

“The Fair Competition Act: Business Conduct in the New Environment”¹

It is my distinct pleasure to address you this morning on “The Fair Competition Act: Business Conduct in the New Environment.”

The Act, which came into force on 3rd January 2003, marks a significant step forward in the development of a new business environment - a business environment characterised by vigorous, fierce yet fair competition.

This morning I propose to share with you some thoughts on the promises made by the Act and indicate how the Fair Trading Commission intends to deliver on them.

Changing global, regional and domestic business environment

The environment in which our businesses operate has been under a state of constant change. The forces of globalisation have shaped the world in which we now operate in a variety of ways:

- transportation and communication technologies have narrowed the concept of distance in our world;
- as barriers to trade collapse domestic firms are exposed to greater competition, from regional and international ones;
- the greater access to technology has stimulated more innovation.

The new trading realities occasioned by the CSME, FTAA and WTO agreements have had and will continue to have a profound impact on domestic businesses. Threats come as a result of being part of a global

¹ Speaking Notes for Remarks delivered by Michelle C. Goddard, Chief Executive Officer, Fair Trading Commission on 2nd October 2003.

economy – international mergers in states concluded other than our own may present problems as large multi-national companies enter the market.

This global tide that cannot be reversed– what is left is for us to manage it and ensure that it can work for the benefit of Barbados.

Michael Porter in *Competitive Advantage of Nations* stated “few roles of government are more important to the upgrading of an economy than ensuring vigorous domestic rivalry” – a robust competition policy and law has been developed in order to achieve this.

The development of a competition policy and enactment of laws occurred not just because of some blind belief in the benefits of competition, but essentially because it seemed that this would reinforce strongly the move towards making our economic actors more adaptive, more competitive particularly in the new global market.

The competition law was put in place as government recognised that strong domestic competition leads to a strong competitive economy.

Benefits of competition

Competition has a vital role to play in the competitiveness of the economy and the overall well-being of its citizens. Greater rivalry among existing firms or new entry not only enhances consumer choice but also encourages productivity growth in the economy as a whole.

Markets work well when there is vigorous competition between firms that trade fairly. The competition process drives competitiveness ensuring that a business continues to move forward, to grow, increase market share and

naturally to make profits. In essence, competition helps businesses to get better results.

The Fair Competition Act supports this process. The law is not about protecting competitors but about ensuring that the competitive process is maintained, sustained and nurtured. Clear benefits result from tough but fair competition and the role of the Commission is encourage that competitive discipline.

But how does the competition law directly benefit you – businessmen?

- It ensures that you operate on a level playing field, that the rules are known and that fair play operates;
- It ensures that small businesses are not disadvantaged and that they can create niches and take advantage of their strengths;
- It protects local companies in the global environment from the actions of large international companies being able to abuse their dominance
- Anti-competitive conduct such as that of cartels raises the cost of doing business. Businesses benefit from competition in the supply of their inputs as this leads to lower costs for them. Exporters who rely on local goods as inputs depend on the level of competition within Barbados in order to keep their costs down.

A competitive marketplace can benefit all the players. Consider, for example what would result

- if all banks decided to increase their banking fees simultaneously to the same high level
- if the only domestic supplier of a critical input for your business decides not to supply you in order to facilitate entry of another player – even if the product can be imported this will doubtlessly increase the costs to your business

- the directors of your competitors sit on each other boards facilitating collusion
- if you are trying to launch a new drink and no bars/stores will stock it because of exclusive dealing arrangements with another business – market entry which can lead to greater choice and lower prices is thwarted

With the enactment of the Fair Competition Act you can take action to protect yourself – either through taking a private action through the court directly or bringing the matter to the attention of the Fair Trading Commission – Without the Act options and remedies are limited – and your business will suffer.

Businesses will need to examine their corporate practices for possible breaches of the Fair Competition Act – as several have done with the Consumer Protection Act – and take action to ensure that your compliance programmes take the types of anti-competitive behaviour into account.

The role of the Commission in the new environment

The goals of the Fair Trading Commission are to:-

- Ensure full compliance with the Fair Competition Act
- Raise public awareness
- Provide timely and efficient service to international best practices (whilst cognizant of the limited resources and maximising use of our human capital)

The Commission recognises that it needs to be attuned to the business realities to ensure that we too operate efficiently in this new environment. As advocates of competition we will work to ensure that our products and

services meet the market demands. To this end we have adopted and will strive to adhere to principles of Confidentiality, Timeliness, Responsiveness & Flexibility and Fairness.

Confidentiality

This is critical. We will minimise the communication of confidential information to ensure confidence and maintain integrity of our investigations. The Fair Trading Commission Act and the Fair Competition Act have specific provisions protecting the confidentiality of all material submitted to the Commission. We will ensure that confidentiality is maintained and we will respect market sensitive information.

The Commission has a clear Code of Ethics to which all members of staff are required to adhere. Any conflicts of interest – shareholdings, financial interests, other interests such as personal family connections have to be disclosed by staff members. This declaration of interests ensures that our investigators appear to and do follow the highest ethical standards.

Our media policy is that we do not disclose information on individual investigations or name organisation or individual under investigation until after completion of investigations as we recognise that media enquiry and comment on FTC investigation on prices can impact on share prices etc. -

Timeliness

Timely consideration of matters is of great import to business. We operate with a clear recognition of the effect that business conduct can have on players and the desire for streamlined and expedited decision-making. Accordingly while appropriate our guidelines set out expected time periods for completing matters under the Act.

Responsiveness & Flexibility

The appropriate procedures will be used for proceedings under the Fair Competition Act. No utility regulation type public hearings will be utilised but we will use of other consultation procedures both written and oral including informal conferences.

Decisions on whether to proceed or discontinue will be made quickly

The FTC will strive to be a flexible creature. In this environment we cannot function as other statutory corporations—speed and alacrity is essential. We are building a new unit with appropriate skills and approach and working towards establishing a strong team of committed, talented and expert professionals. We will be working towards developing service standards and performance targets for dealing with your complaints and enquiries.

Fairness

Procedural fairness, impartiality, right to be heard remain pivotal. However we will also seek to achieve balance between compliance and enforcement. By providing guidance through workshops, meetings and publications. Recognising always that the role of the Commission is to enforce the Act and will do so fiercely, independently and vigorously.

We are also committed to ensuring that international best practices are used in our procedures.

The Guidelines which will be discussed this morning draw heavily on the experiences of other jurisdictions – US, Canada, UK, New Zealand and of course closer to home in Jamaica – they were developed with the expertise of a staff member of the ACCC – the Australian competition regulator who was with the Commission for three months – in the developmental stage – and we continue to draw on our linkages with these agencies not only informally but

also through increasing participation in international fora such as ICN, UNCTAD to discuss matters involving competition, to exchange ideas and information, to disseminate views on how the FCA works in Barbados and learn from others.

The focus of our session this morning is the Guidelines on the FCA - the Commission has developed these Guidelines and is hosting this session to

- (a) assist you in understanding the provisions of the Act and how to avoid breaches
- (b) outlining the approach that the Commission will take in addressing matters; and
- (c) introduce you to the language of competition – competition policy, competition law , competition economics and the relevant applicable terms

We recognise that this is a new area and will be embarking on a consultative public process with respect to the documents – which will be distributed this morning and made available on our website and from our offices. The public is invited to submit written comments on the same by 3rd November.

The Commission will consider the comments received and if necessary issue revised documents in December 2003. We will in due course also be issuing guidance/guidelines on mergers and will invite similar comment on those areas.

Over this period of time we encourage you to contact us with any queries on our procedures. We aim to address the preconceptions and misconceptions surrounding the Act and the Commission's role and philosophy in enforcement as we work towards a common goal of ensuring that you can continue to operate your businesses in the most efficient manner possible in a fair trading environment.

We intend to work with businesses to develop a culture of compliance. Of course this predicated on a strong enforcement regime which is used where necessary. While some matters can be addressed/resolved without recourse to litigation the Commission will not tolerate blatant breaches of the laws. Action will be taken on blatant breaches or continued flouting of the Act and focus will be on those that have a significant impact on consumer welfare.

Compliance is not just about educating people about the Act but also about working to implement an organisational culture that is attuned to compliance. Businesses should ensure that the culture does not support looking for a way around the Act but strives to ensure that full compliance is achieved.

The Commission faces the enormous and exciting challenge of bringing results – by improving efficiencies – enhancing consumer welfare – based on this new competition law framework – we are and we look forward to delivering on the aspirations of the law.