

# PROTOCOL AMENDING THE TREATY ESTABLISHING THE CARIBBEAN COMMUNITY

**(Protocol VIII: Competition Policy, Consumer Protection, Dumping and Subsidies)**

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## PREAMBLE

The States parties to the Treaty Establishing the Caribbean Community (hereinafter referred to as "**the Member States**");

**Noting** that competition policy has become more important with the deepening of the integration arrangements and the liberalisation of the markets of the Region;

**Aware** that the benefits expected from the establishment of the CARICOM Single Market and Economy (CSME) may be frustrated by anti-competitive business conduct whose object or effect is to prevent, restrict, or distort competition.

**Determined** to promote and maintain competition through the establishment and enforcement of applicable laws and rules.

**Determined further** to promote consumer interest and welfare;

**Conscious** that the provision of subsidies by Member States and the practice of dumping could have an adverse impact on the promotion and development of competition in the CSME;

**Convinced** that the application and convergence of national competition policies and the cooperation of competition authorities in the Community would promote the objectives of the CSME,

**Have Agreed** as follows:

## PART I PRELIMINARY

### Article I Use of Terms

1. In this Protocol, unless the context otherwise requires:

"**anti-competitive business conduct**" has the meaning assigned to it in Article 30(i);

**"business"** means any activity carried on for gain or reward or in the course of which goods or services are produced, manufactured or supplied;

**"Commission"** means the Competition Commission established by Article 30(c);

**"Community"** includes the CARICOM Single Market and Economy to be established by the Protocols amending or replacing the Caribbean Common Market Annex to the Treaty;

**"Community Council of Ministers"** (hereinafter referred to as "the Community Council") means the Organ of the Community so named in Article 8 (1) of the Treaty;

**"competent authority"** means the authority legally authorised to perform a function;

**"Conference"** means the Conference of Heads of Government of the Community;

**"Council for Trade and Economic Development (COTED)"** means the Organ of the Community so named in Article 6(2)(a) of the Treaty, and for the purposes of this Protocol shall be deemed to include the interim Committee established pursuant to Rule 34 of the Rules of Procedure of the COTED;

**"Court"** means the Court established by Article III of the Agreement Establishing the Caribbean Court of Justice;

**"enterprise"** means any person or type of organisation involved in the production of or the trade in goods, or the provision of services (other than a non-profit organisation);

**"goods"** means all kinds of property other than real property, money, securities or choses in action;

**"Regional Judicial and Legal Services Commission"** means the Commission established by Article V of the Agreement Establishing the Caribbean Court of Justice;

**"rules of competition"** includes the rules set out in Articles 30(i), 30(h) and 30(k) of this Protocol and any other rules made pursuant to Article 30(b) 1(a)(i);

**"Secretary-General"** means the Secretary-General of the Community;

**"services"** means services provided against remuneration other than wages in an

approved sector and "the provision of services" means the supply of services:

**(a)** from the territory of one Member State into the territory of another Member State;

**(b)** in the territory of one Member State to a service consumer of another Member State;

**(c)** by a service supplier of one Member State through commercial presence in the territory of another Member State; and

**(d)** by a service supplier of one Member State through the presence of natural persons of a Member State in the territory of another Member State;

**"subsidies"** includes the subsidies set out in Schedule V of Protocol IV - Trade Policy and shall apply only in relation to goods;

**"trade"** includes any business, industry, profession or occupation relating to the supply or acquisition of goods or services;

**"Treaty"** means the Treaty Establishing the Caribbean Community signed at Chaguaramas on the 4th day of July 1973 and includes any amendments thereto which take effect either provisionally or definitively (hereinafter referred to as "the Treaty").

**2.** Where in this Protocol there is a requirement for notification to be given, such notification shall be in writing.

## **Article II Amendment**

Replace Articles 19 and 30 of the Caribbean Common Market Annex to the Treaty with the following:

### **Article 30 Scope of Parts I, II and III**

The rules of competition shall not apply to -

**(a)** combinations or activities of employees for their own reasonable protection as employees;

**(b)** arrangements for collective bargaining on behalf of employers or employees for the purpose of fixing terms and conditions of employment;

**(c)** business conduct within the meaning of Article 30(i) duly notified to the

COTED in accordance with Article 30(b);

(d) negative clearance rulings within the meaning of Article 30(l) or exemptions within the meaning of Articles 30(m) and 30(o);

(e) activities of professional associations designed to develop or enforce professional standards of competence reasonably necessary for the protection of the public and approved by the Commission.

### **Article 30(a)**

#### **Objectives of Community Competition Policy**

**1.** The goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the CARICOM Single Market and Economy (CSME) are not frustrated by anti-competitive business conduct.

**2.** In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:

(a) promote and maintain competition and enhance economic efficiency in production, trade and commerce;

(b) subject to the Treaty, prohibit anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market;

(c) promote consumer welfare and protect consumer interest;

### **Article 30(b)**

#### **Implementation of Community Competition Policy**

**1.** In order to achieve the objectives of the Community Competition Policy,

(a) the Community shall:

(i) subject to the Treaty, establish appropriate norms and institutional arrangements to prohibit and penalise anti-competitive business conduct;

(ii) establish and maintain information systems to enable enterprises and consumers to be kept informed about the operation of markets within the CSME;

(b) Member States shall:

(i) take the necessary legislative measures to ensure consistency and compliance with the rules of competition and provide penalties for anti-competitive business

conduct;

**(ii)** provide for the dissemination of relevant information to facilitate consumer choice;

**(iii)** establish and maintain institutional arrangements and administrative procedures to enforce competition laws;

**(iv)** take effective measures to ensure access by nationals of other Member States to competent enforcement authorities including the courts on an equitable, transparent and non-discriminatory basis.

**2.** A Member State shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition.

**3.** A Member State shall require its national competition authority to:

**(a)** co-operate with the Commission in achieving compliance with the rules of competition;

**(b)** investigate any allegations of anti-competitive business conduct being allegations referred to the authority by the Commission or another Member State .

**(c)** cooperate with other national competition authorities in the detection and prevention of anti-competitive business conduct, and the exchange of information relating to such conduct.

**4.** Nothing in this Article shall be construed as requiring a Member State to disclose confidential information, the disclosure of which would be prejudicial to the public interest or to the legitimate commercial interests of enterprises, public or private. Confidential or proprietary information disclosed in the course of an investigation shall be treated on the same basis as that on which it was provided.

**5.** Within 24 months of the entry into force of this Protocol, Member States shall notify the COTED of existing legislation, agreements and administrative practices inconsistent with the provisions of this Protocol. Within 36 months of entry into force of this Protocol, the COTED shall establish a programme providing for the termination of such legislation, agreements and administrative practices.

## **PART II COMPETITION COMMISSION**

### **Article 30 (c) Establishment of the Competition Commission**

For the purposes of implementation of the Community Competition Policy, there

is hereby established a Competition Commission (hereinafter called "the Commission") having the composition, functions and powers hereinafter set forth.

**Article 30(d)**  
**Composition of the Commission**

- 1.** The Commission shall comprise seven members appointed by the Regional Judicial and Legal Services Commission to serve on the Commission. The Regional Judicial and Legal Services Commission shall appoint a Chairman from among the members so appointed. Notwithstanding the foregoing, the Chairman and Members of the Commission shall be appointed by Conference on the recommendation of the COTED as long as the Parties to the Agreement Establishing the Caribbean Court of Justice are less than seven.
- 2.** The Commission shall comprise persons, collectively having expertise or experience in commerce, finance, economics, law, competition policy and practice, international trade and such other areas of expertise or experience as may be necessary.
- 3.** A Commissioner shall be appointed for a term of five years and such appointment may be renewed for a further period of not more than five years as determined by the Regional Judicial and Legal Services Commission.
- 4.** A Commissioner may be removed from office only for inability to perform the functions of his office or for misbehaviour.
- 5.** A Commissioner shall be removed only on the vote of the Judicial and Legal Services Commission that represents not less than three-quarters of all the Members of the Commission.
- 6.** A Commissioner may at any time resign the office of Commissioner by writing under his hand addressed to the Chairman of the Judicial and Legal Services Commission.
- 7.** A Commissioner shall not enter upon the duties of the office unless he has taken and subscribed before the Chairman of the Judicial and Legal Services Commission, the Oath of Office set out in [Annex V](#) to this Protocol.

**Article 30(e)**  
**Functions of the Commission**

- 1.** The Commission shall:
  - (a)** apply the rules of competition in respect of anti-competitive cross-border business conduct;

(b) promote competition in the Community and co-ordinate the implementation of the Community Competition Policy; and

(c) perform any other function conferred on it by any competent body of the Community.

**2.** In discharging the functions set out in paragraph 1, the Commission shall:

(a) monitor anti-competitive practices of enterprises operating in the CSME, and investigate and arbitrate cross-border disputes;

(b) keep the Community Competition Policy under review and advise and make recommendations to the COTED to enhance its effectiveness;

(c) promote the establishment of institutions and the development and implementation of harmonised competition laws and practices by Member States to achieve uniformity in the administration of applicable rules;

(d) review the progress made by Member States in the implementation of the legal and institutional framework for enforcement;

(e) co-operate with competent authorities in Member States;

(f) provide support to Member States in promoting and protecting consumer welfare;

(g) facilitate the exchange of relevant information and expertise; and

(h) develop and disseminate information about competition policy, and consumer protection policy.

**3.** The Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its functions to one or more of its members.

#### **Article 30(f)** **Powers of the Commission**

**1.** Subject to Articles 30(g) and 30(h), the Commission may, in respect of cross-border transactions or transactions with cross-border effects, monitor, investigate, detect, make determinations or take action to inhibit and penalise enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME.

**2.** The Commission may, in accordance with applicable national laws, in the conduct of its investigations:

- (a) secure the attendance of any person before it to give evidence;
- (b) require the discovery or production of any document or part thereof; and
- (c) take such other action as may be necessary in furtherance of the investigation.

3. The Commission may, on the basis of its investigations, make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the Treaty.

4. The Commission shall, to the extent required to remedy or penalise anti-competitive business conduct referred to in Article 30(i):

- (a) order the termination or nullification as the case may require, of agreements, conduct, activities or decisions prohibited by Article 30(i);
- (b) direct the enterprise to cease and desist from anti-competitive business conduct and to take such steps as are necessary to overcome the effects of abuse of its dominant position in the market, or any other business conduct inconsistent with the principles of fair competition set out in this Protocol;
- (c) order payment of compensation to persons affected; and
- (d) impose fines for breaches of the rules of competition.

5. The Commission may enter into such arrangements for the provision of services as may be necessary for the efficient performance of its functions.

6. Member States shall enact legislation to ensure that determinations of the Commission are enforceable in their jurisdictions.

7. The Commission may establish its own rules of procedure.

**Article 30(g)**  
**Determination of Anti-Competitive Business Conduct:**  
**Procedure of Commission on Request**

1. A Member State may request an investigation referred to in paragraph 1 of Article 30(f) where it has reason to believe that business conduct by an enterprise located in another Member State prejudices trade and prevents, restricts or distorts competition in the territory of the requesting Member State.

2. Where the COTED has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts or distorts competition within the CSME and has or is likely to have cross-border effects, the COTED may



request an investigation referred to in paragraph 1 of Article 30(f).

**3.** Requests under paragraphs 1 and 2 shall be in writing and shall disclose sufficient information for the Commission to make a preliminary assessment whether it should proceed with the investigation.

**4.** Upon receipt of a request mentioned in paragraph 3, the Commission shall consult with the interested parties and shall determine on the basis of such consultations whether:

(a) the investigation is within the jurisdiction of the Commission; and

(b) the investigation is justified in all the circumstances of the case.

**5.** The consultations shall be concluded within 30 days of the date of receipt of the request for investigation, unless the parties agree to continue the consultations for a longer period.

**6.** Where the Commission decides to conduct the investigation, the Commission shall:

(a) notify the interested parties and the COTED;

(b) complete the investigation within 120 days from the date of receipt of the request for the investigation; and

(c) where the circumstances so warrant, extend the time period for completion of the investigation and notify the interested Parties.

**7.** Where the Commission decides to conduct an enquiry following an investigation, the Commission shall afford any party complained of the opportunity to defend its interest.

**8.** At the conclusion of an enquiry, the Commission shall notify the interested parties of its determination.

**9.** Where the Commission determines that a party has engaged in anti-competitive business conduct, it shall also require the party to take the action necessary to remove the effects of the anti-competitive business conduct.

**10.** Where a specific course of action is required under paragraph 9, the enterprise concerned shall take the appropriate course of action within 30 days of the date of notification. If the concerned enterprise cannot comply, it shall notify the Commission and request an extension.

**11.** If the enterprise cannot comply within the time period specified and fails to

inform the Commission, the Commission may apply to the Court for an order.

**12.** A party which is aggrieved by a determination of the Commission under paragraph 4 of Article 30(f) in any matter may apply to the Court for a review of that determination.

**Article 30(h)**  
**Determination of Anti-Competitive Business Conduct;**  
**Procedure of Commission *Proprio Motu***

**1.** Where the Commission has reason to believe that business conduct by an enterprise in the CSME prejudices trade and prevents, restricts, or distorts competition within the CSME and has cross-border effects, the Commission shall request the competent national authority to undertake a preliminary examination of the business conduct of the enterprise.

**2.** Where a request is made under paragraph 1, the national authority shall examine the matter and report its findings to the Commission within such time as may be determined by the Commission.

**3.** Where the Commission is not satisfied with the outcome of its request, the Commission may initiate its own preliminary examination into the business conduct of the enterprise referred to in paragraph 1.

**4.** Where the findings of the preliminary examination under paragraphs 2 and 3 require investigation, the Commission and the Member State concerned shall hold consultations to determine and agree on who should have jurisdiction to investigate.

**5.** If there is a difference of opinion between the Commission and the

Member State regarding the nature and effects of the business conduct or the jurisdiction of the investigating authority, the Commission shall:

**(a)** cease any further examination of the matter; and

**(b)** refer the matter to the COTED for its decision.

**6.** Nothing in this Article shall prejudice the right of the Member State to initiate proceedings before the Court at any time.

**7.** Where there is a finding that the Commission has jurisdiction to investigate the matter, the Commission shall follow the procedures set out in paragraphs 5, 6, 7 and 8 of Article 30(g).

**PART III**

## **RULES OF COMPETITION**

### **Article 30(i)**

#### **Prohibition of Anti-Competitive Business Conduct**

**1.** A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:

**(a)** agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community;

**(b)** actions by which an enterprise abuses its dominant position within the Community; or

**(c)** any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME.

**2.** Anti-competitive business conduct within the meaning of paragraph 1 includes the following:

**(a)** the direct or indirect fixing of purchase or selling prices,

**(b)** the limitation or control of production, markets, investment or technical development;

**(c)** the artificial dividing up of markets or restriction of supply sources;

**(d)** the application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby placing them at a competitive disadvantage;

**(e)** making the conclusion of a contract subject to the acceptance by the other party to the contract of additional obligations which, by their nature or according to commercial practice, have no connection with the subject matter of the contract;

**(f)** unauthorised denial of access to networks or essential infrastructure;

**(g)** predatory pricing;

**(h)** price discrimination;

**(i)** loyalty discounts or concessions;

**(j)** exclusionary vertical restrictions; and

**(k)** bid-rigging.

**3.** Subject to Article 30, a Member State shall ensure that all agreements and decisions within the meaning of paragraph 1 of this Article shall be null and void within its jurisdiction.

**4.** An enterprise shall not be treated as engaging in anti-competitive business conduct if it establishes that the activity complained of:

**(a)** contributes to:

**(i)** the improvement of production or distribution of goods and services; or

**(ii)** the promotion of technical or economic progress while allowing consumers a fair share of the resulting benefit;

**(b)** imposes on the enterprises affected only such restrictions as are indispensable to the attainment of the objectives mentioned in sub-paragraph (a); or

**(c)** does not afford the enterprise engaged in the activity the possibility of eliminating competition in respect of a substantial part of the market for goods or services concerned.

**Continue on to [Article 30 \(j\)](#)**