



***Presentation to the American
Chamber of Commerce Trinidad and
Tobago Legal and Trade and
Investment Committee***

About Us

- **Independent Statutory Body established pursuant to the Fair Trading Act**
- **Our main purposes are to:**
 - (i) **ensure that all legitimate business enterprises have an equal opportunity to participate in the economy;**
 - (ii) **prevent anti- competitive conduct while at the same time complementing other policies that promote competition**
 - (iii) **maintain and encourage free and fair competition in business**
 - (iv) **take action against anti-competitive practices**

Benefits of Increased Competition

- **Competition provides an incentive for firms to perform at their best, producing high-quality goods and services at reasonable prices**
- **Increased competition is an important way for firms to increase efficiency**
- **Efficiency better enables firms to compete in global markets, or to compete more effectively in their domestic market**
- **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.**

Why Competition is 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**
- **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.**

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.**

Commission's Objectives

- **Ensuring an effective competitive process**
- **Maximize efficiency**
- **Ensure a level playing field**
- **Promote fairness and equality**
- **Facilitate market liberalization and competitiveness**

Organizational Structure

**Chair and
Commissioners of
the TTFC**

Executive Director — **Secretary (Corporate)**

Internal Audit

**Information
Technology**

**Information
Systems
Administrator**

Legal

**Senior Legal
Counsel, Legal
Counsels**

**Research/
Investigation**

**Investigators,
Researchers,
Case
Managers**

Support

**Administrative
Secretaries,
Receptionist,
Office Assistant,
Driver/Messenger**

Accounts

**Accounting/Clerical
Assistant**

The Fair Trading Act

- **The Fair Trading Act creates an institutional framework for the enforcement of competition policy in Trinidad and Tobago and deals with many major issues including:**
 - (i) the abuse of monopoly power;**
 - (ii) anti-competitive mergers**
 - (iii) anti-competitive agreements and**
 - (iv) The enforcement of the relevant clauses or enforcement measures.**
- **The legislation was passed in Parliament in 2006**
- **Parts II, IV, V, VI, VIII have already been proclaimed**
- **It is expected that the remaining parts will be proclaimed before the end of June**
- **Specific anti-competitive practices that are prohibited under the Act include resale price maintenance, price fixing, collusion and cartels and bid rigging. These are per se offences i.e. their mere existence makes these practices an offence.**
- **Rule of reason offences under the legislation include anti-competitive bundling, tie in arrangements, vertical restraints, rebates/discount policies**

Three Pillars of Competition Law

- **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 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**

Abuse of Dominant 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 its dominant position 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 are 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.**

Powers of the TTFTC

- **The TTFTC's powers are set out in several provisions in the Act. They include the power to**
 - (i) carry out investigations in connection with matters falling within the provisions of the Act,**
 - (ii) summon and examine witnesses,**
 - (iii) to call for, require the production of and examine documents in connection with an investigation, and**
 - (iv) to direct an enterprise to take such steps as are necessary and reasonable to overcome the effects of abuse of dominance in a relevant market.**
- **The TTFTC can take to Court any business or individual who has been found guilty of anti-competitive practice and has failed to take corrective measures, after being instructed by the Commissioners**

Court's Enforcement Powers

- **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**
- **prohibit the acquisition of another company or require that certain undertakings be entered into**
- **Impose 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**

Markets/sectors that we are likely to impact

It is alleged that there is bid rigging, collusive tendering, price fixing and market sharing in Trinidad and Tobago, based on these allegations it is likely that the following markets will be likely affected in varying degrees

- **Construction**
- **Airline industry,**
- **Medical/pharmaceutical industry**
- **Furniture and appliances sector**
- **Alcohol sector**
- **Energy services sector**
- **Motor vehicle sector – New car, Used car and repairs**
- **Food production, supply/distribution industry**
- **Agricultural sector**
- **Entertainment industry**
- **Hotel industry**

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 in place a competition regime**
- **The effects may include reduced productivity, high prices, poor quality products, suppressing of innovation and less consumer choice.**

Focus Areas for the Future

- **Raise awareness of the benefits of competition through a proper well structured Advocacy program**
- **Continued Stakeholder-focussed Presentations**
- **Entering into MOUs with other Regulators nationally, regionally and internationally**
- **Getting the remaining parts of the Fair Trading Bill proclaimed**

Advice to AMCHAM Membership

- **Avoid activities that will constitute per se type (strict liability) offences under the legislation e.g. price fixing, agreements to limit production, bid rigging**
- **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 agree with competitors to boycott suppliers or customers**
- **Don't cover up wrongdoings, report it immediately to legal counsel or to the Commission**

Final Thoughts

- **The evidence is clear that competitive markets can and do contribute to productivity, cost efficiency, low prices, innovation and therefore economic growth**
- **The objective is to use competition law and policy to assist in creating an environment that is friendly for the development and promotion of enterprise in Trinidad and Tobago**
- **Try to ensure that your practices are in accordance with the legislation.**



Thank you for your attention!

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