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**Session II: Leniency Programmes in Latin America and the Caribbean –
Recent Experiences and Lessons Learned**

-- Contribution from CARICOM --

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The attached document from CARICOM is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session II at its forthcoming meeting to be held on 12-13 April 2016 in Mexico.

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LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



**14th Latin American and Caribbean Competition Forum
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Session II: Leniency Programmes in Latin America and the Caribbean – Recent Experiences and Lessons Learned

LENIENCY PROGRAMMES TO FIGHT CARTELS: CAN THEY WORK IN THE CARIBBEAN COMMUNITY (CARICOM)?

-- CONTRIBUTION FROM CARICOM¹ --

1. Introduction

1. One of the most important tools used by competition authorities in many countries to identify and dismantle cartels is the leniency programme. Empirical evidence has suggested that leniency programmes not only uncover information about unknown cartels that may otherwise go undetected by competition agencies, they can also shorten the time spent on investigations on cartel activity, destabilise cartels in the short-term, and lead to lower cartel formation rates.² The success of corporate leniency programmes is also

¹ The paper was written by Mr. Rommell Hippolyte, Research Economist at the CCC. The views expressed are not an official position of the CARICOM Competition Commission.

² Brenner, S. (2009), “*An Empirical Study of the European Corporate Leniency Program*,” International Journal of Industrial Organisation, Vol. 27, Miller, N.H. (2009), “*Strategic Leniency and Cartel Enforcement*”, American Economic Review, Vol. 99, and Choi, Y. (2011), “*An Empirical Analysis of the Corporate Leniency Programme in Korea: Its Amendment in 2005*,” The Korean Journal of Economics, Vol.18. No. 2.

demonstrated by the widespread adoption of similar immunity programmes around the globe. Today, more than 50 countries have such programmes in place.³

2. Despite the success of leniency programmes in many jurisdictions around the world it is important to note that no such policies exist in the Caribbean Community (CARICOM). Competition laws for the countries of Barbados, Jamaica, Trinidad and Tobago and Guyana, all prohibit cartel activity through provisions that make anticompetitive horizontal agreements illegal. However, this is the extent to which the countries have reached. In light of the adverse effects that both domestic and international cartels can have on the economies of small developing countries, this paper discusses the underlying framework needed to implement leniency programmes and considers if such a framework exists in CARICOM.

2. Cartel activity in CARICOM

3. As aforementioned, cartel activity is very difficult to detect and cartel participants operate within a realm of secrecy. Nonetheless, within CARICOM there are a few documented reports of cartel behaviour among competing business enterprises that outline the importance of punishing and deterring cartel activity in the region. This behaviour has so far been found within national jurisdictions and among domestic business enterprises, but not at the regional level.

4. The investigation of the Barbados Fair Trading Commission (BFTC) into the conduct of the Shipping Association of Barbados (SAB) and its membership presents a good example of cartel behaviour uncovered in the region. In 2010, the BFTC commenced an investigation into an allegation that in 2004 the members of SAB agreed among themselves to introduce a local administration charge.⁴ In 2011, the BFTC investigation concluded that the agreement was in breach of the Barbados Fair Competition Act CAP 326C and directed that with immediate effect, the local administration charge be ended in the manner in which it was administered. The SAB agreed that its conduct represented a “case of price fixing” and that there had been no appreciation of the gravity of the action which its members undertook. The SAB therefore accepted the decision of the BFTC and rescinded the agreement taken in June 2004 pertaining to the local administration charge.

5. Another example of cartel activity facilitated by trade associations was found in Trinidad and Tobago where the economy is larger and more complex than most of the other member states of CARICOM. In 2003, price fixing by the Baker’s Association was announced in the newspapers. Given that there was no law prohibiting collusion at the time, and that this had been the business practice of trade associations in the country for a long period, there was no sense of wrongdoing amongst the members of the Baker’s Association.⁵

6. The two examples above emphasise the importance of detecting and prohibiting cartels in CARICOM. Especially noteworthy is that although cartels have an adverse effect on all consumers, it is well documented that the poor suffer disproportionately from the effects of collusion among business

³ Scott D. Hammond (2010), “*The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades*”, Address Before 24th Annual National Institute on White Collar Crime (Feb. 25, 2010) available at <http://www.usdoj.gov/atr/public/speeches/255515.htm>.

⁴ See case summary on the Barbados Fair Trading Commission website available at http://www.ftc.gov.bb/index.php?option=com_content&task=view&id=226&Itemid=28.

⁵ Stewart, T. (2004), “*The Role of Competition Policy in Regional Integration: The Case of the Caribbean Community.*” available at <https://sta.uwi.edu/salises/workshop/papers/tstewart.pdf>.

enterprises.⁶ The impoverished spend a greater portion of their income on basic provisions such as food. High prices due to cartels, especially in essential goods such as bread, make those goods more costly or unaffordable and contribute to increased poverty. Small entrepreneurs who rely on imports might also be denied access to markets or subject to exploitative conduct by cartels.

7. Although not related to the aforementioned examples, it must also be highlighted that cartels can have a negative impact on the economic growth of small developing countries such as those in CARICOM. Collusive tendering poses serious dangers where public purchasing accounts for a substantial part of national economic activity and public projects, such as infrastructure development, are vital to economic growth.⁷ An anti-cartel measure in a competition law, supported by a leniency programme, could prove a valuable tool for punishing and deterring efforts to rig public tenders.

8. As shown in this section, based on the significance of addressing cartels it is therefore essential that the appropriate legal and institutional frameworks be put in place, both at the national and regional level, to prohibit and deter cartel activities in CARICOM. The following section examines whether these frameworks are currently present.

3. Legal and institutional frameworks for addressing cartels in CARICOM

9. At present there are 4 member states within CARICOM that have enacted competition laws and established national competition authorities. These countries are Jamaica, Barbados, Guyana, and Trinidad and Tobago. In addition to these countries, the CARICOM Competition Commission (CCC) was established under Article 171 of the Revised Treaty of Chaguaramas (RTC), as a regional competition authority to investigate and prohibit anticompetitive business conduct of a cross-border nature.

10. It is important to note that within the aforementioned CARICOM member states, and at the Community level, cartels are prohibited through provisions for anticompetitive agreements in existing competition laws and Article 177.1(a) of the RTC. However, this is the extent to which the region has taken to make cartels illegal. No leniency programmes are implemented in the region at this time to support the existing pieces of competition legislations in proscribing cartel activities.

11. The national competition law of Trinidad and Tobago perhaps presents a basic platform from which a corporate leniency programme could be established in that country. Section 19 of the country's Fair Trading Act 2006 is labelled as "Transitional Amnesty". First, it allows for a business enterprise which is a party to, or engaged in, an anticompetitive agreement, to inform the Trinidad and Tobago Fair Trade Commission (TTFTC) within one month thereafter, the details of the anticompetitive agreement. Second, Section 19.2 of the Fair Trading Act 2006 also allows the TTFTC and the business enterprise to enter an agreement as to the manner and timetable, to phase out or end the anticompetitive agreement or practice prior to an application being made by the TTFTC for an Order to the Court to have the anticompetitive agreement prohibited. Last, Section 19.3 of the Fair Trading Act 2006 further states that a business enterprise which fails to end the anticompetitive agreement or practice within the time agreed to with the Commission, is liable on summary conviction to a fine of TTD 100,000 (or around USD 16,666).

⁶ United Nations Conference on Trade and Development (2013), *"The Impact of Cartels on the Poor"*, Intergovernmental Group of Experts, Thirteenth Session, Geneva 8-12, July 2013, available at http://unctad.org/meetings/en/SessionalDocuments/ciclpd24rev1_en.pdf.

⁷ W.E. Kovacic and D. Eversley, (2007), *"An Assessment of Institutional Machinery: Methods Used in Competition Agencies and What Worked for Them"*, International Competition Network, Available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc368.pdf>

12. Although being a basic framework from which a leniency programme could be developed, the provisions in the Fair Trading Act 2006, and specifically the section relating to the sanctions that can be imposed, do not present a significant incentive for any business enterprise to be the first to inform the TTFTC that a cartel exists. This is explained in greater detail in the following section.

4. General framework for leniency programmes in the context of CARICOM

4.1 *High risks of detection and enforcement*

13. Competition authorities use various investigative techniques to detect cartel activity. These techniques range from analysing data to uncover suspicious behaviour displayed in product markets, to securing substantial evidence of collusion such as competitors meeting before or after bids are submitted. Regardless of the techniques used, business enterprises or individuals taking part in cartels must perceive that there is a high risk of detection and that, in the absence of a leniency application, strong enforcement action by a competition authority will ensue. This perception of being caught encourages participants in cartels to confess and the leniency programme presents that opportunity to do so.

14. Within CARICOM, however, there are two essential elements that perhaps lead to low detection and enforcement rates of cartel activities both at the national and Community level. The first element pertains to its member states having either missing or weak institutional arrangements. Some member states either have no national competition law and/or national competition authority, or those that have a competition framework in place but suffer from a shortage in human and financial resources.⁸

15. In relation to the first category of member states, at present there are no mechanisms in place at the country level to address cartels that operate, and have an adverse effect, on domestic markets and consumers. This situation presents not only a national problem but also one of a Community dimension. In theory, a member state could request under Article 175.1 of the RTC that the CCC investigate an alleged cartel that has cross-border effects. However, this solution is not workable since the CCC relies on cooperation with national competition authorities to assist in investigating cross-border anti-competitive business conduct and national competition laws to execute searches of property, secure the attendance of persons to give evidence and the discovery or production of documents relevant in a case. Without the competition framework in the member states, cross-border anti-cartel enforcement is also a challenge.

16. In terms of the second category of member states, the insufficiency of technical staffing can limit the level of analysis that can be performed to detect cartel activity. In addition, the smaller endowments provided to the existing competition authorities in the region, when compared to those in more developed countries, also leads to these agencies investigating fewer cases. This problem is even more pronounced regarding international cartel cases when considering the cost of gathering and analysing information from developed countries, and litigation.⁹ It is often difficult for a competition authority with limited financial and human resources to match the expertise and resources of a large multinational corporation, even if it has a strong case. Facing these limitations, competition authorities in small developing countries, such as those in CARICOM, might re-prioritise their enforcement efforts to other areas of competition law, where detection of infringements is much easier such as unilateral cases or merger control reviews.

⁸ Gal, M. and Fox, E. (2014), "Drafting competition law for developing jurisdictions: learning from experience, New York University Law and Economic Working Papers. The authors mentioned the BFTC as an example, which stated that it faces major challenges due to the insufficiency of technical staffing to manage broad and varied technical agendas.

⁹ Gal, M. (2009), "Antitrust in a Globalized Economy: The Unique Enforcement Challenges faced by Small and Developing Jurisdictions", Fordham International Law Journal, Vol. 33, Issue 1.

17. The second important element which could affect cartel detection and anti-cartel enforcement in the region is the lack of a competition culture.¹⁰ This is evident from the prevailing norms in CARICOM where business enterprises and trade associations involved in fixing prices or dividing markets are not even aware that they are committing illegal acts. Similarly, business enterprises being disadvantaged by cartels are also not conscious that the practices used to foreclose them from markets are anticompetitive. Other stakeholders in civil society such as consumer rights groups and the media are also not aware of the illegality of cartels and their responsibility to report such activities to the relevant authorities. Most of the enforcement activities by national competition authorities are based on complaints received from business enterprises and civil society. Therefore, a lack of understanding of the dangers and illegality of cartels of these stakeholders place a greater onus on already resource scarce competition agencies to detect and prohibit cartels.

4.2 *Significant sanctions*

18. Competition laws and competition agencies in many developed jurisdictions have followed the conventional wisdom that the primary remedy to deter cartel activity is for corporate fines to be significant.¹¹ Many jurisdictions have instituted individual sanctions to ensure that executives recognise that their role in the formation or maintenance of cartels can lead to either personal fines or prison sentences. If these corporate or individual penalties are inadequate, cartel participants will not come forward since the benefits to be gained from a leniency programme are reduced or non-existent. In this way, an effective leniency programme and strong potential penalties provide a powerful incentive for business enterprises to be the first to reveal a cartel.

19. In contrast to what exists in most developed countries, the strategy used in CARICOM member states to proscribe anticompetitive agreements and cartels, comprises a two-pronged approach. The first recourse taken by national competition authorities in the region, in accordance with their national competition laws, is to direct business enterprises to end any anticompetitive agreement or practice in which they are involved. This first step could be considered a tolerant response to cartels, and specifically international ones, if they are discovered. It does not present a stringent deterrent as cartels, once they are discovered, could redesign their operations knowing that if again detected they would only be requested to cease the practice.

20. The second recourse taken in CARICOM member states to prohibit anticompetitive agreements is for the national Courts to impose penalties on enterprises or individuals if they do not comply with the directions to end an agreement. In relation to corporate sanctions to proscribe anticompetitive agreements in CARICOM, these differ across the member states in terms of their magnitude. With Jamaica, for example, enterprises that contravene the national competition law or fail to comply with any direction of the Jamaica Fair Trade Commission (JFTC) are liable to fines not exceeding JMD 5 million (or around USD 43,050).¹² In contrast, enterprises that fail to end an anticompetitive agreement or practice within a stipulated period in Barbados and Guyana respectively are liable to a fine of BBD 500,000 (or around USD 250,000) or up to 10 percent of the turnover for the financial year preceding the date of the offence is

¹⁰ International Competition Network (2002), “*Advocacy and Competition Policy*”, Report prepared by the Advocacy Working Group, International Competition Network Conference, Naples, Italy, 2002. The report suggests that many perceive competition culture to be closely related to the age of the market economy and subsequently the experience of the competition authority.

¹¹ Ginsburg, D., and Wright, J. (2010), “*Antitrust Sanctions*”, (Competition Policy International, Vol. 6, No. 2, pp. 3-39, George Mason Law & Economics Research Paper No. 10-60, Available at SSRN: <http://ssrn.com/abstract=1705701>.

¹² Section 47.1(a) of the Jamaica Fair Competition Act 1993.

committed,¹³ and GYD 50 million (or around USD 250,000).¹⁴ As noted in Section III, in Trinidad and Tobago enterprises that fail to end anticompetitive agreements or practices are liable to a fine of TTD 100,000 (or around USD 16,666).

21. Although in some instances the corporate sanctions that exist in CARICOM might seem adequate for deterring domestic business enterprises from engaging in cartel activity, in most cases they would be inadequate for punishing and deterring international cartels that operate in the region. For instance, in Barbados the corporate penalties may be satisfactory as the specific fine might be stringent enough to deter domestic cartels, while the 10 percent limit on turnover¹⁵ could be an effective deterrent or punishment for international cartels. Meanwhile, with Trinidad and Tobago the magnitude of the corporate fine, as laid out in the national competition law, is unlikely to prohibit or punish either domestic or international cartels. There is also no real incentive for an enterprise to report a cartel to the TTFTC. Instead, cartel activity in the country is more likely to go unreported because of the low potential penalty at risk.

22. Regarding the penalties imposed on individuals in the region who play a role in forming or maintaining cartels, these differ in terms of scope and magnitude. In Barbados, an individual who fails to end an anticompetitive agreement could be fined BBD 150,000¹⁶ (or around USD 75,000), while in Jamaica the fine for an individual does not exceed JMD 1 million (or around USD 8,640).¹⁷ In Guyana, the national competition law suggests that instead of a fine the penalty for an individual who fails to end their participation in an anticompetitive agreement is imprisonment for one year.¹⁸ On the contrary, no penalties for individuals who take part in cartels exist in Trinidad and Tobago. Therefore, based on what is observed from the national competition laws of the 4 countries, the individual sanctions for Barbados and Guyana could be viewed as adequate for a small developing country to deter participation in cartel activities. The opportunity to avoid these sanctions would also encourage individuals to report their participation in a cartel to the respective national competition authorities. However, no strong incentives exist for an individual to report their participation in a cartel in Jamaica or Trinidad and Tobago since the penalties are not stringent in the former country, and non-existent for the latter.

23. At the Community level, based on Article 174.4(d) of the RTC, the CCC completed and published its Guideline for Fines for anticompetitive offenses in 2015. For anticompetitive business conduct, such as cartel activities, several aspects are taken into consideration when determining the magnitude of a fine: the relevant turnover of the infringing business enterprise, the duration of the offence, aggravating and mitigating circumstances, and a limit of 10 percent of the total turnover of the infringing enterprise as the maximum penalty that can be imposed. The Guideline also includes a provision to allow the CCC to impose a maximum fine of USD 75,000 on individuals who take part in an anticompetitive agreement, or require individuals to be disqualified from holding a position as a director at a firm for a specific period or indefinitely depending on the nature and duration of the offense. On review, the Guideline appears to address the need for stringent fines for cartels activity. Some of the elements of the Guideline compares to what exists in the Barbados national competition law relating to penalties to be imposed on business enterprises and individuals for engaging in anticompetitive agreements. However,

¹³ Section 15.2(b) of the Barbados Fair Competition Act 2002 CAP 236C.

¹⁴ Section 22.3 of the Guyana Competition and Fair Trading Act 2006.

¹⁵ The Barbados competition law does not indicate whether this is the relevant turnover or total turnover. This would impact on the magnitude of a fine imposed on an enterprise engaging in anticompetitive agreements.

¹⁶ Section 15.2(a) of the Barbados Fair Competition Act 2002 CAP 236C.

¹⁷ See the Jamaica Fair Competition Act 1993, n. 23 above.

¹⁸ See Guyana Competition and Fair Trading Act 2006, n. 25 above.

unlike the Barbados national competition law, the turnover used to derive the maximum penalty for an infringing enterprise is less ambiguous and is potentially more punitive.

4.3 Transparency and certainty

24. For a leniency programme to be effective, a business enterprise needs to predict with high certainty how it will be treated if it reports a cartel and the consequences for not reporting.¹⁹ Therefore, competition authorities must strive to ensure that their leniency policies are clear, comprehensive, regularly updated and well publicised. Agencies need to build up the trust of applicants and their legal representatives by applying the programme in a consistent manner. For example, in the United States, the Department of Justice has sought to provide transparency in the following enforcement areas: (1) standards for opening investigations; (2) standards for deciding whether to file criminal charges; (3) prosecutorial priorities; (4) policies on plea agreements; (5) policies on sentencing and calculating fines; and (6) application of the leniency programme.²⁰

25. It must be first highlighted that developing and publishing the required guidelines for business enterprises to apply and gain leniency for their participation in a cartel would not be too difficult for CARICOM. There are several models of leniency policies available around the world that can be amended to fit the circumstances at the member state and regional level. It should be noted, nonetheless, that some of the national competition authorities in the region do not have a strong history of publishing detailed procedural guidelines to increase the transparency and predictability of their decisions and actions. To date, the national competition authorities of Guyana and Trinidad and Tobago are yet to publish procedural guidance documents to increase the transparency of their agencies. Although not a definitive indicator, the lack of detailed procedural guidance documents to increase agency transparency in these member states is an ominous sign of the likelihood of the countries developing and publishing guidelines on leniency.

26. In contrast to the above mentioned competition agencies, Barbados, Jamaica and the CCC have taken steps to produce and publish various documents to increase the transparency of its operations. For example, the CCC has so far published its Rules of Procedures (Rules), Guidelines to Fines and a guidance document on how it conducts its investigations. In regard to its Rules in particular, the CCC has over the years either convened or took part in several seminars to promote the guideline to business enterprises, the judiciary and government officials in various member states. Based on the willingness of the BFTC, JFTC and CCC to develop, publish, and sometimes promote its various guidance documents, it is easy to envisage that to curb cartels within Barbados, Jamaica and those that have a cross-border effect publishing transparent leniency policies would not be too difficult a task for the agencies.

4.4 Confidentiality

27. Confidentiality is one of the most important elements required for the successful implementation of a leniency programme. There are two main aspects of confidentiality that competition authorities must consider: (1) its ability to protect the identity of a leniency applicant; and (2) its ability to protect the information provided by that leniency applicant on a cartel. In relation to the latter, this dispels any fear that an applicant may have that the information it provides to a competition authority might be used against it in private civil actions or shared with another government agency. Any risk or doubt that the identity of

¹⁹ Consumer United and Trust Society International (2007), “Study of Cartel Case Laws in Select Jurisdictions – Learnings for the Competition Commission of India.

²⁰ Hammond, S. (2004), “*Cornerstone of an Efficient Leniency Program*”, Presented before the International Competition Network Workshop on Leniency Programs, Sydney, Australia, November 22-23, 2004.

a leniency applicant might become exposed, or the information provided would be conveyed to other jurisdictions might decrease the incentives of individuals or firms to come forward.²¹

28. In CARICOM, protecting the identity of a leniency applicant is perhaps the main aspect that makes leniency policies difficult to implement. The issue, however, is not the ability of the competition authorities in the region to keep the identity of an informant confidential. The competition authorities in the region all have mechanisms in place to keep information secure. Instead, the problem lies in the small sizes of the CARICOM countries, which means that their product markets are highly concentrated with a few players. Because of the high concentration of markets and the interwoven relationship among business enterprises in the region, the identity of an informant can be easily deduced. In addition, some commentators have also argued that acting as an informant may result in social exclusion and perhaps even physical harm or death.²² The high likelihood that an informant's identity could be inferred, coupled with the possible repercussions of providing a competition authority with information, therefore reduces incentives for business enterprises or individuals applying for leniency in CARICOM.

5. Conclusion and way forward for CARICOM

29. For small developing countries such as those in CARICOM, cartels can have a negative impact on economic growth and a disproportionately adverse effect on the impoverished. This paper reviewed the applicability of leniency programmes in the CARICOM region to support the efforts of the existing competition authorities at the national and regional levels in detecting and punishing cartel activity. The assessment considered 4 essential elements required to implement a leniency programme from the perspective of the region. These elements were: (1) high rates of detection and enforcement of cartels by the competition authorities in the region without the existence of leniency policies; (2) significant sanctions for cartel participants to encourage voluntary cooperation with national competition authorities or the CCC; (3) a high level of transparency and predictability of how business enterprises would be treated should they report a cartel; and (4) strict levels of confidentiality for the leniency applicant and the information being provided.

30. On the basis of the analysis conducted it is recommended that the region seek to strengthen the elements needed to implement a leniency programme before instituting such policies is considered. For example, there needs to be a re-evaluation of the first recourse by national competition authorities in the CARICOM to curb anticompetitive agreements, which is to request enterprises or individuals to cease such practices. This strategy will not adequately deter domestic or international cartel activities that adversely affect local markets.

31. With respect to sanctions imposed on cartel participants who do not terminate their agreements or practices, it appears as if the drafters of the competition laws in the member states took a narrow view of its application. The national competition laws seem intended mainly to remedy domestic infringements and do not contemplate a globalised world where international cartels can have as large an adverse impact on local markets as domestic cartels. An update of most of the sanctions included in the countries' competition legislations for anticompetitive agreements is therefore urgently needed. This would be with the view of making the penalties more stringent for both domestic and international cartels, especially in Jamaica and Trinidad and Tobago. For Barbados, consideration should be given to a 10 percent limit of the "total or worldwide" turnover of a business enterprise, instead of simply its "turnover". This would remove any

²¹ Organisation for Economic Co-operation and Development, (2002), "Fighting Hard Core Cartels: Harm, Effective Sanctions and Leniency Programme, Available at: <http://www.oecd.org/competition/cartels/1841891.pdf>

²² Stewart n. 11 above, and Jamaica's comments on leniency programmes in United Nations Conference on Trade and Development, n. 6 above.

ambiguity as in its current form the cap possibly refers to “relevant” turnover, which would represent a smaller fine than if total turnover is used. The latter would be more prohibitive for international cartels.

32. In regard to the detection and enforcement of cartels, CARICOM countries will most likely continue to face financial and human resource challenges. Concluding cooperation agreements with provisions of positive comity could be an interim solution for CARICOM.²³ Such bilateral arrangements would allow countries in the region to be notified by the competition authorities of developed countries that competition enforcement is required for domestic cartel activity of concern to their important interests. In effect, these notifications would increase the ability of national competition authorities in the region to detect both domestic and international cartels. Bilateral cooperation agreements would also allow countries in the region to request non-confidential information from competition authorities in developed countries and open a line of communication to discuss investigative techniques and other competition issues. Already, the Caribbean Forum-European Union Economic Partnership Agreement (CARIFORUM-EU EPA)²⁴ which includes a provision for enforcement cooperation in the competition chapter has been concluded. Similarly, as part of the negotiations towards a CARICOM-Canada Free Trade Agreement, a bilateral cooperation agreement between the competition authorities of the respective signatories is being contemplated. It may be a valid short-term strategy to conclude as many bilateral cooperation agreements with important trading partners as possible.

33. Another strategy to increase the rate of detection and enforcement of cartel activity (and particularly domestic cartels) is by strengthening the competition culture in the region, principally through greater advocacy and educational programmes. Given the importance of anti-cartel enforcement both nationally and regionally, a Community strategy needs to be developed that aims to increase the awareness of, and education about, competition law. Such a strategy should target business enterprises, the civil society, the media, and government officials throughout the entire region.

34. In relation to agency transparency as noted above this is not a difficult task to undertake. The lack of documents being published by some of the national competition authorities to promote agency transparency, however, may not instil confidence in the business communities in some member states about the predictability of their procedures. Conversely, the CCC has prepared and published its Rules and Guidelines for Fines for competition offences. The agency has also developed its Guidelines on Investigations. Already, technical assistance has been provided to the national competition authority of Guyana towards developing its own procedural rules. It therefore remains possible that the CCC could also provide technical assistance to other national competition authorities in the region to develop similar documents.

35. Lastly, keeping the identities of applicants confidential is perhaps the most challenging aspect of implementing successful leniency programmes in the region. The difficulty stems not from the ability of the competition agencies to keep information confidential, but from the concentrated product markets in CARICOM and the ease of which the identity of an applicant can be deduced by other cartel participants. Because of this challenge a valid strategy for the region might be to engage in discussions with other small developing countries that have already implemented leniency policies, to determine how these challenges could be overcome. For example, similar to all the member states in CARICOM, Mauritius is classified as

²³ This should be an interim strategy due to the arduous task of trying to conclude bilateral cooperation agreements with all the region’s important trading partners. A more long-run strategy would include advocating for a multilateral approach to competition enforcement such as through the World Trade Organisation.

²⁴ The Caribbean Forum (CARIFORUM) comprises the member countries of CARICOM and the Dominican Republic.

a Small Island Developing State (SIDS).²⁵ It therefore shares many of the same characteristics of the countries in the region.²⁶ However, although establishing its competition authority in 2009 the country already has a leniency programme instituted. In 2012, the country also undertook several legislative steps to improve the programme which led to its first leniency application in 2014.²⁷ The experience of Mauritius therefore shows that although there may be difficulties for the region in implementing a successful leniency programme, the challenge is not impossible.

²⁵ United Nations Educational, Scientific and Cultural Organization list, available at <http://www.unesco.org/new/en/natural-sciences/priority-areas/sids/about-unesco-and-sids/sids-list/>

²⁶ Based on World Bank statistics for 2013, the real Gross Domestic Product per capita for Mauritius was less than the average for the 7 countries of the Organisation for Eastern Caribbean States. However, the country's population density is almost twice that of the countries of the Organisation of Eastern Caribbean States and almost the same as Barbados

²⁷ The Competition Commission of Mauritius has recommended fines of approximately €487,000 and €158,000 be imposed on Phoenix Beverages Ltd and Stag Beverages, respectively, for their involvement in a cartel. Phoenix applied for leniency and received a lesser fine.