

**"A NEW ORDER OF THINGS"**  
**PRIVATE SECTOR RESPONSE TO THE FAIR TRADING COMMISSION**<sup>1</sup>

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*"There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things."*

*– Niccolo Machiavelli, The Prince (1532)*

## **1. Introductory Remarks**

I am delighted to have the opportunity to address you this afternoon on "Private Sector Response to the FTC". The last time that I addressed members of the Chamber, the Fair Trading Commission was a mythical being yet to become a reality. The Commission, a creature of statute, established in January 2001 now enforces extensive legislation on regulatory and fair trading matters and all the building blocks of our legal mandate are now in place.

We enforce 5 pieces of legislation:

- Fair Trading Commission Act CAP 326B;
- Utilities Regulation Act CAP 282; and
- Telecommunications Act CAP 282B (certain provisions) enacted 2001
- Consumer Protection Act CAP 326D; and
- Fair Competition Act CAP 326C enacted 2003

We are satisfied that the Commission has been instrumental in achieving fundamental change in the business climate. The response of the private sector, while cautious at times, has been largely supportive of the new legal regime and this afternoon I will seek to provide you with a snapshot of the private sector response to the Commission's work and mandate.

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<sup>1</sup> Speaking Notes for Address to Chamber of Commerce June Luncheon by Michelle C Goddard, Chief Executive Officer, Fair Trading Commission, June 22<sup>nd</sup> 2004. The views expressed are solely those of the author and not the views of the Fair Trading Commission or any particular Commissioner

I trust that you will leave the luncheon refreshed not only by the culinary delights but also by greater understanding and appreciation of the role that the FTC can and does play in growing and developing your business and preparing you to compete in our wider business environment.

## **2. Private Sector Response**

What is the private sector? It is a diverse grouping – comprising of persons with wide and disparate interests -

- Small businesses
- Conglomerates
- Professionals
- Individual operators
- Large publicly traded companies
- Private family owned operations

It is composed of individuals, persons and entities operating in wide and varied fields of endeavour from banking to farming, from telecommunications to hairdressing. This is the private sector impacted by the work of the Fair Trading Commission.

I am pleased to report that the private sector has been largely supportive of the goals and objectives of the Commission.

In seeking to effectively carry out our mandate and recognising the limited familiarity of the business community with the provisions of the new laws the Commission focused on raising awareness and hosted targeted educational programmes and workshops. The response to this was overwhelming. Our first seminar on the Consumer Protection Act which addressed the Development of Compliance Programmes by businesses was

oversubscribed. The Commission has also held targeted workshops for diverse business sectors namely:

- Regulating Utilities in Barbados for utility service providers (2002)
- Running the risk of prosecution under the Consumer Protection Act the Advertising Industry: (2003)
- Hidden charges, US Price, No Refunds for the Travel Industry (2003)
- Banking Roundtable for the banking community (2003)
- Room with a View for real estate sector (2004) and
- For all market participants: Fair Competition Act: Business Conduct in the New Environment (2003)

Through these seminars, which were all fully subscribed, we have reached over 650 individual members of the business community. Given our limited human resources we have focused on educating specific sectors of the business community about the issues that are germane and pertinent to them and have facilitated dialogue on their issues.

The Commission receives weekly requests for our officers to address individual businesses and trade associations. Whilst we have addressed several private sector agencies - including the Small Business Association, the Insurance Institute of Barbados, the Barbados Association of Rehabilitation Therapists, the Barbados Association of Professional Engineers and the Association of Chartered Secretaries and Administrators - efficient management of our limited human resources dictates that the Commission cannot accede to every request. The demand will always exceed available officers. Young persons, consumers, service and community groups are also an integral part of our public awareness thrust and we also need to ensure that we balance the delivery of information to all of our varied stakeholders.

The Commission has been pleased to witness change in the behaviour of businesses vis-à-vis consumers. I speak of matters such as :-

- Removal of offending signs in stores, on invoices and sales receipts such as “No Exchange – No Refund” ;
- Revision of contract terms to provide greater fairness and balance;
- Amendment of misleading advertisements;
- Provision of more detailed information on credit transactions; and
- Discontinuance of resale price maintenance arrangements.

We are also heartened that many businesses have sought to contact the Commission for general guidance on the laws. While we cannot be a substitute for independent legal advice, the Commission increasingly seeks to provide guidance to businesses seeking to avoid breaching the law. Our staff have provided guidance, where appropriate, on matters such as labelling of goods, revision of unfair contract terms, authorisation procedures for anti-competitive practices to name but a few. We encourage you to continue to contact the Commission on matters of this type.

Businesses have also approached the Commission to deal with the unfair trading practices of competing entities. The laws work for you – by ensuring that businesses who breach the law are not afforded an unfair advantage by so doing – we encourage companies to use the law as a tool in this area in order to garner the benefits that the new fair trading regime can deliver.

The Commission continues to publish electronic and printed material. Guides, booklets and pamphlets on areas such mergers, anti-competitive practices, unfair trade practices and unfair contract terms etc are available at the Commission’s offices and on the Commission’s website. Our weekly newspaper column “Fair and Unfair” and our weekly television slot “Consumer Wise” also seek to educate consumers and businesses alike.

We have developed Guidelines under the Fair Competition Act – namely a Guide to Anti-Competitive Conduct and a Guide to Authorisations. The Commission sought to develop these through a consultative approach with businesses and whilst disappointed by the lack of comments from private sector persons we were extremely pleased that the Chamber of Commerce and Industry took the opportunity to participate in the process.

The private sector also responded to our invitations to participate in our other consultative processes. The Commission issued Consultation Papers on Interconnection – Accounting, Costing and Pricing Principles, Interconnection – Dispute Resolution and Telecommunications Pricing Principles and received input from interested and affected parties in the private sector.

Communication and dialogue with business will assist sustained change in business practices. Indeed the Commission was pleased with the response of the banking community to our Banking Roundtable. We are in continued dialogue with individual banks and the banking association and look forward to working with them on the development of practices that can provide greater certainty for consumers and enhance overall consumer welfare.

We have placed emphasis on education, advice and persuasion and are satisfied that this has reaped rewards for the general community. Our public education programmes and guidelines are designed to help people conform with the law. We believe that most business people do not set out to break the law, they would rather conform with it, and arrange their affairs so as to comply with it.

We have received and responded to over 3,000 complaints/enquiries against businesses and can report that to date the compliance rate by businesses in this regard is over 95%.

Obviously, a small minority in the private sector, have a different attitude to compliance and our responsibility is to remind them of their obligations and to prod them, or compel them to comply. Our enforcement tools, as we move along the enforcement continuum, include undertakings, settlements, charges, guilty pleas, fines - up to imprisonment. However our overall objective is to use these legal enforcement mechanisms as a last resort.

In seeking to effect change regulators recognise that stakeholders with entrenched interests will seek to safeguard their position and test the mettle of the regulator

The Commission has also faced legal challenge. It is natural for those on the receiving end of regulatory decisions to question the legitimacy of an agency, especially in its embryonic or early stages and where its decisions will have major implications for the conduct of business.

In the regulatory arena, adjudicative panels of the Commission have deliberated on and handed down twelve (12) decisions:

- [4] four of our decisions have been the subject of review applications (with respect to re-prescription of asset lives, dispute resolution, interconnection guidelines, filing of RIO etc EXPAND ;
- [3] three of our decisions have been appealed in the Law Courts of Barbados (with respect to re-prescription of asset lives, interim mechanism and procedural rules). One appeal has been dismissed while a second appeal has been withdrawn by the service provider and the third appeal lies dormant.

You will no doubt be aware that the Court of Appeal recently rendered a decision upholding the use of the Utilities Regulation Act Procedural Rules by the Commission. The Commission is pleased that its rules were able to undergo and withstand judicial scrutiny.

The Commission recognises that legal challenges are a necessary stage of any new regulator's development. However we judge ourselves by the quality of our output and by demonstrable change in the environment we are seeking to affect.

### **3. Commission Report Card**

A quote from Machiavelli's Prince is instructive:

*"There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things."*

The Commission is pleased that over its short life span it has successfully taken the lead in the introduction of a new order of things in the business environment in Barbados.

#### **Telecommunications**

- Determined the framework for interconnection of new mobile service providers
- Approved agreements between the incumbent telecommunications provider and three (3) new mobile providers;
- Implemented pricing flexibility in telecommunications sector with maximum rates order;
- Concluded two public hearings;

#### **Electricity**

- Conducted a survey of residential electricity consumers to commence the process of establishing standards of service for the electricity service provider;

- Operation of Fuel adjustment clause is under review and we will be using a consultative process to obtain public feedback with respect to this.

### Natural Gas

- Establishing regulatory process & framework for regulation of NPC

We recognise that the cost of these utilities is a major input for business in Barbados.

### Fair Competition

The Commission is cognizant of the importance of developing strong local businesses that can compete with regional and global players. Our Fair Competition Act gives us the tools to ensure that the competitive process is maintained and that it remains dynamic.

Consolidation of business resources is vital to competing in today's marketplace – the Fair Competition Act facilitates this – it allows the Commission to investigate amalgamations and assess them for overall economic benefit. We have assessed seven (7) merger transactions that have occurred in Barbados over the last year to ensure that competition was not adversely affected. We expect to be able to issue a consultative document on Merger Guidelines and would encourage you to participate in our consultative process and provide your comments with respect to the same.

The Commission has conducted a number of inquiries and is continuing to investigate certain allegations of anti-competitive practices. We are presently finalising our review and inquiry into fee-setting in the professions – this includes the legal profession. Where minimum scale fees are prescribed they can prevent price competition which is generally likely to lead to reduced



efficiency, innovation and less variety in services and prices. We will be consulting with the professional bodies, users and government in our review of price-setting in the professions.

## **5. Concluding Remarks**

Although we may at times have a different perspective on issues – please be assured that the Commission will deal with issues in a fair, objective and professional manner.

We recognise that confidentiality of information is important to the business community and have sought to ensure that all necessary steps are taken to maintain the confidentiality of any information submitted to us:

- Express statutory provisions protecting the confidentiality of information are set out in our umbrella legislation Fair Trading Commission Act as well as the Fair Competition Act with detailed provisions for regulatory matters set out in our Utilities Regulation Act Procedural Rules. The penalty for disclosing confidential information is a fine of up to \$50,000 or up to two years imprisonment;
- Confidentiality Agreements are signed by all staff, consultants and other persons engaged by the Commission;
- Code of Conduct and Ethics setting out guidelines for the conduct of staff including the requirement to make declarations of interests in investigations; and
- Internal procedures with respect to the handling, tracking and storage of information ensuring that there is limited access to restricted information.

We look forward to broadening our relationship with the private sector and trust that dialogue between the Commission and businesses will continue to

grow and develop. The Fair Trading Commission has been in existence for the short period of three years, the consumer protection and fair competition laws have been in place for only eighteen months. We are therefore still at the stage of process and promise.

You will rightly judge us by our actions. Our job is to help Barbados flourish. By that are we happy to be judged.

I thank you.