TTFTC

TRINIDAD AND TOBAGO FAIR TRADING COMMISSION

Trinidad and Tobago Fair Trading Commission (TTFTC) Breakfast Session with Key Stakeholders

Wednesday April 17 2019

OUTLINE OF SESSION

- Importance of Competition
- The Key Provisions in the Fair Trading Act
- Work and Role of the TTFTC
- Final Thoughts

About the TTFTC

- Independent Statutory Body established pursuant to the Fair Trading Act

- Responsible for implementing and administering the provisions of the Fair Trading Act

- The TTFTC is one of more than 130 competition/anti-trust agencies that are presently functioning globally

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TRINIDAD AND TOBAGO FAIR TRADING COMMISSION

IMPORTANCE OF COMPETITION TO THE TRINIDAD AND TOBAGO ECONOMY

Presented by Mr. Bevan Narinesingh, Executive Director, Trinidad and Tobago Fair Trading Commission

What is 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 shares, and/or sales (OECD 1993:22).

- A Competitive market is characterized by there being numerous sellers with every seller trying to increase its profits by offering to the buyers a better combination of price, quality, and service than the combinations offered by its competitors.

Why is Competition Good

- Competition lies at the heart of any successful market economy.

- Increases productivity and economic growth. (3 ways – promotes firm efficiency, inefficient firms exit the market, and promotes innovation and technological development)

- Increases competitiveness (national and sector levels) Stimulates companies to increase their productivity and efficiency and thereby to improve their market position locally and globally because of the desire to keep ahead of rivals

- Competition improves consumer welfare by protecting consumers and helping to ensure a wider choice of goods are available at the lowest possible prices and aids in the reduction of poverty (re lowering the costs of essential goods and services).

- Can work together with other complementary policies and strategies such as Industrial Policy and National Development Plans

Why Competition is good for your Business

- Competition leads to innovation and creative thinking while also helping you become less complacent
- Constant competition ensures that as your marketplace continues to evolve your product offering evolves with it
- Competition forces you and your business to figure out how to be different than your competition and helps you focus and concentrate on what you are really good at and leads to increased efficiency

Why should anti-competitive behaviour be discouraged?

- Anti-competitive behaviour significantly distorts competition while not producing positive effects for market efficiency and consumer welfare

- Because of the suppression of competition, firms are no longer under pressure to minimise costs or provide high quality goods and services at competitive prices

- Enterprises are not faced with sufficient incentives to promote the development of new products and processes, in order to gain a competitive advantage

Present Competitive Rankings

- Competitiveness is a measure of the ability to efficiently create goods and services and involves the ability of firms to face competition on a sustainable basis

- Competition is an important driver of competitiveness as it encourages entrepreneurial activities and market entry.

- Trinidad and Tobago 89th in 2017-18 Global Competitiveness (World Economic Forum). Rankings are especially low in Key Pillars such as Institutions, Macroeconomic Environment and Innovation

- A properly functioning Competition Policy as well as the further development of business incubators and development organizations will likely help improve Trinidad and Tobago’s overall ranking by working in tandem with policies to improve the macroeconomic environment, higher education and training, business sophistication, innovation and general efficiency.

Competition Success Stories

- Economic evidence in South Africa is that effective competition led to 2-2.5% growth
- In Mexico, the Competition agency working in collaboration with procurement agencies in the pharmaceutical sector led to more than 1 Billion US in total savings through lower prices and increased competition

- The OECD worked with the Government of Greece to identify existing anti-competitive laws with the subsequent amendments and regulations ending up saving Greece about 5 Billion Euros or about 1.4% of GDP.

- Uzbekistan- the Competition Agency identified anti-competitive practices in the food market and helped developed legislation which led to improved efficiency, transparency and competition through the de-mopolization 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.

THE FAIR TRADING ACT:
KEY PROVISIONS

Presented by Mr. Bevan Narinesingh, Executive Director, Trinidad and Tobago Fair Trading Commission

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RATIONALE
The logo symbol has the overall shape of a square with equal sides, symbolsing the equality and fairness that the commission brings to businesses. The shapes that make up the square depicts abstract people

What is Competition Law?

- Competition law refers to the legal rules and standards that are used to protect, promote and restore market conditions conducive to competition.

- Appropriate Competition legislation is essential for the efficient functioning of a modern free market economy

- Competition law is enforced in Trinidad and Tobago through various pieces of legislation including the Fair Trading Act, the Telecommunications Act and the Regulated Industries Act

- The Fair Trading Act was passed in 2006

- The Fair Trading Commission was established in 2014.

The Fair Trading Act

- The Fair Trading Act creates an institutional framework for the enforcement of competition policy and deals with many major issues including:

(i) the abuse of monopoly power;

(ii) anti-competitive agreements;

(iii) anti-competitive mergers and

(iv) The enforcement of the relevant clauses or enforcement measures.

- Parts II, IV, V, VI, VIII have already been proclaimed
- There are certain sectors where the Act does not apply including:

(i) Securities Industry

(ii) Telecoms

(iii) Banking Industry

(iv) Intellectual Property

(v) Professional Associations/Collective Bargaining Situations

- It is expected that the rest of the legislation will be proclaimed by the end of the Parliamentary session.

CARICOM COMPETITION COMMISSION

Key Provisions in the Fair Trading Act: Abuse of Monopoly Power

Abuse of Monopoly Power

- Under the Fair Trading Act ‘dominant position’ is equated to monopoly power when a firm possesses 40% market share.

- A firm with market power has the ability to profitably raise its prices (and without a significant loss of customers), for a long period of time, without any regard to competitors.

- The Fair Trading Act does not prohibit the acquisition or possession of market power provided it is achieved and maintained through legitimate means e.g. through skill, foresight and innovation.

Is Dominance bad?

THE ANSWER IS NO AND COMPETITION LAW DOES NOT PROHIBIT DOMINANCE!

- If dominance in itself was bad then firms would not have an incentive to invest money in costly infrastructure, or to undertake research & development.
- What is considered bad is the abuse of a dominant position!
- The abuse refers to practices that the firm may engage in to lessen competition in the market (removal of rivals) or to exploit customers.

Types of Abuses of Dominance

Fair Trading Act Section 21- Activities that:

- restricts the entry of any person into that or any other market;
- prevents or deters any person from engaging in competition in that or any other market;
- eliminates or removes any person from that or any other market;
- directly or indirectly imposes unfair purchase or selling prices;
- limits the production of the goods or services to the prejudice of consumers;
- makes the conclusion of agreements subject to acceptance by another parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreements;

Practical Steps – Abuse of Dominance

Enterprise?
- Legal definition from the Act

Dominant?
- Define relevant market (product and geographic)
- Calculate market shares
- Barriers to entry

Abuse?
- In relation to the Act

Lessen competition?
- Lessen competition or harm to consumers?

Efficiencies?
- Efficiencies outweigh harm?

Key Provisions in the Fair Trading Act: Anticompetitive Agreements

Anti-competitive Agreements:

- An anticompetitive agreement is one which has an adverse effect on the competitive process with the effect of Substantially Lessening Competition (coordinated conduct) and are prohibited under section 17 of the Fair Trading Act

- Prohibited agreements between Competitors include
  - **Unreasonably fixing** prices or terms of trade
  - **Market sharing** (customers, territories, products)
  - **Bid rigging**
  - **Output limitations**
  - **Exchanging confidential information:** e.g. prices, price increases, costs, capacity, market shares, business plans, relations with customers/suppliers

Why are these bad?

- **Raises prices to anti-competitive levels**
- **Lowers quality and stifles innovation**
- **Restricts the amount supplied**
- **A deprivation of an opportunity to get value for money with there being d**isproportionately adverse impact on the poor, especially in the case of essential goods
- Preventing business opportunities that could spur economic growth
- Impact on government accounting through bid-rigging
- **Can put honest and well-run companies out of business**
- Firms can however collaborate in a number of ways to gain some competitive advantage for a sector through joint investment in costly infrastructure, or undertake R&D.

Key Provisions in the Fair Trading Act: Mergers

What is a Merger?

SECTIONS 13-16 in Fair Trading Act

It is difficult to capture the concept of a merger in one definition – several transactions can be
classified as mergers, including:

- 2 firms (Firm A and Firm B) deciding to become a single firm (and losing their individual identity).
- Firm A acquires Firm B.
- Firm A acquires a significant share of Firm B and therefore has controlling interest in Firm B.
- Firm A and Firm B establish a joint venture as an autonomous entity.

▪ Horizontal Mergers – Firm A and Firm B operate at the same level of a market.

▪ Vertical Mergers – Firm A and Firm B operate at different levels of a market.

Why do firms merge?

- Efficiency (Synergies) – combining business activities will reduce cost (economies of scale) and increase performance

- Enter markets – a firm may acquire another to diversify its product base or to expand its operations into another country.

- Eliminate (or prevent) competition in a market – existing or future competition.

- National reasons, e.g. to create a national champion or to protect an industry from closing.

Potential Impact of Mergers

- Lack of efficiency post-merger
- Price increases
- Facilitate collusion – fewer competitors on the market
- Portfolio power – tying and bundling
- Foreclosure on markets

Why Merger Control?

- Guard against possible negative impacts of mergers
- To protect and maintain the structure of the market to ensure that effective competition takes place
- To protect the public interest – non-competition in nature

Elements of Merger Control

Jurisdiction

Thresholds (asset based – $50million or more)

Notification

(A) ~~Voluntary~~ | (B) Mandatory

Assessment

Substantially lessen competition in the market

Decision - Approve, Block or Approve with conditions (Remedies)

Merger Considerations

- The vast majority of mergers do not raise material competitive concerns.

- Concerns do arise with respect to anti-competitive mergers i.e. mergers which restrict of distort competition.

- 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 of either structural or behavioural remedies which aim at the elimination of the merger's prospective anticompetitive effects.

Key Provisions of the Fair Trading Act: Relationship with the Court, Potential Penalties, Relationship with the CARICOM Competition Commission

Relationship with the Courts

- The Commission can take to Court any business or individual who has been found guilty of anti-competitive practices and has failed to take corrective measures, after being instructed to do so
- Penalties and sanctions are fixed in the law and set out in Section 44 of the Fair Trading Act

The court may:

- prohibit an agreement from being made or carried out
- order that an agreement be terminated or modified
- require that certain undertakings be entered into
- fine the business/individual that is guilty of anti-competitive practices

Decisions can be appealed

Potential Consequences for Contravening the Provisions of the Fair Trading Act

- Fines (up to 10% of Annual Turnover).
- Lengthy investigation and loss of management time.
- Reputational damage.
- Monetary Damages awarded to aggrieved parties.
- Contracts may be null and void.

Relationship with the CARICOM Competition Commission

- In cases of allegations of cross-border anti-competitive business conduct section 49 of the Fair Trading Act provides for the TTFTC to carry-out the work of the CARICOM Competition Commission at the local level

- Under section 50 of the Act, a decision of the CARICOM Competition Commission is binding on all parties to which it relates and is enforceable in Trinidad and Tobago as though it were a judgment of the High Court."

THE ROLE OF THE FAIR TRADING COMMISSION

Presented by Mr. Bevan Narinesingh, Executive Director, Trinidad and Tobago Fair Trading Commission

Functions of the Commission

- The promotion and maintenance of competition
- To advise the Minister on competition matters
- To make available to businesses and consumers, general information with respect to their rights and obligations under the Act
- To undertake studies and publicize reports.

The Fair Trading Commission's Responsibilities

The TTFTC will be responsible for implementing and administering the provisions of the Fair Trading Act and for,

- keeping business conduct under review;
- conducting investigations;
- diffusing and publishing information about competition policy;
- cooperating with other competition jurisdictions;
- reviewing the effectiveness of the Act;
- advising the Government on other laws affecting competition.

Commission's Objectives

- Prevent anti-competitive conduct while at the same time complementing other policies that promote competition;
- Ensuring that all legitimate business enterprises have an equal opportunity to participate in the economy;
- Maintaining and promoting free and fair competition in business;
- Raising awareness of the benefits of competition.

Values

- Accountability
- Transparency
- Consistency
- Fairness
- Commitment

Possible Sectors that will be impacted by work of TTFTC

- Construction
- Medical/pharmaceutical industry
- Alcohol sector
- Energy services sector
- Motor vehicle sector
- Food production, supply/distribution
- Entertainment industry
- Hotel Industry
- Transport

Additionally, State Owned Enterprises involved in anti-competitive agreements, mergers or unilateral anticompetitive conduct will find no comfort in the Act.

Compliance Tips

1. A culture of competition must come from the stakeholders themselves with there being a spirit of fair competition throughout the industry

2. Take special care during meetings as meetings present an opportunity for competitors to meet and exchange commercially sensitive information. Appropriate safeguards need to be put in place including if necessary the preparing of a manual that clearly sets out the areas to be discussed at meetings with these areas being focussed on technical and general industry issues and not commercially sensitive information

3. Be careful what you put and don't put in writing. Keep a contemporaneous written record of what was or not discussed in meetings with competitors and the reasons for strategies.

4. If you are in a meeting where collusion or anti-competitive activities are being discussed, please withdraw from the meeting and have this noted.

Advice

- Do not discuss prices with your competitors
- Do not agree with competitors to boycott suppliers or customers
- Don’t use one product as leverage to force or induce a customer to purchase another product without consulting legal counsel
- Don’t agree with competitors to restrict or increase levels of production
- Do not agree to share or allocate markets i.e. divide customers, markets or territories with competitors
- Continue to deal fairly with your customers and suppliers
- Remain alert to arrangements between your competitors e.g. take note of significant and unexplained prices changes
- Don’t cover up wrongdoings, report it immediately to legal counsel or to the Commission
- Update your compliance document and continue to keep abreast of relevant developments

Internal Communication

Phrases to avoid	Alternatives
We should pre-empt or weaken competition.	We must invest in product innovation and quality to retain its competitive advantages .
We faces no real competition.	We are a key player.
We enjoy a dominant share of the market.	We are currently the market leader in this category.
We are the price leader / follows the price leader.	We consider our competitive environment.

TTFTC's Focus Areas for the Future

- Raise awareness of the benefits of greater competition
- Continued Stakeholder-focussed Presentations
- Entering into MOUs with other Regulators nationally, regionally and internationally
- Getting the remaining parts of the Fair Trading Act proclaimed
- A proper well structured sensitization program

Final Thoughts

- The Commission is committed to promoting and ensuring a fair market

- Through legislation, monitoring, enforcement, and public education, the Commission is committed to promoting and ensuring a fair marketplace we will do this through

- This is based on our firm belief that the Fair Trading Act can with other pieces of important legislation and effective government policy result in long term sustainable growth and development.

- Contact us if you wish to get further clarifications with respect to your responsibilities under the Fair Trading Act

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TRINIDAD AND TOBAGO FAIR TRADING COMMISSION

Thank you for your attention!

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