



Caricom Countries[❖]

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Selected Indicators for CARICOM Member States: 2006

Country	Area (KM ²)	Mid-Yr. Population.	GDP per capita US\$ mn	HDI Rank	Total Exports US\$ mn	Total Imports US\$ mn
Antigua & Barbuda	442	84,330	11,931	60	(2005) 120.63	670.77
The Bahamas	13,864	329,500	20,867	53
Barbados	431	273,987	11,646	47	441.22	1,629.04
Belize	22,966	291,800	4,159	93	274.44	660.33
Dominica	750	70,964	4,470	81	41.48	166.89
Grenada	345	106,605	5,248	67	25.37	298.92
Guyana	214,970	760,218	1,179	117	655.07	882.33
Jamaica	10,991	2,673,800	3,872	79	1,988.81	5,043.00
Montserrat	103	5,027	9,025	?	1.30	30.19
St. Kitts & Nevis	269	49,995	9,901	72	39.77	249.52
Saint Lucia	616	166,838	5,485	82	93.74	592.19
St. Vincent & The Grenadines	389	105,345	4,760	85	38.11	271.48
Suriname	163,820	504,257	3,681	104	929.1*	1,008.89
Trinidad & Tobago	5,128	1,297,944	14,042	62	14,334.11	6,579.74

Source: CARICOM Selected Economic Indicators 1997, 2002-2006: A Statistical Profile of the CARICOM Single Market and Economy, p. xi. www.caricom.org (figures converted from EC\$ to US\$ at rate of US\$1=EC\$2.70)

* Caribbean Export Development Agency: Doing Business with Suriname.

As the table above indicates, the Caribbean Community (CARICOM) consists of fourteen Member States (Haiti's access to CARICOM's instruments of integration is limited). Apart from the three mainland states of Suriname, Guyana and Belize, CARICOM mainly consists of small island states, with small populations, limited geographical areas, and separated by sea. Despite the large land space of Guyana, Suriname, and Belize, all three territories are sparsely populated and with low development indicators. Small population size, with limited earning capacity in most of the territories, lead to limited demand and consequently small markets, small firms and higher costs. This constraint is further exacerbated by the fact that imports must be transported by sea or air, increasing

costs and requiring economies of scale, thus creating oligopolies in the import and wholesale areas.

Economy

These countries are largely dependent on export of single commodities (e.g., bauxite, spices, tourism, petroleum) and import most of their consumption goods.

As such, most exports from these economies are tied to internationally fixed prices, and with adverse terms of trade. Moreover, there was a high dependence on preferential markets in Europe, under the Lome/Cotonou Agreements (agricultural products), the Caribbean Basin Initiative (CBI) and the Caribbean Canada Agreement (CARIBCAN).

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However, these preferences have been eroded as a result of successful challenges in the WTO, and the resultant loss of markets, such as the banana and sugar markets in the European Community. The mainstay of most of the economies at present is tourism. In addition, Jamaica, Guyana and Suriname export bauxite/alumina, gold from Suriname and Guyana and Trinidad and Tobago exports petroleum and also some light manufactured good intra-regionally. The table above shows the small size of these economies and the negative balance of trade for all countries except Trinidad and Tobago.

These features make the economies extremely vulnerable to external shocks which at one stroke, could affect the entire economy.

For instance, tourism is the major activity and source of income in most of the CARICOM countries and tourists originate mainly from North America and Europe. Economic contraction or other problems in those countries have immediate negative impacts on tourist arrivals and thus the entire economy. In the Bahamas for instance, more than 40 percent of the tourism workforce had to be sent home in the immediate week following the 9/11 tragedy in New York, USA. Moreover, the increase in Atlantic hurricanes and the devastating effect on infrastructure can wipe out crops (such as bananas or spices) in one swoop, and with it, the annual foreign income of the country, or damage hotels extensively, leading to severe contraction in the tourist industry.

Intra-regional trade is dominated by exports of petroleum and light manufactured goods from Trinidad and Tobago, valued in 2006 at US\$2,537mn. but with imports from the region into T&T a mere US\$98.5mn, giving Trinidad & Tobago (T&T) a very positive Balance of Payments intra-regionally. T&T's intra-regional exports in 2006 represented 83.8 percent total intra-regional exports, and this is explained by export of petroleum to the rest of CARICOM. Intra-regional investment is largely in the financial sector and originating in T&T. Together with the banks and insurance companies, the conglomerates in T&T are also expanding into the rest of the region.

Competition Policy¹

Trade policy in CARICOM is quite open, but there are some areas that are protected, such as sectors that provide significant employment and contribute to food security. For instance, it is imperative that the agriculture sector in Belize is protected against unfair competition from subsidised imports, given that, at present, the country is nearly self-sufficient in food products; and some 50 percent of the population live in rural areas, earning their livelihood from farming.

There are sectors that are protected, particularly in the smaller territories, as for instance, in Belize, St. Lucia and St. Vincent and the Grenadines. Article 56 of the Treaty of Chaguaramas, establishing the CARICOM, gives special and differential treatment (S&DT) to the LDCs of CARICOM. 19 items are subject to price controls in Belize. St. Lucia and St. Vincent also have price controls on the 'basic needs' products. In Belize, quantitative restrictions (including import licensing) and tariffs are designed to protect locally produced goods and services, and promote import substitution.

Despite these restrictions, the CARICOM economies are very open, given the high level of imports and dependence on foreign trade. In some territories (the Bahamas, Belize, there is some competition for local commercial enterprises and professional services in the non-tradable sector, through consumers moving to external sources of supply Miami for Bahamians and Mexico for Belizeans).

The region is heavily reliant on Foreign Direct Investment (FDI) to promote economic growth and generate employment because domestic savings are insufficient to meet the needs of heavy investment projects in the commodities sector. But apart from these investments in tourism, bauxite, petroleum and its by products, and gold mining, there are also foreign investors in the manufacturing sector, financial sector, and other services, such as security. An examination of the economy of Trinidad & Tobago reveals a very high level of penetration of foreign investors in many smaller businesses, unlike Belize, St. Lucia, St. Vincent, Bahamas and Jamaica. There were approximately 152 foreign firms operating in T&T in 2003. There are some sectors that are protected for locals only, such as downstream tourist services (taxis, water sports etc.).

Relevance of Competition Law to Small Economies

Research conducted in 2003 revealed much about the way competition operates in these small economies, and the findings remain relevant today. Small size and concentrated market structures inherited from the colonial period, as well as strong cultural traditions, make the workings of competition somewhat different in small economies.

Research findings point to the predominance of concentrations and the need to have regulations in place to prevent the abuse of a dominant market position and to promote efficient functioning of markets. An important feature of these economies is the small size of the firms, which are unable to have any impact on world trade, but concentrations in the import and wholesale sector, given the high-level of import of consumer goods and the expense of ocean freight, and requiring economies of scale. Nevertheless, the small size of the population leads to limited demand and diseconomies of scale. This dampens

¹ Competition policy is here interpreted as including trade policy, investment policy, exchange rate policy, industrial policy etc. and competition law.

the urge to innovate or improve the quality and variety of goods and services, especially where consumers are unsophisticated and unwilling to try new products, such as credit cards or use ATM machines.

Most of the firms in the small economies of the CARICOM are still owned by large families, who have historically controlled the local economy. For instance, in St. Lucia, a member of the ‘old aristocracy’ controls the supermarket sector, and is involved in shipping with ties to companies in Puerto Rico, and is now dominant in the destination management sector of local tourism. This cross-multiple ownership is common in the smaller economies of CARICOM.

Anti-competitive Business Conduct

Cartelisation

Active cartels have been found largely in the activities of trade associations, and mainly in T&T, where the economy is larger and more complex. Price fixing was found to be occurring primarily for goods that had a good history of price control, as there is no law prohibiting collusion, and such practices have been common amongst trade associations from time immemorial. There is no sense of wrongdoing amongst the firms. While a Competition Law was passed in T&T in 2008, it has not as yet been fully proclaimed and is not enforced.

However, in the very small economies of the region, businesses have a robust sense of independence and do not like to cooperate with others. Even so, at the same time, these very small economies abhor fierce competition. This may be due to the social culture and the small communities these people live in, where businessmen are friends and interact with each other socially as well. Perceptions were that if a merchant sold at a different price, then he/she was being “unfair”, turning the whole concept of competition and fairness on its head.

A question that arises, in these small economies, is how a competition authority can prove collusion, when some indicators of collusion, such as people from competing firms meeting for dinner, or at hotels, is normal everyday practice in these societies. Unless there is written evidence, it is very difficult to prove. A leniency programme may not work in these economies because:

- Firms will only expose a cartel in which they are involved if there is a real fear of the competition authority, and large fines and possible imprisonment are involved; but, the competition authorities in these countries would be too small to inspire such fear, and
- The inter-personal culture in these small economies does not lend itself easily to whistle blowing. There is a real danger of being physically attacked or intimidated if one blew a whistle on a competitor. Worse, given the

violence that has now become endemic in these societies, a whistleblower will most likely be killed.

Abuses of Dominance

Serious concentrations were found in all the economies, particularly in the import/distribution/retail sectors, and this has not changed much. The need to achieve minimum efficient scale (MES²) partly explains the concentration of market in a few hands, but it cannot explain the dominance of the retail sector (for instance, of supermarkets) by the white elite population, which has controlled the sector since the colonial period.

Concentrations in the economy and the close networking of the leading business persons are reflected in the prevalence of interlocking directorates in this region.

Scarce human resource has been put forward as an explanation of the existence of interlocking directorates. Whilst this argument might hold true for micro-economies, such as St. Vincent, where the pool of skilled persons is very small; this is not the case for Jamaica and T&T. Therefore, the prohibition of inter-locking directorates is needed in CARICOM countries, since this is one of the ways in which the dominant capital holders ensure that their control of the economies is maintained, and wherein collusion can occur. The Barbados Fair Competition Act prohibits interlocking directorates.

Box 1: Few Cartels in Action

Active cartels were found largely in the activities of trade associations, and mainly in Trinidad & Tobago where the economy is larger and more complex. Thus,

- Price fixing by the Baker’s Association was openly announced in the newspapers;
- The Shipping Association increased their handling charges, despite protests from their clients; and
- Resale price maintenance was found to be standard business practice for one large bakery company, albeit to prevent retailers from charging a higher price.

The five largest poultry producers in Trinidad & Tobago indulged in incremental increases from January to August of 2003, to the extent of 85 percent.

It took government intervention and the threat of opening the sector before prices were brought down. However, a closer examination revealed that, rather than price fixing, the issue was predatory behaviour on the part of one dominant player, who was responsible for the price swings and the exit of two producers.

Source: Taimoon Stewart, Competition Issues in Selected CARICOM Countries: An Empirical Examination, 2004.

2 The Minimum Efficient Scale (MES) is the output for a business in the long run, where the internal economies of scale have been exploited.

It is evident that the prohibition of abuse of a dominant market position is very important in these economies, more so, when the skewed distribution of wealth has historical roots and still reflects a racial divide. This limits or prevents the entrance of new players.

The links between the business elite and politicians provide some businesses with competitive gains over their rivals through political interference in the competitive process. This issue is of serious concern and should be given high priority. Competition authorities should urgently address, through advocacy, the governance issues in these societies, and also take into consideration the impact of the operations, of the informal sector, on competition. While this sector has many layers, with some being just survival strategies, at another level there are high levels of criminal activities in this sector, linked to alleged corruption by customs officials and in the other government departments, resulting in large amount of goods entering the country without paying customs duties, and competing with formal businesses unfairly.

One can conclude, therefore, that competition law is important for the development of small economies. Both cartelisation and concentration exist in these economies, harming consumer welfare and these anti-competitive conducts must be disciplined. Similarly, heavy concentrations in these economies leave them exposed to the abuse of market power. Moreover, even though these economies are largely open to international trade and investment, there exist a sizeable non-tradable sector, which harbour many types of anti-competitive behaviour. However, the law must be tailored to the needs of small economies.

Box 2: Cable & Wireless Sued

The Online telephone service provider of Georgetown, Cayman Islands, Net2Phone Inc., filed a civil suit against Cable & Wireless PLC, which has blocked the Internet service in a bid to protect its legal monopoly in the British Caribbean territory.

Net2Phone of New Jersey alleged in the lawsuit filed in the Cayman Islands that Cable & Wireless wrongfully interfered with its trade and business. Net2Phone is a so-called ‘call-back’ service that uses computers to get around the local telephone networks to offer lower fees.

According to a survey, the Cable & Wireless’ telephone rates in the Cayman Islands are the highest in the Caribbean. Cable & Wireless will continue to block access to Web sites that offer the ‘call back’ services, according to general manager Tim Adam.

Source: Wall Street Journal, 02.10.00

Merger Control Regulation (MCR)

An argument has been advanced, including by CARICOM countries, that MCR is not relevant for small economies because of the need to achieve minimum efficient scale. However, there could be instances where, despite arguments regarding economies of scale, there is a need for several firms to compete in a market so as to ensure that competition is promoted and consumer welfare is protected. The case of the buy-out of all cross-country bus companies by Novelo Bus Company in Belize, and the prohibition of the companies to apply for bus licences for 15 years, as part of the sales deal, is a case in point. Could a MCR regime have prevented this concentration from occurring? However, governance issues are also alleged to have been involved.

Another example is the merger of firms in Barbados, just prior to the proclamation of the competition law, in order to pre-empt an investigation by the Barbadian FTC. Protests by dairy farmers bore out the negative impact which the merger had in the relevant market. A third is the buyout of Stag Beer by Carib Beer Ltd. in T&T, creating a total monopoly in local production, and with little foreign competition because of barriers to entry.

It seems that for small economies, MCR can be important. However, extreme care has to be exercised in evaluating merger cases. The yardstick of measurement, used in larger economies, should not be applied blindly in small economies. It would be necessary to develop a set of criteria, in keeping with local conditions, upon which to make determinations, based on features of size and MES considerations, rather than simply prohibiting a merger if competition is substantially reduced in the market.

Evolution of Competition Regimes

Obligations

CARICOM countries are in the process of developing competition law regimes, as part of the undertakings to establish the CARICOM Single Market and Economy (CSME), as enshrined in the Revised Treaty of Chaguaramas (RTC), that came into force in 2001. Chapter 8 of the Treaty requires all member states to legislate and implement national competition laws, and the creation of a CARICOM Competition Commission (CCC) for dealing with cases with cross border effects within the CSME.

The purpose of the competition regime is to prevent the private sector from reversing the benefits to be derived from the removal of governmental barriers to the free flow of goods and services in the CSME through anti-competitive conduct.

In January 2008, CARICOM, together with the Dominican Republic, entered into an Economic Partnership Agreement with the EU (CARIFORUM-EU EPA). This agreement

includes a competition chapter which requires compliance with the obligations set out in the RTC, Chapter 8. A review of implementation progress is due in early 2013.

The basic obligations under the RTC and CARIFORUM-EU EPA is to legislate against anti-competitive agreements, abuse of dominance, and that state owned enterprises and monopolies be subject to competition law, with a few exceptions. The RTC requires each member state to set up a Commission to enforce the law, but the EPA requires only that the regional commission for CARICOM and a commission for the Dominican Republic be established. This has implications for the Bahamas, which is not a signatory of the RTC, and therefore, not a part of the regional competition regime, but which has signed the EPA. It means that either it comes under the umbrella of the CCC, or negotiates its own representation with the EU.

Neither the RTC nor the EPA obligations require legislating merger control regulation (MCR). However, within the region, the discourse is leaning more and more towards recognising the need for MCR. Barbados and Trinidad and Tobago have MCR in their laws, but Jamaica and Guyana do not. There is a need to harmonise this area of regional laws.

State of Play of Competition Regimes

Four CARICOM member states have competition laws: Jamaica (1993), Barbados (2004), Guyana (2008) and Trinidad and Tobago (2008). Jamaica, Barbados and Guyana have established competition commissions and are enforcing the law. Trinidad and Tobago is still in the process of fully proclaiming its law and setting up its commission. All the other states are in the process of introducing the law. The Organisation of Eastern Caribbean States (OECS) countries have agreed to establish a single OECS competition commission, and the model law for the member states has been agreed upon and implementation is progressing. However, the greatest constraint is lack of finances to set up and operate the Commission. Suriname and Belize both are in the drafting stage. The CARICOM Competition Commission was established in January 2008, and is in the process of completing its staff and becoming fully functional.

Suriname faces several challenges to adopting a competition regime. There seems to be little enthusiasm to take the process forward in the private sector, and little political will on the part of the government. Further, because Suriname operates under a civil law regime, while the rest of CARICOM adheres to common law, there are specific challenges for Suriname to adapt the CARICOM model law to their legal system. This had led to further delays.

Belize also suffers from lack of political will and little support from the private sector for adopting a competition regime. Issues of governance exist, particularly in Belize and the beneficiaries of government largesse are not willing to give up their privileges.

Regulatory Framework

Telecommunications Sector

In all the territories, the respective national regulatory commissions are charged with the responsibility of regulating services in electricity, water and sewerage, and telecommunications. Five OECS countries, St. Lucia, St. Vincent and the Grenadines, Dominica, Grenada, and St. Kitts and Nevis formed the Eastern Caribbean Telecommunications Authority (ECTEL) in May 2000 which is an umbrella organisation overseeing telecommunication services in its member states and making policies for the sector. Directors consist of Ministers of Telecommunications of Member States/ Under ECTEL are National Telecommunications Regulatory Commissions (NTRC) established in each country. Any proper telecommunication regulatory agency must have built-in expertise in several areas that include law, economics and engineering. All of the countries cannot afford the high quality of human resource needed so these are provided through ECTEL on a shared cost basis. Moreover, by pooling resources, countries had greater negotiating power with the big international telecom companies operating in their markets.

This is an important factor, given that a bitter struggle which took place between these governments and Cable and Wireless (C&W) prior to ECTEL's formation, to end the stranglehold monopoly in the region. It was precisely because they stood together against C&W that the governments succeeded in not renewing the license in the case of St. Lucia (expired in 2000) and revoking licenses in the other countries (ending in 2020 in some cases.)

ECTEL ensures that there is competition in the telecommunications sector, promotes harmonisation of telecommunication policies and practices throughout the member states, generally promotes fair pricing and fair competition, sees that public interest and national security are preserved and ensure that high standards are maintained.

The national commissions under ECTEL advises the Minister on formulation of national policy, are responsible for technical regulation and maintenance of high standards of service, are responsible for regulation of prices and receive and review applications for licenses, interconnection agreements. They investigate and resolve complaints and conflicts.

Competition was introduced leading to phenomenal changes in the products and services now offered in the member states. There are now several service providers, including Digicel, and many small businesses have sprung up to service internet users, cellular phone service and repairs, and the use of the internet and blackberries in small business operations and management styles. Yet, legislation lags behind technological changes which are occurring so fast in this sector that procedures for

legislation formulation and approval are unable to keep pace, The state owned Bahamas Telecommunications Company (BTC) began the privatisation process in 1998, liberalising Internet services, pager system and trunk radio services. Voice and cellular services were still monopolised in 2004, competition was introduced in cellular and customer key systems A majority share of BTC was purchased by C&W on April 07, 2011 from the Government of the Bahamas.

Currently (2012), consumers in the Bahamas have access to the most modern telecommunication services, as for instance, I-Connect provides simultaneous Internet, Voice and Fax capabilities over a single phone line resulting in uninterrupted, high-speed Internet Access, and also provides greater security, since it gives you your private connection to the Internet, unlike Cable Modem Internet Access where many users share the same infrastructure and lines greatly increasing your risk of viruses and attacks by hackers. Consumers also have access to Vibe unite, which allows calls routed via internet with a monthly charge covering free international calls.

To promote the new regulatory regime and achieve the goal of liberalisation, a package of new legislation was drafted by the Government of the Bahamas and submitted to Parliament for approval in May 2009, among which was the act creating The Utilities Regulation and Competition Authority (URCA) Act, 2009 and The Utilities Appeal Tribunal (UAT) Act, 2009

URCA, is an independent, well-resourced regulator which oversee electronic communications as well as broadcasting (including cable television) and also controls spectrum and numbering.

Importantly, in addition to its regulatory functions and powers over the electronic communications sector in The Bahamas (including the designation of operators as possessing significant market power), URCA is also responsible for competition issues arising from anti-competitive agreements, abuse of dominant position and merger control in the provision of networks, carriage services and content services (including broadcasting). Thus, the roles of the national communications regulator and the national competition authority (in respect of telecommunications) are combined into one agency-URCA.

In line with worldwide best practices, it is expected that URCA will eventually assume responsibility for other sectors as new sector-specific legislation is passed.

The telecommunications company, Belize Telecommunications Ltd. (BTL), was partially privatised in 1988 when the government kept 49 percent of the shares of BTL, sold 25 percent to British Telecom, and allowed the rest to be acquired by Belizean investors. The new

company and was granted a fifteen years exclusive license that expired on December 29, 2002 In that year, a new telecommunications law was passed that empowered the Public Utilities Commission (PUC) to regulate rates, protect consumer interest and oversee the orderly development of this sector. The new Act contains specific provisions to foster greater competition and free market forces, taking into account the need for universal service considerations.

In 2003, the government sold the rest of its shares to Belize Telecommunications Ltd. but provided a loan to BTL. In 2005, BTL defaulted on the loan, allowing the government to regain their share in the company. However, a bitter struggle over the right to appoint Directors ensued because BTL refused to revoke the appointment of their two directors linked to the shares, and the government insisted that the appointments were theirs to make. The issue was taken to court, appealed, and then taken to the Privy Council for a ruling, at the end of which the government regained control of the two directorship appointments.

In T&T, a monopoly still exists, with Telecommunications Services of Trinidad and Tobago (TSTT) controlling the market, but competition was gradually introduced from 2005. As with other cases of challenges to the incumbent's monopoly, the incumbent claiming that services provided by new entrants are illegal, and the incumbent used delaying tactics in providing interconnection services.

TSTT no longer holds a monopoly in fixed-line telephone services due to Flow introducing a fixed-line service of their own, but their cellular monopoly was broken in June 2005 when licenses were granted to Digicel and Laqtel.

TSTT has re-branded its mobile division to bmobile along with other Cable and Wireless companies in the region. TSTT's mobile service currently uses the GSM network for data and voice. In 2007 they began launching data services on a CDMA network. Their previous TDMA network was discontinued on August 31, 2006.

Digicel, which also serves other countries in the Caribbean, began operations on their GSM network in early 2006. Digicel and TSTT have since had legal battles over an inter-connection agreement to allow communication between their two networks. LAQTEL, a Trinidadian owned company, was also awarded a CDMA license but on March 14, 2008 had its license revoked.

TSTT Internet Services include dial up service, wireless broadband service based on EVDO technology, and ADSL-based Broadband service. TSTT also offers a variety of data solutions for the Corporate sector including leased circuits, virtual private networks, frame relay services, and metro Ethernet service with speeds up to 1GB. In October 2007, TSTT introduced its ADSL2+ broadband internet service branded "Blink Broadband" with speeds up to 10Mbit/s.

A Telecommunications Board has been appointed with responsibility for all aspects of telecommunications services.

Electricity Sector

The Government wholly owns the Bahamas Electricity Corporation. Executives at the Bahamas Electrical Corporation (BEC) were definitely of the view that privatisation should not proceed on the same assumptions as those which apply to electricity providers in large economies. They argued that competition in a large economy is not a problem because there is scope for many large power stations and large transmission and distribution systems servicing a large customer base. The Bahamas is an archipelago with distances of thousands of miles between islands and with very small populations on the various islands. Without provision of subsidised electricity, the outer islands would not be able to afford service.

While the company, Belize Electricity Limited (BEL), has not been given an exclusive license, 'the small and dispersed nature of the population coupled with high costs of network expansion' lend themselves to a natural monopoly. The license provided to BEL allows specifically for other generators and distributors of electricity. Although the law provides open access to the transmission network, BEL is the only provider.

BEL meets the country's peak demand of about 80.6 megawatts (MW) from multiple sources of energy. These sources include electricity purchases from Belize Electric Company Ltd. (BECOL), which operates the Chalillo, Mollejon and Vaca Hydroelectric Facilities in Western Belize; from Hydro Maya Limited located in Southern Belize; from Comisión Federal de Electricidad (CFE), the Mexican state owned electricity company; from Belize Cogeneration Energy Limited (Belcogen) and from BEL's gas turbine unit and diesel fired generators. All major load centres are connected to the country's national electricity system, which in turn is connected to the Mexican electricity grid, allowing BEL to optimise its power supply options.

Approximately 65 percent of the energy distributed by the Company in 2010, was sourced from renewable energy sources the company that is involved in the field of power generation from thermal sources (coal, oil and gas).

Given the small size of the St. Lucian market, the utility companies lend themselves to natural monopolies. The electricity company, LUCELEC, is a publicly held company with the biggest shareholder, Commonwealth Development Corporation (CDC) of the UK, holding 49 percent of the shares. The Government, through the City Council and the National Insurance Corporation, owns 45 percent of the shares and six percent of the shares were offered to the public in the early 1990s. CDC also has interests in St. Vincent and the Grenadines. Recently, legislation was

passed to restrict shareholding in order to prevent CDC from cornering 51 percent of shares.

In 2007, Emera acquired from American private equity fund manager The Caribbean Basin Power Fund (CBPF) a 19 percent percent interest in St. Lucia Electricity Services Limited (Lucelec).

The company announced in 2010 an intent to acquire a 38 percent stake in Light & Power Holdings. The company serves as the lone power utility on the island of Barbados. The stake was previously held by Canadian International Power Company Ltd. (CIP), a subsidiary of United States based Leucadia National Corporation. Under the deal, the Barbados utility plans to sell its stake in Barbados' telecommunications market by spinning off its minority shareholding of TeleBarbados and sub Caribbean fibre-optic cables to Leucadia. Leucadia then relinquished its 38 percent stake in Light and Power to Emera. In 2010 Emera announced it would seek to acquire the remaining outstanding shares of Barbados Light and Power and on December 20, 2010 the Barbados Stock Exchange approved the terms of a further shares purchase by Emera. The deal offer is expected to last until January 14, 2011.

The company announced on November 18, 2010 that it will invest US\$1.8bn in the Lower Churchill Project in exchange for 20 percent of the 800-megawatts of capacity from Muskrat Falls In Trinidad & Tobago, generation and distribution of power have been unbundled, with Trinidad and Tobago Electricity Corporation, the incumbent, responsible for distribution while Powergen and Incogen are responsible for generation. However, there is no competition because of the contractual arrangements with the supplier. According to the Regulated Industries Commission (RIC), nothing can be done about this for another 10 years. This has now changed.

The RIC is responsible for regulation of water and sewerage services and electricity generation and distribution. It recommends on the award of licences, monitor and enforce compliance with licence conditions, and establishing the principles upon which tariffs will be based taking into account consumer protection and monitoring rates charged to ensure compliance. Among their other responsibilities are prescribing standards, conducting studies on efficiency and economy of operation and performance, and facilitating competition where possible and desirable. The RIC also ensuring that service providers earn sufficient return to finance necessary investment.

In an article by Harjinder Singh Atwal*, Executive Director of the RIC, and Shinelle Padmore *, Tariff Analyst in the RIC, it was concluded that the independence of the RIC is compromised by the overlapping responsibilities given to both the RIC and the Minister in respect of setting rates, setting of standards for services, and monitoring of water quality and effluent discharge. In general, they found that

the Minister exerts tremendous influence over many areas of operation, including budget approval and choice of commissioners.

At the regional level, both in the telecommunication sector, and in regulation of water/sewage and power, institutions have been set up at the regional level to give support to national institutions, and to provide a forum for discussions, research, and learning from each other's experiences. In the case of telecommunication, the Caribbean Telecommunications Organisation was established and the Organisation of Caribbean Utilities Regulators was established in July 2002, and its purpose and objectives are to inter alia assist in the improvement of utility regulation, to foster transparent and stable utility regulation through autonomous and independent regulators in member countries, to undertake research, training and development, to facilitate understanding of regulation issues and sharing of information and experience.

ECTEL is a member of OOCUR, as is the Fair Trading Commission of Barbados. A conference is held every year at which regulators brainstorm the major issues which they face. Caribbean Association of National Telecommunication Organisations facilitates conferences, conducts research and issues periodicals for the telecommunication regulators that are its members. At present, there are 100 members from 35 countries.

Consumer Protection

The RTC, Chapter 8, includes a consumer policy for the region, and there is a CARICOM Model Law on Consumer Protection which has been approved by the Council for Trade and Economic Development of CARICOM. All member territories are required to adopt a consumer protection law in compliance with the provisions in the RTC. At present, countries that have enacted a revised consumer law are Barbados, Guyana, Jamaica, and St. Kitts and Nevis.

Trinidad and Tobago has reformed its consumer law but has not yet enacted it to replace its 1986 Consumer law. Antigua and Barbuda has a consumer law since 1987 but would have to do some work to embrace the new provisions in the CARICOM Model.

The other OECS countries, Belize and Suriname have been for a long time trying to enact their consumer law but this process has been very long and protracted.

Some Member States have Commissions (Barbados, Jamaica and Guyana); others enforce through Ministries and Consumer Affairs Departments. The Member States are active in consumer protection but in the main through moral suasion.

Concluding Observations and Future Scenario

There is a case for arguing that in small open economies, there should be a discriminating competition policy. Given the structure of the small economies of CARICOM, it is simplistic and inappropriate to apply a completely open and liberal competition policy.

These economies are not internally integrated and self-propelled economically, but are rather responsive to external signals and demands from the major actors in the global economy. The markets are too small to achieve sufficient scale for firms to be globally competitive.

In small economies, competition from imports, produced by large foreign transnational corporations (TNCs), is too great to allow small firms to survive, even if operating at the most efficient level possible, because of structural constraints.

In addition, given that Governments do not have the financial capability to support the unemployed and provide re-training for them (as happens in the developed countries), a discriminatory competition policy is required to protect employment and productive sectors. Even in formulating the competition law, public interest must be considered with regard to unemployment and given the racial divide along with inegalitarian distribution of wealth.

In shaping its competition laws, CARICOM countries should have very strong provisions for prohibiting abuse of dominant market positions, because this is the major type of anti-competitive practice found in most of these economies. This emanates both from the heavy concentrations amongst local firms and the dominance of foreign firms in the economies.

Competition law enforcement has the potential to prevent TNCs from abusing their power in the market, provided that the power asymmetry does not negate this possibility. This is a serious problem in small economies, where the turnover of the resident TNCs far exceeds the annual GDP of the economy, and this gives the TNCs immense power to threaten withdrawal if unhappy with the government policy.

A major constraint to the advancement of the regime is lack of skilled personnel to enforce the law, particularly through use of the rule of reason approach. Given these constraints, the regional Governments need to focus on securing technical assistance for the training of lawyers, economists and trade experts.

A special educational programme needs to be developed to target the trade associations and dominant local firms in the economies, since the culture of competition is almost non-existent in most of the CARICOM economies. Both at

the national and sub-regional level, import and export cartels, and SMEs should be exempt from the application of the competition law, as this would provide opportunity for small firms to come together to import and thereby challenge the incumbents through better prices.

What also needs to be remembered is that good governance is an essential part of policy reform, and is needed to ensure that the competition regime is transparent and respected by the stakeholders. Special attention

should be given to rooting out ‘interlocking directorates’, where competition between firms could be compromised. Also, reducing interlocking directorates could help to eliminate anti-competitive means used to control markets.

A special effort should be made to develop cooperation modalities between the bank supervisory bodies and competition authorities, given the peculiar problems existing in the banking sector in small economies. Finally, a provision for protecting public interest.

Suggested Readings

Study of competition issues in six CARICOM countries conducted by Dr. Taimoon Stewart, with assistance from country counterpart researchers and supported by DFID and IDRC, “Competition Issues in Selected CARICOM Countries: An Empirical Examination”. Trinidad and Tobago: Sir Arthur Lewis Institute of Social and Economic Research, UWI, *March 2004*.

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