




CARICOM COMPETITION COMMISSION




**IMPLEMENTATION OF COMPETITION
PROVISIONS IN THE
REVISED TREATY OF CHAGUARAMAS**

**CHALLENGES FACED BY THE CCC AS A
SUPRANATIONAL AGENCY**




COMMUNITY COMPETITION POLICY



- **THE GOAL**

Ensure that the benefits expected from the implementation of the CARICOM Single Market and Economy (CSME) are not frustrated by anticompetitive business conduct.


THERE ARE 15 MEMBER STATES OF THE CARIBBEAN COMMUNITY WITH 13 PARTICIPATING IN THE CSME. THE 13 ARE: ANTIGUA AND BARBUDA, BARBADOS, BELIZE, DOMINICA, GRENADA, GUYANA, JAMAICA, MONTERRAT, ST. LUCIA, ST. VINCENT AND THE GRENADINES, ST. KITTS AND NEVIS, TRINIDAD AND TOBAGO AND SURINAME




implementation is a shared obligation under Art.170



- **The COMMUNITY shall:**
 - Subject to Articles 164, 177, 178 and 179 of this Treaty, establish appropriate norms and institutional arrangements to prohibit and penalise anti-competitive business conduct ; and
 - establish and maintain information systems to enable enterprises and consumers to be kept informed about the operation of markets within the CSME





implementation is a shared obligation under Art.170




The MEMBER STATES shall:

- take necessary legislative measures
- establish and maintain institutional arrangements and administrative procedures
- disseminate information to facilitate consumer choice
- Ensure equitable, transparent and non-discriminatory access by nationals of other member states







implementation is a shared obligation under Art. 170




The Process


- Revised Treaty sets Community competition framework
- Member States agreed on Model competition law
- Enactment of harmonised domestic legislation and establishment of national competition authorities
- Establishment of CARICOM Competition Commission



Status of implementation in CARICOM



- Barbados , Guyana and Jamaica (operational)
- Trinidad and Tobago (law not fully enacted)
- Suriname (consultation on draft competition bill)
- OECS Sub-region (Agreement and draft bill)
- Belize (strategy development for implementation)





INSTITUTIONAL CHALLENGES



CHALLENGES FACED:

- Majority of Member States have not enacted competition laws and/or established national competition authorities (NCAs) as per Chapter VIII of the Revised Treaty
- Member State obligation under Chapter VIII to provide for jurisdiction of CCC in a Member State – Jamaica has no such provisions in its national competition law
- Trinidad and Tobago has passed a competition law – but only proclaimed provisions for appointment of Commissioners and establishment of NCA.
- Obligation under RTC for national competition law to provide for enforcement of determinations of CCC
- Rules of Procedure published in 2011 and now being tested in first case



ENFORCEMENT ISSUES



- If there is no national competition law and/ or NCAs then this hampers the effectiveness of CCC's operations under Article 174 in the Member States
- NCAs using national competition law would have legal rights to compel persons or institutions to provide information or appear to give evidence on behalf of CCC
- National competition law would allow NCAs to require the discovery or production of any document or part thereof on behalf of the CCC (search of premises, removal or copying of files or electronic docs at premises) on behalf of CCC
- NCAs using national competition law could undertake such other action as maybe be necessary in furtherance of the investigation on behalf of the CCC



ENFORCEMENT ISSUES (cont'd)




- Rules of Procedure developed pursuant to Article 174 (7) of the Revised Treaty
 - Rules of Procedure tested in case before the Caribbean Court of Justice (CCJ) in relation to compliance with provisions of the Revised Treaty
 - Effectiveness of procedures for purposes of investigation and enquiry phases of a case are also now being tested
 - No precedents to guide CCC
- Enforcement of determinations of the CCC
 - The procedure and mechanism for enforcement of determinations of the CCC is yet to be tested in circumstances where a national competition law is not enacted and enforceable in a Member State
 - No precedents to guide CCC




IMPACT ON CCC – Enforcement




- One complaint from the CARICOM Secretariat on behalf of the Member States resulted in a decision to undertake an investigation by the CCC
 - Case against TCL, which is a regional cement producer, of alleged anti-competitive business conduct.
 - TCL is headquartered in Trinidad and Tobago which has no competition authority. This hampered the CCC's ability to use the full powers bestowed upon it in the Treaty to investigate.
 - TCL has a subsidiary in Jamaica. However, the CCC has no direct enforcement powers in that country




IMPACT ON CCC – Enforcement



- Despite the challenges the CCC was still able to undertake a preliminary investigation and the Investigating Panel recommended an enquiry be held to decide on the merits of the findings of the preliminary Investigation
- Enquiry is to be convened at a date to be decided by the Adjudicating Panel



ACTION TAKEN BY CCC



- **Providing technical assistance to Member States:**
 - Suriname – significant redrafting of the Competition Bill with expected enactment into law in 2014
 - Belize – assistance in developing a Strategic and Action Plan to enable access to funding for the establishment of a national authority by 2015
 - Guyana – training of Commissioners, judiciary and magistracy, and staff of national authority to facilitate operation of NCA in 2010; provided technical assistance on Draft Rules of Procedure in 2013
 - OECS – technical assistance in developing Strategic and Action Plan for establishment of sub-regional competition authority in 2015
 - Executed Workshops on CCC Rules of Procedure in Antigua, Dominica, Grenada, Guyana and Suriname in 2012
 - Launched web site in July 2013 to disseminate information on community competition and consumer protection matters



THANK YOU



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Chairman

CARICOM Competition Commission

<http://www.caricomcompetitioncommission.com>

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