



# **COMPETITION POLICY AND LAW IN THE CSME**







### Why the need for Competition Policy in CARICOM?

and are experiencing more intense competition from international firms because

create opportunities for firms to improve efficiency by operating on a larger scale,

markets. This is particularly important since many firms in CARICOM countries are relatively small and have difficulty competing in the international markets.

promoted intra-regionally and CARICOM firms are provided with the opportunity

## **What are Competitive Markets?**

In competitive markets, firms compete for customers but are unable to independently influence the prevailing price. In this environment, consumers and firms can easily access information relevant to their decision making process; new firms can freely enter the market and unprofitable existing firms can freely exit the market.

firms enter a market to contest excessive profits, if any, earned by existing firms. Accordingly, competition provides the proper incentives for existing firms to supply

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Since each existing firm, motivated to maximize profits, has an incentive to undermine competition, it is likely that some firms will engage in conduct

be implemented by a single firm or coordinated amongst a group of firms. In either case, consumers and some firms could be made worse off when competition is

Given the importance of competitive markets to consumers and some firms, Governments need to discourage firms from engaging in conduct that is likely to



## CARICOM Competition Policy Regime

competition and enhance economic efficiency in production, trade and commerce. To ensure that action by enterprises does not reduce the benefits to be derived

- *Anti-competitive agreements (prohibited against) CSEMCCS & TEMCF-2017*  
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*IV*



## Anti-competitive Conduct under the CARICOM Competition Regime

- *Fixing of purchase or selling prices, directly or indirectly:*



**1992-95**, fixing prices on feed addi

most significant lysine producers. Production facilities were located in

**overcharging by 100% and gaining rents of some US\$ 140 million. Every person in CARICOM who eats poultry and pork paid more for the products as a result of this cartel.**

flour mills in Jamaica, Belize, Barbados and Grenada.







## COMPETITION



- ◆ A dominant firm may be forced by competition to lower prices or pro



fined US\$95.9 million by the South African Competition Tribunal for  
of flat steel products. Mittal SA manipulated the supply of flat steel prod  
market in order to maintain a price pre-determined by the firm.

flat steel products any conditions in respect of the customers use or resale  
ers of flat steel products.

- *Treating parties engaged in similar commercial transactions unequally, so as to give competitive advantage to one party over another:*

- ◆ For example firms are not allowed to charge different prices to different  
differences in prices do not reflect the quantity, quality or any other trad
- ◆ A firm may, for instance, provide its subsidiary with a better price for



- *Tying to a sale or contract additional obligations that are not connected to the substantive transaction:*



- *Refusing to give competitors access to infrastructure or networks where such access is essential to the provision of a service:*



firm constructed a dock and offered a ferry service. A competitor wanted



- ◆ A firm could resort to selling a product at a below cost price in order

- *Directly or indirectly imposing unfair purchase or selling prices or other restrictive practices;*



a product or service, and allows a dominant firm to maintain profits



## COMPETITION POLICY AND LAW IN THE

## Agreements Allowed by the Revised Treaty of Chaguaramas

- *There are instances when there is a need for collaboration amongst competitors which merit special consideration. The Revised Treaty provides that an enterprise shall not be treated as engaging in anti-competitive business conduct if*



*goods and services, or improves efficiency by, for instance, facilitat*



*exclusions and exemptions*

**a.**

*reasonable protection as employees* *their own*

**b.**

*for the purpose of fixing terms and conditions of employment*

**c.**



## COMPETITION

## Enforcing the Revised Treaty

On the basis of findings of the investigation, the Commission may

- *determine whether business conduct contravened the rules of competition;*
- *apply remedies or sanctions, including ordering the termination or law;*
- *issue cease and desist orders;*
- *order payment of compensation to persons affected by the anti competitive conduct.*



## Member States' Obligations

and void within its jurisdiction, except for those benefiting from exclusions or

- *enact competition laws consistent and compliant with the rules of competition and provide penalties for anti-competitive business conduct;*
- *enact legislation to ensure that determinations of the CARICOM Commission are enforceable in their jurisdictions;*
- *establish and maintain institutional arrangements and administrative procedures to enforce competition laws by establishing and maintaining national competition authorities for the purpose of facilitating the implementation of the rules of competition;*
- *take effective measures to ensure access by nationals of other Member States to competent enforcement authorities including the courts on an equitable, transparent and non-discriminatory basis;*
- *provide for the dissemination of relevant information to facilitate consumer choice;*
  
- *Cooperate with the CARICOM Commission in achieving compliance with the rules of competition;*
- *Investigate any allegations of anti-competitive business conduct referred to the authority by the Commission or another Member State;*
- *Co-operate with other national competition authorities in the detection and prevention of anticompetitive business conduct and the exchange of information relating to such conduct, giving due regard to the need to*



## Procedure for Undertaking an Investigation at the Community Level

### *Member States or COTED*

request of the Commission to undertake an investigation. Individuals or firms must the CARICOM Commission to investigate, if there is sufficient reason to believe

where it has sufficient reason to believe that cross-border anti-competitive conduct

sufficient information to allow the CARICOM Commission to make a preliminary assessment on whether an investigation is justified. If so, then the Commission

the parties fail to comply in the time specified, the Commission may apply to the



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## **Procedure for Undertaking an Investigation at the National Level**

At the national level, individual or firms may take complaints to the National writing, providing full identification details, and a brief description of the practice

An enterprise that is aggrieved by the findings of the National Competition Authority can appeal to a Judge in Chambers. The Judge may confirm, modify or reverse the Commission's findings or any part thereof, or direct the Commission to



## Role of Stakeholders in Enforcement of the Law