily because of an aversion to collaboration by small family firms in the local population (as opposed to the ethnic migrants groups). Small size of population lends itself to intense inter-personal relations and a level of transparency that are not the norm in larger economies. The culture of the small indigenous family owned business is one of fierce

independence and unwillingness to disclose or share information. On the other hand, the business elite intermarry, consolidating their wealth and generally ensuring that their control of the economy is preserved through interlocking directorates.

Abuse of a dominant market position by a significant player in the poultry sector in T&T led to wide swings in the price of poultry, so much so that the Consumer Affairs Division of the Ministry of Legal Affairs had to intervene to regularize the price of poultry. There was alleged predatory behaviour on the part of a dominant player who succeeded in driving two players out of the market and increasing his market share significantly.

Sole Agencies/Distributors were found to be the norm in the region, largely linked to the need for achieving minimum efficient scale, but also residing in the hands of historically entrenched capital. This is increasingly being eroded as larger retailers import directly from major warehouses in the USA that carry a variety of products and brands. However, there is suspicion that the products are "seconds" due to their relatively poor quality.

There is a natural monopoly in the cement market, and this is region-wide since the Trinidad Cement Ltd (TCL) brought out Jamaican and Barbadian factories. Importation of cement is allowed, but there is a common external tariff of between 50-60 percent. There have been several cases of dumping of cement, which led to the request by TCL for a higher tariff. There is a perception, though, that the cement company is making exceedingly high profits, that there are inefficiencies that should be removed, and that there should be a fairer sharing of the surplus with consumers. Indeed, the company is currently upgrading and restructuring its plants.

Concentrations were increased in the beer market in T&T and in the transport sector in Belize through buy out of competitors creating sole producer/provider of the good/service. It is clear that even in very small economies, there may be a role for merger control regulation or legislation that would allow government's intervention to prevent anti-competitive mergers.

Intra-regionally, anti-competitive conducts were discerned in the beer market between Heineken of St. Lucia and Carib of T&T. These included loyalty discounts by both groups and the provision of refrigeration facilities on an exclusive display basis by Carib. In Jamaica, the foreign company, Desnoes and Geddes Ltd. (D&G), which produces Red Stripe, was

investigated by the FTC for exclusive sales and promotional arrangements between D&G and several distribution outlets. A Consent Agreement was concluded between the FTC and D&G.

There were complaints that foreign investors in the petroleum sector in T&T were not giving local service suppliers fair access to the tendering process for jobs, but rather, were sourcing suppliers from the UK and Houston, Texas. However unfair this may be to the economy, though, it seems to be more an issue of local content in investment rather than a competition issue. The multinational company which owns the steel mill in T&T has been charging locals prices that are considerably higher than the international price of steel, and downstream producers are complaining of predatory behaviour to drive them out of the market. This issue is at the heart of the development question, since the downstream sector was created precisely to add value in the industry, and the mill was supposed to feed that sector.

An issue that came up repeatedly in interviews all over the region, more so in some countries than in others, is the unfair competition faced by the private sector from the informal sector. This sector has changed considerably over the last decade or so, to now include a criminal element that is allegedly linked to the drug trade. They are alleged to launder money, import goods into the economy without paying duties and other taxes, and their retail prices are in the range of the cost price to the formal trader. Alleged collusion with customs officers facilitates this process. Crime levels are so high in countries like Jamaica and T&T that firms are forced to spend substantial amounts of money on security, thus increasing their cost of production. The governance issue extends to political favouritism and cronyism which lead to deals which give some businesses a competitive advantage over others. It became clear that developing a healthy competition regime requires seriously addressing the need for good governance practices.

A brief exploration of the utilities sector was undertaken. The Cable and Wireless monopoly has been successfully challenged in several countries, and the data and cellular sub-sectors liberalized. T&T and Antigua and Barbuda are amongst the few countries in which there is still a monopoly. The Antiguan Government owns the telecommunications company, while the T&T government has majority shares in the company with Cable and Wireless owning 49 percent of shares. Competition has brought remarkable reduction in rates and improvement in services, with several providers operating in the economies that are liberalized. The incumbent, Cable and Wireless, is accused of having employed delaying tactics to bar entry of the newcomers.



In small economies, electricity and water providers tend to have natural monopolies because of small size of market. In several of the countries, these sectors have been privatized or commercialized. However, in St. Lucia, the foreign company has a guaranteed rate of return which agreement is very unpopular with the population. In the Bahamas, the company must provide service to some sixteen (16) islands spread over long distances, with populations of a few thousand persons or less. Clearly, it is uneconomical, and must be done as a public service. There is grave concern that privatization, which naturally means transfer of ownership to a foreign company in these small islands, would lead to either neglect of the Family Islands or exorbitant, unaffordable charges. The Bahamas Electricity Corporation has made itself more efficient over the last year, however. There may be good argument against privatization in this case.

The study concluded that competition law is necessary in these economies because of the detrimental effects on development of the anti-competitive conducts that are prevalent. However, strong cultural traditions make the workings of competition somewhat different in small economies, and this must be strongly considered when implementing and enforcing the law. Moreover, the introduction of competition policy must be framed in the context of the level of insertion of these economies into the global economy, and the inequality of the international trading system. It is necessary to protect certain sectors in the interest of food security, employment and entrepreneurial opportunities for locals. The benefits of competition that are touted in the literature may not materialize in small economies because of the structural rigidities and deficiencies that limit development options. Further, innovation would not be a natural response to competition in small economies because there is not the enabling environment to take invention to commercially successful innovation. Rather, the firms are technology takers.

It is recommended that emphasis should be placed on proscription of abuse of a dominant position, since this is more pervasive in small economies. This therefore requires technical assistance for training of staff and education of stakeholders. The education process is urgently needed, before the legislation is passed, so that there will be the requisite human resource in place to staff the Commissions. It is recommended that training of staff should be offered on the condition of being bonded for five years, to avoid rapid staff turnover that is plaguing competition commissions in developing countries. Import and Export cartels should be exempt. In the case of import cartels, this could be done through a general exemption of small and medium enterprises. The importance of linking consumer protection to competition enforcement

was emphasized, and there is an urgent need to provide for mechanisms to facilitate close cooperation between Regulators and the Competition Commissioners, in order to prevent conflicts over jurisdiction.

In drafting the law, the recommendation was that the law must be shaped to the needs of the economies, as identified here, and that international experts be invited to comment on the law, as that would prevent challenges after the law has been passed which could discredit or cripple the Commission. Fines should be sufficient to be a disincentive and should be a percentage of yearly turnover or of assets, so that large companies can be suitably punished while small ones can survive the fines. The provision in the South African law that provides for a defense of the public interest in the name of social justice is worth considering, given the inequitable division of resources in many of these economies. Moreover, there must be careful planning in setting up the Commission, training the staff and, in the early stages, choosing cases that can be easily understood by the public and which the commission could win, as success begets success and is vital for the sustainability of the process. Finally, it was recommended that governments address governance issues in the society simultaneously with competition issues.

The draft Chapter on Competition Policy in the FTAA proposes introduction of merger control regulation, and while the study concluded that it is indeed needed, there is no consensus in the region on this provision, so CARICOM countries would require exclusion in the event that there is agreement by other delegations. The provision on state enterprises and legal monopolies is very extensive and goes well beyond what is agreed intra-regionally. Moreover, the Bahamas has a peculiar situation of legal monopolies in Freeport enshrined in law in the Hawksbill Creek Agreement, and would require exclusion from this provision. While it was determined that there is very little direct state aid in the countries studied, it is not possible to make a pronouncement on this until all CARICOM countries are examined in this respect. A separate, detailed policy paper will be produced for the Caribbean Regional Negotiating Machinery (CRNM), which would necessarily have to be confidential.

The findings of this study extend the thinking on Competition Policy in Small Economies by demonstrating that while economies of scale and the need to achieve minimum efficient scale impose severe constraints on competition in small economies and must be considered when enforcing a competition law, there are more factors of equal relevance in small economies. The culture of the societies, given small size, close interpersonal relationships and value systems,

impact on how business persons respond to competition issues, and the ability of the competition authority to discern and prove anti-competitive conduct. Moreover, because there continues to be remnants of the exploitative plantation system in these societies, special consideration should be given to disadvantaged groups in the society when determining the extent to which reliance on pure market forces will lead to welfare gains that trickle down, or whether market imperfection requires government intervention. Social considerations must be factored into developing and implementing a competition law and policy regime.