



INTRODUCTION TO COMPETITION LAW

Presented by: Mr. Bevan Narinesingh

Outline

- Definition of Competition
- Benefits of Increased Competition
- Three Pillars of Competition Law
- Status of Competition Law in the Region
- Role of a Fair Trading Commission
- Why competition is good for your business
- Advice.

Definition of Competition

- A situation in a market in which firms or sellers independently strive for buyers' patronage in order to attain a particular business objective, in most cases profit, market share, and/or sales (OECD 1993:22)
- Competition provides an incentive for firms to perform at their best, producing high-quality goods and services at reasonable prices
- Competition is an important driver of competitiveness in that it encourages entrepreneurial activities and market entry
- There is general acceptance by governments and policymakers that competitive markets are important to economic growth and sustainable development.

Benefits of Increased Competition

- Increased competition is an important way for firms to increase efficiency which, in turn, serves to reduce productive and dynamic inefficiency
- Efficiency also better enables firms to compete in global markets, or to compete more effectively with foreign firms in their domestic markets
- Effective Competition can promote an economy's growth prospects and work with other complementary policies and strategies to enhance trade and investment and resource mobilization
- Competition can bring about innovation, technological development, leading to lower prices and better-quality products and services.

Three Pillars of Competition Law

- Competition law consists of rules that are intended to protect the process of competition
- There are now more than 100 systems of competition law in the world including the Fair Trading Act in Trinidad and Tobago
- The main objective of the Fair Trading Act is the promotion of effective and undistorted competition
- The Act establishes the Fair Trading Commission and deals with three major pillars
 - (i) Anti-competitive agreements: This involves the elimination of agreements that restrict competition
 - (ii) Abuse by firms who hold a dominant market position (defined as having a market share in excess of forty per cent)
 - (iii) Merger control: This involves the investigation of mergers and take-overs between firms (e.g. a merger between two large groups which would result in their dominating the market).

Anti-competitive Agreements

- Agreements among competitors to fix prices, share markets or restrict output i.e. horizontal agreements are prohibited
- Other Agreements that restrict, distort or prevent competition are prohibited unless such agreements or practices can be shown to provide overriding benefits
- Agreements among firms at different levels of the market i.e. vertical agreements may be struck down when they are or could be harmful to competition
- There must always be a distinction made between harm to competition and harm to competitors.

Abuse of a Dominant/Monopoly Position

- Examples of Abuse of Dominant Position includes actions that
 - (i) restricts the entry of any person into that or any other market;
 - (ii) prevents or deters any person from engaging in competitive conduct in that or any other market and
 - (iii) eliminates or removes any person from that or any other market directly or indirectly imposing unfair purchase or selling prices or other uncompetitive practices;
- The Commission is not against a firm achieving a position of dominance provided it is achieved through legitimate means e.g. through skill, foresight and innovation
- We are however against the abuse of a dominant position i.e. class of conduct carried out by a dominant enterprise which has the effect of a substantial lessening of competition
- An enterprise shall not be treated as abusing monopoly power if it is shown that—
 - (i) its behaviour was exclusively directed to improving the production or distribution of goods or to promoting technical or economic progress; and
 - (ii) consumers were allowed a fair share of the resulting benefits.

Mergers

- Merger control aims at preventing an excessive reduction in the number of independent competitors supplying the marketplace so as to ensure the maintenance of an adequate degree of competition
- It aims at preventing those concentrations which would substantially increase the ability for firms to engage in either abuses of dominant position or in restrictive agreements.
- Merger control is forward-looking: rather than assessing the anti-competitive effects of practices that have occurred in the past, the competition authority assesses the likely anti-competitive effects of the merger in the future
- Under the Fair Trading Act any merger that exceeds 50 Million Dollars in total value will require the Commission's prior approval, if this is done without our approval we have the power to prohibit this merger and make an order for divestment
- In our analysis of the merger we will examine the efficiency justifications for the merger and then compare it to any anti-competitive effects that may result
- Other than outright prohibition, further remedies for anticompetitive mergers include the imposition on the merged firm of either structural or behavioural remedies which aim at the elimination of the merger's prospective anticompetitive effects.

Status of Competition Law in the region

- CARICOM Competition Commission established in 2008- Revised Treaty of Chaguaramas
- Jamaica- Fair Trading Commission established in 1993- Fair Competition Act
- Barbados- Barbados Fair Trading Commission established in 2001- Fair Trading Commission Act
- Trinidad and Tobago- Fair Trading Commission established in 2014- Fair Trading Act
- Guyana- Competition Commission established in 2011- Competition and Fair Trading Act
- OECS- future supra-national competition agency to be established- Draft OECS Competition Bill already prepared
- In case the competition case has a multi-jurisdictional/regional dimension, the CARICOM Competition Commission may get involved
- The case may also be handled by cooperation/coordination among various national competition authorities and courts
- In addition there are sector regulators in most jurisdictions inter alia in Telecommunications, Utilities, Banking etc.

Role of a Fair Trading Commission

- Fact finding
- Conducting investigations and market studies
- Taking action against infringements of the law
- Investigating and approving mergers
- Advising the government on the effect of relevant policy and legislative initiatives on competition law and policy
- Competition advocacy and public education.

Trinidad and Tobago Fair Trading Commission's Enforcement Powers

- De-regulation - laws to reduce monopoly power
- Preventing mergers/acquisitions that create a dominant position or requiring that certain undertakings be entered into
- Penalties against proven cases of anti-competitive behaviour e.g. companies breaching competition rules risk hefty fines of up to 10 per cent of global turnover
- Prohibit an agreement from being made or carried out
- Order that an agreement be terminated or modified
- Prohibit any extraneous conditions being attached to transactions
- All decisions are subject to Judicial Review.

Why is competition good for your business

- Competition leads to innovation and creative thinking while also helping you become less complacent by encouraging change
- Constant competition ensures that your marketplace continues to evolve and that your product offering continues to evolve with it
- Competition forces you and your business to figure out how to be different than your competition, how you can focus on your customers
- Competition helps narrow your focus and helps you concentrate on what you're really good at
- This helps you to work smarter and leads to increased efficiency with respect to employees and methods of production which is especially critical in dynamic knowledge based markets.

Without effective competition?

- Rising concentration of economic power
- Declining market entry and entrepreneurial activity
- Increased wealth and income inequality
- The competitive process will be distorted leading to harm to consumers through higher prices, lower quality products and less choice and innovation.

Present Competitive Rankings

- Trinidad and Tobago 89 in Global Competitiveness (World Economic Forum)
- Barbados is 55, Jamaica is 86 (both have FTCs)
- A properly functioning Commission as well as the further development of business incubators and development organizations will likely help improve this ranking especially because Trinidad and Tobago's ranking is quite low with respect to the pillars of Institutions and Infrastructure
- A well functioning Commission can enhance and work in tandem with policies to improve the macroeconomic environment, higher education and training, business sophistication, innovation and general efficiency.

Success Stories

- Uzbekistan- identified anti-competitive practices in the food market and developed legislation in regard to the food supply and value chain, in order to improve efficiency, transparency and competition. This facilitated conditions for the rapid development of free markets to ensure a sustainable food supply for its population. This involved demopolization and unbundling of state enterprises, the encouragement of small enterprises and the development of enabling infrastructure.
- Tanzania- after the Fair Trade Practices Act was adopted in 1994 markets with five or more competitors achieved 13-24% increases in firm productivity
- South Korea- application of the new competition policy measures created one million job opportunities.

Contrast

- In Nepal when there is no competition law or political will to protect competition in the market, there is regulatory capture, widespread cartelization, bid rigging, tied selling and predatory behaviour and consumers pay considerably more
- A similar situation affects CSME jurisdictions who do not have an place a competition regime
- The effects may include reduced productivity, high prices, poor quality products, suppressing of innovation and less consumer choice.

What is needed

- Aggressive and consistent enforcement of the Fair Trading Act
- A properly resourced Fair Trading Commission
- Proper coordination with other regulatory agencies such as sector regulators
- Greater international coordination through the CARICOM Competition Network and the International Competition Network.

Advice

- Don't discuss prices with competitors
- Don't agree with competitors to restrict or increase levels of production
- Don't divide customers, markets or territories with competitors
- Don't require a customer to buy products only from you unless you get advice and approval from legal counsel
- Don't agree with competitors to boycott suppliers or customers
- Don't offer a customer prices or terms more favourable than that offered to competing customers unless justified by cost savings and the need to meet competition or changed market conditions
- Don't use one product as leverage to force or induce a customer to purchase another product without consulting legal counsel
- Don't cover up wrongdoings, report it immediately to legal counsel or to the TTFTC .



Thank you for your attention!

Email: tandtftc@gmail.com