

FACT SHEET N°8

COMPETITION POLICY IN ECONOMIC PARTNERSHIP AGREEMENTS (CARIFORUM TEXT)

SYNOPSIS

This Fact Sheet Nb.8 overviews provisions related to competition policy in the CARIFORUM EPA text, initialed by 15 Caribbean countries on 16 December 2007, and assesses its developmental impacts, including for regions which have not yet agreed to competition policy provisions in their EPAs with the EU.

It is part of a series of Fact Sheets designed to improve stakeholders' understanding of the legal, economic and developmental implications of specific provisions in the EPA texts agreed to, as well as to suggest options for improvement, particularly for the benefit of ACP countries and regions which are in the process of finalizing an EPA text.

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I. INTRODUCTION

1. Over the last days of 2007, thirty-five African, Caribbean and Pacific (ACP) countries have accepted to initial Economic Partnership Agreements (EPA), with the European Union (EU). Except for the agreement concluded by Caribbean countries, which is a *comprehensive EPA*, in the sense that it covers a wide range of trade topics. The CARIFORUM comprehensive text contains indeed detailed provisions regarding the liberalisation of trade in services, investment and electronic commerce, and disciplines related to current payments and capital movement, competition, innovation and intellectual property, public procurement, environment and labour protection.

2. All other interim EPA texts initialled at the end of 2007 are partial because they contained detailed provisions only with respect to the liberalisation of trade in goods whereas other trade topics are enumerated for further negotiations in 2008. For this reason, these agreements were described as an *interim* or first step EPAs¹. The issue of competition policy appears in all the initialled texts as one of the areas for which further negotiation will be required in 2008.

3. This Fact Sheet comments on competition policy provisions contained in the CARIFORUM text since that text spells out detailed obligations in that respect and could provide insights into the EU's position on competition policy in the EPAs. This note provides a brief background to competition policy and developing country interests (II) before analysing in greater detail the contents of the CARIFORUM EPA Competition Policy Chapter (III). The note concludes with considerations regarding the implications of that Chapter (IV) and some suggestions to improve it (V).

II. BACKGROUND TO COMPETITION: DEVELOPING COUNTRY POLICY OBJECTIVES

¹ Regarding the EU understanding of the "two step" EPAs and for a general assessment of these agreements, see, for instance, *"EPA State of play and considerations for the way forward"*, South Centre (2008). Available at <http://www.southcentre.org/TDP/newpublistothers.htm>.

4. Competition policy refers to the legislative framework or to the set of regulations which control practices by both private and public firms which are deemed to restrict competition in one market. The most common or classic objective of competition laws has been to protect and promote free and effective competition². Competition policy traditionally covers:

- The prohibition of cartels or agreements among rival firms to stop competing by fixing prices, allocating or sharing markets and fighting outsiders (non members of the cartel);
- The control of vertical anti-competitive practices and the prohibition of abuses of dominant market power by large firms or monopolies;
- The control and review of mergers and acquisitions which may lead to the creation of a dominant player in the market; and, sometimes,
- The conditions for the allocation of state aid and the conditions under which public (state) enterprises operate.

5. Competition policy can be a fundamental instrument in the promotion of more transparent, more efficient and more open markets. It is also fundamental in the promotion of consumer protection and welfare and, hence, it can be very useful complement to policies aimed at poverty alleviation and development. In addition, competition policies can help encourage innovation (through fostering research and development (R&D) activities) and thus economic and productive transformation³.

6. Competition policies are, therefore, not necessarily detrimental to the interests of developing countries. The opposite can actually be true. However, the ability of competition policies to support developmental objectives depends generally on the content and requirements of that policy, and particularly on the capacity of legislators and competent authorities to balance the quest for an optimum degree of domestic competition with other policy objectives.

A. The EU's typical agenda on competition issues

7. Despite the positive role that competition policy can play as a complement to development strategies, the competition clauses typically included in regional trade agreements (RTAs), including some to which developing countries are parties, tend to mirror concepts of interest mostly to advanced economies. There has in fact been a multiplication of competition provisions in RTAs (86 RTAs contain competition provisions according to a study published in 2006 by the

² Chapter 1 of "A Framework for the Design and Implementation of Competition Law and Policy", OECD and World Bank (1997).

³ On the role of Competition Policy for development, particularly in the context of free trade agreements see, for instance, "Competition Provisions in Regional Trade Agreements: How to Assure Development Gains", UNCTAD (2007). Available at: www.unctad.org/en/docs/ditcclp20051_en.pdf

OECD⁴).

8. In late 2006, the European Commission (DG Trade) published a policy statement⁵ that clearly articulates a more aggressive approach to expanding European Union (EU) overseas markets, especially in pursuing this agenda through stronger engagement with major emerging economies and regions; and a sharper focus on barriers to trade behind the border⁶. That strategy focuses on seeking to open up more overseas markets for EU businesses coupled with a focus on ensuring that stronger rules “in new trade areas of economic importance ... notably intellectual property (IPR), services, investment, public procurement and competition”⁷ are put in place in such overseas markets to secure the EU’s market shares.

9. Hence, putting in place stronger rules with respect to competition policy is one of the major trade policy objectives of the EU in the coming years. The EU perceives the lack of strong competition policies in many of its overseas markets as something which is detrimental to EU trade interests. It states that:

*The absence of competition and state aid rules in third countries limits market access as it raises new barriers to substitute for tariffs or traditional non-tariff barriers. The EU has a strategic interest in developing international rules and cooperation on competition policies to ensure European firms do not suffer in third countries from unreasonable subsidisation of local companies or anti-competitive practices. There is much to be done in this area. In most countries there is little transparency over the granting of aids.*⁸

10. Notwithstanding the clarity of the EU’s vision of competition policy in RTAs, the EU Commission did not seem to follow a single coherent template when negotiating competition clauses in its RTAs (Box 1). The EU has concluded several bilateral free trade agreements which include a competition chapter, including with Mediterranean countries (EuroMed), South Africa (TDCA), Mexico and Chile. From an assessment of these agreements, it becomes clear that the focus is generally in promoting competition principles to consolidate market access opportunities deriving from bilateral negotiations. However, the precise contents of each FTA competition chapter seem to vary according to the level of institutional and legislative capacity of the EU’s FTA partner concerned.

⁴ “Competition provisions in regional trade agreements”, O. Solano and A. Sennekamp, OECD Trade Policy Working Paper Nb.31

⁵ See *Global Europe: Competing in the World – A Contribution to the EU’s Growth and Jobs Strategy*, European Commission (2006). See also European Commission Commission Staff Working Document COM(2006)567 final, 4 October 2006.

⁶ Id., p. 6.

⁷ Id., p. 7.

⁸ Id., p. 8.

Box 1: comparative content of competition clauses in EU FTAs⁹

EU FTAs	Substance of competition policy provisions					Reference to legislation		State monopolies and public enterprises		Technical cooperation
	Total No. of art.	Mergers and acquisitions	Abuse of a dominant position	Concerted practices	Public (state) aid	Mutual recognition of legislation	Sole reference to EU legislation	Ban on positive discrimination for commercial state monopolies	Ban on special and exclusive rights for (public) enterprises	
MED1	10	-	✓	✓	-	-	-	✓	✓	-
MED2	9	-	✓	✓	✓	-	-	✓	✓	-
MED3	9, 10	-	✓	✓	✓	-	✓	✓	✓	-
TDCA	16	-	✓	✓	✓	✓	-	-	-	✓
Mexico	23	✓	✓	✓	-	✓	-	-	-	✓
Chile	23	-	✓	✓	✓	✓	-	-	✓	✓

MED1: Agreements with Algeria and Lebanon, MED2: Agreement with Israel, MED3: Agreements with Morocco, Jordan, the Palestinian Authority and Tunisia.

11. Another comment element is that, EU FTAs – whether in the form of existing Association Agreements with its Mediterranean partners, its TDCA with South Africa, EPAs with the ACP, Association Agreements with the Andean Community and Central America, or outright FTAs with ASEAN, India, and Korea – must contain strong and binding commitments to put in place and implement competition policy that follows the European model, unless the negotiating partner (such as Chile) already has in place domestic competition legislation that the EU feels is equivalent to or comparable with its own model, or the negotiating partner (such as South Africa) is just as equally insistent on ensuring that it continues to have flexibility in implementing its competition policy.

12. For those negotiating partners that the EU may perceive as lacking in the appropriate “motivation” or political will to adopt and effectively implement a strong EU-comparable competition policy model, the EU is likely to take a much more aggressive negotiating stance. And the weaker or less-prepared the negotiating partner, the more aggressive the EU is likely to be.

B. Competition policy at the multilateral level

13. Despite the recent proliferation of competition rules in bilateral and regional trade agreements, there are no multilateral disciplines on competition policy. In fact, competition policy was part of the “Singapore issues” together with investment, government procurement and trade facilitation¹⁰. Developed

⁹ Table 1 of “Comparing EU free trade agreements: competition policy and state aid”, Stefan Szepesi in ECDDP InBrief, Nb. 6E, July 2004.

¹⁰ Competition Policy is part of the so-called Singapore issues because it was the object of a mandate during the 1996 WTO Ministerial Conference, held in Singapore, to establish an ad-hoc working group to discuss the appropriateness of establishing common multilateral rules regarding Competition under the WTO. A Working Group on the Interaction between Trade and Competition Policy “educated WTO

countries, and particularly the EU, had been very active in seeking the inclusion of multilateral disciplines on these issues at the WTO. However, most developing countries, including ACP countries, were concerned about the challenges that such new disciplines could create, particularly regarding the costs of implementing and enforcing them. Moreover, many developing countries were concerned that such WTO competition disciplines could restrict their ability to adopt industrial policies or other development policies.

14. In July 2004, therefore, the WTO General Council decided that work towards a multilateral competition framework at the WTO should not proceed and hence that the work of the WGTCPC should be terminated.¹¹

15. As a result, for the moment, WTO rules touch only tangentially on competition policy. The most important of those rules are contained in the TRIPS Agreement (article 8 and section 8) and in the GATT and GATS¹². Article XVII of GATT (*State Trading Enterprises*) establishes that these enterprises must operate in a non-discriminatory manner in their sales or purchases of imports and exports. Article VIII of GATS (*Monopolies and Exclusive service suppliers*) provides that monopoly suppliers of services must respect the principle of Most Favoured Nation and as well as each WTO Member's specific sectoral commitments in services.

16. Despite the reservations developing countries hold about adopting international legally binding rules on the Singapore Issues, the EU, on the contrary, had insisted that such an international framework is needed to guarantee market access benefits flowing from trade liberalisation¹³. The EU was in fact one of the main, if not the most eager, proponent of a multilateral competition framework. The inclusion of competition provisions in EPAs has indeed constituted a major negotiating priority for the European Commission (EC). Trade Commissioner, Peter Mandelson, has repeatedly stated that the Commission sees the inclusion of trade-related issues, including competition policy, in EPAs as a fundamental aspect of the developmental dimension of these agreements.¹⁴

Members about the benefits and challenges of agreeing to multilateral disciplines regarding trade and competition policy.

¹¹ Paragraph 1(g) of WTO General Council Decision WT/L/579, 2 August 2004. Other topics eliminated from the Doha Work Programme were government procurement and investment. Work on only trade facilitation was authorised to continue.

¹² "Final consolidated report of regional capacity building meetings organised by UNCTAD on competition issues within the framework of the Doha mandate", UNCTAD (2003), at page 24.

¹³ See the European Communities communications to the WTO Working Group on Trade and Competition Policy, for instance, document WT/WGTCPC/W/1 (June 1997). The enforcement of competition regulations to avoid restrictions to the benefits created by trade liberalisation is also recognized in the CARIFORUM EPA text itself (Art.2 (1) of Chapter 5).

¹⁴ "The development dimension of EPAs is in using market access, not merely granting it. It is investment finance, not merely development aid. This needs new rules fit for a globalised world, and this is why I am so keen that EPAs address issues such as competition policy, public procurement and trade facilitation. But we know our partners' limits and will work with them to phase in change and to identify regionally specific needs and solutions.

C. Some developing countries' interests in the formulation of competition policies

17. The enforcement of classical competition policy and the promotion of competition per se, assume the existence of a multitude of independent private actors, the existence of consumers, the presence of no information asymmetries and the capacity of states to enforce contracts. Moreover, the enforcement of traditional competition concepts rely on the existence of a strong state, with adequate institutional, human and financial capacity to conduct investigations, monitor markets and sanction prohibited practices.¹⁵

18. However, the reality in developing countries is so far from that abstract economic world, that the promotion of narrow competition objectives in developing countries is simply not adequate and can indeed be detrimental to other developmental priorities. For instance, in the early stages of industrialisation, governments may wish to promote "national champions", that is, large industrial groups which are likely to compete with foreign firms both in domestic and possibly in regional markets. Hence, governments may want to encourage, at least initially or temporarily, some market concentration. A competition policy primarily concerned only with the obsessive quest for maximum competition is likely to prevent mergers leading to market concentration whereas industrial policy objectives might encourage the same mergers. A classic example of a mix of competition policy alternating market concentration and rivalry can be found in the promotion by the Korean government of national *chaebols*.

19. Moreover, depending on the stages of development and productive capacity of a developing country, governments may decide to increase or reduce the level of intra-firm competition, hence enforcing more or less strictly competition principles. A good recent example is China, where industrial policies have alternated the promotion or restriction of intra-firm rivalry depending on the perception of the vulnerability or strength of firms in the context of a strategy for the promotion of a "team" of national champions¹⁶.

20. It could, therefore, be of interest to the ACP countries to maintain their policy options open with respect to intra-firm rivalry and restrictive business

No one is talking about immediate overnight change or imposing rules". Trade Commissioner's remarks about EPAs at the EU Parliament debate (May 2007).

http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm149_en.htm

¹⁵ On the relevance of adapting competition policies to the other policy imperatives of developing countries, see "*Competition Policy, Development and Developing Countries*", South Centre Working Paper 7 (1999). Available at: <http://www.southcentre.org/TDP/newpublistothers.htm>

¹⁶ "In the 1990s a national team of 120 large enterprise groups was selected by the State Council [...] in those sectors considered to be of 'strategic importance', including" electricity generation, coal mining, automobiles, electronics, iron and steel, machinery, chemicals, construction materials, transport, aerospace, and pharmaceuticals. P. Nolan cited in "Would enforcing competition law compromise industry policy objectives?", S. Evenett (2005), cited above.

practices such as dominant position. In developing countries, and particularly in small and vulnerable economies such as those of the ACP states, competition policies can aim at specific developmental objectives, for instance:

- (a) Creating an *optimum* level of domestic competition, as opposed to a *maximum* level of competition. This optimum level of competition has to be balanced against and reflect other policy objectives, such as the promotion of local industries and incentives for innovation and R&D;
- (b) Ensuring coordination between competition authorities and legislators and other stakeholders active in development promotion (e.g. agricultural or industrial producers, trade unions, agencies responsible for industrial policies or export promotion, as well as all other agencies in charge of sectoral policies, e.g. education, fisheries, transports, etc.);
- (c) Safeguarding the propensity of firms to invest at high levels, hence protecting encouraging the growth of profits, including by coordinating investment decisions and guaranteeing protected markets. In these instances, a certain degree of market concentration may be encouraged, rather than punished by competition policy;
- (d) Regulating the behaviour of multi-national corporations which frequently enjoy a dominant position in developing country markets thereby restricting, delaying or hindering the establishment of national industries, particularly by controlling any abuse of dominant position in a value chain (standards or inputs);
- (e) Regulating how public (state) aid¹⁷ can be attributed, that is, enumerating the public policy objectives that may justify the use of such instruments or identifying priority sectors that need government support and encouraging transparency in the attribution and use of such aid – but not generally prohibiting the use of state aid, including in cases where it encroaches on social policies or the promotion of small and medium enterprises;
- (f) Securing the policy space needed to support national firms or sectors; that is, reserving the right to discriminate against foreign economic operators. While non-discrimination is a legitimate request

¹⁷ The term “state aid” generally covers transfers (financial or by other means) given by public authorities or by agents on their behalf to support the activities of public or private firms. State aid is of interest to competition authorities because by granting benefits to some operators, governments may create unfair benefits that distort competition conditions. While the EC Treaty generally prohibits state aid, it also gives EU Member States the possibility of creating exemptions to that general ban. There are currently specific state aid rules for audiovisual production, broadcasting, coal, electricity, postal services, and shipbuilding. EU’s Vademecum on EU’s rules on state aid, available at: http://ec.europa.eu/comm/competition/state_aid/overview/index_en.cfm.

among equal business players, the reality in most ACP economies is that markets are already tilted in favour of foreign firms, to the detriment of much smaller local entrepreneurs. Developed countries and the EU have repeatedly argued that they see national treatment with respect to competition laws as an essential element (i) for increased governance in the attribution of business benefits as well as an instrument to protect governments against rent-seeking behaviours, as well as (ii) for a fairer business environment and hence greater attraction of FDI. For developing countries, however, there are sound arguments why discrimination on the basis of nationality may be useful¹⁸.

(g) Ensuring that a competition framework does not require the prohibition or privatisation of state monopolies or the deregulation and liberalisation of sectors considered strategic from a developmental perspective (education, energy, health, transportation, finance, etc.).

21. The specificity of some of these developmental objectives and the resulting different approaches to competition regulations have been the source of disagreement among developing and developed countries regarding common rules. Fear that these objectives may not be reflected in international instruments was precisely the reason why a multilateral framework could not be adopted at the WTO. The same fear has explained the scepticism of ACP countries in negotiating competition rules with the EU in the context of the EPAs.

III. EPA CONTENT: THE CARIFORUM EPA COMPETITION CHAPTER

22. The request for the inclusion of competition provisions within the CARIFORUM EPA as well as the actual language used, were initiatives of the EU Commission, not the Caribbean Regional Negotiating Machinery (CRNM). Chapter 1 of Title IV (on Trade Related Issues) contains competition provisions in the CARIFORUM EPA text and is reproduced in an Annex at the end of this note. The principles upheld in the Chapter reflect the typical language regarding trade and competition policy used mostly by developed countries.

23. While the provisions contained in that Chapter remain circumscribed to

¹⁸ For instance, a case where two large domestic companies are allowed to merge so that they reach economies of scale to compete with other firms at the regional or international level, whereas the same merge involving one domestic firm and a multinational firm may need to be prohibited to avoid a concentration of market power. An additional example is where a government seeks to promote small and medium enterprises through specific benefits and defines an eligibility criteria based on sales or profit thresholds that de facto exclude foreign firms (although *de jure* such firms were not facially excluded on the basis of nationality). Finally, another example concerns the promotion of export activity, where, by definition, only domestic firms may be targeted, since foreign competitors are already international. See, for instance, "Core principles, including transparency, non-discrimination and procedural fairness", WTO Background Note, WT/WGTPC/W/209 (September 2002)

greater cooperation regarding information exchange, the reach of certain obligations, particularly regarding state (public) enterprises could be a source of concern.

A. Objectives of competition policy in the CARIFORUM EPA text

24. From the outset, the Chapter states that competition policies are based on exclusively one principle: that of promoting “free and undistorted competition” (art.2). This mirrors the focus of the EU’s own competition policy¹⁹. Moreover, it marks a shift in the focus of competition policies as recognised by the Cotonou Partnership Agreement (CPA) and other international instruments, such as the United Nations Set of Multilaterally Agreed Equitable Control of Restrictive Business Practices²⁰.

25. First, the objectives currently stated in the CARIFORUM EPA competition chapter restrict the flexibilities recognised in the Cotonou Partnership Agreement. As a matter of fact, the CPA recognised broader objectives for competition policy, including the need to promote the industrialisation of ACP countries. The objectives recognised for competition policies were threefold, namely to: “*secure an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets*”. Under the CARIFORUM text, the promotion of greater competition becomes an objective in itself, not an instrument towards the promotion of broader policy objectives.

26. Moreover, Chapter 5 of the Cotonou Agreement, of which art. 45 on competition policy is part of, creates a framework for greater cooperation on trade-related issues, including increased EU assistance. The CARIFORUM text contrasts with that framework, at least partly, in so far as it includes specific obligations in addition to cooperation clauses (explained below).

27. Second, the objectives recognised by the UN Set of Principles and Rules are worth reproducing here in so far as they represent, in a much more balanced manner, the interests of developed and developing countries with respect to the promotion of competition:

Taking into account the interests of all countries, particularly those of developing countries, the Set of Multilaterally Agreed Equitable Principles and Rules are framed in order to achieve the following objectives:

1. *To ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade*

¹⁹ For an overview of EU competition law see: “*Competition Law and Policy in the European Union*”, OECD (2005). Available at: <http://www.oecd.org/dataoecd/7/41/35908641.pdf>

²⁰ <http://www.unctad.org/en/docs/tdrbpconf10r2.en.pdf>

and development of developing countries;

2. *To attain greater efficiency in international trade and development, particularly that of developing countries, in accordance with national aims of economic and social development and existing economic structures, such as through:
 - (a) *The creation, encouragement and protection of competition;*
 - (b) *Control of the concentration of capital and/or economic power;*
 - (c) *Encouragement of innovation;**
3. *To protect and promote social welfare in general and, in particular, the interests of consumers in both developed and developing countries;*
4. *To eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises, and thus help to maximize benefits to international trade and particularly the trade and development of developing countries;*
5. *To provide a Set of Multilaterally Agreed Equitable Principles and Rules for the control of restrictive business practices for adoption at the international level and thereby to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels.*

28. By comparison, the CARIFORUM Competition Chapter only reflects the typical objectives of developed countries with respect to competition policy, that is, the prohibition of restrictive business practices to protect their investments and guarantee market access following trade liberalisation.

29. In this sense and assuming that EPAs should contain any sort of competition provisions, the CARIFORUM Chapter is also a missed opportunity to make a positive contribution to some of the problems developing countries typically face with respect to competition. For instance, promotion industrialisation and competitiveness, promotion of innovation and research and development, the protection of local enterprises and particularly small and medium producers from the dominant position of multinational corporations, etc²¹.

B. Specific EPA obligations on competition

30. Three main sets of obligations are contained in the CARIFORUM EPA competition chapter: (i) that of having in force competition laws and establishing competition authorities, (ii) that of cooperating to exchange information, and (iii) that of reforming state enterprises or the conditions under which they operate to refrain from discriminating against EU firms, goods or services.

31. Finally, a noteworthy aspect of the EPA, is that it already foresees a

²¹ For a review of how multinational corporations may affect developing countries' small producers through global agricultural supply chains, see, for instance, "Rebalancing the Supply Chain: Buyer Power, Commodities and Competition", South Centre and Traidcraft (2008). Available at: http://www.southcentre.org/publications/CompetitionReport/Balancing_the_Supply_Chain.pdf

review of the competition chapter once it is implemented.²² It must be noted, however, that the agenda does not mention which parameters or benchmarks will be used to assess the operation of the Chapter. It is also worth noting that the focus of this review is on the effective implementation and functioning of EPA competition obligations (particularly regarding information exchange) and not on the effects of the application of competition policies on the Caribbean economies or legislative frameworks.

i. Competition laws and Competition Authorities

32. The first obligation the Chapter creates is that of having “*in force*” competition laws and establishing a CARICOM Competition Commission (a Competition Authority in the Dominican Republic). This is a reaffirmation of the language used in the CPA where ACP countries undertook to “*implement national or regional rules and policies*” regarding competition (art. 45(2)). Under the EPA, however, five years are provided for compliance with this obligation. However, both the presence of a time-bound implementation period (5 years) and the dissuasive effect of an EPA dispute avoidance mechanism are likely to accelerate the implementation of that Cotonou commitment.

33. It is positive that the competition text does not necessarily preclude the contents of such laws and, hence, do not, in principle, impinge on crafting such laws according to the Caribbean developmental priorities. Neither does it provide mandatory benchmarks to gauge the appropriateness of that policy (other than general principles, see below). The Competition chapters in the FTAs signed by the EU with Tunisia (1995), Morocco (1996), Jordan and the Palestinian Authority (1997) refer explicitly to the EU’s core legislation on competition and state aid (articles 81, 82, and 87 of the Treaty of the European Community) as templates for those countries.²³

34. Nonetheless, this seemingly flexible language could be restricted by two factors.

35. First, it flows from the EPA objective of promoting a maximum level of competition, that restrictive business practices (i.e. (a) agreements between firms that lessen competition and (b) abuse of market power) are “*incompatible with the proper functioning*” of the EPA. The logical consequences, although the article does not stipulate so, are that such practices should be prevented and sanctioned. This broad formulation could, to some extent, preclude the contents of competition laws.

²² The review is to start after 6 years of the start of cooperation between EU and CARIFORUM competition authorities. Since CARIFORUM States have up to 5 years to establish such authorities and enact competition laws, the revision should start, at the latest, 11 years after entry into force of the agreement.

²³ “*Comparing EU free trade agreements: competition policy and state aid*”, Stefan Szepesi in InBrief, Nb. 6E, July 2004.

36. Second, the CARICOM and some CARICOM Member States as well as the Dominican Republic already have competition regulations in place. In that respect, it should be noted that Chapter 8 of the revised CARICOM Treaty of Chaguaramas on competition policy shares similar objectives for the Community's competition policy as those of the EU:

1. *The goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the 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) *the promotion and maintenance of competition and enhancement of economic efficiency in production, trade and commerce;*
 - (b) *subject to this Treaty, the prohibition of anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market; and*
 - (c) *the promotion of consumer welfare and protection of consumer interests.*

37. Hence, a fundamental related question concerns the capacity and desire of CARIFORUM policymakers to utilise the latitude contained in the EPA. In other words, the capacity to discharge EPA obligations by adopting a set of rules which are pro-developmental and creative, as opposed to utilising competition policy templates from developed countries.

ii. Increased cooperation regarding the exchange of information

38. Once competition laws are in force and after the establishment of competition authorities (i.e. in 5 years), European and Caribbean competition authorities, will have the possibility (not obligation) to cooperate to exchange competition-related information²⁴. The Chapter provides examples of how information can be exchanged and the matters that can be the object of information exchanges. In practice, cooperation regarding the exchange of information is a very common element – sometimes the central aspect indeed – of bilateral or regional competition agreements.

39. It is interesting to note that this section (art.4) contains non mandatory language (for instance *may inform*, and *may exchange non-confidential information*). Exchange of information can concern both ongoing investigations as well as enforcement proceedings (e.g. sanctions to firms who have been found to be involved in anti-competitive practices). However, cooperation does not concern mutual or coordinated enforcement of competition policy (as opposed to the EU-

²⁴ The clause is akin to a positive comity although the subject of requests for cooperation is not the enforcement of competition laws or the Parties' interest but rather the exchange of non-confidential information only.

Chile agreement).

iii. National treatment, non-discrimination and the operations of public enterprises

40. In sharp contrast with the non-mandatory language concerning exchange of information, the competition Chapter contains obligations concerning the operation of public enterprises or State monopolies which could be of far reach.

41. Article 5(2) reaffirms the right of the parties to maintain public enterprises or public or private monopolies according to their own legislation. However, public enterprises or enterprises having special rights must also be subject to competition laws, unless they are subject to specific sectoral rules.²⁵ Moreover, the legislation or regulations that affect the conditions of operation of such enterprises must be reformed so that “any measure distorting trade in goods or services between the Parties to an extent contrary to the parties’ interests” are eliminated following the date of entry into force of the EPA (art.5(2)).

42. The drafting of that obligation could be of concern, particularly because:

- Enterprises with special and exclusive rights or public enterprises, and designated monopolies are not qualified or defined. For instance, GATS article VIII distinguishes between services sectors where a monopoly exists and sectors where a monopoly competes with other firms, whereas the EPA article makes no such distinction. Moreover, article 5 does not use consistent language to designate the entities concerned (public enterprises, enterprises entrusted with special or exclusive rights, designated monopolies, and private monopolies).
- Nor is “specific sectoral rules” defined. For instance, would the presence of scattered legislation on telecommunications or energy amount to *sectoral rules* to argue these sectors should be exempted from competition law? Given the lack of normative capacity prevailing in most ACP countries, particularly on trade in services, this creates uncertainty and merits to be clarified.
- The obligation (*shall*) that public enterprises or enterprises with special rights be subject to the rules of competition is of concern, because it could force to liberalise certain sectors where these enterprises operate under restricted competition. Only two exceptions were made to that general obligation. First, it does not concern enterprises subject to sectoral rules. Second, it does not apply where competition would obstruct the performance of particular tasks assigned to these enterprises. While the

²⁵ Sectoral rules refer to the set of rules that usually regulate a specific sector of the economy, for instance, where policy makers wish to ensure access for consumers to key services where the market alone might not be sufficient to deliver those services to everyone. Examples of typical sectoral rules are those which apply to telecommunications, banking, broadcasting, etc. Because of the nature of these services, companies operating in these sectors are typically not or not entirely subject to competition laws since they operate under limited competition conditions.

first exception, the existence of comprehensive sectoral rules, remains uncertain in most ACP countries, the second, is subject to debate and hence is also of doubtful utility for the ACP.

- The litmus test to identify measures that need to be eliminated is extremely complex as it refers to the *parties' interests*, which is difficult to assess. In other instances where the term "interests" appears in the EPA text, it is generally qualified: *interests of suppliers, legitimate commercial interests of particular enterprises, business interests, interests of the owner of the trademark*, etc. However, no indication of what could constitute the Parties' interests under this provision is given. Presumably, the text refers to the overall commercial interests of the parties or the commercial interests of their nationals (e.g. importers or exporters of services or goods), that is a very vague notion, which could potentially affect any government (behind-the-border) measure.

- Any measure distorting trade in goods or services must be eliminated, whether or not they are justified under specific public policy objectives (EU-South Africa's TDCA language) and whether or not the measure was intended to discriminate. The only qualification is that measures are found to distort trade, which, in practice, creates a hierarchy between policy objectives: market openness should prevail over any other policy objective (unless, as stated above, the measure can be linked to sectoral rules).

- Having regard to the difficulties of this paragraph and considering the asymmetry opposing the EU to ACP countries, it can be of concern that the chapter does not provide greater guidance as to how to determine the terms it contains.

- Given the possible scope of that language, it will be difficult for Caribbean countries, and even more so for more resource constrained African ACP countries, to review all policies in light of this requirement and reform incompatible measures by the time of entry into force of the EPA.

43. In addition, art.5(4) requires that all the regulations that apply to State monopolies of a commercial nature be reformed, within five years of entry into force of the EPA, so as to eliminate any discriminatory measures which allow such enterprises to discriminate among Caribbean nationals and EU nationals in the sale and purchase of goods or services.

44. In practice, WTO agreements already require state enterprises (both in services and goods) to operate in a non-discriminatory manner in their operations. However, that obligation only applies to the import or export of goods and services, not to the domestic sale and purchase of these goods and services²⁶. The EPA actually grants national treatment to EU nationals in Caribbean domestic markets. Hence, the scope of this measure is much larger

²⁶ Unless otherwise committed by a WTO Member in its schedules of commitments in trade in services.

than that of WTO rules (WTO-plus)²⁷, and ensures, in practice, much larger market penetration for EU companies or service providers. Moreover, article 5(4) is problematic for a number of reasons:

- While laws and measures must be adjusted progressively, only 5 years are granted for that process. This can be of concern for countries that still maintain a large number of state monopolies or sectors with restricted competition.
- The paragraph targets the “conditions” under which services and goods are sold or purchased and not specific measures, which can be virtually all-encompassing. That wording could indeed cover virtually all governmental measures and state monopolies’ practices which directly or indirectly create more favourable situations for Caribbean nationals.
- The paragraph deals with the procurement activities of state monopolies (purchase of goods and services). In practice, this prohibits a state enterprise to give preference to a national producer or a national service supplier. This is hence a direct restriction of policy space for the promotion of national productive or supplying capacity.
- Similarly, it is not clear how this provision would play vis-à-vis the obligations accepted under an EPA Services Chapter. For instance, if a country has deliberately excluded a specific services sector from the EPA, say, transports, would it have to still have to ensure the activities of its national rail company treats ACP and EU nationals equally whenever selling or buying goods? It would appear that would be the case. In other words, the state monopoly would be able to continue to operate without accepting foreign competition, but it would have to refrain from supporting local (ACP) service providers or producers of goods to the detriment of EU nationals.

C. Areas for technical assistance and cooperation

45. Cooperation regarding the functioning of the Chapter includes similar areas as those which had already been foreseen under the CPA. It includes financial support to facilitate the cooperation among competition authorities, technical assistance in drafting guidelines and legislation, financing independent experts and training of personnel involved in implementation and enforcement.

46. While cooperation is not time bound, it is said that it should cover particularly the first 6 years of operation of the chapter (sixth to eleventh year of implementation).

47. It should be noted that cooperation supports, therefore, the objectives and

²⁷ For instance, government procurement of goods and services is explicitly excluded from the scope of WTO rules (Article III:8(a) of the GATT and Article XIII of the GATS). Only 25 WTO Members have negotiated commitments on government procurement under a plurilateral agreement.

the implementation of the obligations of the chapter – not Caribbean policymakers' capacity on competition policy issues generally.

IV. ANALYSIS OF SELECTED DEVELOPMENTAL IMPLICATIONS

48. While most of the Chapter on competition contains non-binding language and obligations which are not necessarily detrimental to development, those of article 5 are clearly different and do represent major concessions of Caribbean negotiators to the EU. Moreover, there could be conflicts between competition provisions (especially art.5) and those regarding government procurement and trade in services. Some considerations regarding the implications of this Chapter, particularly article 5, are enumerated below.

A. Systemic and developmental implications

49. The EPA text initialled by Caribbean countries is very likely to become a template or model for other EPA regions. This is all the more true since the CARIFORUM EPA competition chapter itself contains elements which are part of the template used by the EU with other developing countries with whom it has concluded FTAs (see above for the competition elements included in the EU's FTAs)²⁸.

50. In fact, close to identical language has already been proposed by the EC to other EPA regions. For instance, an April 2007 EPA draft proposal that the EU Commission submitted to West Africa as well as a July 2007 draft proposal discussed with the SADC region contains almost identical language to that of the final CARIFORUM text.

51. However, it must be recalled that CARICOM, CARICOM Members States and the Dominican Republic already have competition laws and that these laws mirror those of the EU. It is possible, or perhaps, likely, that the EC would try to negotiate more detailed texts with other regions, particularly in Africa, which do not apply competition standards of interest to the EU. As a matter of fact, in a draft submitted to Central Africa, the EC had proposed to use the EC Treaty as a benchmark to determine the contents of Central Africa's competition policy.²⁹

52. The utilisation of the EPA CARIFORUM language could be problematic as article 5 granting National Treatment to the EU in domestic competition policies curtails the capacity of developing countries to use the procurement operations of state enterprises to promote their own small and medium enterprises or services

²⁸ See, for instance, articles 177 and 179 in the Association Agreement between the EU and Chile.

²⁹ The proposed text included, in brackets, the following precision: *{Pour Discussion : Toute pratique contraire à cet article sera déterminée sur la base de critères découlant de l'application des Articles 81, 82 et 87 du Traité établissant la Communauté européenne.}*

suppliers. In addition, the vagueness of the language used could conflict with other EPA provisions, where perhaps flexibilities have been negotiated. For instance, what is the relationship between the obligations under the EPA government procurement chapter (e.g. regarding central governments' entities) and the competition language regarding the prohibition of discrimination in the sales and purchases conducted by public enterprises? Similarly, could the competition chapter be used to advocate for the reform (opening) of services sectors presently operating under restricted competition?

53. Moreover, the overall objectives of competition policy as stated in EPAs, and the likelihood of using the EU competition policy template in ACP countries legislative reforms, is also a source of concern, as all ACP countries are still at a level of industrial development and productive capacity which would justify a different set of competition rules. The principles promoted in EPAs are a missed opportunity to foster a reflection in ACP countries about both the industrial and the competition policy priorities governments should promote.

54. Non-discrimination and national treatment with respect to competition policies were two of the core principles proposed for a multilateral framework on competition policy at the WTO. There are aspects of WTO rules which require, to some extent or indirectly, that governments respect the principle of non-discrimination in competition policy. However, the national treatment provision contained in the CARIFORUM EPA text extends clearly beyond WTO requirements.

55. It could be of systemic concern that the multiplication of that type of regulations through bilateral or regional trade agreements would contribute to the creation of a normative floor regarding competition policy which could be used subsequently to preclude the contents of a competition policy framework at the WTO. In other words, it generates an *acquis* that would make it more difficult to avoid multilateral rules at the WTO and that would largely preclude the outcome of such negotiations³⁰.

B. Regional Integration

56. While all fifteen countries who compose the CARIFORUM EPA region have collectively signed a comprehensive EPA, many other countries having initialled an interim EPA have done so individually (that is, not collective with the entire regions with which they had been originally negotiating the EPAs). As a result, there is a risk that the utilisation of the Caribbean template text in one country but not in others could create normative clashes or prejudice the content of competition policies for some countries which currently have none in place.

³⁰ The EC explicitly recognises the value of such agreements for *next level of multilateral liberalisation*, EU 2006 Global Europe Strategy, at p.10 (see above).

For instance, what would be the impact of the CARIFORUM text being used as a template for an EPA with Côte d'Ivoire but not with Ghana? Would the adoption of EPA competition language by Botswana, Lesotho, Namibia, and Swaziland, imply any harmonisation of legislation with Mozambique, Angola or South Africa?

57. Differences in agreements are likely to arise as different ACP countries have different views regarding the best content for EPA competition policy provisions. To prevent such discrepancies, there needs to be detailed information sharing and coordination among ACP countries within each EPA region negotiating EPA competition policy provisions. Ideally, such measures could actually be negotiated at the regional (as opposed to national) level. There could indeed be a case for negotiation of competition policy provisions at the all-ACP or all-African level.

C. Strategic considerations for the way forward

58. Since the interests regarding the promotion of competition could differ widely in the EU and in ACP countries because of their enormous economic and productive asymmetries, it can prove more tactical for ACP negotiators to simply refuse to discuss legally enforceable rules within an EPA competition chapter. This includes avoiding language regarding objectives on competition policy which may prejudice the content of a national or regional competition framework.

59. In the case of the forty-one other ACP countries which have not initialled an interim EPA, and are thus not bound to base further EPA discussions on existing texts, the question about whether or not to discuss competition and the possible contents of a Chapter remain open. The EPA negotiating mandates and roadmaps for all regions afford enough manoeuvring space to rebuke the EU's insistence for the inclusion of binding commitments on competition policy.

60. The mandate for EPA negotiations contained in the CPA is clear in requiring "negotiations aimed only at enhancing *co-operation* in all areas relevant to trade" (Art. 36(1), emphasis added). Moreover, the 2002 ACP Guidelines for the negotiation of EPAs, stipulates that EPA competition issues should exclusively:³¹

- assist ACP States and regions to develop the necessary legal and administrative infrastructure and pre-requisites to deal with competition policy;
- develop effective and sound national and regional competition policies and rules as a means for improving and securing an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets;
- ensure that appropriate mechanisms may be implemented and maintained by ACP States to avoid their domestic firms and enterprises from being destabilized

31 ACP Guidelines for the negotiations of EPAs, ACP/61/056/02 [FINAL], (July 2002), at p.14. Available at: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_130235.pdf

by foreign firms and to address the restrictive business practices of multinational corporations.

61. For the other twenty ACP countries who have initialled an interim EPA, the rendez-vous clauses of these texts identify competition as one of the areas for further discussions as from 1 January 2008. However, an analysis of such mandates reveals that they usually do not preclude the outcome of negotiations. In other words, negotiations need not lead to the adoption of legally binding obligations of the type contained in the CARIFORUM EPA, subject to the EPA dispute avoidance mechanism. Discussions can be limited to creating a framework for enhanced cooperation, strengthening the language used of the CPA.

62. Alternatively, negotiators may agree to discuss a more specific set of rules, in which case they need to make sure they can agree on rules that reflect the level of development of ACP states and which does not constrain policy makers' ability to promote local industries. Of course, this would require strengthening the capacity of ACP negotiators so that they can articulate, defend and draft language that reflects their specific developmental needs with respect to competition policy.

V. IMPROVEMENTS AND LESSONS TO BE DRAWN

63. The EPA texts that have been initialled already by CARIFORUM countries and other twenty ACP countries create an unavoidable precedent and constitute a template for all other ACP countries engaged in the EPA negotiating process. For this reason, it is crucial that the current texts be improved as much as possible before their signature, notification to the WTO and definitive implementation. As discussed above, there are several possible changes to the texts that could significantly improve their developmental impact. This is in line with the numerous recent calls from African governments, the African Union, and ACP and European civil society groups for a revision of these texts³².

64. It is difficult to suggest improvements for competition clauses, as, ideally, most ACP governments continue to prefer to negotiate only cooperation provisions – not legally enforceable obligations. However, in case the CARIFORUM template is used in other EPA negotiations, a priority should consist of entirely deleting article 5 of that Chapter, which creates obligations for state trading enterprises of a commercial nature.

65. Alternatively, that article should be substantially discussed and clarified in light of the party's intentions to identify a common understanding of the

³² The African Union, for instance, called "for the review of the interim EPAs, in line with the concerns raised by African Heads of State during the Second Africa-EU Summit"; AU declaration on the EPAs. See *Supra* at footnote 23.

specific obligations and possible flexibilities it contains. Some positive changes could include a reaffirmation of the primacy of development policy objectives in case of conflict or the right to establish exceptions to competition policy at any time. While the vagueness of the language of that article raises questions about its enforceability (and hence its utility for the EC), it is better to have a clear understanding about its scope since it is subject to the EPA dispute settlement mechanism.

66. In addition to clarifying the scope of the obligations of article 5, it would also be worth clarifying the hierarchy and relationship of the competition policy chapter vis-à-vis other EPA obligations and flexibilities, particularly those under the chapters on trade in services and government procurement respectively.

67. Finally, if ACP countries decide to negotiate substantial provisions on competition, they should have regard to elements of a positive competition policy agenda (see, for instance, the elements enumerated at section II.C above). Negotiators could, in addition, seek to improve the article on technical cooperation, particularly after a national and regional (bottom-up) needs assessment exercise. Some positive elements for a technical assistance agenda include assistance to improve human capacity, palliate data shortage and improve data collection techniques, develop techniques which are appropriate to markets dominated by the informal sector, or foreign companies, etc.

68. The successful negotiation of a substantial and pro-developmental chapter would require enhanced negotiating capacity to improve ACP negotiators' understanding about competition law and policy. It would probably also require an adequate negotiating timeline for the identification of national and regional industrial and other sectoral policy priorities.

VI. CONCLUSION

69. The inclusion of a competition chapter in the EPAs, together with chapters on other trade-related issues, remains one of the most sensitive and divisive issues in these negotiations. Regions and countries that have not initialled an interim agreement yet have generally maintained their resistance to even discuss the matter or alternatively, have stated their firm intention to negotiate only provisions leading to greater cooperation on these issues.

70. That prudence seems to be justified given the fact that the interests regarding the promotion of competition differ widely in the EU and in ACP countries because of their enormous economic and productive asymmetries. The EC would very likely refuse, for systemic reasons, to accept an EPA competition chapter which reaffirms the right of developing countries to use competition policy as a developmental instrument (selective or lax enforcement of anti-concentration rules). Moreover, developing country competition policies which

actively promote local industries and services suppliers to the detriment of imports or foreign suppliers would actually run frontally against the European interest of tightening competition regulations to improve the conditions of market access for its nationals.

71. Because many other developmental policy instruments are severely limited either by WTO rules or by the EPAs (for instance, tariff policy, export taxes, intellectual property, and government procurement), ACP negotiators should avoid adding competition rules to the list of instruments their governments will no longer be able to use in a pro-active manner to foster their development.

ANNEX: COMPETITION CHAPTER OF THE EU-CARIFORUM EPA TEXT

TITLE IV: TRADE RELATED ISSUES

CHAPTER 1
COMPETITION

Article 1
Definitions

For the purposes of this Chapter:

1. "Competition authority" means for the EC Party, the "European Commission"; and for the CARIFORUM States one or more of the following Competition authorities as appropriate: CARICOM Competition Commission and the Dominican Republic Competition Authority.

2. "Enforcement proceeding" means a proceeding instituted by the competent competition authority of a Party against one or more undertakings with the aim of establishing and remedying anti-competitive behaviour.

3. "Competition laws" includes:

(a) for the EC Party, Articles 81, 82 and 86 of the Treaty establishing the European Community, and their implementing regulations or amendments;

(b) for the CARIFORUM States, Chapter 8 of the Revised Treaty of Chaguaramas of 5 July 2001, national competition legislation complying with the Revised Treaty of Chaguaramas and the national competition legislation of The Bahamas and the Dominican Republic. Upon entry into force of this Agreement and thereafter, the enactment of such legislation shall be brought to attention of the EC Party through the Joint EC-CARIFORUM Implementation Committee.

Article 2
Principles

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices have the potential to distort the proper functioning of markets and generally undermine the benefits of trade liberalization. They therefore agree that the following practices restricting competition are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Parties:

- (a) agreements and concerted practices between undertakings, which have the object or effect of preventing or substantially lessening competition in the territory of the EC Party or of the CARIFORUM States as a whole or in a substantial part thereof;
- (b) abuse by one or more undertakings of market power in the territory of the EC Party or of the CARIFORUM States as a whole or in a substantial part thereof.

Article 3 **Implementation**

1. The Parties and the Signatory CARIFORUM States shall ensure that within 5 years of the coming into force of this Agreement they have laws in force addressing restrictions on competition within their jurisdiction, and the bodies referred to in Article 1.1.
2. Upon entry into force both of the laws and the establishment of the bodies referred to in paragraph 1, the Parties shall give effect to the provisions of article 4. The Parties also agree to review the operation of this Chapter after a confidence-building period between their Competition Authorities of 6 years following the coming into operation of article 4.

Article 4 **Exchange of information and enforcement cooperation**

1. Each competition authority may inform the other competition authorities of its willingness to co-operate with respect to enforcement activity. This co-operation shall not prevent the Parties or the Signatory CARIFORUM States from taking autonomous decisions.
2. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information. All exchange of information shall be subject to the standards of confidentiality applicable in each Party and the Signatory CARIFORUM States.
3. Any competition authority may inform the other competition authorities of any information it possesses which indicates that anticompetitive business practices falling within the scope of this Chapter are taking place in the other Party's territory. The competition authority of each Party shall decide upon the form of the exchange of information in accordance with its best practices. Each competition authority may also inform the other competition authorities of any enforcement proceeding being carried out by it in the following instances:
 - (i) The activity being investigated takes place wholly or substantially within the jurisdiction of any of the other competition authorities;

(ii) The remedy likely to be imposed would require the prohibition of conduct in the territory of the other Party or Signatory CARIFORUM States;

(iii) The activity being investigated involves conduct believed to have been required, encouraged or approved by the other Party or Signatory CARIFORUM States.

Article 5

Public enterprises and enterprises entrusted with special or exclusive rights including designated monopolies

1. Nothing in this Agreement prevents a Party or a Signatory CARIFORUM State from designating or maintaining public or private monopolies according to their respective laws.

2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties and the Signatory CARIFORUM States shall ensure that, following the date of the entry into force of this Agreement, there is neither enacted nor maintained any measure distorting trade in goods or services between the Parties to an extent contrary to the Parties interest, and that such enterprises shall be subject to the rules of competition in so far as the application of such rules does not obstruct the performance, in law or in fact or the particular tasks assigned to them.

3. By derogation from Article 5(2), the Parties agree that where public enterprises in the Signatory CARIFORUM States are subject to specific sectoral rules as mandated by their respective regulatory frameworks, such public enterprises shall not be bound or governed by the provisions of this Article.

4. The Parties and the Signatory CARIFORUM States shall progressively adjust, without prejudice to their obligations under the WTO Agreement, any State monopolies of a commercial nature or character, so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods and services are sold or purchased exists between nationals of the Member States of the European Communities and those of the CARIFORUM States, unless such discrimination is inherent in the existence of the monopoly in question.

5. The CARIFORUM-EC Trade and Development Committee shall be informed about the enactment of sectoral rules provided for in paragraph 3 and the measures adopted to implement paragraph 4.

Article 6 **Cooperation**

1. The Parties agree on the importance of technical assistance and capacity-building to facilitate the implementation of the commitments and achieve the objectives of this Chapter and in particular to ensure effective and sound competition policies and rule enforcement, especially during the confidence-building period referred to in Article 3.
2. Subject to the provisions of Article 7 of Part I of this Agreement the Parties agree to cooperate, including by facilitating support, in the following areas:
 - (a) the efficient functioning of the CARIFORUM Competition Authorities;
 - (b) assistance in drafting guidelines, manuals and, where necessary, legislation;
 - (c) the provision of independent experts; and
 - (d) the provision of training for key personnel involved in the implementation of and enforcement of competition policy.

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South Centre Analytical Note

Fact Sheet Nb.8: Competition provisions in Economic Partnership Agreements
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