



CARIFORUM-EC EPA: COMPETITION¹

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The objective of the competition chapter in the Cariforum EPA is to agree on a limited number of **common principles to ensure that markets are not distorted by anti-competitive practices by companies**. Anti-competitive practices like cartels or abuse of dominant position cost consumers globally billions of dollars, as they keep prices for goods and services artificially high. Sound and balanced competition policies therefore contribute to economic efficiency, consumer welfare and good governance.

This has been recognised for a long time in the Caribbean, where the Treaty establishing the Caribbean Community (1973) already provided for competition rules. These are, in content, very similar to those of the EPA, but their implementation is still in progress². Due to the lack of national competition regimes in most of the Cariforum countries, there is a **transition period of five years** to put such laws and authorities in place (art. 127).

Anti-competitive practices covered by the Agreement

The types of **anti-competitive conduct by companies** that are prohibited (art. 126) are:

- 1) **cartels** and other "concerted practices" ("agreements and concerted practices between undertakings which have the object or effect of preventing or substantially lessening competition on the market" of one of the parties);
- 2) **abuse of dominant position** ("abuse by one or more undertakings of market power" in the territory of either the EU or Cariforum).

Mergers and State Aid are not covered. In the light of the very different development level between the EU and Cariforum, it was considered that such inclusion was not necessary at this stage.

There are also provisions on **public enterprises** and so-called "enterprises with special rights"³ (art. 129). Such enterprises are of course not prohibited: the

¹ This fact sheet describes the content of part of the CARIFORUM-EC EPA but it does not in any way replace or interpret the provisions of this Agreement.

² The Caribbean Community is in the process of operationalizing a regional competition authority, the CARICOM Competition Commission. Jamaica, Barbados, Guyana, St Vincent and the Grenadines and Trinidad and Tobago have competition laws in place, but Jamaica was the only country with significant enforcement practice. Other members of Caricom need to set up national competition regimes to be in compliance with the 1973 CARICOM Treaty. The Dominican Republic has recently passed a bill on competition policy.

³ Enterprises that are entrusted with carrying out a service of general economic interest. EC law includes the same concept. As an example of a service of general economic interest one could name carrying out a postal service or energy/clean water distribution to remote areas that would not be feasible for commercial operators.

agreement expressly states that **parties have the right to design or maintain public or private monopolies**. However, such enterprises must **respect competition laws** to the extent that the application of these laws does not obstruct the execution of the special task assigned to them. This means they are allowed to carry out their special functions of general economic interest, even if they must disregard competition rules to do so, where necessary.

Following the request of the Cariforum countries, certain specific sectors are exempted from this provision on public enterprises (art. 129.3). Cariforum considers regulating certain sectors like telecommunications and energy through a special regulatory framework including sectoral regulatory authorities, and in such cases these regulatory authorities would also be responsible for enforcing the competition rules in these sectors⁴.

In this context, it must be noted that the services chapter of the Cariforum EPA expressly specifies that **nothing in the services chapter should be construed to require privatisation of public undertakings** (art. 60.2), and that the EU and Cariforum countries also have the right to define universal services obligations⁵ (see e.g. art 91).

Enforcement

The above competition rules laws will be enforced by specific **competition authorities**: one for the Caricom countries (Caricom Competition Commission) and one for the Dominican Republic (Comision Nacional de Defensa de la Competencia) (Art. 125.1)⁶.

The enforcement cooperation provisions in the Cariforum EPA go less far than those in some other EU agreements, thus recognising the specific situation in the region (see footnote 1). Building on CARICOM regional integration in competition policy, the EPA gives the region and its countries five years from entry into force to put in place the laws and bodies required to address restrictions on competition.

Cooperation

Since setting up competition authorities and maintaining competition laws requires significant resources, the Cariforum EPA stipulates that the **EU will provide technical assistance and capacity building**, through assistance in drafting guidelines, manuals etc., training key personnel, provision of independent experts etc... (Art. 130). The agreement also provides for **cooperation between Competition Authorities** (mainly through exchange of information), which may be very useful in the case of anti-competitive behaviour by companies on an international scale, such as hard-core cartels (Art. 128). Due to globalisation of markets and companies, many competition problems cannot be effectively tackled by national competition authorities alone.

⁴ At the time of concluding the negotiations, there was however no concrete sectoral legislation in place yet.

⁵ Obligation imposed by government on service providers to guarantee equal access to basic utility services (such as water, electricity, telephony or mail) at a uniform price.

⁶ The European Commission is the authority on the EU side.