ANTI-COMPETITIVE AGREEMENTS

Introduction

The Fair Competition Act 2002-19 covers all types of business behaviour and protects consumers by preventing competing firms from coming together to engage in anti-competitive behaviour.

Anti-competitive agreements which have a damaging effect on competition in Barbados are prohibited. This means that any arrangement or understanding, between two or more companies whether written or oral that may or may not be legally enforced, that has the effect of preventing, restricting or distorting competition in a market is prohibited.

Specific types of agreements that are likely to be anti-competitive are listed in the Act and these include cartel behaviour such as price fixing, resale price maintenance, bid rigging and tied selling.

Price fixing

Price fixing, often regarded as the most blatant form of anti-competitive conduct, occurs when enterprises that would otherwise be in competition with each other come together and agree to fix or maintain the price of goods or services that they supply. Fixed prices are usually set in excess of what the price would be under effective competition in order to generate super normal profits to the firms concerned. An example would be where a group of the major suppliers of wood in a country agree to fix the price of the product at 15% above the competitive level. This may then cause the price of all the products made from wood in the economy to be increased, causing customers to pay much more than necessary.

Resale Price Maintenance

This is a type of agreement where the supplier influences an independent dealer to resell the goods supplied at a price predetermined by the supplier. This is sometimes enforced by suppliers who withhold goods from dealers who are likely to reduce the price which the supplier is trying to maintain.

Bid rigging

Bid rigging is an agreement where firms, in response to a request for a bid, or tender, submit bids that have been prearranged among themselves. It also includes cases where one or more firms agree among each other not to submit a bid in order to influence the outcome of the process.

Output restriction

This is where firms agree to reduce output production with the purpose of limiting consumer choice or create scarcity in order to artificially inflate prices. A group of suppliers of flour may agree to limit their production of this product in order to create shortages and thereby increase the price.

Exempted agreements

The Act does not apply to agreements which have been authorised by the Commission pursuant to Part V of the Act or which the Commission is satisfied:

- contribute to the improvement of production of goods and services or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- impose on the enterprises concerned only such restrictions necessary to the improvement of production of goods and services or the promotion of technical or economic progress; or
- involve firms which are too small for the effect of their practices to restrict competition significantly in a market.

Penalties for breach of the Act

A person who contravenes the provisions of the Act on anti-competitive conduct is guilty of an offence and is liable on conviction on indictment to:

(i) a fine of $150,000 or to imprisonment for a term of 6 months or both for individuals; or

(ii) a fine of $500,000 or a fine of up to 10 percent of the turnover of the enterprise for the previous financial year

Investigation and Enforcement

The Fair Trading Commission has been granted various investigative powers under the Act including the power to summon witnesses, search premises and seize documents. Action will be taken by the Commission to prosecute offenders for breaches of the Act.

Individual persons can also take action in court if they believe that they have been affected by anti-competitive conduct.