

Fair Trading Commission

**Legal Framework of OOCUR Member Countries:
BARBADOS**

Speech presented by

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INTRODUCTION

Chairman of OOCUR, PUC and other visiting Chairpersons from the U.S. regulators, Commissioners, ladies and gentlemen, in the twenty minutes allotted I will seek to outline the framework of the Fair Trading Commission under its governing legislation.

A legislative framework for public utilities in Barbados was in existence since the 1950's. It must be noted that, the Government of the time, was in the process of consolidating self governance and autonomy as we were still a colony of Great Britain.

The growing demand for public utilities, in particular electricity and telephony services, along with the growing political awareness of the importance of infrastructural services to the local economy ushered in a new way of thinking. It was this philosophy which led to the enactment of the Public Utilities Act. This Act, now repealed, is contained in Chapter 282 of the Laws of Barbados, and took effect in January 1955. This legislation mandated the establishment of the Public Utilities Board of Barbados in the same year. The powers conferred to the PUB through the enabling legislation were such that the Board had wide authority in the establishment of regulations, determination of utility rates and the provision of utility services.

The Public Utilities Act, under which electricity supply and domestic telephony were regulated, served as a catalyst and outlined the guiding parameters for the drafting of further legislation to govern the process of regulating Public Utilities in Barbados.

In its regulation of electricity supply and domestic telephony on the island, the Public Utilities Act required that utility rates be fair and reasonable while simultaneously allowing for a fair and reasonable return to the service provider. Policymakers while staying faithful to these bastions of good regulation of public utilities recognised that a new paradigm of regulatory control would be required to meet the dictates of economic development in Barbados.

The Birth of the Fair Trading Commission and the Fair Trading Commission Act, CAP. 326B “Fair Trading Commission Act”

The FTC was conceptualized and subsequently established in response to domestic, regional as well as international stimuli. Its enabling legislation, the FTC Act CAP. 326B, is the overarching legislation of the Commission, and facilitates the Commission’s role in the utility sectors. The Commission is designed to administer and enforce several pieces of legislation, including the Utilities Regulations Act, the Telecommunications Act, Fair Competition Act and the Consumer Protection Act.

It is important to note that the FTC’s mandate is much wider than that of its predecessor the Public Utilities Board.

In enforcing what some regard as a plethora of legislation, the Commission seeks to:

- Ensure efficiency in the operation of regulated utility companies
- Promote competition in the sector, and
- Safeguard consumer welfare.

The FTC Act gives the Commission administrative, prosecutorial, quasi-judicial and investigative powers to enable it to achieve these stated objectives.

The FTC Act initially allowed for a Board consisting of a Chairman, Deputy Chairman and not more than five Commissioners to be appointed by the Minister responsible for Consumer Affairs. It was and continues to be a requirement that the Chairman is an Attorney-at-law of at least ten years standing, or a person who has held high judicial office.

The Board is given the power with the approval of the Minister, to appoint a Chief Executive Officer. The Chief Executive Officer also acts as an ex officio member of the Board.

The FTC Act has recently been amended. The Board now consists of eleven members, a Chairman, Deputy Chairman and nine (9) Commissioners. Members of the Commission are appointed on a part time basis.

Funding of the Fair Trading Commission

Section 19 (1) of the Fair trading Commission Act outlines the process by which the Commission obtains its finances. It states that the funds and resources of the Commission shall consist of:

- (a) such amounts as may be voted for the purpose by Parliament;
- (b) such sums as are levied on the service providers to meet the annual expenses of the Commission; and
- (c) all other amounts which may become payable to or vested in the Commission in respect of any matter incidental to its functions.

Sections 19 (2) and (3) respectively outline the formula which the Commission should utilise when calculating the levy on the respective service providers while section 19 (4) states that within 1 month of the levy on the service provider, if the amount still remains unpaid the Commission can sue for and recover in court any costs that have been levied.

By virtue of 19 (5) the Commission can use such funds to:

- (a) to defray the following expenditure:
 - (i) salaries, fees, allowances and other payments due to staff of the Commission;
 - (ii) capital and other operating expenses including maintenance and insurance of any property of the Commission
 - (iii) any other expenditure authorised by the Commission in the discharge of its duties, functions and contractual obligations;
 - (iv) any other expenses authorised to be spent in the functioning of the Commission; and
- (b) to create any reserves determined by the Commission, approved by the Minister responsible for finance.

Commission Powers

The FTC Act gives the Commission wide investigative and information gathering powers. For this reason, detailed provisions governing the classification and treatment of confidential information has been included in the legislation and to some extent has been replicated in the

Telecommunications Act. These provisions govern the handling of all information is submitted to the Commission as a result of any proceedings or obtained by the Commission through its information gathering powers.

To bolster its information gathering powers penalties can be levied on service providers who fail to provide information to the Commission. Service providers or business enterprises who fail or refuse to obey an order of the Commission is liable on summary conviction to a fine of \$100,000 and to a fine of \$10,000 for each day or part thereof during which the offence continues.

Directors and officers of the service provider or business enterprise can also be liable on summary conviction to a fine of \$50,000 or to imprisonment of six months or to both, should they refuse or fail to provide the information requested by the Commission.

The Commission has also been ascribed power to seize documents, subpoena witness and other ancillary powers.

Utility Regulations Act, CAP. 282

The Fair Trading Commission Act, CAP. 326B and the Utilities Regulation Act, CAP. 282 together provide the framework which guides the Commission in its regulatory functions vis-à-vis utilities in Barbados. Under the URA the Commission currently regulates domestic and international telephony services, electricity and natural gas.

At present under the URA, the Commission's functions are to:

- establish principles for arriving at the rates to be charged
- set the maximum rates to be charged
- monitor the rates charged to ensure compliance
- determine the standards of service applicable
- monitor the standard of service supplied to ensure compliance; and
- carry out periodic reviews of the rates
- and principles for setting rates and standards of service
- sit to hear and determine billing complaints, rate applications and any other utility matter.

The Commission has the power to make rules and after consultation with service providers and the Minister, to prescribe the procedure for the conduct of reviews, hearing of complaints and other proceedings before the Commission. To date the Commission has developed the URA Procedural Rules S.I. 104 of 2003.

Telecommunications Act, CAP. 282B

The telecommunications sector is jointly regulated by the Fair Trading Commission together with co-regulator in this area the Ministry of Energy and Public Utilities. In Barbados' partially liberalised telecommunications market, one of the main issues which falls under the Telecommunications Act is interconnection. The Commission is the primary body regulating the interconnection process and it must ensure that –

- the Reference Interconnection Offer which provides the standard terms and conditions of service to promote competition are favourable;
- the interconnection rates charged are equitable and non-discriminatory;
- the terms and conditions in the interconnection agreements are consistent with the Reference Interconnection Offer and the principles of the Telecommunications Act;
- a Public Record of Interconnection Agreements is established and;
- disputes are resolved between carriers, in an expeditious manner.

Under the Telecommunications Act the Commission has the authority to review interconnection complaints, and in the event that they mature into disputes, the Commission also has the power to assist in resolving the dispute. This is important in Barbados, particularly as the mobile market has recently been liberalized, and even more so with the upcoming plans to liberalise to domestic fixed wireless market and international market.

Access Deficit Charge

Section 35 of the Telecommunications Act states that the Commission must prescribe an Access Deficit Charge and establish guidelines for doing so.

The Commission's role as a Co-Regulator

The Commission acting as co-regulator with the Ministry of Energy and Public Utilities is required to consult with the Minister when enforcing policies established by that Ministry.

The Government of Barbados in an effort to facilitate the smooth transition to a fully liberalised telecommunications market implemented a set of policies to guide the process. These policies are enforced through legislation namely, the Telecommunications Act and various Statutory Instruments which work with and expand specific provisions of the Telecommunications Act. The Statutory Instruments cover wide range of issues including but not limited to the services to be regulated, interconnection regulations and the universal service obligations.

Now I will discuss the universal service obligation briefly.

Under the Telecommunications Act the universal service policy designed by the Government of Barbados is aimed at ensuring that every resident and every business enterprise of Barbados has access to reliable affordable telecommunication services throughout Barbados on an equitable basis.

The Minister imposes a universal service obligation on the universal service carrier. The universal service carrier is normally the dominant carrier in the country. It is the minister's responsibility to declare a dominant carrier. At present Cable & Wireless (Barbados) Limited has been declared the dominant carrier in Barbados in relation to the:

- (a) majority market share in respect of the provision of the relevant services; and
- (b) extent of the geographical area coverage in respect of the provisions of the relevant services.

The universal service obligation is designated in writing by the Minister. This designation becomes effective on the date specified by the Minister and shall have effect for the duration of the license of the universal service carrier unless otherwise specified by the Minister or unless the minister designates another carrier to be the universal service carrier. The Minister may after consultation with the Commission and the universal service carrier modify in writing the universal service obligation.

In modifying a universal service obligation, the Telecommunications Act provides that the Minister after consultation with the Commission shall permit the universal carrier concerned in the modification to recover the cost of providing the modified universal service obligation and must ensure that no unfair or unreasonable burden is placed on the universal service carrier or any person required to contribute to the provision of the service.

It has just been indicated to me that my twenty minutes are almost up so I just want to add in conclusion, that I hope that I have not only imparted some knowledge but piqued your interest into learning more not only about the legal framework of the Fair Trading Commission but about the other areas of our extensive mandate.

I thank you.