
THE SENATE DEBATES

(OFFICIAL REPORT)

FIRST SESSION 1999 – 2003

THE SENATE

Wednesday, 20th November, 2002

The Senate met in the Senate Chamber, Parliament Buildings on Wednesday, 20th November, 2002, at 11.00 a.m.

PRESENT

His Honour Senator Sir Fred GOLLOP, K.A. (President)
His Honour Senator C. L. BOLDEN, C.B.E., Q.C. (Deputy President)
Senator the Hon. G. S. H. MURRAY, B.A. (Hons.) J.P. (Minister of State, Prime Minister's Office)
Senator T. E. BARKER, B.A. (Hons.), M.A. (Econ.) J.P. (Parliamentary Secretary, Ministry of Economic Development)
Senator P. C. GODDARD
Senator Dame Patricia SYMMONDS, D.B.E., G.C.M., B.A. (Hons.) (P.G.C.E.) J.P.
Senator Miss J. C. ODLE, J.P.
Senator J. E. D. WILLIAMS, B.Sc., MBA, J.P.
Senator C. A. MASCOLL, B.Sc. (Econ.) (Hons.) M.A. (Public Finance)
Senator LeR. H. McCLEAN, B.Sc. (Hons.)
Senator Mrs. P. E. RICKINSON, B.A. (Hons.) M.P.H. (Harvard), S.R.N.
Senator C. K. LAURIE, D.I.C.T.A. (S.T.) FBSTA
Senator Sir John Stanley GODDARD, K.A., G.C.M., B.Com., F.C.A., Hon. LL.D. (U.W.I.)
Senator B. R. COLLYMORE, C.M.G.
Senator the Rev. L. W. B. ROCK, M.Div.
Senator D. D. MARSHALL, LL.B. (Hons.), L.E.C.
Senator the Hon. Mrs. V. E. NEWTON, S.C.M., B.A., (Spec. Hons.) M.A., LL.B. (Hons.) (U.W.I.) F.L.A. (Gt. Brit.), L.E.C.

Senator K. D. SYMMONDS, LL.B.
Senator D. L. HAYNES, S.C.M.

Prayers were led by Rev. Father Errington Massiah.

Mr. PRESIDENT: This Senate is in session.

ANNOUNCEMENTS

Mr. PRESIDENT: I have received the following letter from the Office of the Ombudsman.

“His Honour the President
The Senate
Parliament Buildings
Bridgetown

Your Honour,

The Ombudsman Act, Cap. 8A. Section 13(6) provides the Ombudsman shall in each calendar year provide for laying before each House of Parliament, a general report on its functions under that Act.

Section 13(9) provides that reports prepared pursuant to Subsections (6) and (7) shall be submitted to the Speaker of the House of Assembly and to the President of the Senate who shall cause them to be laid before the House of Assembly and the Senate respectively.

In accordance with the provisions of section 4(1), Section 13(6) and (9) of Cap. 8A, I have the honour to submit the Annual Report of the functions of the

Ombudsman under the Act in respect of the Year 1999 and 2000.

I shall be most grateful if you would inform me when the Reports have been laid.

Yours faithfully,

Barbara Taylor (Mrs)
Investigations Officer"

PAPERS

SENATOR THE HON. G. S. H. MURRAY: Mr. President, I beg to move that the following documents be laid:

1. Barbados State of the Environment Report, 2002.
2. Duties, Taxes and Other Payments (Exemption) (Stantec Consulting International Limited) Order, 2002.
3. Statutory Boards (Pensions) (Pensionable Offices) (No. 2) Order, 2002.
4. Financial Institutions (Business Transfer) (Barclays Bank, PLC) Vesting Order, 2002.
5. Annual Report of the Barbados Investment Development Corporation for the Year 2001.
6. Report on the Social Investment Fund on the Quarter ended September 30, 2002.
7. Annual Report of Needham's Point Development Holdings Limited for the Year 2001.
8. Report of the Accountant General for the Financial Year 2001-2002.
9. Annual Report and Statements of Accounts of the Insurance Corporation of Barbados Limited for the Year 2001.
10. Value Added Tax (Refund) (Bellairs Research Institute of McGill University) Order, 2002.
11. Annual Report of the Barbados Tourism Investment Inc. for the Year 2001.
12. Annual Report of the Needham's Point Development Incorporation for the Years 2000 and 2001.
13. Annual Reports from the Office of the Ombudsman for the Years 1998, 1999,

2000.

SUSPENSION OF STANDING ORDERS

SENATOR THE HON. G. S. H. MURRAY: Mr. President, I beg to move the suspension of Standing Order No. 45(2) in order to deal with a number of measures that are before us today.

The question that Standing Order No. 45(2) be suspended for the remainder of today's Sitting was put and agreed to in the affirmative.

INTRODUCTION OF BILLS

SENATOR THE HON. G. S. H. MURRAY: I beg to give notice of the following Bills:

1. The Fair Competition Bill, 2002.
2. The Consumer Protection Bill, 2002.
3. The Consumer Guarantee Bill, 2002.
4. The Mutual Funds Bill, 2002.
5. Resolution to approve in accordance with Section 5 of the Crown Lands (Vesting and Disposal) Act, Cap. 225, the vesting in the National Housing Corporation of land at Bay Street, St. Michael for the provision of recreational facilities.
6. Resolution to approve in accordance with Section 5 of the Crown Lands (Vesting and Disposal) Act, Cap. 225, the vesting in the National Housing Corporation of a parcel of land situated at Forde's Road, Clapham, in the parish of St. Michael in this Island for the purpose of housing development.

FIRST READING OF BILLS

On the motion of SENATOR the Hon. G. S. H. MURRAY, the question that the Bills be read a first time was put to the Honourable Senate and agreed to in the affirmative.

ORDER NO. 3 – THE FAIR COMPETITION BILL, 2002

SENATOR T. E. BARKER: Mr. President, the Fair Competition Bill, 2002, seeks to:

- (a) promote and maintain competition;
- (b) prohibit the prevention, restriction or distortion of competition and the abuse of dominant positions in trade in Barbados and within the CARICOM Single Market and Economy;

- (c) ensure that all enterprises, irrespective of size, have the opportunity to participate equitably in the marketplace;
- (d) enhance economic efficiency in production, trade and commerce;
- (e) promote the welfare and interests of consumers;
- (f) for connected matters.

Sir, before we examine the Bill in detail, we should note the circumstances which gave rise to this Bill in the first place.

Sir, what is fair competition? We believe fair competition is creating the environment where citizens of this country can participate fully in the marketplace in the selling of goods and services without any hindrances in accessing the market.

It is extremely important that we have rules and regulations for such conduct in this country. Not only because it is fair but because it lends to greater efficiency when citizens know that with their ideas and innovations, they can participate in the economy and that there are no set of persons or rules which could prevent them from fulfilling their dreams.

If there is more competition in the marketplace then, as happened in Barbados and in other countries, the price of goods or service to the consumer could be significantly reduced. Anytime there is distortion or unfair competition in the marketplace, we have to assume that the players who are seeking to perpetuate that distortion is doing it for motives which are not always honourable and that, in the final analysis, it ends with the consumer having to pay more for the goods or service. Therefore, in terms of positioning our economic efficiency to achieve greater equilibrium, we need to ensure that the marketplace is as fair as humanly possible.

We must have a society and an economy where people feel that they can participate fully and that the State has an enabling environment which allows them to participate in a meaningful way. Anytime that it is perceived that the marketplace is not open, then people are being condemned to exist outside of the market, which inevitably could lead to anti-social behaviour.

Mr. President, for the sake of social cohesion and an equitable society, we have to ensure that fair competition is always the order of the day and, as we build a Barbados of which we all can be proud, we must seek to involve all of our citizens.

We have to ensure that we do things so that our citizens, whether commercial agents, supermarket owners, *et cetera*, must feel they have a stake in this country and could participate fully in the economy.

Therefore, these are some of the philosophical ideas that have propelled Government in making sure that legislation which would allow for the orderly and fair conduct of businesses in the marketplace is brought to this Chamber. Not only that, we are moving in a direction where Barbados will become an active participant in areas such as the Free Trade Area of the Americas. Presently, we are in the Caribbean Single Market and Economy, one of the best areas in which we could be.

We also know we have certain obligations to the new world trade order. These measures will cause us to make sure that there are rules and regulations within our economy which would allow business to prosper and where fairness becomes the order of the day.

Do not let us forget that we not only face competition from within but because of our international obligations, we are going to face competition both from the CARICOM Region and beyond. Therefore, we have to ensure that our businesses are given the tools and the framework in which they could compete with businesses from outside of our shores.

In this regard, we have to ensure that in certain key areas there are businesses, especially in the service sector. In this sector, there is some degree of comparative advantage. We want to ensure that the companies in the services sector are given the opportunity where they could compete within the larger setting.
11.30 a.m.

Therefore, we have to have proper rules so that mergers can take place because it may be to our advantage in positioning our businesses and allowing them to become bigger so that they can compete on the regional and international scene.

Sir, we must not only think of Barbados as the marketplace because there is a larger marketplace where our businesses have to operate and these issues require us to bring legislation to ensure that the marketplace is what we want it to be.

Sir, Barbados is a signatory to the CARICOM Single Market and Economy (CSME), and Protocol VIII, which is already a document of this Honourable Chamber, speaks about competition policy and consumer protection.

“A member state shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition”.

Sir, this is one of our obligations under the CARICOM Single Market and Economy which was signed in March 2000 by the Prime Minister. This legislation must be in place in order to set the framework for the orderly competition.

Article 1 of Part 3 of Protocol VIII says that a member State shall within its jurisdiction prohibit as being anti-competitive any business conduct or agreement which would distort the marketplace. If two firms enter into an agreement that can distort the marketplace we are called upon as member States of CARICOM to make sure that we have legislation which would prohibit this sort of behaviour.

We are also mandated to have legislation which prohibits firms from abusing dominant positions within the economy.

It is against this background that a few years ago the Prime Minister changed the Public Utility Board and in its place the Fair Trading Commission came into being. Sir, the Fair Trading Commission has three aspects to it: the utility regulation, fair competition and consumer protection.

When the Fair Trading Commission came into being we had the legislation relating to the regulation of public utilities but the regulation relating to consumer protection and fair competition were not ready at that time. This morning we are debating the Fair Competition Bill which is the second arm of the Fair Trading Commission. We will now have the legislative apparatus within which they can ensure that there is fair competition within the society and within the economy. Sir, the Fair Trading Commission would now be better armed to carry out this important mandate.

Sir, we may want to ask what happened in our society to make the passage of this legislation so important. The Inter-American Development Bank did an assessment of the Fair Trading Commission in Barbados and also a survey of the domestic market to see the level of competition obtained in the market and the practices that operated against fair competition.

Many anti-competitive practices were prevalent in our society and which necessitated the passage of this legislation that we are discussing. Among them were anti-competitive practices to maintain monopoly power. In other words, the monopolies trading in Barbados were using all sorts of practices to make sure there were no other entrants to the marketplace.

Sir, 18 specific practices were deemed to be anti-competitive. The Report mentioned anti-competitive practices which prevented competitive entry. For example, that some of the firms were using practices to ensure that other firms did not come into the marketplace.

The Report also mentioned predatory pricing, exclusionary conduct which impaired competition and discriminatory pricing.

It was noticed that some firms, because they were competitors, refused to deal with other firms and, therefore, they could not get the raw materials. The Report also mentioned price fixing, division of the markets and anti-competitive exchange of price information. It also mentioned interlocking directorates and anti-competitive mergers.

Sir, the study highlighted all of these practices that were taking place in our economy that could be deemed anti-competitive. Lastly, it mentioned unfair consumer practices. 11.40 a.m.

Sir, these were 18 practices which were highlighted by the study which was deemed to be anti-competitive. What were the results of these practices? The unfair practices, with respect to pricing and dealing, tend to eliminate competition and the result was that the consumers were made to pay higher prices for the goods or services than they should have if there was fair competition.

Secondly, the unfair, competitive entry of the domestic and foreign competition resulted in higher prices for consumers and precluded them from receiving quality products and services. Sir, the consumers did not only pay more for goods and services because of the monopoly situation which prevailed, they paid higher prices and at times received inferior goods.

The study highlighted the unfair competitor and that the consumers were the ones who suffered because of the unfair practices. The Report concluded that there was a strong case for Barbados to enact fair competition legislation.

Sir, it is a welcome addition to the laws that we have to ensure that there is fair competition and we are not alone in this. Since 1993 Jamaica had a fair competition law. In the United States of America and other countries there is anti-trust legislation and other pieces of legislation which would prevent these kinds of practices.

Sir, as we seek to transform Barbados into a developed country, which is our very noble goal and which is Section 2 of Protocol VII says that:

achievable, we have to ensure that our practices in the marketplace conform to those which are the best practices in the world and these sorts of philosophical underpinnings have given rise to this legislation.

What are the main features of this legislation? The main objective is to promote and maintain competition. We all know that competition is vital to the proper functioning of the economy.

Sir, Part II of the Bill focuses on the Fair Trading Commission. In Part II, Section 4, says it shall make available to persons and give general information with respect to their rights and obligation under this Act.

A person seeking to become an entrepreneur must know beforehand what his rights and obligations are. Sir, you cannot come into the marketplace and plead ignorance. The Fair Trading Commission's first mandate is to ensure that anybody who is engaging in business activity knows what their rights are but should also know what their obligations are under this Act. Sir, Section 4 is a key section which says that the Commission may have the duty in law to give information to the entrants and that they know what is expected of them. The Commission shall also make available to the consumers their rights under the Act, especially, as they affect the interest of consumers.

Sir, the Caribbean Single Market and Economy has mandated all countries to ensure that there is legislation in place for a competitive framework. Also, at the same time, the Caribbean community is setting up a Community Competitive Commission which acknowledges that if you are going to become one market, that there must be unfettered trading.

Sir, a Barbadian company must be allowed to do business in St. Lucia or Jamaica and that country must not use any obstacles to prevent the Barbadian company from so doing. Barbados would have to allow Guyanese firms to operate here. We are going to have cross-border operations. The Caribbean community has put in place the Community Competition Commission and the Fair Trading Commission is mandated under Section 4 to cooperate with this Commission, so as to ensure that compliance with the Fair Trading Commission is maintained.

We would not want firms to believe that that behaviour is tolerated in Jamaica would be tolerated in Barbados. There would be the flow of information between these cross-border entities so that activities can be properly monitored, so that sharp practices are not developed. There may be laws in one country where firms may be able to use the differences in laws to do things that they should not be doing. There will also be Commissions in the various countries to ensure that the provisions of this Act are being

complied. Sir, the authorities will be in contact with each other so that they can better monitor the activity of firms, especially those which operate in more than one country.

The Commission may undertake studies and publish reports and information regarding matters which affect the interest of consumers. It also says that the Commission may assist any national body or the competent authority within any member state in developing or promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

Sir, the Fair Trading Commission is empowered to prohibit a supplier from withholding goods from a competing firm. In other words, if you are supplying goods, you may be called upon to supply these goods to all the players in the market without discrimination.

11.50 a.m.

Sir, the Fair Trading Commission would have the power in law to ensure that firms do not withhold supplies because you would want all firms in the economy to be operating on, basically, a level playing field. Therefore, the Fair Trading Commission has to ensure that such conduct does not take place. It also can prohibit the making or carrying out of any agreement which is likely to result in uncompetitive practices. Then, it can prohibit the attachment of extraneous conditions to any transaction.

Sir, we know that one firm can tell another one, I will sell you this, but you must not resell to somebody else. Of course, Sir, that is obviously a restraint which will be frowned upon after the passage of this legislation, so that the Fair Trading Commission will prohibit the attachment of extraneous conditions to these transactions.

The Fair Trading Commission will also prohibit discrimination or preference in pricing or other related matters. For example – and this is something that worries me – you have two firms competing in the same business. One firm goes to the bank to borrow \$1 million. The bank says, "I will charge you 10 per cent". The next firm, doing the same business, goes for the same \$1 million and the bank charges 15 per cent. Sir, the difference in the interest would be \$50 per year, so you can see that the firm is already in a disadvantageous position because he is called upon to repay \$50 000 per year, which the other firm, making the same goods or providing the same service would not have to pay. How can you expect the firm to be competitive in that sort of situation?

I am told that the banks do this because they have their favourite customer to whom they give a good rate and the other customer would not be the recipient of such largesse and when the business fails, those who do not know of these practices, will say that the fellow cannot run a business.

Sir, how can you run a business when immediately you have \$50 000 more in cost that the competitor does not have? I am saying that the interest is a cost to a service. It is a price, basically, of obtaining the loan. The banks have to be very careful that these practices do not perpetuate within the economy. It has caused problems in the past and it will continue to cause problems, unless they are properly regulated.

Sir, the Commission can prohibit discrimination or preferences in prices or other related matters. Then, it can prohibit the recommended or prescribed rating of prices. In other words, you go to buy goods for resale. The wholesaler says, I can sell you 100 units but you cannot sell for less than \$10. If that firm owner feels that he could sell the product at \$8 and still make a profit, why is the wholesaler or the suppliers, in the first instance, telling him that he cannot sell lower than \$10? The consumer will benefit, if he can sell at a lower price and the firm may even make a decent profit.

Sir, while I am on this, we have a situation with the provider of services by law – Sir, I know I am treading on dangerous ground here but – where lawyers are prevented by law from charging rates of less than a certain percentage for certain transactions. There are certain attorneys who will convey land for less than the prescribed price, but they are prohibited from doing so by law. As I said, they are prohibited from charging less than a certain amount.

I believe, Sir, that these are practices we need to look at because we all know of the instances where lawyers will be glad to help out their customers but they are prevented from doing so, Sir, and while we do not want producers of goods to do this sort of thing, we would not want producers of services to do the same. Sir, the same way that a doctor can treat you and charge you what he likes...

Asides.

SENATOR T. E. BARKER: Sir, the same way a doctor can charge you as little as he feels like, we feel that a lawyer should be able to charge as little as he feels like also...

Asides.

SENATOR T. E. BARKER: Now, the question of overcharging, if he overcharges too much, then he would lose customers because they have freedom to choose which provider of services they want to use. So, if a lawyer or doctor is overcharging, well, they may end up feeling it in their pockets. Sir, the point I want to make is that we have to make sure that we do not set minimum levels. We are

about fair competition. Let the market dictate without fettering.

Sir, the Fair Trading Commission will require the publication of accurate price lists that are available to members of the public. In other words, if you are providing goods or service, you have to tell the public and provide accurate information as to the price of those goods or service. Sir, the Fair Trading Commission can make you inform the public about the accurate price.

Sometimes, Sir, some stores do this. They have an item on display for \$1 000, but when you go to purchase the item, the cost is \$1 100 because the \$100 is for the assembly. The \$1 000 is for the knock-down price but you have to pay \$100 for the assembly. Sir, I think that is obviously wrong but the Fair Trading Commission can make sure that the supplier gives an accurate price list to the consumer.

Sir, the Fair Trading Commission even has more powers. It can prohibit the acquisition of one company by another company and that is very important. We hear of hostile take-overs and we hear of mergers which are not in the interest of the general public, so the Fair Trading Commission has the power under law to prohibit one company from taking over another, whether in a hostile take-over or by voluntary sale.

If the interest of the general population is being compromised, then the Fair Trading Commission can, and they have the legal power to prevent such acquisition. It also prohibits the acquisition of assets of one company by another company, not only the whole company but assets of the company. It can prohibit one firm from buying the assets of another firm, if it is not in the public's interest.

Then, the Fair Trading Commission will also have the power to mandate the furnishing of information which it may require within a specified period. It may tell a firm, within two months, I want information on your balance sheet or whatever and the firm is required, by law, to provide that information to the Fair Trading Commission.

Sir, that is why the Fair Trading Commission has to be staffed by highly competent people. We know that apart from the overall CEO, it is going to have a Director of Public Utilities, a Director of Fair Competition, and a Director for Consumer Protection. Sir, each of the three arms of the Fair Trading Commission will have a director who then will be answerable to the overall CEO of the Fair Trading Commission. We have to ensure that the Fair Trading Commission, since it has such a wide and powerful mandate, not only in relation to competition but to other aspects of this operation, is staffed by highly competent persons who are not only trained but who are motivated, because the interest of the public must always be paramount in their operations

12.00 noon

Having such a wide mandate means that the Commission would have the power to get the necessary information upon which it can make the necessary pronouncements. So the Commission would have the power to require people to provide the information, affidavits or whatever, and it would have the power to deal with people who fail to provide the necessary information.

Of course, the actions of the Fair Trading Commission can be reviewed by a High Court judge. The High Court judge will also have the power to recommend certain things to the Fair Trading Commission. So we are not letting loose an uncontrollable monster in the society. The Commission is a very powerful body and one that is very much needed within our economy and our society. We applaud the work that they have done so far but their work is now beginning because they are being called upon to make a difference.

Part III of the Bill deals with anti-competitive agreements, the abuse of dominant positions, mergers and interlocking directorships. The Fair Trading Commission has the mandate and the law to look at practices and to determine whether or not these practices are, in their view, uncompetitive and not likely to result in benefits to the consumers and the economy as a whole.

The question of dominant positions is one that we always have to deal with. When one firm has a large share in the market, we have to make sure that the action of that firm does not result in unfair activity which will negatively impact on the consumer. You might be big, Sir, but you do not have to be powerful and bad and throw your weight around. With the passing of this legislation, the days of bullying companies are over. We are not going to stand by and allow a company because it has 75 per cent of the market to engage in practices which will squeeze out the man who has only 25 per cent. So the State has a responsibility to ensure as far as possible that firms do not use their dominant positions because at the end of the day we want to ensure that there is efficiency within the economy. This efficiency also means that the consumer must be able to obtain quality goods and quality services at the best obtainable price.

The question of interlocking directorships is something that we have been dealing with for a long time. If you are a director of a company which is engaged in a certain activity, you cannot be the director of a competing company which is engaged in the same activity. For example, if you are in the wholesale business and your firm is wholesaling food for that matter, you cannot be a director of that company and at the same time be a director of the company over there which is engaged in the same distribution of food. This is an opportunity for conflict and for price fixing because you are the director of both companies which will militate against fair competition. So this Bill that we are passing would not

allow a person to be a director of two different companies which are engaged in the same business.

The Fair Trading Commission will have the power to ensure that does not happen as we see in section 23 of the Bill which reads as follows:

“Where a director serves on a board of directors of two or more companies that are significant competitors and the director’s conduct has the effect of welding together the policies of those companies in such a way as to reduce significantly competition between them or to eliminate such competition, the Commission shall direct that the director serve on not more than one board of the relevant companies”.

Sir, these are not the days of the 1940s or the 1950s. We have a cadre of young, intelligent well-trained people now who need to be given the opportunity to serve at these levels. Years ago that was not the case but we have trained them over the past 20 to 30 years. They are competent and bright and they must be given the opportunity to do what they were trained to do. So this idea of one person serving on six boards or 12 boards is unfair and I am glad that this Government is doing something about it. We must give an opportunity to our young, bright fellows to show what they are made of.

Asides.

SENATOR T. E. BARKER: Sir, that would be a thing of the past because the law will ensure that.

Part 4 of the Bill deals with resale price maintenance where it states at 24 (1) that:

“It is unlawful for any

- (a) association comprising members who are suppliers of goods;
- (b) two or more enterprises or agents of enterprises that are suppliers of goods,

to enter into or carry out any agreement whereby the association, enterprises, or agents of enterprises, as the case may be, undertake to

- (I) withhold supplies of goods from dealers (whether parties to the agreement or not) who resell or have resold goods in breach of any condition as to the price at which those goods may be resold.”

I mention this before where the supplier will no longer have the right to tell the buyer of these goods what price they must sell the goods at. If the man feels that he can sell the goods at 10 cents and recover his cost and make a profit, then more power to him because the consumer will benefit in the end. So those days of a supplier telling a retailer what price he must sell the goods at are over as a result of this Bill.

12.10 p.m.

Mr. President, this shows the stark difference between this Party of which I have the honour to represent and the other Party. That Party talks, but we act. If someone wants to hear all talk, let them go under the street light but when they want things done for the benefit of the people, then there is only one Party. The political history of this country is clear on this matter.

Mr. President, this morning we see some very revolutionary things that people wanted for some time. We have come with a piece of legislation along with the others that would come at a later date to put the framework for which our policy of 'each person matters' could be enhanced along with expediting the modernisation of our country.

In regard to the idea of people using wealth or position to cause us to pay more for goods and services, this Bill will put an end to some of these unfair practices.

As consumers and potential entrants into the market, it is also incumbent upon us to know what are our rights and obligations, to ensure that whenever we conduct business, we know that we cannot be told anything different because it would be against the law. Not only that, there is one thing to have laws but we know that access to the high court is not always available for the "poor people".

What are we now doing? We are making sure that there is a revolutionary Public Council where there is an avenue for anyone who has a grievance.

Asides.

SENATOR T. E. BARKER: Sir, for those who are worrying, they can refer to the Fair Trading Commission Act where there is provision for Public Council.

Sir, Part 5 deals with authorisation of the Fair Trading Commission.

29. (1) Subject to subsections (2) and (3), any person who proposes to enter into or carry out an agreement or to engage in a business practice which, in that person's opinion, is an agreement or practice

affected or prohibited by this Act, may apply to the Commission for an authorisation to do so.

29. (2) The Commission, notwithstanding any other provision of this Act, upon receipt of an application referred to in subsection (1) may, where it is satisfied that the agreement or practice, as the case may be, is likely to promote the public benefit and is reasonable in the circumstances, grant an authorisation subject to such terms and conditions as it thinks fit and for such time as the Commission shall specify.

29. (3) The Commission shall before granting an authorisation:

- (a) publish a notice in the *Gazette* and in at least one newspaper of the application and advising that persons who have an interest in the matter may submit written objections to the grant of the authorisation, within the time specified in the notice; and
- (b) consider all objections received and satisfy itself that it is reasonable in the circumstances to grant the authorisation.

31. (2) The Commission shall, before revoking or amending an authorisation, serve on the relevant applicant, a notice in writing specifying the reason for the proposed revocation or amendment and inform the person of the right to apply to the Commission to be heard on the matter within such time as may be specified in the notice.

32. (1) The Commission shall keep, in such form as it may determine, a register of authorisation granted under this Part.

32. (2) The register shall be kept at the office of the Commission and shall be available for inspection by members of the public during the hours of business of the Commission.

Part 6 deals with Anti-Competitive Business Conduct.

33. (1) A person who is engaged in the business of producing or supplying goods or services shall not, directly or indirectly,

- (a) by agreement or promise, intimidation or threat or any like means, attempt to influence and increase or the maintenance or a reduction of the price at which any other person supplies or offers to supply or advertises goods or services;

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| <p>(b) refuse to supply goods or services to or otherwise discriminate against any other person engaged in business because of the low pricing policy of that other person or for any other reason.</p> <p>33. (2) Subsection (1) does not apply where the person attempting to influence the conduct of another person and the person in respect of whom the attempt to influence is made are affiliated companies or, as the case may be, principal and agent.</p> <p>33. (3) For the purposes of this section, the publication by a supplier of goods other than a retailer, of an advertisement that mentions a resale price for the goods is an attempt to influence the maintenance or an increase of the selling price of any person into whose hands the goods come for a resale unless the price is so expressed as to make it clear to any person who becomes aware of the advertisement that the goods may be sold at a lower price.</p> <p>34. (1) No person shall conspire, combine, agree or arrange with another person to,</p> <p style="padding-left: 40px;">(a) limit the facilities for transporting, producing, manufacturing, storing or dealing in any goods or supplying any service;</p> <p style="padding-left: 40px;">(b) prevent, limit or lessen, the manufacture or production of any goods to enhance unreasonably the price thereof;</p> <p style="padding-left: 40px;">(c) lessen unduly, competition in the production, manufacture, purchase, sale, supply, rental or transportation of any goods;</p> <p style="padding-left: 40px;">(d) lessen, limit or prevent competition in the provision of insurance on persons concerned in or property related to the production, storage, transportation or dealing in any good or the provision of services;</p> <p style="padding-left: 40px;">(e) otherwise unduly restrain or injure competition.</p> <p>34. (2) Nothing in subsection (1) applies to a case where the arrangements are related to the introduction or maintenance of</p> | <p style="padding-left: 40px;">(a) standards for products or for the quality of service that are reasonably necessary for the protection of the public;</p> <p style="padding-left: 40px;">(b) standards of competence and integrity that are required,</p> <p style="padding-left: 40px;">(i) in the practice of a trade or profession relating to the service; or</p> <p style="padding-left: 40px;">(ii) in the collection and dissemination of information relating to the service.</p> <p>Mr. President, Section 35 is important. It is called bid-rigging:</p> <p>(II) (1) Subject to subsection (2), it is unlawful for two or more persons to enter into an agreement whereby</p> <p style="padding-left: 40px;">(a) one or more of them agree to undertake not to submit a bid in response to a call or request for bids or tender, or</p> <p style="padding-left: 40px;">(b) as bidders or tenderers they submit, in response to a call or request, bids or tenders that are arrived at by agreement between or among themselves.</p> <p>35. (2) This section shall not apply in respect of an agreement that is entered into or a submission that is arrived at only by companies each of which is, in respect of every one of the others, an affiliate.</p> <p>For example, there are a number of firms colluding together in a bidding process which would cause price distortion where, when bidding, a tender which initially would have cost \$7 million, now cost \$12 million. This not only happens in the private sector but also the public sector. In other words, the bidding process has to be fair so that the consumer could get the goods or service.</p> <p>I am not sure if professional association would not fall foul of these stipulations, although I would mention that, by and large, our professional associations are decent and act decently, especially the Nurses Association.</p> <p>These practices which, unfortunately, were all part and parcel of our business landscape for some time, have now been outlawed by the passage of this piece of legislation.</p> <p>Sir, this Honourable Chamber has to agree that, for the first time, we are putting business activity under a microscope. We see what is unfair. We see what is fair. We see what should happen. We see what is not now happening. This Bill seeks to ensure that there is fair competition in Barbados, that transparency must be the order of the day.</p> |
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One must not feel that because of one's antecedents, one is being denied a place in the economy but must be allowed to participate in the economy once there is the drive and entrepreneurship to do so. There must be no obstacles placed in people's way and, as a whole, the society becomes enriched and benefits. That is why this Government must be highly commended for bringing this piece of legislation to this Honourable Chamber.

I want to invite all Honourable Members in this Senate to join us in the crusade of putting wrong things right. For too long we have complained of people being unfairly treated in the economic marketplace. It will not happen again. We have now given the Fair Trading Commission the tools. They have the skill and the resources and must now make sure they have the commitment to make Barbados a better place for doing business.

Sir, with those few words, I commend this Bill to this Honourable Chamber and to the people of Barbados. I say to them: "Know your rights and together we can make this place a place that we all want it to be."

Sir, with those words, I beg that this Bill be now read a second time.
12.20 p.m.

SENATOR C. A. MASCOLL: Mr. President, I sat and listened to a display that did not shed any light on this Bill at all. In fact, I am worse for the display I heard because I cannot understand what the Bill is about.

This legislation tackles the practices of private business but it does not address the practices of the private sector in conducting business in Barbados. I will demonstrate this by way of several examples in my presentation.

Sir, it is well-known that competition enhances efficiency and ultimately benefits the society by reducing prices to individuals. The question then becomes, in this new global environment, how would Government help to increase competition so as to bring these benefits to the society. Sir, Government can bring law into force to do so and I am satisfied that an error is being made in this piece of legislation because too much emphasis is being placed on the role of the Fair Trading Commission to the extent that it seems to suggest that unless the Fair Trading Commission gets involved in this process then fairness cannot be obtained for the society at large.

One then has to ask the question, what role would the Fair Trading Commission play in the event that a private individual seeks to bring a company to court or to bring justice to himself because of unfair treatment.

The legislation seems to put undue emphasis on the Fair Trading Commission to ensure that there is fairness of competition within the Barbadian society.

Sir, I have said before, the Fair Trading Commission would not have the type of staff to deal effectively with the issues that may arise as a result of concerns over unfair trading practices in Barbados. I cannot see the Fair Trading Commission replacing the law courts of Barbados in dealing with those kinds of issues. From the presentation made it would appear that the Fair Trading Commission would now become a godsend to the Barbadian society.

I am saying that the Fair Trading Commission is not going to have all the resources, the clout nor the ability to enforce what is being asked of this legislation.

Sir, in the United States of America and other countries anti-trust laws have been put in place to ensure that there is fairness of competition from as early as 1890 and subsequent amendments provided for proper enforcement of the concerns associated with unfair environment. In view of that, I would like to shed some light on the debate because my understanding of the Bill is that it is supposed to provide a workable competition environment for the practice of fair trade, that the intent is to prohibit firms from conspiring to initiate and maintain practices not in the interest of the public and that it would also prohibit collusion and price fixing from occurring.

Can we say that the benefit of fair competition would be a reduction in price to the consumer?

Is there an instance where an increase in price may benefit an individual or company that is receiving the service?

Could we identify any instance in which a higher price could be of benefit to the consumer?

Sir, we cannot see this legislation as only attending to the concerns of the private sector but we must be concerned about public sector activity.

In recent times in Barbados, Government was able to transfer \$15 million of the taxpayers' money from the Public Enterprise Investment Fund to Caribbean Commercial Bank as a deposit and received 6 per cent on it, in an environment in which time deposits were hardly attracting two per cent. This is a situation in which the consumer received a higher price and this can be considered unfair. Sir, one also needs to ask some questions about the Central Bank's Act. Is it permissible with this Act that a commercial bank in an environment in which individuals are receiving two or three per cent on fixed deposits, that an entity could receive as much as six per cent on a deposit?

The same way in which we are seeking to investigate the private sector on its behavioural patterns, we need to investigate the actions of Government and, Sir, this legislation does not do this.

Sir, this means that Hotel and Resorts Limited received a loan of \$15 million at 3.75 per cent in Barbados today. This is why I wonder whether this fair competition is going to work within the public service domain.

Then we had the subsequent removal of the Chairman of Carribean Commercial Bank and he has been reduced to an ordinary director. I wondered whether he should remain as an ordinary director in light of the legislation that we have before us and the discussion surrounding interlocking directorships.
12.30 p.m.

Sir, there is no way that any commercial bank could feel pleased to know that in an environment where interest rates are as low as 2 per cent, that the Chairman of that commercial bank could have sat and agreed to a 6 per cent rate on a fixed deposit for an entity called HRL that he has some concern or control over. Now that is interlocking directorship and that needs to be looked at.

Sir, I have concerns but legislation cannot deal with the matters that I am addressing in Barbados. Therefore, from my opening comment, I intend to shed a lot of light on this particular debate.

Sir, the next object is to look at the intention of the law and it is to reduce market dominance. We need to look at the question of market dominance. In economics there is something called "price discriminating monopolies" who segment markets and offer prices on the basis of particular characteristics of that market. For example, you may go to a theatre and sit in the balcony and be charged a much higher rate than you are charged in the "pit" or "circle", as we know it. Although the consumer is watching the same picture, they have been classified according to various characteristics.

Sir, monopolists can have that sort of dominance. In law, however, it is not restricted to this single seller. In law, as far as I gather, it has to do with the ability with the individual firm to so dominate the market that he or she may be described as having that kind of monopoly power. The two definitions are different when you look at the question of price discrimination from the economic standpoint and price discrimination from the legal standpoint.

Sir, in Barbados there is a need for a second newspaper, there is only one. There is a paper called the *Beacon* that has very little marketshare and the other very good paper dominating the market. Perhaps, within the next

two years or so, there may be only one real newspaper, given the lack of performance of the other one. The paper that now brings an entire page of the action.

Sir, it is quite evident to me that, perhaps, we need to look at this issue of fair competition as it relates to the print media because there is such dominance, that even in a situation in which the *Beacon* sought to support, the Hotel Resorts Limited (HRL) responded with their paid advertisements. They put the paid advertisement in the *Sunday Sun* and carried the paid advertisement in the Monday's edition of the *Beacon*. That is what happened in Barbados.

Sir, so much confidence is instilled in the *Beacon*, that even though that paper has openly supported individuals in this instance, when HRL wanted to reach the public, it used the *Sunday Sun* instead of using the *Beacon*. Therefore, I am saying that the question of market dominance, perhaps, needs to be looked at and we definitely need to look at the question of getting a second newspaper in Barbados. That is my position.

Asides.

SENATOR C. A. MASCOLL: Sir, on the question of price discrimination and price setting, we know what happens. It is going to be extremely difficult. In fact, it is amazing that this Government has now seen it fit to understand what the free market and fair trading are about. Three years ago, when certain comments were made about globalisation and the potential impact and the move towards the Caribbean Single Market and Economy and the Free Trade Area of the Americas (FTAA), all kinds of things came from the Other Side saying there is no patriotism on the Democratic Labour Party's side because we are advocating that manufacturers move to Trinidad. Then the same Government went to Trinidad and purchased all of the tee-shirts that they needed for Independence the following year.

Sir, I say that to say that the whole question of price setting is extremely important because we must understand that this is going to be an absolutely new market in which you have to ensure that there is no price setting below cost. As a result, I am saying, yes, you have to be careful that some firms are not seeking to put other firms out of business as a result of affixing price below cost. Therefore, running their competitors, a situation that is potentially possible, as we see within the small aeroplane travel around the region, which is a situation that can be addressed from the point of view of the question of fair trading.

Mr. President, we have a situation where there will be, no doubt, a need for fair trade to be applied across-the-board. Sir, I will demonstrate in no uncertain terms another situation in which we have heard of, Section 35 in this legislation.

Sir, Section 35 of this legislation talks about bidding. Let me explain what happens at the National Housing Corporation.

Asides.

SENATOR C. A. MASCOLL: Sir, when a National Housing Corporation house becomes available, four individuals come together and collude. Sir, I need for this legislation to deal with what happens in the public sector as well. Mr. President, these four individuals would come together and offer bids for the house. On the date of the sale of the house, the three top bids would remove themselves from the bid and the lowest bid would then get access to the National Housing Corporation house. That happens in Barbados as I speak.

Sir, some Members on the Other Side are very familiar with what I am saying. I am saying that it happens where individuals came together, colluded and bid for houses within the National Housing Corporation and were able to get houses for the lowest bid.

Mr. President, in addition to that, there is a regulation at National Housing Corporation that prevents individuals, who already own homes, from having access to homes that belong to the National Housing Corporation. It is well known that there are individuals in Barbados who have been able to purchase properties, in recent time, even though they are in possession of properties from the National Housing Corporation for \$163 000 at Husbands Terrace and these individuals already have properties all across Barbados but were able to purchase houses owned by National Housing Corporation in Barbados today, when there are regulations which clearly stipulate that these individuals ought not to have access to such land and property.

Sir, if called upon, even though I will have to produce all the evidence from in my paper bag, the information is there.

Asides.

SENATOR C. A. MASCOLL: Mr. President, I can bring all the information to demonstrate the conveyance but the more substantive point is, I would hope that this kind of fair trading legislation applies to public sector activity.

Asides.

SENATOR C. A. MASCOLL: Sir, it applies to public sector activity in which individuals are able to access Government property and pay minimal cost for it, which is unbelievable and I have all the conveyances here available. 12.40 p.m.

Mr. President, let us look at the third condition here under the imposition of restrictions and merger activity. Now, we have seen in recent times some mergers in Barbados. The most recent one has been CIBC and Barclays and this has caused, as was said by the Prime Minister in his Budget, a mega institution. He went on to say that the days for local banks focussing strictly on retail banking are over, and what we need now is to have some of our local banks come together and deal at a particular level.

Now, it is more than likely that you will see a merger in Barbados between the Barbados National Bank and the Mutual Bank. Sir, nothing is really wrong with it, for we have seen Barclays and CIBC come together so there will be nothing wrong with BNB and the Mutual coming together. Therefore, what is expected to happen here is that these so-called mergers can, in fact, be of substantial benefit to the people of Barbados by way of offering certain facilities to the consumer.

Sir, as it relates to the question of state-owned enterprises, we know that the Fair Trading Commission is going to be in charge of determining the rates and prices of certain utilities offered in Barbados. There is nothing wrong with that but they just need to be given the adequate staff to be able to deal effectively with it but what we know, is that sooner rather than later, there will be an increase in water rates in Barbados.

This can be seen from the words of the Prime Minister in his Budget speech that there has been a fairly substantial increase in cost within the last decade or so in Barbados and there has been no increase in prices of these particular utilities. Therefore, the only thing that can prevent an increase in water rates, for sure in Barbados, would be a pending election. We are aware that there have been persons looking at the circumstances that should justify these increases to the consuming public of Barbados.

Sir, in the area of transport, for a long time this Government has been trying to avoid increasing bus fares in Barbados but the pressure is coming, and it was fully alluded to in that this is going to happen. Sir, all that is happening here is a delay. Now the extent, then, in which the Fair Trading Commission is allowed to play its part will be determined by timing. Because I do not think that other than justifying that if these utilities have not been increased over the last ten years, sooner rather than later, they will have to do so because the overall cost of doing business in Barbados has increased for both the public sector and the private sector. Sir, because of this, there can be some degree of justification.

Sir, when it comes to the question of telephone rates, what we have seen recently in Barbados, in fact, worldwide

is that the international organisation, Fair Trading Commission has in fact forced overseas calls to be reduced worldwide. This is a known. It has nothing to do with BARTEL. It was Cable and Wireless worldwide and measures that were required for it to happen dictated and caused it to happen and therefore, the Barbadian public benefited.

Now, over the last several years, the overall discussion in Barbados was that we are subsidising local telephone calls. We could remember from the wonderful work of the late Wendell McClean, a man who has been sadly missed in the political and economic affairs of Barbados, that the discussions surrounded whether or not we can have an increase in local calls, and one of the reasons why we were able to keep those down, is because the foreign calls were quite high in terms of cost.

Now, in the face of what has happened, you can well anticipate again that BARTEL will soon be coming to the Fair Trading Commission for an increase in local telephone calls. It is only a common sense thing. It does not require an Einstein to say this. If over the years, we have been able to contain our local calls because of the high cost of foreign calls and now we are seeing some decline, then we can expect that local telephone calls will increase in price in the not too distant future.

Sir, right now, we are on the verge and I have every reason to believe that metering, which I have no doubt will become part of the Barbadian landscape also, will just be a matter of time. All of these things are being delayed because of the politics of elections. These things are not being delayed because of any desire to keep down the overall cost of living for Barbadians. It is just that it was untimely to make sure that these things happen at this time.

Mr. President, I do not have to speak too long in this debate because remember, that we have already dealt extensively with the Fair Trading Commission and I do not intend to waste time trying to prove that I can filibuster in this debate. I am making it absolutely clear that the legislation and the foolishness about that, I would not even react to. The legislation, as it relates to this fair trading needs to look at the whole question of the role of the public sector in businesses as well as the private sector.

I have already questioned and I am going to make it clear now. In fact, let me say that this thing really has to be looked at in a very serious way and I am very serious about the fact that if you are going to put legislation in place to control competition within the private sector, then you have to put it in place to control competition within the public sector as well.

In that regard, *CBC* ought not to have a monopoly in Barbados. Therefore, all I am asking for there again, in the same way in which you are saying that when you open up markets and allow fair competition to happen, *CBC* needs to have someone competing against it because wasting the taxpayers' money with *Morning Barbados* and all these other things is not important. Give the private sector an opportunity to have television in Barbados to compete with *CBC*. This is what is required, so if you are now lauding all of the virtues of fair competition and the free market, make sure that you have that within the media as well. Sir, that is all I am asking for and, unfortunately, this will not happen in the print media.

Mr. President, I now need to be able to support a contention of something I said earlier that I really do need for fair competition within the public sector of Barbados to obtain. I mean that. Do not tell me that you can have a situation in which people within the private sector have to compete fairly and then a major entity like the National Housing Corporation (NHC) is allowing all kinds of things to happen – I have not yet talked about the Urban Development Commission (UDC) – then I am saying that what I have before me is unfair.
12.50 p.m.

What I have before me is a conveyance dated 29th March, 2000 between the National Housing Corporation and Rodney Levi Wilkinson, *et ux*, which was drawn and prepared by an attorney. This conveyance was received on 29th June, 2001. This is the conveyance I have so nobody can accuse me of lying because I do not know what it is to tell lies.

Mr. PRESIDENT: Senator, are you making that a document of the Senate?

SENATOR C. A. MASCOLL: Of course, I am going to make it a document of the Senate but I will need to have a copy of it.

It says here that:

“This conveyance is made the 29th day of March 2001 between the National Housing Corporation a Statutory Corporation established by the Housing Act Cap 226 of the Laws of Barbados and having its principal place of business at No. 49 Roebuck Street... of the One Part and Rodney Levi Wilkinson...”

Somebody else's name is here but I am not reading that because I am not interested in that part.

Asides.

SENATOR C. A. MASCOLL: I will not bring that other person into this, not me.

I am saying that this ought not to happen in Barbados where an individual can get a parcel of land at Husbands Terrace for \$163 306. This is what is here before me and it is a lot of land too because this land was being purchased for less than \$9 per square foot, therefore, I am saying that this lot alone has to be close to 20 000 square feet. In a day when an individual is not supposed to have... I can demonstrate that he owns several other pieces of land at 45 Husbands and at 50H Durants and he also owns a commercial building. This is an individual who could hardly get a job in 1995 and less than seven years later he is in possession of all of these properties...

SENATOR T. E. BARKER: On a point of order, Mr. President, if I am out of place, I apologise. I do not think that a person's private business should be brandished about like that. I think that the Honourable Senator should be very careful how he is brandishing about information on a private person.

Mr. PRESIDENT: I think Senator your caution is well given. There is nothing in the rules to prevent a Senator from bringing documents to the Chamber. I presume that all Senators are responsible for bringing documents to the Chamber but I think we must have fairness in mind and fairness for private citizens. I do not think that Senator Mascoll is speaking of any officer in his official capacity and of course there are specific rules dealing with that. However, I think we should have fairness in mind in dealing with private citizens.

SENATOR C. A. MASCOLL: Mr. President, I never intended to be too long in this debate but I want it to be recognised that the same accountability and transparency that is being required of the private sector of Barbados, because of all the discussions we heard about how they are doing this and they are merging and there is gouging and all these other things. It should be applied to the public sector of Barbados also because there is a need for accountability and transparency within the public sector of Barbados. Therefore, the question of fair competition cannot only apply to commercial entities in the private sector but must be applied across-the-board and within the public sector domain.

This is the basis from which I am making this contribution because we have discussed the Fair Trading Commission in detail in this August Chamber already and therefore there is no need for me to enter into any lengthy discourse on this matter except that I am extremely concerned that the concerns about this legislation are:

- (1) being restricted to the power of the Fair Trading Commission; and
- (2) being focussed mainly on the private sector of Barbados.

There are concerns that we need to look at because the economy is not confined to the private sector alone. The economy is an interplay between the public and the private sector and therefore whatever is good for the goose should be good for the gander. In this case whatever scrutiny the private sector is put under, the public sector should be put under also. That is the basis upon which I make my contribution, Mr. President, and I therefore, thank you for it.

SUSPENSION OF SITTING

SENATOR THE HON. G. S. H. MURRAY: Mr. President, I beg to move that this Sitting be suspended until 2.00 p.m. today.

The question that the Sitting do now suspend until 2.00 p.m. today was put to the Senate and agreed to. Mr. PRESIDENT suspended the Sitting accordingly. 1.00 p.m.

RESUMPTION

Mr. PRESIDENT: This Sitting is resumed.

SENATOR D. D. MARSHALL: Thank you, Mr. President.

Honourable Senators, I must say that it is a signal honour for me to be part of this Honourable Senate at a time which I consider to be a watershed in the development of Barbados.

The concept of consumer protection is one that is perhaps as old as the hills. In my recent readings I have discovered that in "The Taming of the Shrew" by William Shakespeare, there is a reference to an individual being carried before a court called the "Leet" for adulterating meat. Even before that, I am sure there are many instances where the concept of consumer protection is embodied and recognised in our early literature.

As old a subject as it may be, it has taken many years and generations before we, in Barbados, have finally reached the point where we are able to grapple face-to-face with the issues of consumer protection. To some extent, I would not deny that many of our efforts are as a result of things happening beyond our shores and I speak specifically of trade liberalisation. We have to recognise that it takes a

caring Government to understand that the consumers in Barbados are well educated and have come to expect a high level and standard of service. Therefore, this Government is now embarking on that journey.

Mr. President, while this piece of legislation is known as the Fair Competition Act, I feel it important to start out with a reference to consumer protection because, at the end of the day, fair competition is about the consumer. We cannot fail to recognise that.

Forty years ago, I think in all of the colonies in Africa and in the Caribbean, the struggle at that time was one for Independence. At that time sovereignty was a thing that was specially priced. What we are seeing today is the moving away from this insular concept of Independence to a concept of having unions, whether they are economic or political. Therefore, as we embark on a journey toward forming these economic unions, in our case, the CARICOM Single Market and Economy, we have to recognise that mutuality of dealings and of trading will become a central part of that process. It is an important part of the CARICOM Single Market and Economy. In fact, at the heart of the CARICOM Single Market and Economy, is an idea that one company can have the right of establishment in another country within the CARICOM Single Market and Economy. This is what trade liberalisation is about. With trade liberalisation, it becomes very important to recognise that a country must formulate what is often called a competition policy.

Our competition policy is now enshrined in this Fair Competition Bill which is before this Honourable Senate. It is not only about opening our markets for foreign companies to come in, it is also about ensuring that those companies that are operating in Barbados, operate on rules which can be seen as being proper and decent.

Mr. President, with your permission, I would like to quote from a book which I am happy to make available to the House. It is called "Competition Law and the World Trade Organisation: The Limits of Multi-lateralism", published by the International Trade Law Series, first edition, 2001. Its author is Kevin C. Kennedy. I found the following passage to be very informative:

"On the competition policy side, trade liberalisation can succeed only if anti-competitive practices of private firms are checked through effective competition laws. Competition laws thus complement trade policy by ensuring that the reduction or the elimination of trade barriers to trade are not negated by the anti-competitive behaviour of private firms, through the abuse of market power or through collusive behaviour.

Like a liberal trade policy that removes government barriers to competition at the border, competition policy removes private barriers to competition behind the border."

Mr. President, that passage, I would like to think, sets the scene for how competition policy is going to operate. It is a vital component of our total trade liberalisation negotiations but it especially is going to be operating in the local arena.

It is important that all companies in Barbados operate on a level playing field. The learned Senator Barker cited about 18 instances where businesses in Barbados were engaged in what can be seen as anti-competitive practices. At the end of the day, these anti-competitive practices prevent a consumer from getting the best price for the best product. There was a time when a *laissez faire* approach was taken toward businesses of these kinds which did what they liked to make a profit and it did not matter but many people, including me, consider that they are rapacious businesses who, for their own self-interest in maximising their profits, gouge the consumer at every turn.

Mr. President, the banks have been engaged in gouging the consumer in such a way that it is almost slipped into a 20- or 30-page mortgage. I speak of a clause which, on many occasions, I have had to argue, said that the mortgagor must obtain mortgage insurance from a company designated by the bank or from an insurance company which has been approved by the bank.

I consider such a clause in a document to be almost pernicious. I have to be able to go to my credit union and say I want to insure my house. I have to be able to go to an insurance company in which I might have shares and say I want to insure my house but a bank, Mr. President has, over the years, been telling borrowers of money that, as a condition of that loan, they must insure their premises at an insurance company, the designation of the bank or an insurance company that has been approved by the bank.

Mr. President, there are many other ways in which we are affected by these pernicious dealings. Personally I know of situations where businesses in Barbados have refused to effect repairs unless they supply the parts to do so. If these businesses are not the sellers of these parts, they will not repair the commodity that has been brought to them to be repaired, even though the consumer might have bought the parts from elsewhere. These are the kinds of things that have been a thorn in the sides of Barbadian consumers for many years and the time has now come where this Government has taken the position that it has to be stopped.

We often talk of the poor black man. We sometimes try to reduce each other into a common denominator but at the end of it, however one describes us, we are all individual citizens who simply lack the bargaining power to trade and to deal at arms length with businesses, not only in Barbados but anywhere.

We are in a sense now trying to catch up to a global movement. I believe everyone here, in the last three years, would have followed the challenge to the Microsoft domination in the United States or the break up of what used to be called the Bell Telephone Company of the United States. Even now, multinational accounting firms are being told that they must shed some of their consultancy practices, *et cetera*. This is the maturity of a market that is required when dealing with trade liberalisation. I am proud as a Barbadian to say that we have now reached that level of competition.

Competition policy on our Fair Competition Bill is about maintaining competition in the marketplace. It is about maximising and promoting consumers' welfare. It is only when businesses are forced to operate on a level playing field that the consumer will get the benefits of the trading enterprise and everything that he requires. It is about protecting competition and not protecting competitors.

I am aware that many business persons might, at this time, squawk and say that their businesses are being prevented from operating in the way they have always done. But that is exactly the point. For this new millennium, it cannot be business as usual because the business that is uncompetitive, I can almost guarantee, is going to be one that is inefficient. It is going to be a business that has not streamlined its activities. It is likely to be a business that does not benefit from the economies of scale or if it does, chooses not to pass those economies of scale onto the consumer. It is a business that is reasonably likely not to be technologically current.

Businesses in Barbados and in the region have to recognise that it is not business as usual and that in order to function in this competitive marketplace, they have to guarantee their profit margin, not by gouging the consumer but by ensuring that they engage in prudent business practices which result in efficiency and productivity.

Our Fair Competition legislation is concerned about price competition but frowns on predatory pricing. I can hear the purists asking, how could the consumer get the best possible price and that when someone lowers his price to a point where it happens to drive someone else out of the marketplace, there is a quarrel.

Of course, predatory pricing is one thing the legislation frowns upon. Predatory pricing is the situation where an enterprise prices its goods below a marginal cost or prices them so low that it results in someone exiting the marketplace.

2.20 p.m.

I think everyone here would be aware of the allegations of predatory pricing that were levelled against one Caribbean airline recently where one airline had so lowered its prices as to ensure that its competitor got no sale and drove the competitor out of business.

Sir, at the end of the day, there are some things that will concern Barbadians. Senator Barker referred to lawyers' fees but I want to say that legislators in Barbados have long recognised that it is important that people do not so undersell and undercost their services that in a bid for the cheapest price consumers get the worst possible service.

It is with this in mind that there is a statutory instrument that sets out the minimum level fee that can be charged by an Attorney. Sir, this minimum scale was in place for 20 years before it was amended to take inflation into account a few years ago. As a practitioner, I can say that many lawyers find it difficult to manage their business at a profitable level using the scale of fees. I am happy to say as a proud member of the legal profession, that we are operating in such a way that consumers get good service for a reasonable price.

While we are seeking to ensure competition, there are going to be instances where there are Government condoned business practices that may appear to be outside of the realm of this competition law. It may seem as if the Government itself is promoting uncompetitive practices but the Government recognises that there are many instances in which the consumer needs to be protected.

Senator Mascoll spoke about this Act binding the Crown and I have given that allegation some thought. In real terms, this legislation seeks to affect business dealings and it is impossible for us to contemplate a situation where a Government, dealing with its citizens for the benefit of all can be considered to be business dealing. It is a business deal when I buy a shirt but when Government establishes an agency to do a particular thing with a particular common purpose in mind, I do not see how anyone can say that it must be subject in every case to the workings of the Fair Trading Commission.

It is with that in mind that the Government took the position that the Act does not bind the Crown because the Crown must have the ability to perform all of its services to its citizens.

Sir, Government is always engaged in a delicate balancing act and it is this balancing act that requires the Government not to be bound by this particular piece of legislation.

Sir, I would like to come to the matter of the National Housing Corporation. I have had the honour to serve the National Housing Corporation in times past and I can say to you that it is a practice that does not vary, that every individual who seeks to buy property from the Corporation must, as a precondition in the form of a solemn oath, sign an Affidavit that he or she does not own any real estate in Barbados. It is to my certain knowledge that the National Housing Corporation will not proceed with an Agreement unless the individual signs an Affidavit. When Senator Mascoll waves in the Senate the conveyance to which he refers I have no doubt that such an Affidavit would be on the files of the National Housing Corporation. I would challenge Senator Mascoll to show this Honourable Senate what search he has embarked on at the Land Registry to confirm his allegation that the individual mentioned in the conveyance also owns property somewhere else.

I verily believe that an Affidavit has been sworn by the individual in this case and that nowhere in the Land Registry will you find a piece of land anywhere in Barbados in the names of these individuals. Sir, Senator Mascoll should make a public apology to these individuals for scandalising them in this way. Sir, it is a discredit to himself and to the normal high standard of debate that an allegation, left entirely unfounded, should find its way to the Floor of the Senate.

The National Housing Corporation is often pilloried and criticised for trying to perform a balancing act between the corporation and the needs of the citizens. National Housing Corporation from time to time will have lots that are considered premium lots and we often have to make a decision as to what is to be done with these premium lots because these lots cannot be sold for \$163 000 to the type of market that the National Housing Corporation normally targets.

At the same time, it is important that the National Housing Corporation maximises the return on its investment. Therefore, there has constantly been a call for the National Housing Corporation to resist chopping up prime lots into smaller lots for sale and to allow the mixing in the developments of several types of housing products.
2.30 p.m.

Sir, this is the kind of thing that the National Housing Corporation has been confronted with. From looking at the conveyance in question, I am satisfied that the individual certainly does not have any more land in Barbados. Apart from that, it would be considered a prime lot. It is a lot on a

ridge and the purchase price of \$166 000, certainly takes it beyond the person that would be considered the average target of the National Housing Corporation. There is a sound business case for making prime lots available to the people of Barbados. It is not everybody that would want to buy 3 000 square feet of land.

Sir, this question is taking me out of the matter of fair competition, so let me bring it back. This Government has not been afraid that its statutory corporations will have to operate in the finest of standards and traditions. In fact, I would like to remind Senator Mascoll that the Fair Trading Commission Act says specifically in Section 25, that a person may make a complaint against any business enterprise. Business enterprise is defined as including a statutory corporation.

This Government recognises that statutory corporations may, from time to time fall short of the kind of standard that is required, and is courageous enough, as it has been in all of its dealings, to ensure that statutory corporations are going to be subject to the operation of this Act as well.

Sir, let us come to the Fair Competition Act because I just want to make the point that the administrative body embodied in the Fair Trading Commission legislation has oversight over statutory corporations. In the definition of "enterprise" in the Fair Competition Act, "enterprise" means that an individual, partnership or body, corporate or not corporate, engaged in business but does not include any employee or partnership or body.

Sir, my understanding of this section makes it quite clear to me that there will be statutory corporations that will be engaged in business. I certainly have no difficulty contemplating National Housing Corporation being engaged in business; business not for profit to return to the shareholders; but certainly "business" in the sense of trying to make a profit in its transactions so that profit can be turned over again into its other activity. Then if that is a business, then fine. As long as that is a business, then the National Housing Corporation will be such an enterprise as would be affected by the Fair Competition Act.

Sir, we must be careful that we do not always get what we ask for. While I have no difficulty with statutory bodies being subject to appropriate legislation, at the same time it seems to me that this legislation is allowing certain exemption, Section 29, to permit what could be considered to be uncompetitive practice to be carried on. The reality is, a statutory corporation like the National Housing Corporation, if you say to it that you must now operate on the same playing field as every other business in Barbados,

you must also accept the fact that it will have, not just in its offering but in the very structure in the organisation, to make significant adjustments.

My point is, I have no difficulty with the National Housing Corporation or any statutory corporation that is doing its business for a profit being subject to the legislation. In fact, I believe it is contemplated but we do have to be careful when we say we want it to be subject to this, that we do not foist in our own efforts. I can easily contemplate where the National Housing Corporation may be compelled in this legislation to do things which, while they may be good business practices, may be considered to be inimical to the interest of the constituency that the National Housing Corporation has to project, that is, Barbadians who are seeking to own homes.

Mr. President, I believe that we are at the start of a new era and it is no accident that we will also be debating several other pieces of legislation which fall within this suite of legislation that has as its focus the consumer. It is a long time in coming. I think that some of our earlier consumers' legislation will be the Weights and Measures Act, 1891 and the Sale of Goods Act, 1985. Rarely have we had a piece of legislation which in a comprehensive fashion tries to fashion a landscape in our commercial dealings which will guarantee to the consumer of Barbados the best possible service or goods at the best possible prices.

We must grapple with the issues that arise. Competition policy is not about protecting competitors but protecting competition. We must recognise that businesses are going to be coming into Barbados as the result of our trade liberalisation. We cannot avoid that. Government is sincere in its commitment to ensuring that the people, whether corporate or individual, are going to be operating on a level playing field. It is that level playing field that is being rolled by the Fair Competition legislation.

It is legislation that is activist in its thinking. It is legislation that promises a lot in store for Barbadians in terms of economic opportunity and economic enfranchisement. Those are the aims of a caring Government, Mr. President, and no doubt we are going to be criticised. We have been criticised by Senator Mascoll but his criticism rings empty and hollow to me because I do not understand why in a world where everyone is going towards trade liberalisation and globalisation and where everyone is talking about competition policy and competition legislation that Senator Mascoll, who leads the Opposition in the Senate, could speak in disfavour of legislation that across-the-board is being welcomed.

It is legislation whose time has come, not because we say so but because we recognise that by our course of dealings, whether it is domestic, regionally or globally,

requires that we pay attention to these kinds of things.

I am very proud to be a member of a Government that is interested in ensuring that fair competition thrives. It is the first time that we are going to be seeing it. There is a saying that there is no good plan that does not admit a modification. To the extent that there are one or two things in the legislation that may need modification over time, this Government will, no doubt, be courageous enough to deal with it. It is legislation that in a sense rings the bell of our entry into a new arena both globally and domestically and it is legislation that I have absolutely no reservation in speaking in support of.

I thank you.

SENATOR Sir JOHN STANLEY GODDARD: Mr. President, before I start my contribution in this debate, I would like to register a deep feeling of disappointment that I felt in this Chamber earlier today. It occurred immediately after the adjournment for lunch. Sir, no sooner had you vacated your seat, the shouting across the table was, to me, unbecoming and not fitting the dignity of the Senate.

Sir, there is always room for vigorous debate when we are in session. Sir, you preside very effectively over that but when the behaviour today took place, in my opinion it was inexcusable.

Sir, all of us must learn to respect the Standing Orders. We must respect each other and we must respect the Chair. I am able to make a comparison because I served in this Honourable Chamber from 1986 to 1990, where, in my opinion, the standard of behaviour at that time was much higher. I say this with all sincerity and in the hope that the standard would rise and that there would be no recurrence of what was witnessed in this Chamber today. Sir, if we debate matters, we should deal with issues rather than with personalities.

I thank you, Sir.

Mr. PRESIDENT: Senator Goddard, the matter to which you refer represented an unfortunate display of discourtesy and disrespect to this Chamber. It is a fact that the Sitting had been suspended but I had not left the room. I had barely walked a few paces towards the door, then there was an outburst across the Floor. It has never happened before and I very much hope it will never happen. When you consider that debates of this Chamber are broadcast live, there were visitors in the gallery, the Press was present, it was certainly a poor reflection on this Honourable Chamber. 2.40 p.m.

I can only appeal to all Honourable Senators to do all in their power to maintain the traditions of this Chamber and to live up to the standards which those who sat here before us have established.

Please continue, Senator.

SENATOR Sir JOHN STANLEY GODDARD:
Thank you, Mr. President.

Mr. President, we are dealing with the Fair Competition Bill and we have already heard in this debate today, a fair amount of, what I call, business bashing. I suppose that has to be expected and I have certainly heard in recent times on the radio call-in programmes the frequent references to exploitation, profiteering, price gouging by the business community which are well-known but too seldom well founded. Many people see this legislation as a means of redressing imbalances. Unfortunately, many of these business bashers do not recognise the changing landscape of business in Barbados today.

Let me admit up front that there are business persons who are unscrupulous and dishonest. I am not saying that every person is honest or honourable but the same is also true in differences in behaviour in every other sphere of human activity. Without exception, consumers, responsible business persons and the business community organisations in Barbados welcome this Fair Competition Act.

Sir, I would like to repeat that for emphasis. Consumers, responsible business persons and the private sector organisations in Barbados welcome the Fair Competition Act. In many ways, it codifies the reputable business practices that have prevailed over many years. This is not just my opinion, Mr. President. I have discussed this Draft Bill with business leaders so I feel very comfortable in asserting what I have just said.

It is modelled on the Fair Competition Act of Jamaica, which was enacted in 1993 to ensure that the benefits of the competitive practices in Jamaica were unhindered by anti-competitive activity. It is my understanding that this Jamaica Act, itself, was modelled on an earlier Act in Australia and many, if not all, but most developed countries today have legislation in place dealing with fair competition, and their numbers continue to grow.

It is a requirement of the World Trade Organisation Protocol 8 of the Grand Anse Declaration of 1989 to establish the Caribbean Single Market and Economy and it will be required by the Agreement with Free Trade Area of the Americas.

This legislation is to business, what rules are to sports, that is, to ensure fair play. The rules may differ. Beach cricket is one thing. Back yard cricket is another thing. Test

match cricket is yet another thing but there has to be rules and the higher the level of activity, the more important the rules become. Could anybody imagine not having rules on a LBW decision in cricket? The rules may change from time to time but there has to be rules, consistently applied.

This legislation will be administered, as was said earlier, by the Fair Trading Commission. The legal framework of the Fair Trading Commission itself is the Fair Trading Commission Act, the Utilities Regulation Act, the Consumer Protection Act and this Fair Competition Act. I have to advise, Sir, that it is my understanding that there was minimal consultation with the private sector organisations, prior to this legislation coming to Parliament.

It is true they were requested to make written submissions which they did but there was hardly any discussion after those submissions were made. This is unfortunate and regrettable. I do not think anybody could not support the concept of a Fair Competition Act or Bill, and if I may, it would be like arguing against motherhood.

If I may refer to the objects and reasons of the Bill which are desirable in any society, and I am quoting here, Sir.

“ OBJECTS AND REASONS

An Act to

- (a) promote and maintain competition;
- (b) prohibit the prevention, restriction or distortion of competition and the abuse of dominant positions in trade in Barbados and within the CARICOM Single Market and Economy;
- (c) ensure that all enterprises, irrespective of size, have the opportunity to participate equitably in the market place;
- (d) enhance economic efficiency in production, trade and commerce;
- (e) promote the welfare and interests of consumers.”

I do anticipate certain difficulties in interpreting certain sections of the Bill and if I may refer to just a few of them to illustrate what I am saying:

Section 2 (1) deals with tied selling. Would an example such as this be affected? For example, a coffee machine. Free installation of a coffee machine and the requirement that the owner of the premises must purchase a specific brand of coffee to use in that machine. Will that be caught, I do not know.

Sir, under section 2(2) would control be applicable to both body corporate, as well as to body and corporate? In other words, is “body corporate” and “enterprise” interchangeable in the Bill, I do not know.

Section 2(6) What does the course of the Bill provide against a supplier who does not reside in Barbados?

Section 6(1)

(b) prohibit the withholding of supplies or any conduct relating to the withholding of supplies;”

This leads to application. For example, would the purchaser who is perceived as a credit risk, be considered sufficient reason for withholding supplies as a business judgment, or that requires business judgment?
2.50 p.m.

Section 6(1)(e) deals with the circumstances in which the Fair Trading Commission can prohibit preferences in prices. This should be clarified in the likes of discounts and prompt payments. The types of discounts differ. There are discounts for volume and for prompt payments.

Section 16 (3) deals with predatory pricing which is referred to but not defined. I can go on but I only mention those by way of illustration. I think that is sufficient to illustrate that this Bill would be welcomed by attorneys-at-law because no doubt it will make many of them rich.

Asides.

SENATOR Sir JOHN STANLEY GODDARD: I am not saying there is anything wrong with it.

The Fair Trading Commission would need to embark on a programme of education for both consumer and business persons so that everyone can become aware of their rights, obligations and responsibilities under this legislation. As was mentioned earlier, there will certainly be the need for a well staffed Fair Trading Commission. The Public Council, whom I believe is not created by this Bill, will be useful to assist consumers in order to minimise frivolous complaints before they reach the Fair Trading Commission.

The Act is one thing, Sir, but as we know the devil is always in the details so there would also be the need for very clear and comprehensive regulations to assist in the effective administration of the Act.

I think consideration needs to be given to the likely negative effect of this legislation on corporate sponsorship of major sporting and cultural events. Those sponsors usually want exclusivity in order to justify the expenditure

that they have made. So if that exclusivity is not forthcoming it could affect their desire or their eagerness to sponsor major sporting and cultural activities.

As has been said already, the Bill does not bind the Crown. However, I am pleased to learn that this legislation would apply to all statutory corporations like the Barbados Agricultural Development and Marketing Corporation (BADMC), the Caribbean Broadcasting Corporation (CBC), the Barbados Water Authority (BWA), the National Housing Corporation, the Transport Board and to other corporations like Hotels and Resorts Limited that was established under the Companies Act.

I commend that because the Government must lead by example. The admonition to do as I say and not as I do, is not good enough in this day and age. The Government did not fall into that trap. The same high level of accountability and transparency must apply to and be practised in both the public and the private sector.

I thank you, Sir.

SENATOR K. D. SYMMONDS: Mr. President, I associate myself with this Fair Competition Bill. It has been said in passing, but I think it bears some repetition, that fair competition policy and fair competition legislation is now widely accepted and embraced across most of the western world.

I think it can arguably be said that the very first piece of fair competition legislation known to our broad systems of government has been passed in the United States of America under the so-called Sherman Act. That legislation basically said that contracts whether in the form of a trust or otherwise was illegal because it was designed to create monopolies in commerce and to restrict trade within the 48 contiguous states of the United States of America or between the United States of America and other territories.

I will start on that note, Sir, because I was somewhat saddened in the immediate aftermath of the passage of this legislation through the first Chamber of our bicameral legislators to hear some of the comments coming from the commentators of the private sector. I happily have now heard one of the deans or the former deans of that sector sitting in the form of Sir John Stanley and honestly believe that the interpretation that he has put on their feeling sits more comfortably with me than that which I heard coming before him. I was somewhat saddened when I heard the statements coming before Sir John because of the fact that private sector persons in Barbados, in particular the “merchantocracy” of this country, have in real terms enjoyed a 100-year honeymoon whilst their peers and counterparts in other parts of the world... I started in the United States of

America but this type of legislation, as Senator Marshall has said, has flourished in Australia, England, Canada and across Europe. The reality is that down here we have come to understand that we do not have a specially blessed breed of people who are separate, distinct and insulated from the slings and arrows of outrageous fortune on this little part of the planet, so we have to deal with the realities of the world. Therefore, the time has come for all aspects of our private sector to get on board, it is as simple as that.

I want to congratulate the Minister of Commerce for bringing this badly needed legislation. Sir, similar legislation existing as it does in other places has had the sobering effect of bringing large corporations, some of which have budgets bigger than the economy of Barbados, under the regulatory scrutiny of Fair Trade Commissions. I speak specifically of large companies like Microsoft, IBM, Cable and Wireless and British Airways which similar type of legislation has caused to come to heel as it were.

I want the nay-sayers to this legislation to understand that competition has to lie at the heart of any successful market economy. I think it is critical to the protection of consumer interest and the efficient allocation of resources that we have all come to understand and accept that point. Sir, somewhat later in my presentation I will speak to the issue of monopolies and the role of the public sector in this exercise, as raised by Senator Mascoll.

Sir, the Federal Trade Commission of the United States of America has postulated a theory called constructive destruction which basically said that out of the old stagnant way of doing business can come new and innovative ways of doing business. Simply put, that means that out of old methods and approaches are often born new innovative methods and approaches. Essentially what they are saying is that the process of regulation serves in good stead to advance the interest of the consumer, the well-being of the economy as a whole and helps to establish icons some of which by virtue of their very size become lazy and complacent and helps them to meet challenges and to respond positively to the challenges from new businesses by virtue of the fact that the playing field is now level and they are given an opportunity to come up and demonstrate their work. That is essentially what we are trying to create and ensure happens in Barbados. In that regard, we are no different to anywhere else.

We have all heard people on the streets of this country speaking with a serious degree of concern about how large conglomerates are functioning in this country; the way in which they are slow to respond to the changing needs of the consumer; the way in which they seem to lack the dynamism; the way in which they are anti-competitive and, as Senator Marshall quite ably articulated, the way in which that kind of

function and operation impacts negatively on consumer interest.

Sir, this is an interesting way of bringing this legislation to the House because in 1993 when Jamaica enacted their legislation they coalesced everything, consumer protection, consumer guarantees and fair trade competition into one single Act. Effectively this is what we are doing only by breaking it up into three.

Sir, I think that the nay-sayers must also recognise that the way in which we did business yesterday and the way in which we do business today will not be the same way to do business tomorrow. This fair competition legislation creates an opportunity for Barbadian businesses when they have to compete in the year 2005, 2006 and beyond with large companies coming to do business here from right across this region to stand in better stead because those businesses which come to do business here must do business on terms which are fair to Barbadians and Barbadian business and commercial interests. I think that is critical.

It was not so long ago that we saw the general panic and terror which ran through the ranks of the private sector in this country at the prospect of the large Marts, whose names I would not now specify, that were supposed to be coming here to erode everything that we held here. Having said that, Sir, I think that we have to look at the pith and the substance of the legislation in question to see exactly what merits are obtained therein to the benefit of consumers as a whole and to the advancement of the whole question of competition in particular.

Sir, the legislation broadly seeks to prohibit, and I think that is the heart of this Act, acts which will restrict by their very nature the whole question of fair competition. The practices, as Senator Barker has said, have been identified as collusive, tendering and rigging of bids. I do not wish to use the supposedly offensive terms of gouging and so on, but the reality is that persons withhold supplies deliberately and have been found to abuse their dominant position in the Barbadian marketplace to the detriment of competing businesses and worst of all by extension to the detriment of the consumer. That is a fact.

Sir, Section 16 of the Act speaks to some of these things. Section 16 for the benefit of the Chamber refers in particular to the abuse of dominant positions in the marketplace. Essentially, there are two key areas which are being looked at under section 16. Firstly, that enterprises are not allowed to stifle consumer choice by their anti-competitive behaviour and secondly that enterprises will not be allowed to undermine and unfairly ruin their competitors in the marketplace. Section 16 (3)(b) speaks to the question of enterprises preventing or deterring another enterprise from

engaging in competitive conduct in the Barbadian market. It also speaks at (c) to enterprises eliminating or removing any enterprise from the market and at (d) directly or indirectly imposing unfair purchase or selling prices that are unreasonable, discriminatory or predatory.

Sir, I think that sometimes you have to break out of the legalese and bring these things into hard, cold reality. We all know of cases where persons in Barbados have spent 15 or 20 years of their lives working and then may have been dismissed wrongfully and as a result of that wrongful dismissal they brought an action against their former employer and have secured significant damages. I know of a case where that happened and the individual in question invested the proceeds from those damages in the creation of his own business. That is a form of entrepreneurship which is commendable and worthy of applaud. There are cases which are perhaps even more heartbreaking where a person may suffer a severe personal injury but is incapable of returning to work or to some other form of work and having secured their damages, which is paid for now by blood, they then invest it in a form of business. Sometimes there are persons who may just win money or inherit money but in keeping with the good old Barbadian principles of doing your best to make ends meet and to advance your family and their interest...

There is a lot of politics in this legislation and I pause to make that point because it is unfortunate that the political content of the legislation was not contacted with when the principal spokesperson for the Opposition spoke in here. The fact of the matter is that when such persons in those categories I just enumerated take upon themselves to invest money in the building of a business, it is terribly unfair that a larger corporation with whom they try to compete but who can bring in container loads of the product and sell them at far less advantageous prices than they normally would, but do so nonetheless to ensure that the new competitor in the market cannot find or create his own niche market and is undercut from the very beginning of his business experience and then that new competitor because of the predatory pricing, the deliberate setting of prices in such a way as to drive your competitor out of the marketplace, that competitor finds it difficult to stand on his own two feet. He collapses and with him then collapses the mortgage that he took out over the property because the family home is now used as the collateral to the business. That happens every day in Barbados, and with him collapses the investment which is sometimes a blood investment by virtue of the fact that the money used as the initial equity in the business came about through claims for damages he received through a personal injury case or through the fact that he had been working for a long time and was wrongfully dismissed. Those are the real-life, day-to-day experiences of the average Barbadian.

Therefore, when we speak to legislation which is, as Senator Mascoll quite rightly said, consumer oriented, because while we talk about fair competition there is a mistake that is often made out there on Broad Street that fair competition has nothing to do with the taximan, the man on the Oistins bus or with the fellow who is going to work at some supermarket but the reality is that day after day we see situations where persons or families of persons pool together scarce resources and mortgage family property to invest it into commercial activity so that they too can compete and can one day begin to reflect the success, as Senator Goddard well knows, wherein certain family businesses in Barbados which began as small family businesses became large conglomerates. The question of colour ought not to be an issue in that, not in 2002. What has to be the issue therefore is the levelling of the playing field as best as possible so that the participants are not driven out of the market unfairly and disingenuously.

3.00 p.m.

Sir, we must never make the mistake of separating the consumer from this legislation because the average Barbadian consumer usually suffers in many ways. For instance, if he goes to buy a vehicle on hire purchase, at the point of concluding the agreement for the hire purchase of the vehicle he is told that the vehicle must be insured by X insurance company. Sir, this may not be a company with which you want to do business because its reputation in terms of settling claims might not be good but if the consumer expresses this concern he is told that the price of the car will change fundamentally. It is this kind of mischief that the legislation is intended to cure.

Mr. President, this legislation has only previously been passed in Jamaica and I understand that similar pieces of legislation will be implemented across the region so as to give effect to the CARICOM Single Market and Economy.

The point must be made that the legislation is not seeing mergers and monopolies as things which are to be expressly prohibited but rather to be restricted, because it is accepted that there will always be a degree of concentration of wealth in a small economy such as ours. It is also accepted that mergers are not a bad thing because, in some cases, they can reduce competition and enhance efficiency in the marketplace.

This question of merger has been tied in by spokespersons for the Opposition to the question of Government-controlled monopolies and they have also spoken of interlocking directorships. I will accept the point that if a person sits on the board of a public sector statutory corporation he will have the benefit of having access to economic, financial and planning information. The problem comes, however, when mischief is perpetuated on the

public's mind to believe and accept that by virtue of the Government holding a monopoly like CBC or National Housing Corporation that persons forming part of that board are accessing information which can be used to the detriment of the ordinary man and woman and, Sir, I take fundamental issue with that.

The Senate should remember and record that one of the first acts taken by the Prime Minister of Barbados in 1994 was to extend the courtesy to the Democratic Labour Party of placing one of its member on the board of every statutory corporation in this country. It was rejected by the Opposition as part of the Party's policy on the frivolous and baseless explanation that it would be helping the Government to govern.

Sir, there is really nothing of substance in this question of monopolies being abused by Government because you cannot approbate and reprobate at the same time.

Sir, those who consider what took place in 1993 will recall that in Jamaica, Government ran into difficulty with several interest groups because of its inability to come to terms with the realities of the society in which they functioned. The first error is that it sought to exclude professional services from the scope of the legislation. The second error was that it sought to offend the corporate sector by saying that it was not right for a person to sit on more than one board in the country.

There was also significant fall-out in terms of labour and the trade union movement in Jamaica because it sought to bring the trade union bodies under the scope of the regulatory experience in Jamaica.

Here we have accepted that the whole question of trade unionism is about the rights of the worker in terms of his condition of employment and wages. The threat to bring the trade unions under the scope of the Fair Trading Commission has not been made by this Government and, therefore, potential industrial unrest such as that which took place in 1993 in Jamaica has been avoided.

I make those points for the simple purpose of demonstrating the maturity and commitment to continuity and consistency which has been brought to bear with this legislation as contrasted to what has taken place in other parts of the Caribbean.

Sir, I am concerned about the search and seizure power attributed to the Fair Trading Commission under Section 7 of the legislation.
3.20 p.m.

Sir, under Section 7, there is the power which is very similar to what lawyers will refer to as an Anton Pillar order, which is really a mandatory injunction of the High Court, arising from a High Court case called Anton Pillar vs. Manufacturing Processing Limited. It empowers the plaintiff to search for articles which may be the subject of litigation or which may have some evidential value. That search is conducted in the home or business place of the defendant.

Similarly, under our legislation, Section 7, if the Fair Trading Commission believes that certain documents exist and which are of evidential value then, the Fair Trading Commission can make an order under Section 7 and they can search and seize such documents.

I am cautious about that part of the legislation because, though it is common in pieces of legislation of this nature, the fact remains that the search process can potentially be used as an instrument of oppression.

For argument's sake, if you have a very large-pocketed enterprise and it seeks for less than wholesome purposes to bring pressure to bear on a competitor who does not have the same financial resources, then you can take it to the point where that competitor's business is dislocated. There is some "dis-cohesion" in the smooth operation by virtue of the search and seizure taking place in the smaller entities. I think that the Commission must guard against being used for malicious or ill motivated purposes.

Sir, the legislation is intended to be a shield and not a sword and, therefore, I would respectfully suggest that prior to any search and seizure taking place, clear evidence of the presence of relevant documents on the property exist and there is also a relatively strong evidence of a likelihood to spirit documents away or destroy them.

Sir, that should, therefore, fall to the question of regulations coming out of the Commission. The Act makes provision for the making of regulations. It has been an unhappy experience with pieces of legislation that we have had in recent time, that the Act is passed but the regulations follow very slowly thereafter. The regulation is sought to give effect to things permitted within the Act.

I, therefore, urge that such regulations as may be necessary be treated and dealt with expeditiously so as to ensure that the avoidance of hardship in aspects of this legislation.

Sir, it would be remiss of me not to make a point about some of the allegations that have been made while the principal spokesperson was on his feet. It is somewhat pointless to come to the Senate on the basis that a bank deposit was allegedly made of money by the Government

and it got a high rate of interest. I am not sure what that tells us. I am not sure if we are to be upset that the money of the taxpayers got interest rates. I am not sure that we are to be upset that, perhaps, some average market rate was not awarded or that some allegedly higher market rate was awarded. I am not sure where it takes us, Sir.

Sir, again, it is one of those situations where fault is attributed and unfortunately to a private concern to ends which do not seem to take the debate on fair trade any further.

I think that it is also unfortunate that in so far as the National Housing Corporation is concerned, fault is attributed to the Corporation's conduct. The institution itself has its reputation tarnished and yet there seems to have been a practice, which as far as we can gather, that has been followed, nothing improper has been done by the institution or the officers of the institution, but the fundamental institution to the business of the public of Barbados once again has its reputation dragged through the mud, seemingly unnecessary for the purpose of scoring a so-called political point which has nothing to do with the revolutionary legislation that is before us, which has nothing to do with transforming or trans-modifying the level of competition in Barbados, transforming or trans-modifying the complexion across the Caribbean.

Certain remarks made by Senator SYMMONDS were ordered expunged from the record by Mr. PRESIDENT.

SENATOR K. D. SYMMONDS: Sir, narrow motives take us to a point where public servants of the country are called into question and the way in which they conduct business is dragged into disrepute on the flimsiest and most baseless types of evidence.

I think that we have come beyond that and would want to reiterate my position. I am happy to be able to support this legislation. I am happy to be able to extend my congratulation to the Minister and his Ministry. I do believe that the legislation was long in coming. Having come, it is a worthwhile development and I think that it deserves the untiring support of the people of this country.

I am obliged to you, Sir.

SENATOR C. K. LAURIE: Mr. President, we hear so much about the consultation that this Government is doing. I understand that they were consulting with the private sector and that some committees were appointed to look at this legislation before it came to Parliament. There was no deadline that was given to the Committee and to their surprise it went to Parliament and the committees never

reported. I do not know the truth of the matter but if this did happen, it sounds very strange that you would ask people to look at legislation and to comment on it and then do not wait for the committees to report with their comments.

Asides.

SENATOR C. K. LAURIE: Sir, the Act binds the Crown. I understand that it was in the legislation and it was removed. Senator Marshall went to some extent to explain to us why it was necessary to bind the Crown. I have some concerns about the Crown. We have a Crown corporation that is making and selling hamburgers. This is not a statutory corporation that is doing big things. I am referring to statutory corporations that are competing in the marketplace with the private sector.

Sir, to say that they are not to abide by this legislation is not a reason.

I cannot think why the Government is worried about binding the Crown. What do they want to do that they do not want the Fair Trading Commission to look at?

Finally, there is a part of the legislation where the Commission has the power to prohibit discrimination or preferences in prices or other related matters. From time to time, the private sector will give concessions to certain groups of people, for example, disabled people, *et cetera*. Last week I was asking on behalf of an organisation, of which I am a member, and I went to this company and said that I would like some concession and was told that they could no longer give concessions and that the Fair Trading Commission Act prohibits it.

Sir, is this going to be happening? This particular organisation had concessions for over 250 companies in Barbados. Are concessions going to be prohibited by this Commission? Sir, that really worries me. I do not think that was the objective of the legislation. If some big organisations say that they cannot give you concessions because the Fair Trading Commission will prohibit it, I think that is something that we want to avoid.

I thank you.

SENATOR THE HON. G. S. H. MURRAY: Mr. President, I must say that when the day began, I had looked forward with great anticipation to the debate on this Fair Competition Bill because I felt that it represented a major landmark in the Barbados society evolution. Therefore, I could safely expect a level of debate that would be commensurate with the elevated objective of the measure and that Honourable Members would rise to the occasion. So

far, most of them but one have done so and therefore, Sir, it saddens me that what would have been a magnificent day in the history of Barbados where the Bill is concerned has been spoiled by the utterances of Senator Mascoll. I am sorry he is not present to deal with me face to face. This has brought the debate to a new low. Really, I think the literary giants would refer to it as a case of debate lost, ludicrously low, anti-climatic and depressing.

3.30 p.m.

Sir, I was also saddened because I would have expected much more of Senator Mascoll as a fellow Combermerian and he really let down the side. He did not keep the flame burning brightly ever. He was not up and on, he was backward and behind. Most of all, Sir, I was very disappointed that Senator Mascoll, who is the President of the Democratic Labour Party should not have shined the light forward, showing some progressive thoughts to the Party and project them as a Party which has a future and a policy that could attract the public of Barbados to give it some badly needed support.

Sir, first of all, I want to deal with Senator Mascoll's first charge where he said that it is amazing that this Government has seen what the free market is all about. I was amazed that he was amazed because, Sir, when I went through the Democratic Labour Party's 1999 Manifesto, it does not contain a single word about fair competition, consumer protection, consumer guarantees or things like that, not a word, mention or thought.

Then, when I turned to the 1999 Barbados Labour Party Manifesto and looked at page 42, Sir, it deals extensively with the whole question of the Fair Trading Commission, *et cetera*. Therefore, I am not surprised that Senator Mascoll has nothing to say because there is no philosophical mooring on which he could jump off to speak on this issue. He was just speaking.

Sir, like I said, the Barbados Labour Party dealt extensively with the issue and, therefore, when Senator Mascoll said that he did not have much more to say, we were not surprised because he started off on point zero. He also charged, Sir, that the Government went to Trinidad and bought all the tee-shirts for Independence celebration.

Sir, that was not true. The minor point that people tried to generate over that non-issue, Sir, we all know that the Government did not go to Trinidad, it was that a concession was awarded to a company on the basis of fair bidding and fair competition, and that company bought some of the tee-shirts from Trinidad, as many of the other companies had done but the Government did not buy any tee-shirts from Trinidad.

I am not surprised but what he really should have been glad about, Sir, is that here is a Government which is doing something about its independence and Independence celebration when one recalls, Sir, the very low level to which the Democratic Labour Party had taken the whole question of Independence celebrations. It had become a non-event, a parade and people went to the beach and it was just another bank holiday in the realm of Barbadian social activity and national activity. The Barbados Labour Party, I am proud to say, has done a whole lot about that and now independence has become something much more meaningful. I though he would have had other things to say on that score.

Sir, I also want to say that Senator Mascoll seems to be able to produce documents or alleged, seemingly at will, on all kinds of issues. He seems to be bent on a campaign where, week by week, he is going to produce a document. I am therefore surprised that with the proliferation of documents which he seems to have access to that he has not yet taken the chance to produce, even in this Chamber, a document that would seek to eliminate the questions that have been raised over the questionable behaviour of the Director of Public Workers Credit Union over the awarding of payments...

Mr. PRESIDENT: Senator Murray, I hate to stop you, but I think you are straying somewhat from fair competition.

SENATOR THE HON. G. S. H. MURRAY: I thank you, Sir, but I am just trying to deal with some of the charges of Senator Mascoll.

Anyhow, be that as it may, I just wish that I could also get my credit card bill paid by some credit union. I just hope that the Media Cooperative Credit Union of the Nation of which I am a proud member and a former President, would not ever seek to go that road where they are going to pay off people's credit cards because of whatever reason.

Sir, I also want to deal with the whole question of the attack on the name of Rodney Wilkinson. The name Rodney Wilkinson has now become fair game, as you would say that the Barbadian vernacular would be that Mr. Rodney Wilkinson's breadfruits seem to hang low and, therefore, it is a question of trying to kick a man when he is down.

I think, Sir, it was unfortunate, particularly when Senator Mascoll himself, had been engaged in objecting to the use or the calling of a so-called private citizen's name in a debate in the Other Place, Sir, during the last Budgetary presentation. A great noise was made of that and a great objection was made of that but at the same time, Sir, here he is, doing the same thing of which he objected. He cannot reprobate and approbate at the same time. He cannot be up

and down but has to decide on the standards he is going to call for as a leader of a party. Those kinds of mixed signals, Sir, do not do him or his Party any good. I think it is most unfortunate and I hope that it does not become the norm for the behaviour in the Senator.

I am just surprise that I did not hear another acronym mentioned among all of these charges after “Jaws”, maybe, we have “paws” or “malls” but I am surprise I am not hearing of another concoction.

I think, Sir, that all of our debates should be of a high standard, particularly when they deal with major pieces of legislation and I feel, Sir, that it will be unfortunate if this debate is in this Chamber and particularly where the Democratic Labour Party is concerned, comes to be remembered more for the charges and the allegations made about a private citizen, rather than for the substantial merit and the inherent importance and quality of the Act and what it would do to transform the Barbadian economic and enterprising landscape, as intended.
3.40 p.m.

Mr. President, as a result of this Act, we are now in a situation where, as Barbadians enter into the business world, they could now feel free in so doing. That Barbadians who historically, socially and traditionally, have been made to feel that they did not belong to the world of business and it was not for them, that only certain persons had the rights, skills or opportunity or contacts to survive and to be successful in the world of business, although since 1994, this Government has done a lot through a series of measures especially for small businesses to demystify the situation and to shatter that myth.

Sir, I feel that when we are operating in such a context where we are creating a new framework, a new culture or attitude toward businesses where persons from all walks of life could feel that they have a chance to survive and to make it and that the deck is not stacked against them, that they do not start off at a disadvantage from the beginning and they are doomed to failure and if they survive and thrive and prosper, it would be the exception rather than the rule. I think this legislation now makes it possible for the opposite to be the norm, that people who enter the field of business could feel that through fair competition, not to mention the implications for benefits to the consumers, but they feel they would not be disadvantaged but would have a chance to be proven on their merit and performance, that the system would allow them to have a fair day in the marketplace, that once they perform and produce goods and services of commensurate quality and attractive prices and reliability, that the system would allow them to earn their fair share in the marketplace.

Sir, I want to lend my full support to this measure and to indicate that has been a long time in coming but nothing happens before its time. Its time has now come and I am proud to be associated with a Party which has taken the initiatives to bring it to fruition and I look forward to seeing it thrive and that the spin-offs could be such that we would have a Barbadian economic climate of which we all could be justifiably proud and which there be equality, fairness and transparency. I thank you, Sir.

SENATOR P. C. GODDARD: Mr. President, I rise to support this Bill and to congratulate the Minister and his Ministry for the work that was done to bring this Bill before this Honourable Senate.

Mr. President, the Minister of Commerce has been engaged in a series of legislative initiatives which are propelling Barbados into the modern economy. We have seen legislation on electronic commerce. We have seen this legislation and we are to discuss it more in the future.

This Fair Competition Bill, like Sir John Goddard has said, is welcomed by those businesses that have long operated in Barbados with good reputation. I think one would see that the consumer legislation that follows would also be welcomed. It is a codification of the practices that have been observed by those businesses with a social conscience, that recognise the value of the society in which they do business.

This Fair Competition Bill will ensure that new entrants from abroad, as well as others, will observe the tenets of this Fair Competition Bill. However, I would like to caution individuals to recognise the fact that while this is a Fair Competition Bill, it does not prohibit competition and that competition will be alive and well in the country. What this means is there will be certain practices that will not be condoned. We have seen where monopolies in this country have abused their power to prevent new entrants into the marketplace and to set pricing which is predatory and often confusing to the consumer as well as to other business entities.

Mr. President, we are moving to develop a CARICOM Single Market and Economy. We are involved in the Free Trade Area of the Americas negotiations and the World Trade Organisation. This piece of legislation is part and parcel of this Government's programme to modernise, to transform and to develop this country into the smallest developed country in the world by the end of this decade. This is the type of legislation that is absolutely essential to achieve those goals. Therefore, it follows a common strategy and a thrust of economic and social development that this Party and this Government have outlined over the past several years. It is nothing new. It has not been sprung on

the marketplace and there have been considerable consultation and discussion about this legislation.

Mr. President, I remember when I was in the private sector in the business community. I was involved with the Caribbean Law Institute in discussing a framework for consumer legislation and fair competition legislation during the 1980s and early 1990s. Much of that work has informed the development of the legislation in Jamaica and then continued on into this Government's term of office.

Sir, people will say that it has taken a long time for this to come but the thoroughness with which it has gone into the details that have been covered and the consultations that were necessary where the Bill itself has considerably changed shape during that period of time was necessary to bring something to the table that would be practical and would work.

Like Senator Symmonds said, any legislation that is here, is not cast in stone and after a working period of time could be modified.

Mr. President, I am particularly pleased to see that the statutory corporations are bound by this legislation. It is important to understand that the statutory corporations are often in competition with business activities or can affect business development in the country.

Mr. President, I would have to say that this Fair Competition Bill, 2002, will promote and maintain competition in Barbados. It will prohibit the restriction and prevention and distortion of competition and the abuse of dominant positions in trade in Barbados and within the CARICOM Single Market and Economy.

It is important to understand that as we develop the CARICOM Single Market and Economy that legislation of this type is important and it is important for it to be harmonised throughout the CARICOM Single Market and Economy as well.

It will enhance economic efficiency in production, trade and commerce. It will promote the welfare and interest of consumers and bring new vigour to our economic activity. It is important that we encourage people to become involved in business activities, thus creating new businesses and new competition that will keep people sharp and make them thrive.

Mr. President, with those few words, I wholeheartedly commend this Bill and once again, congratulate the Minister for work well done. I look forward to its implementation and its operation, along with the suite of other legislation with which it is interrelated. I thank you, very much.

SENATOR J. E. D. WILLIAMS: Thank you very much, Mr. President. I, too, want to begin by registering my whole-hearted support to this piece of legislation. I think today has been a watershed for all of us. Indeed, this Bill speaks to the fact that we have a Ministry of Commerce that, over the last number of years, has been addressing the issue as to how the markets in this country should operate.

If we look at some of the past regulations that came out of that Ministry, for example, the Small Business Development Act; the Fair Trading Commission Act; The Telecommunications Act, along with a series of legislation culminating in today's fair competition.

I know there are some persons who might look at aspects of the legislation with some degree of concern. I listened very attentively to the presentation of Senator Sir John Goddard as he indicated that not every business person is, indeed, someone who would engage in unfair business practice. He is absolutely correct as far as that is concerned. Obviously, this legislation is not intended for those persons but for the individual who might want to engage in the kind of business practices that are undesirable.

I am satisfied that this legislation is going to level the playing field. I believe it will now allow for greater entry and exit for new persons and businesses wanting to operate. It will also provide an opportunity for people to be able to get greater access to information on which to make a decision, whether or not they want to enter into a business. Together Government and Parliament have a responsibility to create the kind of environment that will sustain and support the new kind of business environment that is desirable as we are moving forward.

The two areas to which I want to speak are, as Senator Mascoll has put it, the actions of the National Housing Corporation. As far as Senator Mascoll was concerned, he was saying that the Bill must address both private businesses as well as business operating within the public sector.

I think, however, when one seeks to try to cast doubt on the operations of an institution, that unless that person comes with all the facts and is prepared to let the public understand what has transpired, he is doing the country and the institution a disservice. What we have witnessed this afternoon was, indeed, very unfortunate.

If the National Housing Corporation, as an institution that is selling land wants to make sure that a person does not own any other lands or property in his own name and to do that, the NHC simply asks that person to sign an affidavit, in this instance, the same thing has happened like any other transaction, without fear or favour. However, because of

whom the person is, Senator Mascoll has brought that alleged document to the Floor of the Senate to create in the minds of persons that the actions of the NHC were less than honourable and with the greatest of integrity.

I think those things are wrong and bad. I honestly believe that for as long as Senator Mascoll and I are in here, I will always believe that he does not just owe the Honourable Senate an apology but particularly the personnel at the National Housing Corporation and me. I believe that if Senator Mascoll wants to assume leadership or to use examples whenever he thinks it necessary simply to say that this is the way that they ought not to behave, then Senator Mascoll, himself, ought not to condone it. He must take a position of principle if he purports to be a principled individual.

Mr. President, let me take back that statement. As far as I am concerned, Senator Mascoll does not owe me an apology. He owes the staff of the National Housing Corporation because if they have not done anything different from what was expected of them, why should they be vilified and criticised in the eyes of the public.

I say to Senator Mascoll that if he becomes head of Government tomorrow, those are the same people with whom he would have to work. He would expect them to work with him with all the enthusiasm and high level of motivation that one would expect. The staff are human beings like everybody else and Senator Mascoll cannot just for political expediency come and castigate people. It is wrong and I say unreservedly, wicked.

Mr. PRESIDENT: Please withdraw the word "wicked".

SENATOR J. E. D. WILLIAMS: I withdraw the word, Mr. President. I will replace it with something else.

Mr. PRESIDENT: Could you move on, please?

SENATOR J. E. D. WILLIAMS: It is wrong. It is wrong. An individual signs an affidavit which says that individual does not own another house or property in his name and the National Housing Corporation acts upon it. Of course there is the feeling that election is somewhere down the road and, therefore, everything must be on a political point.
4.00 p.m.

Mr. President, Senator Mascoll raised the issue of statutory corporations. I am responsible for CBC and I feel obliged to speak about it. Government stated in its policy that it intends to ensure that the Caribbean Broadcasting Corporation is put on the kind of financial footing in terms

of its own management stability, that at the shortest possible time we should be able to offer shares to the public, the employee, people within the Small Business Association and people within the credit unions can have share options to become part of the institution.

I also hear Senator Mascoll talk about the question of interlocking directorships. Sir, this is part of what we are discussing and I want to say that there is absolutely no difference between a man who is director of a political party and a person who is interlocking as a director in a credit union.

Asides.

SENATOR J. E. D. WILLIAMS: If you want to be involved in a political party, stay away from credit unions so that nobody will have to ask you to pay back any money. Sir, I am saying that the two things should be separate and distinct.

Mr. President, the Government said that it intends to put Caribbean Broadcasting Corporation on the kind of footing that the public would find it desirable to have an interest in and that the workers could become part of the institution.

Mr. President, Caribbean Broadcasting Corporation needed upgrading as an institution for a long time but it takes money. I will only say that this particular institution is living up to its expectation and we are moving towards 80 per cent local programming. Sir, Senator Mascoll does not have to worry about the Caribbean Broadcasting Corporation because this Government wants to see fair competition in every aspect of business in this country. I know of too many examples where the lack of competition has meant that we have not been well served in certain areas.

Sir, in Europe where competition became the order of the day, prices went down by 35 per cent. This fair competition is about all aspects of business life. It has been long in coming but I want to say to the Minister and the Ministry to continue to do a good job.

I give the fullest credit to them for bringing this legislation before us and I urge the Honourable Chamber to give this matter its fullest support.

Thank you.

SENATOR Miss J. C. ODLE: Mr. President, I rise to give my support to the Bill before us. Much has been said on this Bill today but I want to start by commending the presenter of the Bill, Senator Barker because, in my view, he was thorough and was able to put some clarity to the Bill

before us. There can be no doubt as to the full intent of the Bill.

I want to commend the Minister and the Fair Trading Commission for presenting the information in a timely fashion. As we move into an open market situation, companies and individuals carrying on business in Barbados will be better poised to ensure that they have equal opportunity and regulation of the playing field because to date, there are businesses in Barbados who occupy a monopolistic position.

Sir, I will not bash any entity but as a business person in Barbados I have a difficulty when persons are prevented from operating on an equal playing field. I expect by the enactment of this Bill the playing field will change and give equal opportunity to help reduce the monopolistic position of several entities.

Similarly, I have concern with respect to the charge for services when there is arbitrary disconnection and where the consumer has little recourse. Sir, it should be illegal to disconnect a person's service arbitrarily without giving the person any notice because often the service is cut off unceremoniously until the matter is resolved without having any say in the matter.

I hope this Bill will address this problem once and for all. For example, there may be a burst main in the area where a person lives and suddenly the water bill goes up and there is not the wherewithal to settle the bill. Then the service provider says to an old person that he or she must pay for the amount used.

Sir, many elderly persons find themselves in this position and it is uncomfortable for that person not to have clean running water in the home. Elderly people may not be vocal, vociferous or able to go and battle the cause so I hope that the Fair Trading Commission will adequately represent the issues of these persons once the case is brought to the Commission.

Against that background, I want to make a strong claim for broad education of the rights of businesses under the Fair Trading Commission because, if a case is not put to the Commission, it cannot be resolved. I hope the various media houses and, in particular, the Government Information Service will ventilate all the Clauses of the Bill in a simple fashion in the same way that Senator Barker presented the Bill so that the wider public can have a greater understanding of what is before us in terms of fair trading.

I hope this education will help the small business sector and others and give entrepreneurs a greater understanding of what is before us so that they will not have to worry if their business can survive daily because of the unfair competition

practices that exist currently and that they too will take advantage of the opportunities presented in the Bill.

Sir, I wholeheartedly support the Bill and urge all other Senators to do the same.

Thank you, Sir.
4.10 p.m.

SENATOR T. E. BARKER: Mr. President, We had an interesting debate on this Bill and I have one regret and that is that the Opposition did not discuss it.

Aside.

SENATOR T. E. BARKER: I believe it is a very important Bill. The fact that one Member did not speak is a bit disappointing to me. We were hearing about 'JAWS' and all sorts of things but such is the nature of politics.

Sir, one point that was made which I have to clarify. The fact, that this Bill does not specifically say that the Crown is bound by this legislation, all of the statutory corporations are legal entities. They are part of the Crown but they are not really the Crown. Do not forget that this Government has gone on record and said that some of the monopolies that control National Petroleum Corporation, Barbados Water Authority and the Transport Board have to come under the aegis of the Fair Trading Commission. That is a matter of policy which was articulated by the Prime Minister.

Sir, to say that the Crown is exempt from the Fair Trading Commission is not totally accurate. The Crown, when in the form of statutory corporations or in the form of private companies, would be subject to the same legislation and the Fair Trading Commission would be looking after them also.

Sir, I spoke longer than most Members and we represent the people. The people comprise the business sector as well as everybody in the country. We have an interest to ensure that all the players in the society understand and know the rules of encounter and that they behave in a certain manner which would lend to the stability of the State.

Sir, if we have said things that may not be totally complimentary about this legislation, it is not our fault. As I mentioned, a study was done by the Inter-American Development Bank (IADB), not by the Members of this Government which highlighted 18 practices which are employed by private corporations and which they consider to be anti-competition. If you want to call that business bashing, let it be.

Sir, the point is, the issues were identified as being harmful to competition and hence would result in disequilibrium. We have to be concerned about the greater good. We have to put in place laws and regulations for the greater good. We want to assure Members that the Fair Trading Commission is an independent organisation and the members of the Commission are men and women of stature within the community and we can be assured that they are going to do a good job representing the business sector as well as the consumers. Everybody will be fairly represented by the Fair Trading Commission.

Mr. President, we have no problem with this legislation and we commend it to this Honourable Chamber. We feel that it is necessary and the time has come for this legislation. We feel confident that both the private sector and the consumers would benefit from the passing of this Resolution.

Sir, I beg that this Bill be read a second time.

The question was put to the Senate and agreed to.

On the motion of SENATOR T. E. BARKER, Mr. PRESIDENT left the Chair and the Senate went into Committee on the Bill, HIS HONOUR SENATOR C. L. BOLDEN in the Chair.

COMMITTEE

Mr. CHAIRMAN: All members would have been in receipt of a letter from Parliament highlighting the changes that were made to the Bill in the Other Place. Senators are reminded to treat the Bill as the amended Bill. We have to incorporate the appropriate sections in the Bill.

Parts 1 to 10 inclusive were called and passed as amended.

SENATOR T. E. BARKER: Sir, I beg to move that the Schedule be the Schedule to the Bill.

The question was put to the Senate and agreed to.

On the motion of SENATOR T. E. BARKER, Mr. CHAIRMAN reported to HIS HONOUR THE PRESIDENT the passing of one Bill in Committee. Mr. PRESIDENT resumed the Chair and reported accordingly.
4.20 p.m.

On the motion of SENATOR T. E. BARKER, the Bill was read a third time, passed and cited as the Fair Competition Act, 2002.

ORDER NO. 6 – RESOLUTION TO APPROVE THE VESTING IN THE NATIONAL HOUSING CORPORATION OF LAND AT BAY STREET, ST. MICHAEL FOR THE PROVISION OF RECREATIONAL FACILITIES

SENATOR THE HON. G. S. H. MURRAY: Mr. President, this Resolution really is the latest stage in the process of providing some much needed recreational facilities for persons in Bay Street, particularly those who occupied the very picturesque London Bourne Towers.

As a result, Sir, this Resolution is seeking the Senate's permission to vest 2 804.1 square metres of land on Bay Street in the National Housing Corporation for the provision of recreational purposes. The site comprises three parcels of land which adjoin lands that now accommodate the London Bourne Towers to which I made reference. They consist of 3 346.6 square metres, 205.4 square metres and 252.1 square metres, all owned by the Crown.

Sir, the need for these facilities has long been established. It was felt that with the direction of the London Bourne Towers which already make provision for the Day Care Facilities for both children and the elderly, there was a very important segment of the Barbadian society who occupied the London Bourne Towers who had been omitted. These, Sir, are the youth who are badly in need of these recreational facilities to provide a healthy outlet for their youthful energies and opportunities for them to engage in very healthy, outdoor recreational activities.

It is to be noted, Sir, that the nearest recreational facility to which these youths would have access, would be Queen's Park and anybody who goes near that facility would know that is already fully utilised by groups from not only the immediate area, but from persons all over Barbados.

The National Housing Corporation, Sir, therefore proposes to utilise the entire area of land to provide these recreational facilities which would involve the playing of such games as basketball, tennis and including a playing area for young children who now, Sir, as I traverse that area, I often see them having to dodge traffic as they play in the streets.

As we know, Sir, there is a physiological urge in all people, especially the youth, to play. Playing games represent a very important part of the process of maturation in growing up. It is not just idleness but it is a very important component in the whole development process. These young persons, like I said, now have to play in the street and it is intended that these facilities would serve not only the London Bourne Towers residents but those in the surrounding areas.

Sir, it is felt that without these facilities, the area which has really maintained a very noble record, despite the surrounding areas, would have the opportunity, as I said, to prevent persons from indulging in idle pursuit because there is nothing for them to do that is constructive.

In moving this Resolution, Sir, I want to pay tribute to the Honourable Member for the City who has fought long and hard for the improvement of not only this area, but the entire Bridgetown area. The redevelopment of Bridgetown as we see now, is all part of her mission in life and I am glad to see it succeeding in a more holistic manner but also in particular, in this area, where it would have impact on the social and other lives of the persons who would benefit from these facilities.

I therefore beg to move, Sir, that this Resolution do now pass.

The question was put to the Senate and agreed to.

ORDER NO. 7 – RESOLUTION TO APPROVE THE
VESTING IN THE NATIONAL HOUSING COR-
PORATION OF A PARCEL OF LAND
SITUATE AT FORDE’S ROAD,
CLAPHAM, ST. MICHAEL FOR
THE PURPOSE OF HOUSING
DEVELOPMENT

SENATOR THE HON. G. S. H. MURRAY: Mr. President, this Resolution seeks to vest in the National Housing Corporation, whose major mission is the provision of housing for our people. Sir, the vesting of 3 511 square metres of land at Forde’s Road, Clapham, Christ Church in the National Housing Corporation is to provide much needed housing.

The drive to provide housing, Sir, is a relentless one on the part of the Government and we are working very hard to do that, both through the activities of the National Housing Corporation along with the activities of the private sector and individual citizens.

I am very familiar with this area, Sir, having once lived in this district. It is an area which has grown and developed but it needs some additional space to provide housing facilities for persons. This is another commendable step on the part of Government, under the aegis of the National Housing Corporation to provide these facilities and therefore, Sir, I beg to move that this Resolution do now pass.

The question was put to the Senate and agreed to.

ADJOURNMENT

SENATOR THE HON. G. S. H. MURRAY: Mr. President, that brings us to the end of Government’s Business for the day.

I would like to put Honourable Senators on notice that we are likely to meet next week, so they should hold themselves in readiness for such an eventuality, but Honourable Senators will be circulated well in advance of the measures to be debated.

I therefore beg to move that Senate be now adjourned *sine die*.

The question that the Senate do now adjourn sine die was put to the Senate and agreed to and Mr. PRESIDENT adjourned the Senate accordingly.
4.30 p.m.

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