

PROFILE					
	Antigua and Barbuda	Barbados	Bahamas	Belize	Trinidad & Tobago
Population	80,000 thousand	279,254	296,000	265,000	1,300,000
GDP (Current US\$)	802.5 million	2.6 billion	5.17 billion	835.1 billion	8.6 billion
Per Capita Income (PPP US\$, 2003)	10,294	15,720	17,280	6,080	9,430
Land Area (sq. Km)	440	431	13,864	22,925	5,128
Life Expectancy (2003)	75.4	75	67.1	71.5	71.4
Literacy (%)	85.8	99.7	95.5	76.9	98.5
HDI Rank	60	30	50	91	57

Source: UNDP HDR 2004 (www.undp.org), and Is Flexibility Needed When Designing Competition Law for Small Open Economies? A View from the Caribbean, Taimoon Stewart, Journal of World Trade 38 (4), 2004.

As can be seen from the data profile table given, the Caribbean Community or CARICOM countries are very small countries with fragile economies that are vulnerable, economically, socially and politically. The CARICOM is made up of 15 states.

Apart from the three mainland states of Suriname, Guyana and Belize, CARICOM mainly consists of small island states lying in the geopolitical shadow of the US, with small populations and limited geographical areas. This small population, with limited earning capacity, leads to limited demand and consequently small markets, small firms and higher costs.

Economy

These countries are dependent on export of a single commodity and import most of their consumption goods.

As such, most exports from these economies are tied to internationally fixed prices. Moreover, there is 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). A serious problem faced by these economies is the erosion of preferences 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.

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

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¹ This is a composite paper on the Caribbean countries, which are in an infancy stage on competition regimes. A stand alone paper on Jamaica follows this chapter, because it has a competition law since 1993. Barbados too has a competition law, which was adopted in 2003 and is covered in this chapter.

countries have immediate negative impacts on tourist arrivals and thus the entire economy. In the Bahamas for instance, more than 40 percent of 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.

Keeping this background in mind, we focus on a number of the CARICOM States, which are representative of the different types of economies found in the region.

Competition Evolution and Environment

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), enshrined in the Revised Treaty of Chaguaramas. Chapter 8 of the Treaty requires all member states to legislate and implement national competition laws, and the creation of a Regional Competition Authority for dealing with cases with cross border effects within the CSME, similar to the functions of Directorate General Competition (DG Competition) in the European Commission.

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 anticompetitive conduct.

Competition Policy

Amongst the CARICOM countries, only Jamaica (1993) and Barbados (2003) have enacted a competition law, have set up competition authorities and are enforcing the law. All the other states are in the process of introducing one.

It is important to understand the relevance of competition law for small economies, because of the detrimental effects on development of anticompetitive practices that exist. However, the 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. On the other hand, the small size of the population

leads to limited demand and diseconomies of scale. This dampens 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.

Also, 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. This cross-multiple ownership is common in the smaller economies of CARICOM.

The protection of sectors that provide significant employment and contribute to food security requires attention. 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. While this is a matter of liberalisation policy rather than competition law, it is still important to point to the needs of small economies.

While these economies are largely open, 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. There is some competition for local commercial enterprises and professional services in the non-tradable sector, though consumers eventually move to external sources.

The region is heavily reliant on FDI to promote economic growth and generate employment because domestic savings are insufficient to meet the needs. An examination of the economy of Trinidad & Tobago reveals a very high level of penetration of foreign investors in many sectors, unlike Belize, St. Lucia, St. Vincent, Bahamas and Jamaica. There are approximately 152 foreign firms operating in Trinidad & Tobago.

Anticompetitive Business Conduct

Cartelisation

Active cartels have been found largely in the activities of trade associations, and mainly in Trinidad & Tobago, 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. There is no competition law in Trinidad & Tobago, at present, and predatory conduct on part of one dominant firm is quite visible.

However, in the very small economies, businesses have a robust sense of independence and do not like to collude to fix prices. 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.

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.

Abuses of Dominance

Serious concentrations were found in all the economies, particularly in the import/distribution/retail sectors. 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, who have controlled the sector since the colonial period.

Concentrations in the economy and the close networking of the leading businesspersons 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

Box 101.1: 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.

very small; this is not the case for Jamaica and Trinidad & Tobago. Therefore, the prohibition of interlocking 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.

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. High levels of criminal activities in this sector, linked to alleged corruption by customs officials and in the other government departments, have resulted in large amount of goods entering duty-free.

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.

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 anticompetitive 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 anticompetitive behaviour. However, the law must be tailored to the needs of small economies.

Box 101.2: 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)

The 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 Trinidad & Tobago, 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.

Regulatory Framework

Telecommunications Sector

In all the territories, the Commissions are charged with the responsibility of regulating services in electricity, water and sewerage, and telecommunications, except in St. Lucia and St. Vincent, where the Eastern Caribbean Telecommunications Authority (ECTEL) regulates telecommunications, with National Telecommunications Regulatory Commissions (NTRC) established in each country.

All the Commissions are fledgling institutions that have to learn as they do, because changes in technology in the telecom sector are overtaking them. The linking of several OECs countries under one umbrella commission for regulating telecom will help alleviate the capacity constraints.

The state owned Bahamas Telecommunications Company (BATELCO) began the privatisation process in 1998, liberalising Internet services, pager system and trunk radio services. Voice and cellular services were still monopolised in 2004, but it was proposed that competition will be introduced in cellular and customer key systems.

The telecommunications company, Belize Telecommunications Ltd. (BTL), was privatised in 1987 and was granted a fifteen years exclusive license that expired on December 29, 2002. In 2002, 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.

Any proper telecommunication regulatory agency must have built-in expertise in several areas that include law, economics and engineering. All of the counties cannot afford the high quality of human resource needed so these are provided through ECTEL on a shared cost basis. Most of the regulatory issues at the national level are handled by the NTRCs with support from ECTEL.

The main legislation regulating the telecommunications sector is the Telecommunications Act No. 1 of 2001, which repealed the Radio Communications Services Act No. 19 of 1988, as amended. The Act No. 1 of 2001 contains the Treaty establishing ECTEL and makes the Minister in charge of telecommunications responsible for granting licenses and telecommunications policy in St. Vincent and the Grenadines.

In Trinidad & Tobago, a monopoly still exists, with Telecommunications Services of Trinidad and Tobago (TSTT) controlling the market. At present, the familiar story is unfolding of the incumbent claiming that services provided by new entrants are illegal, and the incumbent is using delaying tactics in providing interconnection services.

A Telecommunications Board has been appointed with responsibility for all aspects of telecommunications services, while at present the Regulatory Industries Commission (RIC) only regulates landlines.

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.

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 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.

Consumer Protection

There is a CARICOM Model Law on Consumer Protection, which CARICOM is expecting all member territories to adopt. With the coming of the CARICOM Single Market and Economy (CSME), which embraces the entire region into one single market, it was recognised that each country needed to have consumer protection laws in place. If a consumer from Jamaica went to another Caribbean country and made a purchase and, upon their return home, discovered the item to be defective, they would have a right to redress, notwithstanding the fact that they were in another CARICOM state.

The Consumer Protection Bill of Jamaica was drafted when the Government of Jamaica decided to pursue a new paradigm, moving away from price controls and exchange controls, towards a free-market, liberalised, system.

The main purpose for the Bill was the consolidation of various laws relating to sale of goods, hire purchase and unfair contract terms; and to establish principles of consumer rights, and regularise the operations of the Consumer Affairs Commission. The political authorities saw that legislative change was needed, in line with this new direction and this new path.

Presently, the Consumer Affairs Commission (CAC) receives an average of 2,500 complaints annually, 90 percent of which are resolved within the year. Many of the complaints were in regard to the utility companies; poor quality food; and issues pertaining to refunds, rebates, credits and exchanges.

Concluding Observations and Future Scenario

While this paper is not dealing with the larger issue of competition policy, 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, as Governments do not have the financial capability to support the unemployed and provide training for them, a discriminatory competition policy is required to protect employment and productive sectors. Even in formulating the competition law, public opinion must be considered with regard to unemployment and the racial divide.

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 anticompetitive 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.

The main constraint, and this was the experience of the Jamaican Fair Trade Commission (FTC), was lack of

skilled personnel to enforce the law, 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.

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 anticompetitive 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, along the lines of South Africa's competition law should be considered where relevant.

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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Her major area of research is in international trade issues, from a Southern perspective, with specific focus on the new areas, including competition policy, intellectual property and trade and the environment. She has been actively involved in the international debate on the issues arising from a proposed multilateral framework on competition policy. Dr. Stewart has published several articles in the areas of her research.