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**CAPACITY BUILDING WITHIN THE CARIBBEAN FORUM OF ACP STATES
(CARIFORUM) IN THE AREAS OF COMPETITION, PUBLIC PROCUREMENT
AND CUSTOMS AND TRADE FACILITATION IN SUPPORT OF THE
IMPLEMENTATION OF THE CARIFORUM-EU ECONOMIC PARTNERSHIP
AGREEMENT**

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FINAL REPORT ON CAPACITY BUILDING IN COMPETITION

Dr. Taimoon Stewart

Lead Regional Expert in Competition

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ACRONYMS

BFTC	Barbados Fair Trading Commission
CARIFORUM	Caribbean Forum of ACP States
CARICOM	Caribbean Community
CCC	CARICOM Competition Commission
CCJ	Caribbean Court of Justice
CETL	Centre for Excellence in Teaching and Learning
CL	Competition Law
CNDC	Comisión Nacional de Defensa de la Competencia
CSME	CARICOM Single Market and Economy
DR	Dominican Republic
EPA	Economic Partnership Agreement
EU	European Union
GCCC	Guyana Competition and Consumer Commission
JFTC	Jamaica Fair Trading Commission
MS	Member State
PP	Public Procurement
RTC	Revised Treaty of Chaguaramas
SRC	Shridath Ramphal Centre for Trade Policy and Law
ToT	Training of Trainers
TTFTA	Trinidad and Tobago Fair Trading Act
TTFTC	Trinidad and Tobago Fair Trading Commission
UWI	University of the West Indies

Final Report on Capacity Building in Competition in CARIFORUM States

In support of the CARIFORUM-EU EPA

Dr. Taimoon Stewart

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1. Introduction

The Economic Partnership Agreement (EPA) between CARIFORUM and the EU is intended to assist CARIFORUM countries in their efforts to integrate into the current phase of production of goods and services in the global economy by providing the CARIFORUM States with avenues for trade, and opportunities to become competitive with international producers. The competition chapter of the EPA supports this effort and ensures that market access opportunities provided by the EPA are not hindered by anticompetitive strategies by domestic players of both Parties to block entry of goods and services into each other's markets.

The CARICOM region recognized the importance of competition law enforcement as a tool in economic development, and to further market integration in the Single Market, and was already forging ahead with development of both regional and national competition regimes agreed to in the Revised Treaty of Chaguaramas. The Competition Chapter in the EPA reinforces this regional undertaking, and provides for technical assistance to achieve compliance.

2. Objectives of Training

The main obligations in the EPA competition chapter are to enact prohibitions against anti-competitive conducts and establish enforcement institutions, and to effectively enforce the law. Only after meeting these obligations could CARIFORUM Member States (MS) build cooperation with the EU Competition Commission. This project focused on developing the human resource capability to fulfill these obligations and ensuring sustainability in capacity building after the project ends through training of trainers and cooperation with regional institutions.

3. State of Play: (March 2015)

3.1 Law & Institution

As at March 2015, ten MS were not in compliance with the obligation to have a law; add to this Trinidad and Tobago (T&T), and there were eleven MS not enforcing competition law. Of the three institutions named in the EPA chapter on competition, two were established: CARICOM Competition Commission (CCC) and Comisión Nacional de Defensa de la Competencia (CNDC). The third, Bahamas, has not yet done so. And in compliance with the Revised Treaty of

Chaguaramas, only four MS of the twelve have established institutions. Table 1 provides a view of the state of implementation of law and institution as at March 2015.

Table 1
Level of Compliance March 2015: Law and Institution

Country	Law Passed	Institution established	Enforcing law	Trained staff
Jamaica	✓	✓	✓	✓
Barbados	✓	✓	✓	✓
DR	✓	✓	✓	Limited no. trained
Guyana	✓	✓	Still early stage	1 trained staff Understaffed
T&T	✓ part still to be proclaimed	✓ But not functional	X	X No staff except CEO
OECS	Draft Law	X	X	X
Suriname	Draft Law	X	X	X
Belize	X	X	X	X
Bahamas	X	X	X	X
Haiti	X	X	X	X

In addition, the Regional Competition Law was enacted in the Revised Treaty of Chaguaramas (RTC) (2001), and the CARICOM Competition Commission (CCC) was established in (2008) but was understaffed.

3.2 Capacity to Implement & Enforce

Policy makers lack understanding of the benefits of supporting CL so even getting the law through Parliament and establishing the institution was a struggle because of lack of political support. Few had the ability to effectively scrutinize draft laws or design competition institutions.

There were few skilled personnel to staff new commissions and many Commissioners (especially in new Commissions) were untrained in CL. The majority of judicial officers were untrained in CL.

There was a lack of competition culture, with little public knowledge of CL and benefits of enforcement.

And there were limited regional opportunities for tertiary training: only one university in CARIFORUM was teaching competition law was the University of the West Indies (UWI), Cave Hill Campus.

4. Challenge of Training in Competition

While Public Procurement (PP) and Customs both have long histories of enforcement, with government departments and staff assigned the tasks of enforcing the rules, Competition law is new to the region and, as Table 1 above shows, there were no human resources directly linked to competition enforcement in 11 countries. Training had to be directed to public officials with the hope that governments would appoint the trained personnel to newly established commissions.

Another challenge is that the enforcement of this law is more complex and draws on a wider net of stakeholders than do PP and Customs.

Commissions must rely on consumers to detect possible anticompetitive conduct and lodge a complaint; or journalist to report on possible anti-competitive conducts; or businesses to lodge complaints against other businesses. This requires an understanding of what is anticompetitive.

Enforcement of the law includes an investigative stage conducted by staff of commissioners, adjudication of the case, conducted by the Commissioners, enforcement of determinations by High Court Judges, and appeal of Commissions' determinations by Appeal Court Judges. To add to the complexity, the TTFTA gave adjudicative power to High Court Judges and sector regulators, requiring more personnel to be trained. Finally, The Caribbean Court of Justice (CCJ) heard appeals from decisions of the Commissioners of the CCC

This means that there is a multiplicity of stakeholders/enforcers to be trained in order for there to be *effective enforcement*. And, the knowledge set needed in training is different, depending on the role of the trainees, and requiring different programme content.

5. Organization of Delivery

Given these challenges, the training programme was designed to capture as many of the stakeholders as possible and consisted of three levels of delivery, and sub-levels within Levels 1 & 2.

Level 1 was designed to include one day national workshops, sensitization sessions with parliaments in the region, and sensitization of the judiciary in the region.

Delivery of the national one day sensitization workshops was assigned to staff of the CCC, and targeted consumers, civil society, the media, and the private sector. A manual was prepared for distribution and delivery combined lectures with active interaction. The content of the programme provide basic explanations of

- the prohibitions in the law and benefits of enforcement for consumers;
- how the regional and national regimes interact and function;
- the role of consumers/media/private sector in enforcement

The parliamentary sessions were designed to encourage policy makers to support the law by demonstrating the benefits for consumers and the economy of effective enforcement. The Chairman of CCC was responsible for delivery.

A session at the Bi-annual Conference of Caribbean Judicial Officers was organized so that Professor Jenny could sensitize Judges in the region to the provisions of law and the need for Judges in to familiarize themselves with the economics of competition law.

Level 2 consisted of six separate levels of training requiring different workshops.

1. **Training of Trainers (ToT) programme** was designed as an Advanced Competition law course targeting the most senior lawyers and economists in the functioning commissions: BFTC; CCC; CNDC; JFTC). Therefore good prior knowledge and enforcement experience were required. The objective was to build sustainability in capacity building from the start. Tutor: Prof. Frederic Jenny.
2. **Intermediate workshops** targeted the investigative arm of enforcement, and trained public officials and staff of Regulatory Authorities in all CARIFORUM countries except Jamaica and Barbados where sufficient understanding existed at this level. (Because of special circumstances, Haiti (Prof. Jenny) and DR (Mr. Perez Motta) received only 1 day training in Level 2). To build sustainability, staff of economic and law departments of university were invited to participate. A manual was produced to guide the participants through the materials, and all materials (manual, local laws, power points, cases, hypothetical cases as assignments were uploaded to Moodle web page administered by UWI. Participants were able to download all materials for later use. Tutor: Dr. Stewart with inputs from Prof. Jenny and using trainees of the ToT Programme to provide practical experience.
3. **Adjudicators** were divided into four sub-groups:
 - a. *Judges in T&T* because of their adjudicative role;
 - b. *Appeal Court Judges in CARICOM* (Haiti & DR not done because of special circumstances);
 - c. Judges of the CCJ; and
 - d. Commissioners of the CCC. (While the initial intent was to train all Commissioners in the region, this was omitted because of concerns about funding).

The mode of delivery was lectures with active interaction/discussions and use of local laws for illustration. Tutor: Prof. Jenny

Level 3 was designed as on-line **Advanced CL course** delivered through the Shridath Ramphal Centre for Trade Policy and Law (SCR), UWI. Prior knowledge of competition law was required for entry. As such, candidates were chosen from participants of Level 2 workshops and experienced staff of existing commissions.

Design of course, development of tutorial materials, development of continuous assessment questions/quizzes/discussion topics, the content of the Moodle webpage, and upload of all materials were done by Dr. Stewart. Professor Jenny pre-recorded lectures and provided lecture notes/power point slides. Ten live tutorials were conducted using Zoom software. managed by the Centre for Excellence in Teaching and Learning (CETL), UWI. Tutors were Professor Simon Roberts with some sessions and marking by Dr. Stewart (medical constraints required Dr. Stewart to hand over tutorials to colleague).

Course content was similar to the ToT programme, but elaborated through tutorials and assessments.

Table 2

Differences in Training Content for Different Groups in Level 2

Description	ToT	Intermediate	Judiciary	CCJ/CCC
Who trained	Senior lawyers & economists of mature Commissions: prior knowledge and enforcement experience required	Staff of new commissions, public officials, University staff: law & econ. Assumed no prior knowledge.	High Court Judges: T&T; Appeal Court Judges: CARICOM	Judges of CCJ; Commissioners of CCC
No. of Workshops	1 workshop; duration 5 days	4 workshops; duration 5 days	2 workshops; duration 2 days	2 workshops; 1 for each and duration 1 day
Training content	Advanced CL: (similar content in Level 3) Substantive provisions of CL; Economics of competition Use of econ. tools for enforcement; Techniques for institution design & building; Teaching methods demonstrated Use of case law; hypothetical cases & role play throughout training	Intro. to 3 pillars of CL; Methodology for determining dominance; Dealing with Cross border anticompetitive conduct; Cooperation Agreements; Intro. to conducting market study; Intro. to Institutional Design	Fundamentals of CL; Econ. tools for Judicial enforcement; Std. of Proof & Burden of Proof; Econ. & legal issues in sanctioning & compensation for damages; Strategies for dealing with econ. evidence in court.	Evolution of Jurisprudence in enforcement: The shift away from an approach of applying the provisions of the law once dominance is proven, to one of using economic tools to prove harmful effects to competition of the conduct. EU & US Jurisprudence covered.

6. Results of delivery of Programme and Recommendations for Future Work

6.1 Overview of results

Delivery of the programme had its organizational challenges, but was for the most part, very successful.

Level 1 workshops succeeded in raising awareness of the law, benefits of enforcement, and the roles of the regional and national institutions and the stakeholders in enforcement.

Level 2 intermediate workshops took participants from a state of no prior knowledge to a sound understanding of the law, basic enforcement tools, and challenges of enforcement when anti-competitive conducts are cross-border, and alerted them to strategies for engaging stakeholders in designing the law and institution. Workshops were lively, and participants were happy with the training.

At level 3, 20 officials received advanced training in CL: In total, 32 officials in the region received advanced CL training (20 trained in Level 3 + 12 in ToT). Skills were upgraded in staff of the JFTC (6) & BFTC (3) and staff trained in new commissions (GCCC 3; T&T: 4). Participants were very stimulated by the programme, and found the trainers engaging and very knowledgeable.

Table 3 below illustrates these outcomes, points to the shortcomings in the delivery, and recommends future work.

6.2 Building Sustainability

There are now a minimum of 10 Senior Staff of Commissions who are able to undertake intermediate training in the region, and be supported by another 9 excellent candidates from the Level 3 training.

The programme offered through the SRC, UWI, in advanced CL is now fully elaborated, and can be continued over the next five years at least.

UWI Mona Faculty of Law will be introducing CL in 2017-2018 academic year as a direct result of the attendance of the Deputy Dean at the Trinidad workshop.

6.3 Successful Collaboration with Regional Institutions

Equinoccio and the Consortium Partners successfully collaborated with regional institutions.

- CARICOM Competition Commission: Delivered Level 1 training in CARICOM (except Haiti and DR);
- OECS Directorate combined resources of EU funding with project resources to build capacity in OECS and CARICOM, collaborating in:
 - delivery of Level 2 workshop in OECS
 - training of CARICOM Judges & OECS Magistrates;
- The University of the West Indies facilitated delivery of Level 3 on-line course and now has the capacity and materials to continue to offer this course.

Table 3

Results of Training and Recommendations for Future Work

Target Group	<i>Nos. Trained</i>	<i>Shortfalls in delivering objectives</i>	<i>Recommended future work</i>
Level 1 sensitization workshops	511	Insufficient Journalist and no police included; Bahamas unable to facilitate workshop	2 nd round of sensitization workshops; include journalists and police
Level 1 Parliamentarian	1 Parliament: Guyana	14 Parliaments could not arrange the sessions	Complete parliamentary sessions in CARIFORUM
Level 2 ToT Adv. CL 1 workshop	12	None	Use ToT trained personnel to continue intermediate training in region (include private sector; bar association: staff of new commissions)
Intermediate workshops of 5 days each (4 workshops)	94	Regulators not included in Suriname delegation	Give public officials access to intermediate competition course in MITP & LLM programmes at UWI
Intermediate 1 day in Haiti & DR	Haiti: 38 DR: 32	Haiti: workshop not publicized sufficiently DR cancelled 5 day workshop twice	DR & Haiti: Deliver intermediate 5 day workshops and train judiciary; Haiti: EU should collaborate with WB & IADB in delivering TA in competition in Haiti; Internships recommended for staff of the Ministry of Finance to learn about enforcement.
Adjudicators: Judges (32); CCJ (8); CCC (3)	43	Training of Commissioners of BFTC; CNDC; GCCC; TTFTC; & JFTC not done due to perceived lack of funds. DR cancelled Judges training twice and so did not benefit ; Invitation not passed on to Belize Judiciary by Belizean Auth.	Give Judges & Commissioners access to Advanced CL offered by UWI. Deliver specialized workshop for all Commissioners.
<i>OES Project: Judiciary</i>	<i>33 CARICOM Judges; 30 OECS Magistrates</i>	<i>No shortfalls</i>	<i>Future collaboration of institutions recommended to maximize use of resources</i>
Level 3: Adv. CL Final Results: 12 As; 4 B+; 2 Cs; 2 F.	20 (12 were staff of existing Commissions, (2 were staff of Regulators in T&T)	Need to fine tune programme based on students' comments & CETL's guidance for on-line delivery but minor.	Continue delivery of Level 3; Provide scholarships for those Level 2 candidates (14) who qualified but were not accepted due to lack of space.

7. Policy Recommendations

Governments need to

- recognize the new skills now available for filling positions in new commissions and utilize these trained personnel;
- ensure synergy between competition provisions and other government policies;
- develop instruments for deep collaboration between Regulators and Competition Commission;
- recognize the importance of independence of the Competition Commission and respect this; and
- provide political support for the competition regime.

Tutors:

Professor Frederic Jenny: Professor of Economics, Essec School of Business, Paris; Chairman of the OECD Committee on Competition; Non-Executive Director, Competition and Markets Authority, UK; Former Supreme Court Judge, France.

Professor Simon Roberts: Professor of Economics, and Director of Centre for Competition, Regulation and Economic Development, University of Johannesburg; Former Chief Economist at the South African Competition Commission.

Dr. Taimoon Stewart: Associate Senior Fellow, SALISES, UWI; Consultant in Competition Law; Lectures in Competition Law in the MITP Programme at SRC, UWI, and the LLM at Law Faculty, UWI, Cave Hill.