

Speaking Notes

Regulatory Challenges in the Global Marketplace – The Role of the Fair Trading Commission¹

Introductory Remarks

It is indeed a pleasure to be asked to address you, the members of the Barbados Association of Professional Engineers (BAPE), on the topic “Regulatory Challenges in the Global Marketplace” and to outline the role of the Commission and share some of the challenges faced by us as a young regulatory agency in this dynamic global environment.

The Global Environment and the FTC Role

We are operating in a world with fewer borders, greater trading blocs and the pervasive influence of trans-national enterprises. This global interdependence brings several benefits including

- greater sources of supply,
- more diverse offers,
- access to innovation; and
- greater competition improving efficiency.

¹ Speaking Notes for Speech to be delivered by Michelle C Goddard, Chief Executive Officer, Fair Trading Commission at the monthly luncheon of Barbados Association of Professional Engineers (BAPE) on 26th September 2002.

However access by foreign players to our markets is guaranteed and this brings threats to our development and existence.

It is no longer sufficient for local businesses to be competitive in local markets but we need to be able to compete on the larger stage.

I propose to share with you some of the challenges which we face and will continue to face as we seek to operate in this marketplace.

The Fair Trading Commission was conceptualised and established in response to domestic as well as international stimuli.

Policy makers recognised that good governance and a new paradigm of regulatory control would be required to meet the dictates of our economic development. Coupled with this was the influence and requirements of several important regional and international factors –

- the Caricom Single Market and Economy (CSME)
- Free Trade Area of the Americas (FTAA); and
- GATS and the World Trade Organisation (WTO)

which all dictated that an institution be set up to promote efficiency and consumer welfare.

Our competition policy obligations are detailed in the Treaty Revising the Treaty of Chaguaramas which places obligations on

Caricom Member States to establish legislation with respect to anti-competitive conduct and consumer protection and to establish a competent authority to enforce the same. The FTAA which is presently under negotiation, contains a draft chapter on Competition Policy and is likely to place additional obligations on us with respect to the enactment and enforcement of fair competition legislation. Discussions at the World Trade Organisation regarding the inclusion of competition policy in the trade discussions continues and may result in certain matters being addressed at that level.

Telecommunications services were incorporated into the General Agreement in Trade and Services (GATS Agreement) in the 1997 WTO agreement and this committed countries to progressive liberalisation of their telecommunications markets. Barbados's commitments in this sector were concretised in Green Paper and embodied in the Memorandum of Understanding that was signed between the Government of Barbados and Cable & Wireless.

These international obligations shaped and will continue to fundamentally impact on the role and legislative mandate of the Fair Trading Commission.

The Commission was established in January 2001 to play an economy wide regulatory role. Whilst presently responsible for the regulation of service providers within the telecommunication and electricity sectors (i.e. Cable & Wireless (Barbados) Ltd. and

Barbados Light & Power) the Commission will in due course assume responsibility for the regulation of the water and natural gas sectors and the publicly owned utilities operating in those sectors – the Barbados Water Authority and the National Petroleum Corporation. The Commission's role in the utility sectors is enshrined/set out in various pieces of legislation including the Utilities Regulation Act and Telecommunications Act.

This utility regulation role will shortly be extended to the enforcement of proposed fair competition and consumer protection legislation. It is expected that this legislation will deal with merger control, abuse of dominant position, anti-competitive practices such as price-fixing and bid-rigging. Matters to be addressed in consumer protection include unfair contract terms, unfair trading practices such as misleading advertising, consumer safety and will discuss some of the matters later in presentation.

In enforcing this plethora of legislation the Commission seeks to

- Ensure efficiency;
- Promote competition; and
- safeguard consumer welfare

But it does so in a global marketplace that brings opportunities as well as challenges.

Regulatory Challenges for the FTC

Facilitating the transition to a competitive telecommunications

Several issues arise in the telecommunications sector (as the FTC together with our co-regulator in this area the Ministry of Economic Development) seeks to ensure that liberalisation and the promotion of competition proceeds in a structured and timely manner and that it brings benefits reaped in other jurisdictions such as greater access to service, lower prices and better delivery of services.

It is critical to ensure that new entrants can participate in this new market by accessing the telephone network.

- Where? – at what point in the network
- What price? – how will prices for connecting to services be determined
- What services? – what can we have access to
- What quality? – what standards
- Who can interconnect?

How do we establish a fair interconnection regime that ensures efficient provision of access to networks. Some of these matters are addressed in a general sense in the WTO Reference Paper and the new Telecommunications Act (to be proclaimed).

Interconnection with a major supplier will be provided on non-discriminatory terms, in a timely fashion, and at cost-oriented rates that are transparent and sufficiently unbundled.

The regulator has to take this general principles and fashion a solution that works and endures to the benefit of the marketplace.

Overly liberal arrangements or overly restrictive arrangements have the power to hurt the entire framework by undermining either competitors or incumbents.

There will be also a constant tension between incumbents and new entrants. As we move on the continuum from monopoly to free market competition, disputes will arise. The incumbents are likely to argue we have not freed them sufficiently to compete, while the new entrants may feel that we have deregulated too much to the point that they can effectively compete. Balancing of all these considerations is the role of the regulator.

To address some of these matters the Commission will be issuing guidelines with respect to the development of standard agreement that can be used by participants in the process – the Reference Interconnection Offer (RIO) to be prepared by the incumbent. This document will address some of the questions I posed earlier regarding the arrangements for pricing, services etc.

Disputes with respect to these and other matters will arise between incumbents and new entrants, between new entrants themselves, between operators and the regulator. We will therefore also be developing dispute resolution mechanisms to facilitate the timely resolution of disputes in this area.

**Application of incentive regulatory mechanisms across sectors -
Designing flexible and responsive yet effective regulatory
measures**

The principles underlying this speak to allowing the regulated service provider a level of flexibility with regard to setting rates. Regulator needs to ensure that the mechanism does not allow the company to make excessive or windfall profits and that it encourages higher levels of efficiency.

The Commission has determined that price cap will be used in the telecommunications sector but detailed consideration has to be given to the electricity sector which is a market that is unlikely to face real competitive pressures but yet the importance of keeping costs down is critical to the development and promotion of our economy including manufacturing/ informatics sector.

A comprehensive overview of the rate and tariff structure for the Barbados Light & Power will be necessary to determine the appropriate type of incentive regulation for that sector. Options will include an incentivised rate of return mechanism, price cap or

performance based rate-making. Consideration will also need to be given to a new tariff philosophy and whether the company should be allowed to continue to pass through certain costs such as the fuel adjustment charge.

The water sector will also come under the ambit of the Commission and in determining the right type of regulation to be used the unique characteristics of a public sector utility will need to be taken into account.

Improving the quality of service offered by utilities and business enterprises

Service Standards must be developed for utility companies. This will include overall guaranteed standards and individual performance standards and levels of compensation for aggrieved consumers.

Balancing regulatory and developmental goals - Regulating for development

It is important to recognise that there is no “one-size fits all” solution and regulatory framework must be relevant to the stage of development and local circumstances. The FTC is primarily an economic regulator which means a focus on correcting market failures and strengthening the enabling business environment, but

this economic regulation has consequences of a social and environmental nature which must be taken into account.

The drive for economic efficiency must also take account of environmental concerns such as in the electricity sector. The Commission intends to take a greater and more pro-active role in response to this and will be examining along with the service provider

- demand side management programme
- use of efficient fuels

Creating a domestic competition culture

We need to educate and inform the various stakeholders as to the dictates of the new regime. Indeed this obligation is enshrined in regional trade agreements – the draft chapter on FTAA obligations includes explicit provisions regarding promotion of competition advocacy.

Competition legislation raises new and particularly challenging issues. Practices presently accepted as the standard and appropriate way of doing business will be prohibited

- Price –fixing - fixing prices between businesses or minimum fee levels by professional associations
- Bid-rigging – applicability in projects
- Loyalty discounts – rationale is to prevent the consumer from going to a competitor

Considerations of the global market impact tremendously in this area as it is difficult to detect and investigate certain matters.

International businesses may enter into agreement and take concerted action which is anti-competitive – if the effects are not felt in their domestic territories then the local jurisdiction will not investigate – but how does a regulatory agency in a small developing country with resource constraints properly investigate activities of these large conglomerates – how can international co-operation assist with respect to this

Maintaining institutional transparency

Ensuring transparency of processes is pivotal. We encourage consultation and seek to ensure that there is public input in our deliberations. We believe that it is a fundamental requirement is that we be as transparent and open as we can be with regard to the decisions that we make.

Several avenues are utilised to achieve this

- (a) public hearings – Our Procedural Rules which govern the conduct of hearings become effective on October 1st 2002 – these were developed in a fully consultative manner -
- (b) public consultation procedures – primarily on a written basis - interim mechanism –

- (c) Town – Hall Meetings/ Seminars will also be used as appropriate

We believe that regulatory proposals must be exposed to as much scrutiny as possible – this may reveal policy proposals that need to be changed. I would like to stress that we are looking for proposals that provide the right solution for Barbados and are prepared to modify and change as necessary.

Use of limited resources to achieve effective discharge of mandate

A core challenge in the drive towards development is the small market problem. Most regulatory costs do not vary based on the size of the population or market. For example the interconnection task is more or less the same for 2 million or 200,000 users. Drawing up quality of service rules costs the same. However these costs are borne by fewer users and the regulatory costs per user are greater in smaller markets.

The ability to attract and retain skilled staff is often an issue for regulatory agencies. I am pleased that we have managed to recruit a skilled and committed multi-disciplinary team on board. We recently recruited a Director of Utility Regulation. However we are always looking for dedicated and technically strong persons.

Concluding Remarks

I hope that I have provided a snapshot of the current regulatory environment

We at the Commission have a challenging but I also believe fortunate and exciting role as the regulator in this area in seeking to balance competing interests and achieve the goals and objectives set out at its establishment.

We see regulation as a catalyst for a constraint upon growth and look forward to the creation of a new regulatory environment that facilitates the growth and development of commerce whilst protecting consumer interests.