

# **GEO**

## **Guyana Economic Opportunities**

### **Competition Policy Assessment**

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*to*  
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## **I. Introduction**

This memo summarizes the findings of competition policy experts Georges Korsun and William Kovacic resulting from their one-week visit to Georgetown from June 19 to June 25, 2000. The primary purpose of this engagement was to present an awareness-raising seminar on competition policy to a diverse audience of government officials and members of the private sector. This seminar was intended to introduce the economic and legal issues of competition policy and law, with a particular focus on their applicability in small open economies. In the course of preparing their presentation, the consultants met with various government officials, private sector representatives, and industrialists to gauge the current legal and economic environment in Guyana. (A list of meetings is attached as Annex A). This survey, while admittedly very brief, nevertheless provided enough insights into current conditions to allow for comparisons with similar economies and to lead to some general conclusions and recommendations, which are presented below.

## **II. Competition Policy Seminar**

The team presented their seminar on Thursday, June 22, 2000. The seminar was very well attended, with over 180 participants. Audience members participated actively during the two question periods of the formal seminar. At the request of the Permanent Secretary of the Ministry of Trade, Tourism, and Industry, an impromptu focus group session was held at the conclusion of the seminar. Five groups of fifteen to twenty participants met to discuss three issues:

- 1) What should be the scope of a competition law relevant to Guyanese conditions;
- 2) What types of trade restraints had been observed by participants; and
- 3) What should be the administrative and enforcement structure for such a law.

It is obvious from the discussions of the focus groups that competition policy is a real issue within the Guyanese business community.

## **III. Legal and Administrative Considerations**

There seems to be little precedent for a full-fledged administrative agency with sufficient technical capacity to fairly and competently enforce a competition statute. The most similar existing agency is the Public Utilities Commission, but this agency has no competent technical staff and its analytical requirements are outsourced. Outsourcing might be acceptable, or even optimal, for an agency regulating one or two sectors in a small open economy, but not for a competition agency. The only other relevant precedent we could identify -- and a bad one at that -- was a Securities Commission, an agency that has never convened. This precedent -- a model based on enacting a law, mandating the establishment of a commission, but providing no resources for enforcement -- should serve as a warning of the dangers of imposing overly complex statutes that make excessive resource demands on a limited human capital pool. There appears to be a successful

precedent for an agency with administrative enforcement authority in the Environmental Protection Agency and the Food and Drug regulators, who have in the past exercised their powers to remove products from retail outlets.

The consultants' discussions with Guyanese experts and study of experience with other recent regulatory experiments in Guyana underscore the need to make realistic assumptions about the institutional constraints that would accompany the creation and operation of a new competition policy body. Four basic limitations stand out. First, the Government of Guyana will be able to devote few resources to a new competition agency. The consultants' interviews indicate that the new competition body may have an initial allotment of no more than one or two employees: at best, one professional (an attorney or economist) and one assistant. This daunting circumstance severely limits the agency's capacity and dictates caution in accepting responsibilities that simply cannot be fulfilled.

Second, Guyana's courts are beset by severe resource deficiencies, crippling administrative delay, and weak expertise in areas of law that would be needed to participate wisely in implementing a new competition law. In all of the 85 countries with competition laws, the courts play a major role either in serving as the forum in which the competition agency or private parties prosecute claims of competitive misconduct or in hearing appeals from the decisions of a competition tribunal. Performing either function effectively requires some basic familiarity with competition policy concepts and the administrative capacity to render decisions in a fair and timely manner. One would hesitate to engage Guyana's courts in resolving competition disputes or interpreting a new competition law without dramatic improvements in human capital and administrative infrastructure.

Third, Guyana lacks the educational infrastructure that provides a crucial source of training and research that support the implementation of a competition law. In countries with effective competition policy systems, universities help train the lawyers and economists who will apply the law and provide research that suggests the proper course for enforcement. Guyana presently lacks such capacity in its universities, and acquiring the requisite capability will take much time.

Fourth, like many other economies making the transition from central planning to greater reliance on markets, Guyana is still in the early stages of developing what commentators often call "the culture of competition." The competition culture consists of a broad understanding among government officials, business operators, and the general public about the rationale for and operation of a market system. Creating a culture of competition involves a lengthy, deliberate process of education and building awareness.

The limitations described above have important implications for the design and operation of a competition policy system in Guyana. As discussed more fully below, the initial conditions surrounding the creation of a Guyanese competition policy program suggest that the early focus of a competition policy program should be institution building and that Guyana might seek to avoid the adoption of ambitious nominal legal commands that badly outrun the country's ability to execute them.

#### **IV. Evidence of Anti-Competitive Conduct**

Our discussions identified few cases of outright restraints typically covered by traditional competition law. The most commonly identified competitive problem concerned abuses of dominant position by the electric power and telecommunications statutory monopolies, GPU and GTT, respectively. It is difficult to assess the legitimacy of these complaints without reviewing the monopoly licenses, sales agreements, and the history of decisions made by the PUC. There did seem to be a clear consensus that the PUC has not been especially successful at regulating these two entities. A second type of abuse frequently cited involved dumping by CARICOM producers (largely Trinidad). However, these mostly appeared to be due to illegal smuggling rather than to any actions of foreign exporters. A third type of unfair competition identified by interviewees concerned informal sector competition, primarily in the retail, light food processing, and garment manufacturing sectors. Unfair advantages are gained through evasion of taxes and social fund obligations, of course, but also through non-compliance with standards and quality differences that are difficult to observe. Thus, the most vocal concerns of the individuals interviewed would not be addressed by a traditional competition law, but a focused competition advocacy program could push to assure that resolving these issues became a priority for the government.

Over the course of the week, several other types of violations were alleged, including refusal to deal (telecommunications), price discrimination (mining), unfair subsidization (tourism), and agreements to fix prices (petroleum). The banking sector was identified several times as being non-competitive, but there was no certainty as to whether collusion or inertia was to blame. Finally, several discussants clearly recognized the benefits of entry, indicating examples of entry into retail that had provided better prices, better service, and more choice.

#### **V. CARICOM Compliance**

It appears that CARICOM's decision to govern competition issues in the Community through the drafting and adoption of Protocol 8 is motivating a major part of the attention being paid to competition policy in Guyana. Protocol 8 holds serious implications for the member countries because it specifies an expansive set of illegal behaviors, defines procedures for dealing with cases, and mandates the creation of a national agency for competition policy. Moreover, as described below, CARICOM's Secretariat intends to move beyond Protocol 8 with the drafting of a model competition law. The expressed interest of the Secretariat is for the model law to be adopted more-or-less in its entirety, rather than serve as a guiding document only.

From our brief review of Protocol 8, we wish to highlight the following points that have direct implications for the development of a national competition policy in Guyana. Adoption of Protocol 8 imposes substantial burdens on the signatories. The Protocol requires signatories to review all laws, agreements, and administrative practices for

conformance with the protocol, to enact a competition law, and to establish a national competition authority.

The Protocol requires each national authority to investigate anti-competitive allegations referred to it by the CARICOM commission or any member state. Protocol 8 also charges the national authorities with the initial investigation of allegations against its domestic enterprises.

Protocol 8 omits any system for controls on mergers. Nonetheless, the Protocol forbids various other anti-competitive practices whose evaluation will require careful scrutiny and sophisticated analytical capacity to distinguish benign or pro-competitive behavior from conduct that harms consumers. There is a real danger that, without the development of substantial institutional capacity in the CARICOM Secretariat and in the member countries, the prohibitions in Protocol 8 may be misapplied and ultimately reduce economic efficiency and social welfare.

Protocol 8 contains significant anti-dumping provisions related to subsidized products (excluding agricultural commodities). The definition of and tests for harm to the domestic industry in the anti-dumping provisions are quite broad. For example, to show that no harm has occurred, there must not have been any displacement of imports of a similar product, nor significant price undercutting in the market in question, nor lost sales of another member state in the same market, among others. There is a separate anti-dumping regime for non-subsidized goods.

Protocol 8 establishes a separate collection of measures for consumer protection. The Protocol requires signatories to create a national set of “harmonized” legislation, regulations and standards, consistent with CARICOM policies. Again, the contents are quite specific, but it is not clear whether these provisions are intended to be part of the model law or part of another, more specialized model law on consumer protection. The CARICOM Secretariat has established an ambitious schedule for implementing the competition policy features of Protocol 8. Current plans call for retaining a policy consultant to begin preparing an indicative model competition law in September 2000. The consultant is expected to prepare an initial draft by early November 2000 and spend the months of November and December 2000 discussing the draft law with officials of the CARICOM nations. The CARICOM Secretariat hopes to issue the final, revised model law in January 2001.

## **VI. Recommendations for Implementation**

Even with few resources, Guyana can take a number of steps to establish a competition policy program. A modest commitment of effort along these lines seems reasonable if, as seems likely, Protocol 8 eventually will mandate the formation of a national competition law. The implementation recommendations presented here deliberately propose a gradualist strategy that first emphasizes the establishment of the institutional foundations for competition policy and then proceeds to enforce specific legal commands.

### *The Ombudsman's Office: The Precursor Institution*

During the period leading to the adoption of a competition law, the relevant office might be called the "Office of the Competition Ombudsman." In this pre-statutory period, the Ombudsman's office would serve as the precursor to the competition authority and would focus on developing an agenda for the work of the competition authority. Among other tasks, the Ombudsman might develop a specific implementation program and work with CARICOM in refining CARICOM's approach to building the new community-wide competition framework and assisting in the adaptation of the CARICOM framework to Guyana. Establishment of the Ombudsman's office would require few resources and would create an institutional body that could become the platform for the competition authority itself.

### *The Competition Authority*

Let us assume that Guyana's new competition agency consists of one professional and an executive assistant. Following the model that has succeeded in countries such as Peru, Venezuela, and Zambia, the small competition agency might best devote the first two years of its existence to institution building and competition advocacy. The key institution-building tasks would include carrying out education and publicity programs directed toward government officials, the business community, the bar of Guyana, and the public in general; developing links with international bodies (such as OECD and UNCTAD) that provide resources and information relevant to competition policy development in emerging markets; and creating ties with Guyana's universities to encourage the establishment of courses in industrial organization economics and competition law. Guyana's national competition law might expressly provide that formal law enforcement efforts will begin only after an initial period of education and publicity for the new statute. By working with trade associations and the national bar of Guyana, the competition agency can suggest how business operators can revise their practices to conform to the requirements of the law. A second institution-building priority would be to develop a training program for the nation's courts, perhaps focusing first on the High Court. With assistance from foreign donors, the competition authority could use simulation exercises and training programs based on Guyanese problems.

The third major focus of the new agency's early work would consist of competition advocacy before other government institutions in Guyana. The competition advocacy program would involve identifying government-imposed barriers to competition and proposing that government agencies avoid adopting measures that suppress business rivalry. The advocacy program also can entail participating in decisions about privatizing state-owned assets and proposing that competition issues receive attention in designing specific privatization plans.

The final priority of the new agency would consist of establishing a modest program of law enforcement. Such a program could follow a one- or two-year period of education, publicity, and institution building. The first targets of such enforcement might include

clearly harmful conduct -- such as bid-rigging on government tenders -- that persist despite efforts to alert the business community to the requirements of the new law.

### *Division of Responsibilities with CARICOM*

In the first years of its operations, the new competition agency might seek to delegate as many enforcement duties as possible to the CARICOM Secretariat. Protocol 8 anticipates that member countries can refer competition policy problems with a community-wide dimension to CARICOM for investigation and analysis. The resource constraints confronting Guyana suggest that its competition body refer all cross-border matters to CARICOM and devote its own resources exclusively to domestic competitive concerns.

## **VII. Next Step Recommendations**

There are a number of modest, interrelated, follow-up activities that could be undertaken by the GEO project, singly or in concert, in the next few months. They map out a process that would significantly inform the public debate on competition policy and facilitate the development of a realistic and rational strategy for advancing national interests in this area that would take explicit account of local economic conditions and resource constraints.

*Protocol 8 strategic response.* A careful, more detailed review of Protocol 8 should be undertaken to see exactly what is implied by Guyana's signature. Such a review would allow the GOG to assess the level of resources necessary to implement the protocol and related national legislation, formulate a strategy for enforcement that minimizes the national burden while remaining fully compliant, and provide guidance on how Guyana should try to influence the development of the model competition law and other forthcoming statutes and regulations.

*Case review seminar.* A one-day follow-up seminar on competition policy, which emphasizes case studies and the experience of selected countries such as Jamaica, Panama, Venezuela, and Peru, would be useful. Former agency heads, who can offer a more unbiased perspective than current heads, could be brought in to discuss their respective countries' experience in creating and developing a competition policy regime. While this would be highly informative, all of the potential case countries are larger, more developed, or enjoyed special circumstances (such as Jamaica), factors that reduce the relevance of their experience as a model for Guyana.

*Better information on the scope of the problem.* There is presently very little reliable information on the scope and extent of competitive restraints in the Guyanese economy. In the absence of such information, it is difficult to set priorities and devise regulatory instruments that are appropriate for existing economic conditions. Likewise, it is difficult to set enforcement priorities because the enforcement agenda is subject to capture by outsiders, in the absence of good information. Moreover, a broader strategy to protect national interests against other CARICOM member states is impossible without a clear notion of the underlying economic relationships and past or potential behavioral abuses.

*A more controlled public participation process.* The seminar and subsequent focus groups were just the first steps in raising public awareness. In order to systematically take account of all stakeholder interests, a program of structured public hearings and focus groups could be conducted to elicit the concerns of the business community and the public at large. These meetings could be used to collect basic information (e.g., abuses), identify concerns of the regulated community, help establish priorities, and create support and a consensus for the eventual government policy on competition.

*Deeper consideration of the administrative/enforcement structure.* Experience elsewhere has irrefutably demonstrated that a critical factor in the successful implementation of competition policy is a functional enforcement structure. Given Guyana's severe resource and capacity limitations, finding an appropriate solution to this problem will be especially important. Although we briefly discussed above some possible approaches, it would be productive to devote some effort to a more detailed investigation of this issue. At minimum, it would be necessary to define the mission and objectives of a very small agency, consider how to establish its autonomy, assess the minimum level of resources and requisite training, and specify a realistic timetable for achieving a gradual increase in authority and competence.

*Drafting a strategy to protect national interests.* All of the above would contribute to developing a strategy for best representing national interests in the various relevant multinational organizations, such as CARICOM, FTAA, and WTO. In the absence of such a strategy, Guyana would be reduced to *ad hoc* responses to structures mandated "from above", all of which impose direct costs on the government and the private sector and some of which may be highly disadvantageous to Guyana. Membership in these trading blocs need not be passive and a coherent strategy can help maximize gains and minimize damages.

*Draft Competition Law.* A draft competition law should be the last step in this process and should probably await the development of CARICOM's model law. A better use of resources at this time would be to try to influence the development of the model law to make sure that it is an appropriate instrument for Guyana, relative to the interests of the other member states. The planned consultations between the CARICOM competition law-drafting consultant and the individual members states, now scheduled for the Fall of 2000, present an important opportunity to influence the content of the model law in ways that account for Guyana's circumstances. Taking advantage of this opportunity will require Guyana to have its own recommendations prepared by the time the CARICOM consultant completes the initial draft of the law. If the existing CARICOM timetable holds true, the consultant will begin approaching the member countries for their views in November and December.

## **Appendix A: Interviews**

### **Monday, June 19, 2000:**

Neville Totaram: NACEN Coordinator, Ministry of Foreign Affairs  
 Sheila Peters, Chargé d'Affairs US Embassy  
 Winston Brasington, Head of Privatisation Unit  
 Dr. Michael Scott, University of Guyana  
 Lance Wills, Ministry of Trade, Tourism, and Industry

### **Tuesday, June 20, 2000:**

David Yankana, President, Private Sector Commission  
 John Dasilva, President, Ms. Eileen Cox, Chairperson of the Advisory Board, and Partick Dyal, Guyana Consumers Association

### **Wednesday, June 21, 2000:**

Sonya Roopnauth, Permanent Secretary, Ministry of Trade, Tourism, and Industry  
 Sattaur Gafoor, President, Guyana Manufacturers' Association  
 Peter Wallace, Caribbean Molasses Co.  
 Ivor Caryl, CARICOM Secretariat

### **Friday, June 23, 2000:**

George Jardim, Chairman, Private Sector Commission  
 Ramesh Lall, Deloitte & Touche  
 Bryn Pollard, attorney  
 Nigel Hughes, attorney  
 Daniel Wallace, USAID

### **Saturday, June 24, 2000:**

Duke Pollard, Chief Legal Counsel, CARICOM  
 Sonya Roopnauth, Permanent Secretary, Ministry of Trade, Tourism, and Industry  
 Minister Geoffrey De Silva, Ministry of Trade, Tourism, and Industry  
 Judge Trevor Lewis