HOUSE OF REPRESENTATIVES

Friday, June 23, 2006

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received communication from the following Members requesting leave of absence from sittings of the House: Mr. Hedwige Bereaux, Member for La Brea, for the period June 10 to July 10, 2006; Mr. Eric Williams, Member for Port of Spain South, for the period June 18 to July 01, 2006; Mr. Ganga Singh, Member for Caroni East, from today's sitting of the House. The leave which the Members seek is granted.

Hon. Members, I also wish to inform you that pursuant to section 49(4) of the Constitution, I have granted to the Member for Couva North a further 30 days' extension to allow him to pursue his appeal against the decision of the Chief Magistrate.

This extension will expire on July 24, 2006.

PAPERS LAID

1. Annual audited financial statements of the Vehicle Maintenance Corporation of Trinidad and Tobago Limited for the year ended September 30, 2001. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley)*]

2. Annual audited financial statements of the Vehicle Maintenance Corporation of Trinidad and Tobago Limited for the year ended September 30, 2002. [*Hon. K. Valley*]

Papers 1 and 2 to be referred to the Public Accounts (Enterprises) Committee.

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Princes Town Regional Corporation for the financial year ended September 30, 2000. [*Hon. K. Valley*]

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Princes Town Regional Corporation for the financial year ended September 30, 2001. [*Hon. K. Valley*]

Papers 3 and 4 to be referred to the Public Accounts Committee.

5. The Value Added Tax (Amendment to Schedule 2) Order, 2006. [*Hon. K. Valley*]

ORAL ANSWERS TO QUESTIONS

Cumuto Main Road
(Rehabilitation of Landslips)

15. **Mr. Harry Partap** (*Nariva*) asked the hon. Minister of Works and Transport:

Could the Minister state when the ministry would begin the rehabilitation of landslips along and the paving of, the Cumuto Main Road from Little Cora Junction to Four Roads, Tamana in the constituency of Nariva?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, by agreement, the questions on today's Order Paper is deferred for one week.

Question, by leave deferred.

The following questions stood on the Order Paper in the name of Mr. Harry Partap (Nariva)

Plum Mitan Road
(Rehabilitation of Massive Landslip)

16. Could the hon. Minister of Works and Transport indicate:

(a) what are the Ministry's plans for the rehabilitation of the massive landslip at the 7.5 km mark on the Plum Mitan Road which has severely restricted traffic?

(b) when will such rehabilitation works commence?

Bonair Road, Cumuto
(Rehabilitative Work)

17. With regard to rehabilitative work on the Bonair Road in Cumuto, Sangre Grande, which started over three years ago and has since ceased, could the hon. Minister of Works and Transport advise when will these works be completed?

Questions, by leave, deferred.

STATE LANDS (AMDT.) BILL

Bill to amend the State Lands Act, Chap. 57:01 to increase the penalties for digging or removing materials on or from state lands without a licence, [*The Minister of Agriculture, Land and Marine Resources*]; read the first time.

FAIR TRADING BILL

Order for second reading read.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move,

That a Bill to provide for the establishment of a Fair Trading Commission, to promote and maintain fair competition in the economy, and for related matters, be now read a second time.

Mr. Speaker, you will recall that this Bill was debated and passed in this honourable House on July 20, 2005. In fact, this Bill was allowed to lapse because subsequent to its passage in this House, the Chamber of Commerce requested that it be given an opportunity to make a further submission, having had a number of opportunities before to do so, Mr. Speaker.

In an attempt to facilitate the Chamber of Commerce, the Bill was allowed to lapse on the prorogation of the Third Session of the Eighth Parliament, on September 08, 2005.

Arising out of the recommendations made by the Chamber of Commerce, a number of amendments have been made to the Bill. I would like to highlight, for the benefit of the honourable House, some of the more significant changes to the Bill, which followed these consultations. Before I do that, Mr. Speaker, I want to reiterate for the benefit of Members, that this Bill deals with four major issues. The Bill deals with the abuse of monopoly power; it deals with anti-competitive mergers; it deals with anti-competitive agreements and there are enforcement measures.

Mr. Speaker, again, I want to underline that this Bill is not against monopolies but it is against the abuse of monopolistic power. It is not against mergers, but it is against anti-competitive mergers. The perspective is clear, which is that Government has a responsibility to balance the freedom required by the business community to conduct their affairs without undue hindrance against the need to protect the citizens and consumers from the unscrupulous. The legislation, therefore, is to stop those who might want to abuse their monopolistic power or participate in anti-competitive actions.

While some may argue that it might be an inconvenience for the business community to adhere to this legislation, it is in the interest of the society that this be done. I want to make the point also that as we move more and more into liberalization and globalization, international competition, as a fact, would

minimize the need for legislation of this type. We have not, however, reached to the point as yet where it is not necessary. It is part of the modernization effort; the landscape of Trinidad and Tobago.

We are, in fact, coming a bit late. This morning the Committee met with respect to bankruptcy legislation, which is also part of the modernizing effort with respect to the economic landscape of Trinidad and Tobago. It is part of a reform agenda that is being undertaken by the Government.

Having said that, Mr. Speaker, let me point out some of the changes which have been made to the Bill since it was passed in this place on July 20, 2005. The first one is the definition of mergers. While under the previous draft, mergers meant the cessation of two or more enterprises being distinct, whether by acquiring material influence over the policy of another or otherwise, the current draft at clause 13(1) where "merger" is defined, says:

> "'Merger' means the cessation of two of more enterprises from being distinct whether by purchase or lease of shares or assets, amalgamation, combination, joint venture or any other means through which influence over the policy of another enterprise is acquired."

The definition is longer and more explicit, as it were. There is also a new definition of "market". At clause 2, "market" is now defined:

> "'market' means available supply of specified goods and services for consumption in Trinidad and Tobago or for export from Trinidad and Tobago as well as such other goods or services which as a matter of fact or commercial sense are substitutable for them;"

At clause 15, the definition of interlocking directorship is changed. The definition in the old draft:

> "Where a director serves on the Board of Directors of two or more companies that are significant competitors and he is likely to weld together the policies of those companies in such a way as to reduce or eliminate competition between those companies, the companies in which he serves as director, shall be deemed to have merged."

The new draft says:

> "Where a director serves on the Board of Directors of two or more companies that are competitors, and the director is likely to weld together the policies of those companies in a way that will reduce or eliminate competition between them, the companies in which he serves as director shall, subject to section 14(1)(b), apply to the Commission for permission to merge."

The threshold for monopoly power at clause 22(2); the old draft says that the threshold is 40 per cent and the new draft says that 40 per cent or more or such percentage as the Minister may by order prescribe. The concept under the new draft is that the Minister would have the power to vary the limit.

The new draft was presented and debated in the other place. It was passed on May 16, 2006. During debate on the Bill in the other place, hon. Members raised some concerns and made recommendations for further amendments to the Bill. The recommendations which were accepted are now reflected in the Bill before this honourable House. Members would have the Bill as was amended in the Senate. In that Bill it would reflect the following changes:

Subclause 8(2) has been changed; the old subclause 8(2) was deleted; there is a new subclause 8(2) and that provides that the Commission must apply to the High Court for the issue of a summons to enforce the attendance of witnesses at hearings and for the production of any documents, books and related matters.

In the old Bill there was the concern that as drafted before, a special majority would be required because one would be given certain authority which would require a special majority. It says in clause 8(2) in the old Bill:

> "All summonses for the attendance of witnesses or other persons or for the production of documents for the purpose of an investigation under this Act, shall be in the form prescribed in the First Schedule and shall be signed by one of the Commissioners."

Under the new clause 8(2), it says that the Commission may, for the purpose of enforcing the attendance of any witness, apply to the court for issues of the summons, for attendance of the witness, and for the production of any documents, books and related matters, bringing it clearly within the purview of the court; putting the court in the forefront at all stages. Therefore, Mr. Speaker, the First Schedule, which was in the earlier draft, has now been deleted.

Another change is in subclause 14(3) which has been deleted. The concerns raised by some hon. Members were that if the Commissioners were delinquent in performing their duties, many mergers would be allowed without adherence to the legislation and this, of course, would defeat the whole purpose of the legislation.

Members would recall that 14(3) said:

> "Where the Commission does not make a determination within one month or the prescribed period, the Commission shall be deemed to have granted approval for the merger."

Members in the other place felt that was too liberal and that simply because the Commission was delinquent ought not to allow a merger, which might be anti-competitive. Therefore, they asked that that clause be deleted.

In 14(1)(b) it says that enterprises with assets of over $50 million shall not merge unless they obtain the permission of the Commission. The Minister was given some flexibility to vary that figure by order.

A new clause 14(5) has now been inserted to the effect that where the variation of the asset base exceeds 50 per cent, the relevant order shall be subject to affirmative resolution of the Parliament and one would now see that in the amended Bill at clause 14(5).

There is a new section 43(8) which is really to make assurance doubly sure. What it says, simply, is that the Commission would be a statutory authority. Mr. Speaker, the reality is—and I told this to the Senate—that the Commission would, in fact, be reporting to the Ministry of Trade and Industry, which has the responsibility to report to one of the joint select committees of the Parliament, which examines ministries as well as statutory authorities. For the avoidance of doubt, they wanted the Commission to be accountable to the Parliament in their own right. Therefore, by deeming it to be a statutory authority they would then be accountable to the committee which examines statutory authorities.

Mrs. Persad-Bissessar: Thank you, Mr. Minister, for giving way. There are two matters on which I would like some clarifications. Why have we left out the banking and the financial institutions from this legislation?

I appreciate your comments on what you have done with respect to making the local fair trading commission really accountable to the court through the Supreme Court. But then in clause 48 there is this regional Community Competition Commission and that commission is being given powers that are within the domain of a supreme court for making fines, taking away properties, and desisting and so on. Through your draftsmen, whilst you have taken on board the unconstitutional aspects with respect to the local commission, I would like an answer as to whether consideration was given to the regional one, because it appears to me that that would require a special majority.

Hon. K. Valley: With respect to the first issue—and I thought I had dealt with that when it was debated last year, but let me repeat—they are financial institutions, as you know, they have their own legislation. As a matter of fact, on the Order Paper you would see that there is a further amendment to the Financial Institutions Bill. The thinking is that we should leave the financial institutions

under that legislation for the time being. This is new legislation; let us see how it operates; let us not bite off more than we can chew. The financial sector is a specialized sector; let the Central Bank deal with them; let us get our feet wet with the rest of the economy. They are already controlled under the Central Bank and, therefore, we should leave them there and exclude them from this legislation.

With respect to the community legislation, which was also answered in the Senate, that comes under the treaty and the treaty provision with the whole CCJ ambit. I think it was section 17, if I remember the correct quote from the Attorney General, and therefore it falls under that and that is the authority for the community. [*Interruption*] Well, the Attorney General argued in the Senate—you know I am not a lawyer—and it was accepted.

Mr. Speaker, the changes made from the original Bill because of consultation with the Chamber of Commerce, plus the changes made as a result of the Bill being introduced in the other place, are the total changes to the legislation which was debated and passed here by all Members on July 20, 2005.

Mr. Speaker, I commend this legislation once more to the House. I make the point that this is all part of our reform agenda. As I said, on the Order Paper there is reform of the financial institutions. As you know, Mr. Speaker, there is the whole White Paper on the financial sector reform; there is the White Paper on procurement reform; the Minister of Local Government has a draft White Paper on local government reform because as we move towards 2020, there is need to put new systems in place and it is important that we have the appropriate infrastructure to achieve what we want to achieve.

Mr. Speaker, with these few words, I commend this legislation to this honourable House.

Question proposed.

Mr. Winston Dookeran (*St. Augustine*)**:** Mr. Speaker, on the last occasion when we debated the Fair Trading Bill we made a number of suggestions to the Government regarding the philosophy behind the Bill and the specific enforcement mechanisms. Since then I have reflected more on this Bill. The real purpose of the Fair Trading Bill is to improve the welfare of our citizens and, more specifically, the economic welfare of our citizens.

It is anticipated that by dealing with what has been called monopoly power, anti-competitive mergers, anti-competitive arrangements and agreements that we will be able to provide lower prices for our people; we will be able to provide

better quality products and we will be able to provide better service to the nation. This is the real purpose of this legislation: Mr. Speaker, to be able to achieve those goals, which are laudable, because today on all three counts we have failed to provide lower prices, better quality and higher levels of service. The evidence is there, not only in terms of the macro performance of the economy but, more specifically, in terms of the impact it has on the everyday lives of our people. Our mothers and wives face the increase in prices in the economy which is growing at a phenomenal rate and it appears to be unabated at this stage.

I would not go into any depth on that issue, except to point out that there are, indeed, ways to handle that situation, with which the Government is yet to come to terms. We have argued on this side of the House on many occasions how that situation is the result of bad economics policy; bad monetary and fiscal policy. The end result is that this Bill is about trying to keep prices down by creating a competitive environment. In order to do so, the creation of a competitive environment is really going to be achieved by having competition in which there is no monopoly power that will distort the economy, the prices, the quality and the service. We are well aware that monopoly power, if unchecked—and we have had the experience—distorts prices where you have to pay higher prices than you would normally do if there is competition, where you will end up with lower levels of service because there is no competition and you will end up with, perhaps, poor quality of service.

The intended objective of this Bill is to remove these distortions in the economy so that there will be a very efficient allocation of our resources and a very efficient use of that resource. In a nutshell that is what we are about; improving the welfare of our people.

2.00 p.m.

What struck me recently was that the real source of distortion, the real source of inefficiency and the real source of welfare loss in the country is not coming through the competitive environment or the absence of it, but is coming through Government's economic programme.

A recent study on Trinidad and Tobago's economy identified that there are two parts of the economy that are outside the control, so to speak, of normal economic behaviour, and it has led some people to argue that we cannot use very orthodox economic analysis to analyze the economic behaviour of this economy and how it works. This study identified what they call the dependent economy

which is growing at a fast rate in our country. The dependent economy is fuelled by Government revenues and, therefore, it is the major source of distortion in the economy for it has generated all the problems that are found in terms of shortages in the country as reflected in labour, in commodities, in goods and services that are being produced which is creating the problems for an economy out of control.

When the Minister says that, in fact, he is trying to embrace the reform agenda and to put this in the context of a modernization effort in the economic landscape, he is failing to understand that the real source of problems of economic management in the country is being created by his very economic strategy of creating a dependent economy; and not only that, the other aspect of distortion is coming from the failure to really get a handle on the drug economy, which is also a major source of distortion in the economic life. Therefore, it was somewhat disconcerting to have heard the Minister talking about finding a way to create a competitive environment when the very Government's policy is the one that is working against that competitive environment and creating the distortions in the country. [*Desk thumping*]

This recent study went on to argue that—and I wish to quote one part in which it says:

> Political decisions rather than economic decisions, maintain the resulting distorted economy while key economic variables like availability of natural resources, world scarcity and demand for them support the politics, at least in the short term. It distorts the economy. It also flaws economic analysis and economic indicators that measure traditional economic performance.

And that is why in this country today there are good financial indices but poor economic fundamentals. This is an area which has not been clearly articulated or even acknowledged by the Government that so often uses the good financial indices as measures of good economic fundamentals. The truth is the people face the burden of poor economic fundamentals because they have to find a way to live in this environment, and I am only dealing with the economic side of the environment in which they are pressured by rising transaction costs, rising food costs, rising construction costs, difficulties in dealing with the ordinary problems of the day and in managing the homes and in providing the necessary income support for their families.

When we talk about the problems of the people, it is not de-linked from the performance of Government's policy. In fact, it is the very performance of Government's policy that creates the problems for the people and often the

Government gets away by finding excuses. The most recent one I saw was where they said that the inflation rate in the country is as a result of consumer exuberance in spending. I could not believe when I saw that statement emanating from one of the Government's spokesmen. Because, here again, they are finding excuses and if you look beyond that, you will find each time there is an appropriate excuse for every Government failure when, in fact, food production is reduced in this country and is growing at negative 18 per cent. The real reason for that is the failure to have an appropriate food production plant and the failure to be comprehensive and long term in view, in dealing with the problem of Caroni (1975) Limited. We said it at that time and we say it again. So there is always that link.

The Government comes with legislation in the name of increasing its competitive environment so as to increase the welfare of the people without acknowledging that, it is the very policies that they are pursuing are creating the distortions that they are talking about.

So here you have a situation. The Government generating the distortions and then creating an environment to remove them which is much weaker than the forces that generate them. So what do you end up with? You end up with what we are having today, and it is now being reflected by what we read in the annual report of the Central Bank. The most recent report pointed in no uncertain terms to the risks that are now associated with Government's expenditure programme, which has created the dependent economy, and that dependent economy is spending money but producing little. And that is fundamentally where the problems are and that is where the distortion is coming from. It is not going to come from this competitive environment, and that is necessary.

Mr. Speaker, the objective of this Bill in terms of its goals to increase the welfare of the society is being nullified by the Government's economic programme, by the creation of a dependent economy that is growing larger and larger, and also by its inability to handle the drug economy that has emerged in our society. There are other implications to that, but I shall confine myself to the economic aspects only. What I am saying has been researched and documented in terms of where this economy is going and, therefore, we see that there is little comfort in expecting to have a sustainable economy beyond year 2008. We must be concerned.

We are aware that what is taking place today that we would probably have the capacity to fuel this dependency economy, we would probably have the capacity to be buffered against the distortion created by the drug economy for the next year or two. All the projections beyond that are no longer creating confidence in

people's mind and it is in that context therefore, that the Government is not only wrong in its approach but is also short-sighted in its measures. I think we have spoken on this on many occasions but this is as good an opportunity to indicate that these so-called measures aimed at increasing the welfare are, in fact, being nullified by the Government's economic programme itself.

Having said that, I want to go next to whether or not the homework has been done to make this Bill effective. In other words, whether the other pieces of the picture have been put in place, to make it effective. The legislation is only one part of that picture. But there is a trade policy platform that goes beyond this legislation and it is in that context therefore, we can ask the very legitimate question: Is the homework done to make this Bill effective, or are we once again passing legislation that would not be effective because the other parts of that picture are not in place? A lot of work has gone on in this issue of the trade policy platform and we have not begun to see the results. In fact, it has been going on for many years.

It would have been more appropriate if the hon. Minister had got up and said that this is the trade policy platform and it is in the context of creating a new trade policy platform that he has brought this Fair Trading Bill and then we would have seen the links. Rather he said he is bringing legislation on financial sector reform and on other kinds of reform, but he is missing the real objectives because those reforms are aimed at regulating the financial sector for other purposes and not for the purposes intended. So in talking about his modernization effort and about his reform programme, I think here again he has misunderstood what really is at stake. What is at stake is a trade policy platform, and there are a number of elements of that platform that ought to be put in place in order to complement this legislation and in order to make it possible for it to work. Because, if we are talking about the people's welfare, we must put legislation that can work and it can only work if the platform is in place.

The first piece of that platform is the amendments to the anti-dumping Act which remains incomplete. It is necessary to amend it to make it compatible with world standards and to bring it in line with other countries. It requires some major changes to ensure that the private and public sectors protected against anti-dumping especially now that both sectors are involved in production. The procedures for complaint in those sectors remain archaic and the very issue of the time lag to investigate such complaints to create an environment is so large and so long. These are some of the measures that ought to be complementary to this particular piece of legislation. It would have been appropriate to do that at the

time, if not, there would be other measures that would be working against the objective of this Bill, and there is no reason why you have to spend all these years—I think the Minister said that this Bill was in gestation since the early 1990s. I queried that on the last occasion but it does not really matter whether he accepts my view that anti-monopoly legislation was a matter way back when. And what does that tell us for a country that 15 years later, we can do as much as to just bring the Fair Trading Bill without dealing with the trade policy platform?

The second pillar of the trade policy platform is to deal with the Act that provides safeguards against abnormal surges in imports. We have had from time to time such surges in imports that distort the whole competitive environment and safeguard measures that are aimed to do that are not in place. We have to resort to some very crude manner measures and you would remember very recently there was that issue with respect to ice cream import, and the Government had to react in a very crude way by putting a countervailing duty of some 500 per cent. So there is the ad hoc approach and these measures, to which I have referred, are part of the legislation both in Jamaica and in Barbados. It is not something new. It is something that we can do and, perhaps, it would be good if we supplement the measures because the Fair Trading Bill is doomed to fail because of the absence of the other measures in the trade policy reform package.

Then there is the third pillar upon which we shall build this trade policy platform. That is the competitive policy framework, and is a major issue that should go across all sectors in the economy.

In this Bill they continue to exclude the financial and the telecommunications sectors in spite of the protestations on our behalf on the last occasion, in spite of the queries that were asked in the other place. The argument for excluding it is that they have their own regulatory bodies, but there is a failure to understand the difference between regulation for the protection of the public as they discharge of those functions and the wider issue of creating a competitive environment. The cost of finance and the cost of telecommunications are the two most important costs that affect the competitiveness of the economy which eventually reflects itself through higher prices, which eventually reflects itself on poor quality of services, which eventually reflects itself on low quality of products.

Mr. Speaker, do you see the link? And by continuing to exclude that in this Bill is a misunderstanding of what the purpose of this Bill is in terms of creating the welfare of the people. It has to be across the board and then there is need for other measures to deal with other aspects of it. But the Government once again

has not been able to put that kind of framework in place, not only with respect to the scope of the Bill, but also with respect to the measures to establish the benchmarks for establishing competitiveness. This is also part of the environment and there are studies that have been done and it is very easy to establish benchmarks of this nature in a number of areas to measure whether or not there is good competitive behaviour. So the purpose of that project is to establish benchmarks in order to ensure competitiveness remains part of our environment and in so doing, there are many benchmarks which can be measured.

One cannot talk about competitiveness if the public infrastructure is itself uncompetitive and adds to the cost, if the very operation of the procedures—I am not even talking about the physical investment—in customs, immigration and the absence of benchmarks to which we can measure our performance, or the procedures with respect to the issues of corruption in the public service or the procedures with respect to full liberalization of the telecommunications sector and so forth—so there is the need to put that in place as well so that you can establish clearly what these benchmarks are.

The question of Town and Country Planning approval—and these are all costs that are incurred in trying to create an uncompetitive environment because we have to be able to compete globally and, therefore, if we are creating an anti-competitive environment by the State, then we would be nullifying the effect of this and one day, we would turn around as is the Government's true style and blame the private sector for being uncompetitive.

I have doubt about that because it would come about at some time when we would read, for instance, that the competitive index in the country has been falling—over the last four years—and it has been well known. Then there would be the argument that there is another excuse. It is some kind of behaviour on the part of the private sector.

Mr. Speaker, that investment climate is absolutely necessary for manufacturing service and the business sectors. Another area that is very important is the area of the Consumer Protection Commission which is part of this package and this platform.

The Consumer Affairs Division has found itself without the enforcement capability or the legal authority to handle the matters. It has been so for years and, therefore, we go through the lip service so often of trying to say we are dealing with consumer matters when we do not have the Consumer Protection Commission which had to be given a quasi-judicial function in order to be able to handle that particular aspect of the welfare that we are talking about.

This division remains one without the necessary teeth to handle its problems, and if we are talking about the ultimate objective—I want to go back—then we have got to put this package. It does not take us 15 years to come to decisions on these matters. If it started in the early 1990s and we are now in 2006 and we are still dealing with that, it is but a reflection of that fact of a political will to really make these laudable objectives realistic.

The sixth area in which there has been a lot of discussion in terms of creating that competitive environment and the ability to take on the job of dealing with the international environment—because one of the other reasons for having the competitive environment is to have a competitive economy and if you have a competitive economy, then you would be able to export more and in so doing, you would be able to create more income. The foreign diplomatic missions must reflect a greater trading capacity and this has been going on for a long time. It is not new and yet we see and hear no tangible evidence where we could create that kind of new dimension to the diplomatic missions. And perhaps, all attempts in the past to do so have not succeeded because there is culture that there is diplomatic protocol and political protocol, and it excludes commercial intelligence as part of our culture.

Mr. Speaker, no wonder, we are ending up today with a situation in which we have to rely on foreign inflows to sustain all levels of living, because we do not have the institutional framework to support the environment that is conducive to making this legislation work.

Mr. Speaker, I raise these points today in addition to all the points I have raised before with respect to this specific legislation, but there is an interesting piece of information that came to my attention. There is an Act 27 of 1996. I do not know whether the Minister is aware of this. It is the Protection Against Unfair Competition Act. It is on the books. Are we going to have two pieces of legislation on the same legislative jurisdiction? I do not know. Is it necessary that this Act should have been repealed, amended or changed? Is this going to create a problem, that this Act was, in fact, assented to in August 1996 and the amendments finally approved on August 07 1996? I raise this point for the Minister to clarify whether or not there are going to be two Acts on the same jurisdiction and whether there are any reasons why we must maintain them in the books. It is a legal issue, but he and his advisors could advise us on that because I want to prevent the matter going to the courts eventually and then there is more confusion at that stage as to what really is got. It would seem to me that this might need to be rectified.

There are some other Acts that pertain to this matter and have been very loosely referred to in the legislation but no specific reference to these Acts. The question arises: Would the commission, in its discharge of its duty, be guided by the provisions of many of these Acts which are covered here but which may contradict the very purpose of this legislation? The Patents Act of 1996, the Layout Designs (Topographies) of Integrated Circuits Act of 1996, the Industrial Designs Act of 1996, the Geographical Indications Act of 1996, there was no specific reference to these Acts, yet there was a reference in the Act before us on the subject matter. This is what it says:

"21(3) An enterprise shall not be treated as abusing monopoly power—

(b) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trade mark."

In other words, it would seem to me that we are creating a kind of legal nightmare where there are different legislative jurisdictions on the same subject and the consistency of that is important.

On the last occasion we spoke on these issues, I talked about the consistency of the legislation in the context of Caricom and in the context of it being consistent with the provisions of Caricom, and now I wish to raise this particular issue. There are two other issues that remain very troubling in this legislation which I raised on the last occasion but which have not found favour with the Government or else the amendments would have been here today.

Mr. Valley: Before you go on—I am trying to understand the point you are making with respect to the patent and so forth dealing with this legislation.

Mr. W. Dookeran: The point I am making is simply that there are various Acts that are not referred to in this legislation that cover the very jurisdiction that this legislation covers, and there could be conflicts in the administration of this because of the different objectives in the Acts.

I just raise this for clarification as I indeed raised the one on the Protection Against Unfair Competition Act. It is a point that you may wish, for clarity, to explain to us how it is going to work.

Mr. Valley: You have read this legislation?

Mr. W. Dookeran: Yes.

Mr. Valley: And you have not seen any exemption for patents and so forth in this legislation?

Mr. W. Dookeran: That is exactly the point I am making. I just quoted what I read. I quoted what the legislation says and I am saying that legislation legislates on the same jurisdictions as the other pieces of legislation but there are different criteria. The last time we talked about that in Caricom, that there was the same subject but different. For instance, in the Act there are different penalties for conflicts in offences and the right of appeals is different in the two Acts. But I will leave that for the lawyers and my legal friend to talk about. I just wanted to raise it to get an answer from the Minister.

2.30 p.m.

It is about time that the Parliament becomes one in which the Government has to account. One of the purposes of my standing here is to hold it to account; to explain what it is doing when we feel that it is not clear. It is in that context I ask the Minister to explain that before it becomes a major issue.

I was about to mention two areas that remain very troublesome in the Bill before us. One is the capitalization limit. In terms of capitalization, $50 million in today's world cannot hold water. It is equivalent to US $8 million, £4 million and Euro 6 million. To subscribe that there is a limit of that nature is virtually to put everyone in this world under the glaze of being involved in anticompetitive mergers. I do not understand, first of all, why there is the need for a figure. I thought that these were moving targets and that the Commission would have to decide clearly how to define what is an anticompetitive merger, without regard to this US $50 million. Secondly, if it is to be included, why such a limit?

It introduces the further question that it can be changed through ministerial intervention. Ministerial intervention on matters of administration ensures a loss of confidence in investors who believe they have to go through this ministerial intervention in order to get redress. There are so many cases where, perhaps in the name of fair trading, ministerial intervention ends up with preferred firms which have the right political connections entering the market.

It is therefore not a matter for building confidence when you replace a rule-based operation with ministerial intervention. This appears to be a trend that is taking place in most of the legislation coming before us. I understand that it is in the Financial Institutions Bill, which has not yet come to this House. In the Home Mortgage Bill that is coming, it is there. In the Telecommunications Act, it is there. We see a trend to bring ministerial intervention at a very low level of operation; not at a level of policy, which is legitimate in our system and must be so.

When you open these kinds of authority to ministerial involvement in operations, you remove the sense of independence of those commissions and, at the same time, you create a lack of confidence. One of the underlying objectives of increasing competition is to create confidence and this continues to be part of this. It is US $50 million, which means you get involved at all times and wherever you may go, you can vary this on the basis of ministerial discretion.

In today's world, we have argued, particularly with respect to anti-trust legislation, anti-competitive legislation, anti-monopolistic legislation, however you want to call it, it has to be rule based, not discretion based, particularly not on the basis of political interference. We have had too many situations, within recent times, with this excessive money flowing in our country, that much of this ministerial intervention is reflected in higher costs.

Today, I read about UDeCott. What is going on there is atrocious from what the report says of the overruns and the number of contracts that are involved. I do not know how it is run. What are the rules that govern that institution? Are they rule based? Do they have accountability? Do they merely come to the Public Accounts Committee and say they will find an auditor? That was their response after they were told that there was all this excessive expenditure; that they themselves were in debt and the solvency of their operation was itself in question, with the full knowledge that there was no risk associated with going overboard because the Government would bail them out with taxpayers' money at some time. Their response was: We will appoint an auditor.

They come to the Public Accounts Committee and you talk about that issue and their feeble response is that they would appoint an auditor. I say here today that we should do far more than that. It is time that we go into the heart of UDeCott and find out precisely what is their accountability to this nation on the expenditure they are undertaking on behalf of the people of this nation. [*Desk thumping*] There should be full-scale exposure on that issue as a start to what I have been calling for as a complete review of public expenditure policy in this country. Public expenditure policy remains outside the scrutiny of this Parliament and the people of this country.

We do not know where the money is going. When they come to Parliament, they say they want $4 billion to spend but they do not tell us how they spent the last $33 billion. We do not have in our parliamentary system a serious sense of accountability for it. Let us start with UDeCott and move to others.

I remember when I met with the IMF some two years ago, I told them to do a public sector expenditure review so that they could see whether or not there is real

value for this expenditure; whether or not there are real benefits; whether or not the people of this country are finding that their welfare is increasing because of the expenditure. They agreed and I believe they included it in their report, but subsequently I have seen no commitment on the part of the Government to undertake that. We have to find a system to monitor it on an ongoing basis. Too much money is being spent in this country and we cannot see the value of it today. It affects the lives of our people. It affects the incomes. It affects prices—everything—therefore there are links and sometimes people argue about the people, but their problems are always linked to the Government's management of the economy. Someday we will talk about other aspects of it. Mr. Speaker, it is in that context that I find it difficult to accept that there will be that kind of limit on the capitalization.

The second area that is troublesome is the area of market concentration. All existing monopolies are in breach based on the market concentration limit of 40 per cent specified in the Bill. On the last occasion I asked the question: Is it 40 per cent of the local market or of the Caricom market? Even 40 per cent of the local market appears to be small. Does it include exports or will they leave that to the discretion of the Minister in the final analysis and therefore introduce the incentive for arbitrary decision-making, which can be used, not for the common good of the people, but to serve the particular interest of the political party? I do not know, but I am saying that we as a government must remove that kind of incentive to be able to use that authority on these issues.

That particular issue remains one, but it raises another issue. What about the existing monopolies and state monopolies? I would like the Minister to explain that to us. Would the existing state monopolies, which clearly would have had more than 40 per cent of the market share, be covered under this legislation? It is not clear to me. I need your guidance. Let us know whether they are. In which case, almost everybody would be under some kind of surveillance. I do not know if that is the intent, but according to this 40 per cent rule, we may find ourselves having to review how effective that rule is in the context of today's regional and global economy and whether or not it could work.

There is a feeling in this legislation that mergers and acquisitions are the only ways in which anticompetitive behaviour takes place. In the real world situation anticompetitive behaviour takes place through other means which are not covered in this legislation. It takes place through all kinds of leasing arrangements. It takes place through a lot of off balance sheet activities. In fact, the entire issue with Enron some years ago—

Mr. Speaker: Hon. Members, the speaking time of the hon. Member for St. Augustine has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Dr. H. Rafeeq*]

Question put and agreed to.

Mr. W. Dookeran: I thank you, Mr. Speaker and hon. Members, for the extension of time.

I was saying that it appears that mergers and acquisitions are ways by which you can detect anti-monopolistic behaviour, but in the new world in which we live, there are other channels, transmissions and leasing arrangements. The Bill, the Minister said would cover agreements, so I would like an explanation on that issue.

The entire fiasco with Enron, which, the whole world knows, was involved in a lot of things from which it eventually collapsed, was based on all sorts of off balance sheet activities that were taking place to create monopoly power. The entire debate with respect to some of the well-known issues came from those measures rather than from mergers and takeovers. I think that the definition of anti-competitive behaviour may need to be reviewed to accommodate some of the practices that take place in today's world.

The questions, therefore, are: Could this Bill work for the benefit of the people? Could it really work to improve our welfare, and in what time frame? Is it done in response to the dictates of the international agenda on economic reform or is it done in response to the dictates of what the local environment requires? If it is to work, there must be a full platform. These are some of the issues I have raised here.

The second question is: Even if it were to work, will the Government's economic strategy be consistent with the objectives they have laid out here? They must stop distorting the economy. The biggest distorter of the economy in Trinidad and Tobago today is the Government itself. Unless they correct that, nothing else will work. They are such a large part of the economy that the rest is miniscule.

I end, Mr. Speaker, where I started when I said that this Bill is about the welfare of our people and we must measure it in terms of its effectiveness in improving the welfare of the people by allowing them not to be subjected to these

high prices, monopoly behaviour and abuse. If you really want to deal with monopoly abuse, let us put some legislation in a framework and have it complemented by sound economic policy on the part of the Government.

Thank you very much.

Dr. Roodal Moonilal (*Oropouche*): Thank you very much, Mr. Speaker and colleagues for recognizing me at this new location. It appears that it is easier to recognize me here than at the last location.

Before I begin to address issues relating to the Bill and a few critical points in a short time, I take the opportunity, on behalf of colleagues on this side of the House and, I am sure, all colleagues, to once again congratulate the Soca Warriors, the Trinidad and Tobago National Senior Football Team for their heroic performance in the ongoing World Cup campaign.

It is the first meeting of the House since the triumphant return of the football team and it is a good opportunity as well to register once again our ongoing support for, not only the footballers, but also the sport as a whole. Ours is a country, Mr. Speaker, where we are often very eager to jump on the band wagon to support champions and as soon as they demit their status, whether they be boxers, football or cricket teams, we abandon them skilfully. I hope that this is one case when our heroes will not be abandoned and forgotten after we get over the euphoria of their recent triumph and performance with distinction.

Mr. Speaker, the matter before us today is one that has been occupying the attention of the Parliament and indeed the national community for some time now. I think it was the Minister of Trade and Industry who sought to put the matter in context, not only in terms of the delay in reaching this point to debate this important matter, but in the context of further modernization and update of the legislative framework, the legal framework and the policy framework dealing with business development in Trinidad and Tobago.

We are at a phase in our economic history when we are aspiring towards First World status—whatever we mean by that—and we have a sense of modernizing legislation dealing with the facilitation of business and fair trading practices constituting an important step towards First World status.

This country has been blessed with resources in the mineral sector—gas and oil—and at times we often cloud our vision of development by reflecting upon the positive returns from our extractive sector. It may well be that the country as a whole may not be developing in the sense of human beings improving the quality of their lives, but the economic indicators suggest development because of the

wealth we experience from the extractive industries and the positive international economy within which the trade of gas and oil takes place.

Mr. Speaker, whether it is anticompetitive policy, whether it is fair trading and, as the Minister alluded, whether it is legislation in the context of bankruptcy and insolvency, it is all meant to modernize the policy and legal framework for business development. That, I think, is the key and the Minister of Trade and Industry hinted at that.

What is happening is that as we modernize our legal and policy framework and increasingly as we seek to borrow, if not copy totally, some of the principles, machinery and concepts used in the so-called developed countries in dealing with legislation and in dealing with issues of this nature, particularly the European, United Kingdom and Canadian experience—we also use a lot of reference points from Canada—as we borrow and try to fashion our own institutions by borrowing principles and concepts and so on, we do so in a particular public sector environment and this is where some of the problems emerge.

In the Caribbean, we have a public administration system and culture that is largely British in orientation, with a particular institutional and cultural heritage from the United Kingdom. For better or for worse, we have in place a traditional British civil service culture and institutional heritage. There is a clash at times between our traditional British civil service culture and these modern pieces of legislation dealing with bankruptcy, insolvency, fair trade and anticompetitive policies. There is this clash between what is traditional and what we are trying to impose as modernity—as modern legislation. That creates a lot of problems in dealing with implementing legislation.

In Trinidad and Tobago, we are also in a second type of Pandora's Box. We are in a second domain of problems in that our legal, political and public service culture is British, yet many of our business practices, our commercial dealings and our banking practices are really American, and North American in orientation. There is a huge difference between some of the practices and the concepts as applied in North America vis-à-vis the United Kingdom, which we have in this descended public sector administration culture and institutions and that presents another bothering problem in dealing with this type of matter. I will come to it later.

In the area of competition law, there is no shortage of controversy in anticompetitive policy and practice and there are a couple issues I would like to put on the agenda for the Minister to ponder over and respond to. Competition law could be at times sophisticated and difficult to understand. At times it could

be a simple matter of trying to understand selling and buying in a shop. I always begin with one simple example to explain the sophistication and at the same time the simplicity of some of these problems.

We go into a supermarket today and we go to a freezer. At the freezer we are looking for bottled water and we see Blue Waters in the freezer. Mr. Speaker, you know, the only water in that freezer is Blue Waters. There is no competitor in the freezer. That is interesting. You want water, but you may not choose one brand, you may want another brand, but the freezer only has one brand. I am only using Blue Waters as an example. That is the Blue Waters freezer. Is that anticompetitive or is it marketing practices that are acceptable? Do you understand the issue? It is somebody's freezer. Is that also preventing another brand from selling?

There is a claim and there are cases that deal with this—I am trying to simplify it, but these are sometimes very complex cases. By asking to put one brand into the freezer supplied by the particular distributor, you could also be pushing out another product which may not have economies of scale to provide a freezer. The other point is how many freezers could actually be provided. If there are 10 brands of water, does that mean the 10 companies should provide 10 freezers for a small company like a quick shop?

These are some of the more complex issues between what really anticompetitive practices are and what could be considered acceptable marketing strategies. Our legislation needs to respond to some of these challenges. That is one.

There are others in the area of enforcement, for example. When you get to the area of enforcement, there are many challenges to enforcement. I am just pointing out one or two of the problems that we talk about.

I want to begin, now that I have people's interest by talking about Blue Waters, by saying that at the heart of all of this law-making we participate in, is really an attempt to create, in a way, a clean business environment—if that is possible—so that there would be fair practices and a high level of competition. You will remove artificial barriers and obstacles to trading and to people marketing their produce, you will remove the anticompetitive obstacles. That is what we are hoping.

Mr. Speaker, the track record as far as this country is concerned—if you for the moment put aside the energy sector and the issues dealing with oil and gas—in producing a competitive economy is not a good one in the context of Trinidad

and Tobago. In the context of reports, we have data. The *Report on Global Competitiveness* produced by the World Economic Forum on an annual basis issues a global competitive indicator. It may be surprising to some persons to see indicated that Trinidad and Tobago is actually sliding down the list of countries with a positive competitive economic index. The country's performance, Mr. Speaker, in terms of our competitiveness is on the decline. This is the World Economic Forum *Report on Global Competitiveness.* Trinidad and Tobago has been in a state of decline for several years as a competitive economy.

Mr. Speaker, "competitiveness" is defined as a collection of factors, policies and institutions which determine the level of productivity of a country and the level of prosperity. There is an explicit assumption that competitiveness is linked to prosperity. If you have an economy where there is a high level of competitiveness and businesses operate and trade fairly and without artificial blockage, there will be a higher level of prosperity. There will be, sometimes, more businesses, more employers and if there are more employers, there should be more employees. There is a wealth chain that surrounds the issue of competition policy.

Competition policy actually is linked to job creation. We do have data to suggest that in economies with a high level of competition, the removal of barriers and proper and effective machinery for enforcing competition law, there is an increase in employment figures. There is a greater number of employers coming on stream in specific sectors and so on.

The point is that this country has not been performing in a positive way in terms of our global competitiveness report. There are several questions which arise in this context and one that was alluded to by the speaker before had to do with the role of the State as a hindrance to effective business; the role of the State as propelling anticompetitive practices. The State plays a greater role, particularly in developing regions, in the direct economic activity in the productive sector than in developed countries. They play a greater role in terms of background facilitation. In developing countries, the State participates directly at times in the productive sector and as such the State, by definition, could be the major obstacle to competition.

We just have to reflect, Mr. Speaker, on developments in the 1970s and early 1980s when the Government of Trinidad and Tobago involved itself in a host of economic activities. There was a time when the State ran cocoa farms and hotels.

3.00 p.m.

The State was involved in a host of activities; some productive, some not, and it may have had an effect on competition in the particular subsector. Today, the State is also involved in the productive sector, although to a lesser extent, and

strategic areas of that sector. There may be interesting questions to ask as to the State's role in promoting anti-competitive policy; whether they do so or not and whether they promote justice at the place of business.

Mr. Speaker, to get out of this downward spiral, in terms of our poor performances on the competitive index—I would read the figures. Our performance according to the report of the world economic forum is as follows: in 2001 we were 38; by 2002, 42; by 2003, 49; by 2004, 51 and by 2005, 60. It is not just that more countries are coming on board, it is that we are moving in a qualitative way; we are moving down. We are getting less and less competitive. The Government may want—before passing a lot of laws; there is almost an implicit acceptance by many that these laws would be passed and never implemented. If they are implemented, we are looking at a 10-year period. It may be that the Government may want to reflect on why this country has been on the decline in terms of our competitive index. Why it is between 2001—2005 we have been falling dramatically down the ladder, in terms of competitiveness? What is the reason? Is it because of unfair practices? Is it because we do not have legislation in place? Is it because of other fundamentals that are not in place in the economy? There are several reasons that we can look at. There are institutions in the country that continue to exist above the law. You need to take a look at the newspaper reports arising out of committee meetings in the House of Representatives to understand there that are some state-run operations that are renegade; that operate beyond the law and you are trying to rein them in.

I remember the Prime Minister, the Member for San Fernando East, approximately four or five years ago addressed delegates and directors of state enterprises and indicated that he would be reining them in so that they could implement proper business practices, accountability systems and transparency. We have heard nothing of that since then. There are state institutions which exist today and operate outside of the law.

Is there a problem with market efficiency? Is there a problem with innovation? Is there a problem with the wider questions of the macroeconomy suppressing business expansion? We sometimes debate one measure in the House and believe that it is not integrated into other policy areas, but there is a relationship between competition policy and crime. There is a relationship between business practices and the state of security in the country, because if businessmen and women wind up their businesses, downsize, sell out and close down because of the state of insecurity in a country, what competitive environment are we creating? What is the competitive environment we create when businesses migrate and business persons migrate in

fear of crime? We may not need a competition policy and we may not have competitors. We may have one producer if we continue at this level. Policy areas are integrated; whether it is competition or security and generally, your failure to deal with security would have an impact upon business and it would also have an impact upon competition.

I promised not to be too long with this intervention, but there are a couple of matters I want to raise for clarity and for the response of the Minister if he deems the contribution by your humble servant to be worthy of his response.

In defining some issues, I want to draw the attention of the House to certain problems of definition, description and interpretation. Competition law is an interpretation nightmare when it gets outside. When we talk about abuse—the Minister made the point; it is not that we are against monopoly, we may be against the abuse of monopoly. There is a distinction of what is abuse. How do we define "abuse"? We need more than a two-line definition of what constitutes "abuse". As we look at the legislation, we have, of course, an interpretation of "monopoly", "power" and "abuse of monopoly". What would constitute exclusive dealings? What would be the basis of exemptions? The exemption policy is probably more important in competition law than spelling out what is to be done in telling what might be the exemptions; whether you would allow a certain measure of anti-competitive practice, based upon public interest, national security or public health. There are clear grounds of exemptions in competition law, meaning public health, public security and public interest in some cases.

You would be amazed to know that in some regions of France, they can produce wines and the way it is bottled and how it is exported is now exempted from competition law, simply because the area that the wines come from is deemed to be a socially depressed area in the South of France and they are under a national law that states that they can be exempted from certain competition policies. National interest plays a big role in competition policy. Of course, we have gone way beyond the boundary, in terms of national interest. This is the Government that closed down the sugar industry because it was unprofitable, of course, and there were economic problems with unit cost. You may be surprised that a debate now, certainly from the point of view of Guyana, is that these industries may have to be deemed social industries and they may have to relocate themselves outside competition law and exempted from some of the practices and policies that we may have to look at. [*Interruption*]

Mr. Valley: I want the Member to state whether he would advocate that Trinidad and Tobago follow Guyana's economic model?

Dr. R. Moonilal: He would first have to give me a good lecture on Guyana's economic model for me to understand what he means by Guyana's economic model. I am not sure he understands Guyana's economic model. I would like to ask him if he thinks we should follow their political model that they have rooted in the Burnham and Hoyte eras? The point I am making is a simple point. Let me get away from Guyana because I know he has an interest there. Public interest, at times, demands that countries pass laws to protect sectors, regions and groups of workers. In doing that, you may also exempt yourself from certain competition laws.

I want to make a final point, because I am sure there are others who would like to contribute on this matter. Another troubling point with this piece of legislation is that today the business environment of Trinidad and Tobago exists not only within national borders; not only within the Trinidad and Tobago nation state, and much more as we progress. The business community in 2006 certainly is not the business community in 1976 and it will not be as we look at it today. It may be mind-boggling because it may not be the same business community in terms of its character in 2016. We are not speaking anymore about businesses located within national boundaries, but certainly within regional boundaries. It is for this purpose that we have as a reference point for policy and law, the Revised Treaty of Chaguaramas and the Caricom Single Market and Economy (CSME).

In our domestic law—with reference to the Caribbean Single Market and Economy—we make reference to a court system. In the event of problems arising with competition law, there is a reference to our domestic court system. In the context of Caricom—where we have a couple of territories and possibly more later—there will be the Caribbean Court of Justice as the final court for arbitrating on business and unfair practices. What happens in a situation where the Caribbean Court of Justice (CCJ), in the context of Caribbean Single Market and Economy, is not the final court for all the territories within Caricom? There is, to me, and others may reflect on it, some type of problem, when you have different countries in the same region moving to a different court, where the court may not be recognized by one territory to arbitrate and determine disputes over competition policy.

In the United Kingdom, the matter is made a bit simpler where there is the European Court of Justice that will determine disputes over competition policy in union members; the European Union (EU) members. Now, incidentally, they are developing that and they are giving the national competition authorities, as the Minister is aware, more and more powers to determine disputes arising out of competition law.

In the Caribbean, we may be faced with an interesting problem where some territories may adhere to the CCJ, others may not, and the territories in which you have the problem and a business partner, where a business may be registered, may look to the CCJ outside of the domestic court system.

Mr. Valley: Let me correct you. The CCJ is for trade matters. It is the final court for trade matters. You do not have the problem. I think you are referring to the problem where Barbados has taken it to the Appellate Court and Trinidad and Tobago has not. For trade matters, this is the final court. You do not have the problem with respect to trade matters.

Dr. R. Moonilal: I accept that, but we can talk about it more. There is the issue of the definition of "abuse" and "exclusive dealings" and the bothering problem of competition policy and marketing strategies, particularly in small states where you have distributors operating in the marketplace with imported products on a basis that the Member for St. Augustine raised; franchise. They franchise out certain goods to domestic distributors. Domestic distributors are involved in competition with products from abroad and also domestic products. Are we saying, with this piece of legislation, that all products would be treated alike; domestically produced products and foreign products coming from aboard, in the context of competition policy? Should we be thinking in an alternative way of somehow exempting particular sectors and businesses from some of the stringent requirements of competition policy?

Mr. Speaker, these are the few remarks I wanted to make on this matter and I hope that the Minister answers. Thank you.

Mrs. Kamla Persad-Bissessar (*Siparia*)**:** Thank you, Mr. Speaker. I want to make a brief intervention on two areas that I am still concerned with, in spite of the comments given by the hon. Minister. The first has to do with the constitutionality of the Caribbean Community Competition Commission.

It is a convoluted route to trace what that commission is, how it is to be set up and who would actually appoint the commissioners. When we look at clause 48 of the Bill, as amended in the Senate—this would be the total Bill and makes it easier for us to follow—it deals with referrals from the Community Competition Commission.

> "48(1) Where an inquiry or investigation by the Commission involves anti-competitive conduct in another Member State, which has the effect of lessening competition in Trinidad and Tobago, the Commission shall under

the hand of the Chairman refer the matter to the Community Competition Commission…

(2) In referring the matter to the Community Competition Commission, the Chairman shall send all documents relevant to the enquiry or investigation."

In this section "Member State" means a Member State of a community. These are found in the Caricom Community Act. I believe that is Act 3 of 2005, which was passed in this Parliament last year, where we took the Treaty of Chaguaramas and gave it the force of law, domestically, in Trinidad and Tobago. Trinidad and Tobago and the other Caricom States are signatories to this treaty. Basically, all the Caricom States would be Member States and, therefore, they would be caught within clause 48.

Clause 49 states:

"49(1) The Community Competition Commission shall have the power to undertake such investigations as may be necessary in Trinidad and Tobago.

(2) The Community Competition Commission shall, in relation to any matter referred to it or any request made to it under this Part, have the same powers of the Commission in Trinidad and Tobago given under Parts II and III of this Act."

Clause 50 states:

"A decision of the Community Competition Commission under this Act shall be binding on all parties to which it relates and is enforceable in Trinidad and Tobago in accordance with Rules made by the Supreme Court under the Supreme Court of Judicature Act, as though it were a judgment of the High Court."

It is binding and it is final. Those are the issues I would want to look at.

Firstly, clause 49(2) speaks about the Community Competition Commission. Can I, for brevity, refer to it as the Community Commission?

"The Community…Commission shall, in relation to any matter referred to it..."

I have no difficulty in understanding that. Clause 48(1) tells us where there is an investigation locally, our local commission can refer to the Community Commission but it goes on to say:

"or any request made to it under this Part..."

I have looked at this part carefully. It is Part VIII of the Bill and I see nowhere within it, for any request to be made to the Community Commission. I would like the Minister to clarify, apart from referrals, where else in this statute there is jurisdiction given for any person, interested party or any State to raise a matter before the Community Commission, which is what clause 49(2) seems to imply.

What is the Community Commission? Clause 2 of the Bill gives the definition of the Community Commission. The "Community Commission" means the Commission established under Article 171 of the Revised Treaty of Chaguaramas establishing the Caribbean Single Market and Economy. In order to find out what this Community Commission is we now have to go back to the treaty, which was made domestic law under Act 3 of 2005, which was brought into force into our domestic law. When we go into this, I discovered firstly, that it said in Article 171:

> "For the purposes of implementation of the Community Competition Policy, there is hereby established a Competition Commission…having composition functions…as set forth."

Article 172 states who should comprise this Commission for the community:

> "1. The Commission shall comprise seven members appointed by the Regional Judicial and Legal Services Commission to serve on the Commission. The Regional Judicial and Legal Services Commission shall appoint a Chairman from among the members so appointed.
>
> 2. The Commission shall comprise persons…"

of certain expertise.

Where is this Regional and Judicial Legal Service Commission? I now have to look at another Act, which is the Caribbean Court of Justice Act, Act 8 of 2005. We passed this one first and then we came to Parliament to pass the CCJ Act, 2005. I am told in Article V, which is a schedule to the CCJ Act, that there is hereby established a Regional Judicial and Legal Service Commission and it sets out whom it shall be comprised of. That is fine.

When we go to look at the powers of this Regional Community Competition Commission, this Commission is being given tremendous powers under Article 174. [*Interruption*] [*Mrs. Persad-Bissessar continues to cough incessantly*]— That would not help. Thank you. It states:

"The Commission may, in accordance with…national laws, in the conduct of investigations:

(a) secure the attendance of any person before it…

(b) require discovery or production of any document…; and

(c) take any…action as may be necessary in furtherance of the investigation."

First of all, the Community Commission is an investigative body but, in addition, it is being given an adjudicative role. In our system, the administration of justice system, and in the jurisprudence, our investigative body is not the same as the adjudicating body. Firstly, the police would investigate, the DPP or the police may charge and then you go to the courts. Here you have one body; a regional body at that, being given both roles to investigate and after being investigator, to come and adjudicate on the matter. I think that is not in keeping with our jurisprudence. I ask the Minister to consider that. You cannot have the investigator, which is the police and the prosecutor, being also the adjudicator and the judge.

The second issue has to do with whether you need the special majority. Here you are giving a body the power to summon persons, but you go further to give this body the power to order fines and compensation. There are cases in our own jurisdiction—[*Interruption*]

Mr. Valley: Which Act are you looking at?

Mrs. K. Persad-Bissessar: Act 3 of 2005.

Mr. Valley: Which has been passed sometime ago?

Mr. Valley: Okay, thanks.

Mrs. K. Persad-Bissessar: Yes. That is okay, because at that time you did not give a specific function to this body. [*Mrs. Persad-Bissessar continues to cough incessantly*] Mr. Speaker, I am not going to be able to—I am so sorry.

Mr. Valley: No, we will wait.

Mrs. K. Persad-Bissessar: No, I am keeping you back with this.

Mr. Valley: No, no, that is fine.

Mrs. K. Persad-Bissessar: Okay, if you give me a moment. I am looking at Act 3 of 2005. I thank you for your time. In this you set out who these people would be but it is only when you come to the Fair Trading Bill that you are

actually giving this a final determining power. You are saying that decisions are going to be binding as stated in clauses 48, 49 and 50. In doing that, you are taking a body to take a jurisdiction that has been given traditionally and constitutionally to the Supreme Court to impose fines.

There is the decision of our own Court of Appeal and our High Court. This was a matter dealing with the Equal Opportunities Commission. You would recall that the courts here struck it down as being unconstitutional. One of the reasons was because the members sitting on the tribunal of the Equal Opportunities Commission were given the power to impose fines. This is what the courts said at page 10 of the decision of the Court of Appeal:

> "The combined effect of this section is to give the tribunal unlimited jurisdiction to impose fines. The Equal Opportunity Act creates no offences. There is a breach of the doctrine of separation of powers as in deciding which matters it could impose finances and then setting limits of those fines. The tribunal would be exercising a function reserved for the Legislature."

Mr. Speaker, it is well accepted in law, and this case goes on to describe it, that where a body is given the power to impose fines, it is the Legislature that sets what those fines may be; minimum and maximum. It is a function of the Legislature and not of the adjudicating body. That is one ground on which this regional competition body is going to be unconstitutional in our law. If it was not unconstitutional, nothing is wrong with that because you know you need to pass it with the appropriate majority, but it cannot be with a simple majority.

The second aspect, in my view, which I respectfully suggest is unconstitutional, is again based on the decision of the Privy Council in the case of Edward Seaga and the Jamaican Council for Human Rights against the Attorney General of Jamaica. This is the case dealing with the Caribbean Court of Justice (CCJ). In this decision, the Privy Council pointed out that the very body—the persons who were appointing the Judiciary for the CCJ—the Regional Judicial and Legal Services Commission; the method and manner of appointments were not such that would give security of tenure to the persons who would sit as judges. That is why they struck it down then, as it would be struck down again. Mr. Speaker, as you know, we have a matter pending in the courts with respect to the original jurisdiction of the CCJ. That matter is scheduled for hearing in the Supreme Court, in November of this year.

Those are the same arguments that were placed before the Privy Council and upheld by the Privy Council. Those are the same arguments that we could use with respect to the Regional Community Competition Commission. The persons

who are going to appoint them are going to do so for a period of five years. Therefore, their security of tenure will depend on the whims and fancies of others. The Privy Council said where it is that this was happening; where you have persons adjudicating on the rights and obligations of citizens, they must have security of tenure to preclude or avoid any threat or any possibility of political or Executive interference. Here it is that the same body, the Regional Judicial and Legal Services Commission, is being given the power to appoint the Competition Commission for the region. Based on this case, again, the Privy Council decision, we are moving into waters that are unconstitutional, with no security of tenure.

The second aspect that the Privy Council ruled on was the fact that persons who were appointed and the manner in which it has been set out it could be amended at any time by a simple majority of the Parliament. In the same way, the Regional Competition Commission can be amended by amending the treaty by a simple majority of the Parliament. The Privy Council used those exact words that that is no constitutional guarantee making for security of tenure or for the terms and conditions of persons so appointed and working as adjudicators in a matter. Those are two aspects.

The third aspect has to deal with the fact that where you give jurisdiction to any body for adjudicating on a matter, and they exercise powers that are similar to those exercised by the Supreme Court, you must make sure that these persons are given the security of tenure, the terms and conditions and such other protections as are set out in Chapter 7 of our Constitution for the Judiciary. This has not happened. I ask the Minister to seriously consider looking again at the Regional Competition Commission. You are making decisions final and right away what you are doing—by a simple majority that you will pass this by—is abrogating or taking away the right of every citizen in this land to go to an Appeal Court and a Privy Council as a court of final decision. You set up the regional commission and you are giving it final jurisdiction, final judgment and final decision, whereas our Constitution guarantees, in our judicial structure, that we must have three tiers: the High Court, the Magistrates' Court, the Tax Appeal Board, or the Industrial Court. You can then go to the Court of Appeal and then the Privy Council. That is not happening with your final decisions as set out in clause 50 of this Bill.

I know the Minister is very anxious to get this passed. We have had it since last year but that area, clauses 49 and 50, would be struck down. If that does not matter to you and you want to get it passed, then the courts will decide. I ask you to ask your draftsmen again to take a look at that.

The second area has to do with the second question I asked, which is: Why are you leaving out the banks and financial institutions? The Minister said: "Well, we are just doing this for the time being and there are other laws governing these financial institutions and the banks." The Minister mentioned the Financial Institutions Act. I looked at that entire Act and the proposed amendments. He mentioned the Securities Industry Act and I looked at that as well. I looked at the Central Bank and none of those will perform any function such as envisaged by this Fair Trading Commission. None of those will handle the kinds of matters dealing with competition policy and monopolies. They are regulators. It is regulatory legislation, not in terms of what is being done with the Fair Trading Commission. When we leave out the banks and the insurance companies, why is it illegal for everybody else, except the banks and financial institutions, to engage in tied selling? When we look at the Bill it talks about tied selling. "Tied selling" is where you offer one service—this is at clause 21 which states:

"'tied selling' means—

(a) Any practice whereby a supplier of an article, as a condition of supplying the article…to a customer, requires the customer to—

(i) acquire any other article..."

The banks are notorious at tied selling. The existing legislation that the Minister speaks of will not assist with the tied selling.

Take for example what happens here. You go to the bank, it is a common practice in many banks, they give you a loan on the condition that the borrower will take more money than he needs and then take the surplus and invest in a fund in the same bank. That is tied selling. You are taking two services, in a sense, from the same and you have no choice because that is the condition under which you are getting the loan.

We have seen also in banks and insurance companies, when you go and get the loan from a particular bank, there is tied selling in the sense that the bank tells you which insurance company and which lawyer you must go to. I was not looking at the lawyers. What it is doing is that it is excluding the banks and financial institutions. If you are dealing with anti-competition practices, how are you going to control those? The banks are the worst culprits when it comes to the small man in the country. When you go for a loan there is no competition. They tell you which lawyer and which insurance company to go to. What is even worse is the interlocking directorates that you find within the banks and insurance companies and, perhaps, some of the law firms as well. What in this and the other

pieces of legislation is going to protect the ordinary man in this country? The Minister said to me: "Do not worry, we already have those covered." I am saying that is not the case.

Telecommunications is exempted. We saw the fiasco in this country for a year when Digicel was attempting to break into the monopoly of TSTT. TSTT took this country for a ride for one year. What is there in this legislation to prevent another such scenario? The Minister has excluded telecommunications. The existing law will not protect the unfair practices and will not help the consumer with respect to the unfair practices.

Mr. Speaker, the Minister spoke about the Bill taking so long to come here and about all the consultations that have taken place, but this Bill is very incomplete, in my respectful view. It leaves out what you would find in the developed markets. In the developed markets you would see that the banks and financial institutions are included. You would see truth in advertising. In this country, there is no control whatsoever with respect to advertisements. We are talking about unfair practices and unfair trading. There is nothing that is put in the developed countries. When you come to unfair trading legislation you have to deal with the issue of truth in advertising, unconscionable conduct, misleading conduct in relation to employees, bait advertising, harassment, coercion and pyramid selling.

Mr. Speaker, do you remember what happened in this country a few years ago with the pyramids? Do you recall the pyramid selling and the collapse where so many people went into difficulty? Legislation in the developed world, dealing with fair trading covers that. There is nothing here.

What about offences by promoters and lenders; all the fete promoters? You hear about the things that happen. What about lenders within the financial institutions and outside of them? They are not covered. What about the liability of recipients of unsolicited goods and services? The list can go on if you look at legislation coming out of developed jurisdictions, and that is where we are going. Trinidad and Tobago is positioning as—[*Interruption*] I will pass a copy to you. I have it here with me. I am not speaking of Jamaica at all, I am speaking of Australia. I will pass the copy to you. I have looked at several of them. In the developed markets, they do not stop where we stop. They do not have only two areas that we are covering. Therefore, we are starting with this, as the Minister is saying, but we need to come back very quickly to deal with these other areas. The Minister needs to seriously consider what he would do with the financial

institutions, the banks and the insurance companies in this country. If we fail so to do, we would continue to see breaches occurring.

Look at what happened at the Unit Trust Corporation (UTC). Not only was it unfair practice, what happened at the UTC was against the law. There was nothing to protect the money deposited. The Auditor General reported to this Parliament that moneys were taken out to the tune of billions and invested in funds in which the UTC had no jurisdiction or power so to do. What has happened with this? What legislation is there to prevent illegalities?

You are saying that the SEC would control and regulate these, but there is an inherent conflict, in my respectful view, where the SEC and the Central Bank that are regulators, going to highlight the several wrongs that would be in the industry when it would show that they have failed in their job of regulator. That is a conflict of interest. They can regulate, but when it comes to fair practices, you need another body outside of that body to deal with it. I think it is a serious failure on the part of Government, not to include banks, the financial institutions and the insurance companies in this fair trading legislation. If the Minister intends to come back with it then tell us so, but it has to be done very quickly.

Mr. Speaker, with those few comments, I thank you for your time.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Thank you very much, Mr. Speaker. I sat here and I wondered whether this was the same legislation which was debated last year. I remember last year we had only one speaker and the speaker came today and changed his tongue. He said he had further consideration. I thought he was aping his former colleague, Mr. Warner. I think that was yesterday. He is telling me at the end, although at the same time: "These are my comments, in addition to those I made on the first occasion." I do not know which to believe. What he said on the first occasion is diametrically opposed to what he is saying now.

On the first occasion he was arguing that: "You do not need this legislation. Why did you bring this? This is 10-year-old legislation. The world has moved." Today he is saying something else. He says that we need it, but we need to go even further. I do not know what to believe.

Just to give some indication. This is why I had to ask him whether he really read the legislation. You would remember that at one point he was making the point—I do not know why he is not here—and he argued that we had other legislation and what is going to happen with legislation such as the patent legislation and copyright. I had to ask him whether he read this Bill. If he had, he would have seen that at clause 21(3)(b) of the amended Bill it states clearly:

"An enterprise shall not be treated as abusing monopoly power—

(b) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trade mark."

It is so clear but he got up and pulled out the legislation with respect to patent trademark and said: "What happened to all of this? Would you be in breach of this legislation?" It is clear that in the legislation it has been taken into account. I asked him and he did not realize that he was making it clear that he did not read the legislation. To make matters worse he said: "What about Act 27 of 1996?" I said: "Act 27 of 1996, what is that?" If you check Act 27 of 1996, it talks about the Act for the protection against unfair competition. Because it talks about protection against unfair competition, he says that it must be the same thing. The Act before us, as I said, quite clearly, deals with certain specific issues. It deals with the abuse of monopolist power and the abuse of mergers. When you look at Act 27 of 1996, it is really dealing with unfair trade practices, in other words you are using wrong trademarks. One simply has to look at the Act. Under clause 4(1) it speaks of general principles. It states:

"In addition to the acts and practices referred to in sections 5 to 9, any act or practice, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition."

It goes on to talk about breaches of a trademark; having nothing to do with what is before us. He simply picks up things and talks. No wonder that very quickly, I told you all that, you would have seen him for the fraud that he is. Now they have seen it. They did not see it when they made him political leader. If you had asked me I could have told you, because I worked closely with him at the Central Bank—show and no substance. You are finding that out. [*Interruption*]

Mr. Ramnath: Just like you!

Hon. K. Valley: You found that out too Kelvin.

Mr. Ramnath: "I eh fine out nothing."

Hon. K. Valley: You are just vexed because you were not elected. Now you want to get rid of Sadiq, after he beat you. You want to run him.

Mrs. Persad-Bissessar: Deal with your issue.

Hon. K. Valley: He is interfering with me. Tell him do not interfere with me.

Mr. Ramnath: Leave our business alone. The Prime Minister said you have baggage.

Hon. K. Valley: And you have no leader, so they cannot talk about you.

Mr. Speaker, I want to start with the Member for St. Augustine because he spent a lot of time and he said a few things and I think I need to respond to him. He spent a lot of time trying to make the point that the Government is making the country uncompetitive. He argued the inflation argument. In any economy that has come into the type of wealth that we have at present, there will be the argument concerning demand/push inflation. A government having that wealth, of course, will be facing pressures from the citizens to get things done, to improve the standard of living and everything else. We have a weekly discussion on that. As I said on a number of occasions, the issue is one of balance. We are in a quest to develop the economy. At the same time, we are aware that if we do too many things too quickly there would be overheating. We know that there are certain things we can do and the Government, at present, is attempting to relax some of the supply side constraints with respect to the food prices.

Members would know—I think it was the Member for Oropouche who made the point about Caroni (1975) Limited—we have now given two-acre parcels to former employees of Caroni (1975) Limited and in the short to medium term one expects, rather quickly, that it is going to be in food production for the benefit of Trinidad and Tobago.

The Government has established a business development committee that is looking at the trade and industry issues, as well as agriculture and agro-processing issues. While in the short to medium term that we are looking at, in the short term we are looking at removing constraints in the market, to allow more products to come into the market.

The Government is aware that especially in the case of food, prices are rising. The Government knows that as a fact, if oil prices are up, you must have imported inflation. If you are buying things from abroad and they have to pay more for the energy, obviously that cost is going to be included in the price. We know, however, to the extent that we could increase supply, importing more from South America, we would have an effect on reducing prices. That is what we are doing and the Government will continue in that vein. As a fact, let us face it, as long as we are talking about higher energy prices, the reality is that we are going to have higher prices. We cannot have one and not the other.

The Member for St. Augustine, as a trained economist as he claims to be, knows that, or ought to know that. He raised this argument sometime before about good financial indicators, but poor economic fundamentals. I do not know what these poor economic fundamentals he is talking about are. He quoted the same

Central Bank. When we looked at the data coming out, the only negative continues to be an increase in inflation. When one talks about inflation as a negative, we are still talking about inflation in the range of approximately 6.7 per cent, overall. I know of inflation in Trinidad and Tobago in the 1980s running double digits. There is the concept that if inflation is very low, perhaps nothing is happening in the economy. As long as you have an economy in growth, one would expect some level of rising prices. The issue is always one of balance; how much will you trade off for growth in the economy.

When we looked at the Central Bank's highlights and we look at what is happening in some of our sectors—a sector that is extremely important to me, the manufacturing sector, where traditionally we were accustomed to growth of 2 per cent or 3 per cent and we are seeing that in the last two years the sector experienced growth of over 9 per cent for 2004 and 8.6 per cent for 2005—it is rather interesting. I do not know what economic fundamentals he is talking about.

When one looks at the unemployment rate of 6.7 per cent I do not know what he is talking about. What are the economic fundamentals that are so bad in this economy?

At the end of this period the Revenue Stabilization Fund would be almost $8 billion. That is money set aside for a rainy day and strategic investment. What is he talking about? He talks about our spending, picking up from his Leader of the Opposition: "You have spent $34 billion and you have come for a further $4 billion." I do not know the "stupidness"! We have not spent $34 billion to date. If we spent $34 billion in half the year, $4 billion cannot take us for the other half. We have not spent $34 billion. What happens is, before you can spend, funds must be appropriated. Whereas funds are appropriated for a number of things and are still there for what it has been appropriate, we have run out in certain votes and, therefore, we need to appropriate an additional $4 billion for those votes, to be able to spend.

Salaries for example; we have not spent the salaries vote. We would have spent half of it for the first six months of the year, but the other half is there. In a particular project, under a particular ministry perhaps, we have run out of funds because perhaps, God forbid, there was an overrun or because they are ahead of schedule and, therefore, they need additional funding for that, but to come here and try to sell the idea that we have spent $34 billion and that we want a further $4 billion is making a mockery of the whole concept of accounting and economics.

Coming from the Member for Siparia, who is a lawyer is tolerable, but coming from the Member for St. Augustine who likes to claim that he is a trained economist is just a farce, because he ought to know better. That is the reality. We have not spent $34 billion. I think the last time we looked at it the expenditure to date is approximately $16 billion or $18 billion or somewhere in that vicinity. Those votes are specific to ministries. A Ministry may be able to vire within subheads, but if one wants to move moneys from one ministry to another, one has to come to the Parliament.

If a Ministry is out of funds, although there is 100 per cent funds in another ministry, that ministry has to come to the Parliament to get the funds. While we have a whole heaping set of moneys all over, in one or two places we need additional revenue amounting to $4 billion and that is what we came for. We cannot spend $34 billion in six months and ask for $4 billion for the next six months; it makes no sense.

Mr. Sharma: You all are obsessed with him.

Hon. K. Valley: It is the same way you are obsessed with him.

What I like about him is the way he likes to ask nice questions; bright-sounding questions. He said: "Has the homework been done? Have you done your trade policy?" He is forgetting that we came here, I think it was last year, and laid in Parliament this same document; the second trade policy review by the WTO. Do you remember all the nice things they said about us? I do not want to say them again this afternoon because I said them the last time. I would give it to him for him to read the nice things that were said about Trinidad and Tobago.

Dr. Moonilal: Not about you.

Hon. K. Valley: Not about me, but about Trinidad and Tobago. I do not know. They should read the thing. He asked if the homework was done.

He spoke about anti-dumping safeguard legislation. He knows that all of that; that legislative agenda is there at different stages. As a matter of fact, the safeguard legislation is before the Legislative Review Committee. We would be either before the Legislative Review Committee on Monday, the day after, or the following week and it will be coming to the Parliament. It is the same thing with the amendment to the anti-dumping legislation. He knows that because we have stated that in the social policy review document. We are clear. We come to the Parliament with legislation as it is ready.

I listened in amazement, as I have done from time to time, but as I have said, I know the gentleman. I think you all found out not a minute too soon. You are laughing. "Yuh lucky. Yuh get away." Oh my God, he is lucky.

Since last year July, I have been answering this question: Why are we excluding the financial and telecom sectors? I say again, if one were only to consider the financial sector and the confidence that is required in that sector, at the slightest thing you may have a run on a bank, or you could be $400 million or $1 billion in a hole quick, quick. Leave well alone. One needs to move incrementally; it is not correct that it is merely regulatory. Sen. The Hon. Enill, in the other place, made a contribution and it is cleared there that in the Financial Institutions (Amdt.) Act, they will take care of mergers and acquisitions within the financial sector. That is a specialized area and they are best able to handle it. We are now starting with this legislation. Let us get some experience. Let us not interfere with things that do not concern us; things that put this whole economy in trouble. The same thing holds for the telecommunications area. There is an authority and they are dealing with it. You speak about Digicel and you see exactly what has happened. The competition is here.

Very interestingly, the Member first of all argued that the $50 million limit is too low and that it will cover everybody and then in the same breath he says: "I do not know why there ought to be a limit." I do not understand. In other words, what the legislation says is if you are under $50 million, we are not going to interfere with you. If, therefore, we take the Member's advice and say there is no limit, meaning that we start from zero, is that better? At one point he was arguing that the $50 million is too low and in the same breath or the next breath he was saying: "I do not even understand why there is a limit," and that you should start from $10 million." If the company has to merge they need to get permission. I do not understand what he is saying. The same thing holds with respect to the monopolies.

4.00 p.m.

Mr. Speaker, there was an issue with accountability. The Member is telling this Parliament where you have to come, as I said, whenever there is need for an increase in appropriation; where there is a Public Accounts Committee; and where the same UDeCott had to come before the Public Accounts (Enterprises) Committee, that there is no public accountability for spending. I do not know. Perhaps, he feels just like outside he could go and say things and nobody would respond. I wish the Member understands that this is Parliament, and when he says things that are simply not correct, people would put the record straight. It makes no sense.

The Member then talked about the legislation only dealing with mergers and monopolies and not leases. He said that there are other ways that one can have anti-competitive behaviour, again, failing as it were, to note the amendment which defines mergers to include leases and so forth. I heard this evening, for the first time, that Enron got into trouble because it was a monopoly. I did not know that. That is what he said. [*Interruption*] He said that it was some off-balance book transaction with Enron that got them into trouble. Mr. Speaker, I understand why the Member left after speaking all these non-truths.

Mr. Speaker, I enjoyed Dr. Moonilal's contribution. I think the Member for Oropouche introduced a concept that is rather interesting, and the way to look at this really is where one draws the line between marketing strategy and anti-competitive behaviour. When do you cross the line? Quite frankly, I think that was a very interesting concept.

Mr. Speaker, of course, for about the sixth time, we heard about this competitive index. Again, I want to make the two points that I make every time: one is that there has been an increase in the sample size; and the other is that it reflects local feeling that is conditioned more about how they feel about crime rather than the real economy. I could tell you as a fact that the view from the outside is much different from what that competitive index would suggest. However, I feel certain that very soon we would see a change in the direction of that index. I feel very certain about that.

The role of the State in the industry and its effect on competitiveness: The Member made the point that in the 1980s the State was involved in a host of economic activities. I just want him to know that it was this Government, in an earlier incarnation, that got the State out of most of what it was involved in—moving from some 87 industries when we got into government in 1991, and when we left in 1995 we were involved in no more than some 47 industries. During that period, we divested 40 of those enterprises.

Mr. Speaker, the Member for Siparia is not here. I wonder whether I should respond to her legal points. I have always been guided by the concept that says shoemaker stick to your last. I am not a lawyer. The Member raised some legal issues with respect to clause 48. All I can report to this Parliament is that this issue was raised before. It was raised in the Senate, in the other place, by a Leader in the Senate, and Sen. Seetahal, S.C responded. Mr. Speaker, with your indulgence, if I am allowed to, I shall just want to put on the record the response of Sen. Seetahal, S.C. The issue raised was similar to the authority of the Community Competitive Commission (CCC).

Mr. Speaker, Sen. Seetahal, S.C said:

> It was not uncommon to have a commission and a court. They do so in the OAS countries. As I understand it, the commission is constituted under the Revised Treaty of Chaguaramas. I remember the Treaty was part of the legislation. It was appended as the schedule to the legislation establishing the CCJ as the court of original jurisdiction. If it is established under Article 171 of the Treaty, that is the commission, the commission has legal status because the Act that we passed last year or the year before established the CCJ and appended that Treaty. I am sure you would remember that the Treaty is part of that Act. If the Treaty is in the Schedule, then the Treaty is part of the Act and the Treaty established the commission.
>
> If you look at clause 2, you would see that the Community Competition Commission means the commission established under Article 171 of the Treaty. The Treaty is appended as the schedule to the Act which created the CCJ as the court of original jurisdiction. Therefore, there is legal status to the commission. That is my understanding of it.

Mr. Speaker, after that we had "Question put and agreed to". In other words, the explanation of Sen. Dana Seetahal, S.C was accepted in the other place.

Mr. Speaker, the Attorney General was at my side in the Senate and he accepted it. As I said, this shoemaker is sticking to his last and, therefore, I believe from my common-sense knowledge, and as I mentioned to the Member for Oropouche, with respect to trade matters, the CCJ is a court of original and final jurisdiction. There are some states which are interested in making it a final Court of Appeal and so on for everything. That is not what I am saying here. This is a trade matter and it is the court of final jurisdiction. That is the agreement that your leader signed on to when he signed the Revised Treaty of Chaguaramas, and that is what it is. That is why I asked the Member which legislation she was talking from.

Mr. Speaker, for the second time in this House, I beg to move that an Act to provide for the establishment of the Fair Trading Commission to promote and maintain fair competition in the economy and for related matters, be now read a second time.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in Committee.

Clauses 1 to 48 ordered to stand part of the Bill.

Clause 49.

Question proposed, That clause 49 stand part of the Bill.

Mrs. Persad-Bissessar: I am not convinced with the arguments, but I would not go over that again. In clause 49(2) it says:

> "The Community Competition Commission shall, in relation to any matter referred to it or any request made to it under this Part..."

Where is the request? There is no request there. So, where in Part VIII, "under this Part" you could make a request? There is nothing here allowing you or permitting you to make a request. It is wrong. We should delete the word "request". There is no request. The word "referred" is sufficient. Clause 48(1) deals with referrals. There is nothing in that part dealing with request.

Mr. Valley: Remember, any state can refer a trade matter to the commission.

Mrs. Persad-Bissessar: That would be handled by referrals.

Mr. Valley: You see, clause 48 is very specific. It talks about referrals. I am saying that other than the chairman, a matter may come to the commission by any other state.

Mrs. Persad-Bissessar: But not "under this Part". It says "under this Part" and "under this Part" there is no reference to any request to be made. Under this Part VIII all we are dealing with are referrals. There is nothing about request.

Mr. Valley: What I am hearing is that the phrase "under this Part" may be in the wrong place, and it should really be after the word "referred". "The Community Competition Commission shall in relation to any matter referred to it under this Part or any request made to it."

Mrs. Persad-Bissessar: The request would take us back to Act No. 3 of 2005. That would handle it. So we need to amend it.

Mr. Valley: We would look at it as a typo.

Mrs. Persad-Bissessar: No, it needs an amendment. Please, how could that ever be a typo? [*Laughter*] Mr. Speaker, I beg to move that clause 49(2) be amended as follows—

Mr. Valley: There is an amendment to clause 49(2) to the effect that the phrase “under this Part” which is now in line 3 be deleted, and it should be inserted after the words “referred to it” in line 2.

Question put and agreed to.

Clause 49, as amended, ordered to stand part of the Bill.

Clauses 50 to 53 ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the House.

House resumed.

Bill reported, with amendment, read the third time and passed.

TOBAGO HOUSE OF ASSEMBLY (AMDT.) BILL

Order for second reading read.

The Minister of State in the Office of the Prime Minister (Hon. Stanford Callender): Mr. Speaker, I beg to move,

That a Bill to amend the Tobago House of Assembly Act, 1996, be now read a second time.

Mr. Speaker, this is what I consider a pretty simple piece of legislation. It is a Bill with two clauses. Clause 1 is really the short title of the Bill and clause 2 seeks to amend section 33(1)(c) of the Tobago House of Assembly Act by deleting the word “five” and substituting the word “seven”.

Mr. Ramnath: That is a big debate. [*Laughter*]

Hon. S. Callendar: Mr. Speaker, section 33(1) of the Tobago House of Assembly Act states:

“(1) The Executive Council shall comprise—

(a) the Chief Secretary;

(b) the Deputy Chief Secretary; and

(c) such other Secretaries, not being more than five, selected from among the Members of the Assembly as the President acting in accordance with the advice of the Chief Secretary may appoint.”

Mr. Speaker, on Thursday, September 22, 2005, the Chief Secretary of the Tobago House of Assembly, in moving a Motion in the Assembly for the increase in the number of Secretaries made the point that the provisions of section 33(1) restricted the size of the Executive Council to seven members, while the scope, functions and resources of the Assembly have been increasing significantly in recent years. Therefore, there is need to increase the size of the Executive Council so as to ensure a more effective management of the resources and delivery of services to the people of Tobago. This amendment is also in keeping with a previous Cabinet decision with respect to the position of administrators in the Tobago House of Assembly.

Mr. Speaker, by Minute No. 1098 of May 06, 1999, the then Cabinet agreed inter alia with effect from October 01, 1998 to the creation of seven permanent positions of administrators to the staff establishment of the Tobago House of Assembly. The creation of these positions by Cabinet was in fulfilment of the requirement of section 73 of the Tobago House of Assembly Act, No. 40 of 1996, which states as follows:

> "Each Division of the Assembly shall be under the supervision of an Administrator who shall be of a level no lower than that of a Chief Technical Officer and who shall be the Accounting Officer of the Division under his supervision."

In submitting Note TA(98)13 dated July 20, 1998 on which the above decision was based, the request to the Cabinet for the creation of seven positions of administrators was based on the fact that there were seven administrative divisions in the THA.

Subsequently, on April 09, 1999 the Institutional Performance Division, now the Public Management Consulting Division (PMCD) of the Ministry of Public Administration and Information, in its comments to the Note, indicated that there were nine divisions in the THA as follows:

(1) Finance and Planning;

(2) Public Administration;

(3) Tourism Information, Environment and Settlements;

(4) Education and Culture;

(5) Community Development and Youth Affairs;

(6) Works Transportation and Infrastructure;

(7) Agriculture, Land and Marketing;

(8) Health and Social Services; and

(9) Labour, Cooperatives and Consumer Affairs.

The Minister of Public Administration and Information accordingly recommended the creation of nine positions of administrators to the THA with effect from October 01, 1998 instead of seven positions. Inadvertently, Mr. Speaker, Cabinet approved seven positions of administrators with effect from October 01, 1998 and not nine as was recommended by the Minister of Public Administration and Information.

Mr. Speaker, it took a subsequent Cabinet note in February 2003 to approve the creation to two positions of administrators to the THA with effect from March 01, 2003, bringing the total number of administrators to nine, and some of the divisions were then reconfigured.

It is important to give an example of some of the challenges the present restricted size of the Executive Council now faces. There is a secretary in the THA with the responsibility for Tourism. All of us know how important tourism is to Tobago's economy. The same Secretary for Tourism is also responsible for transportation, enterprise development, settlements, labour and cooperatives.

In exercising his functions, that secretary liaises with the Minister of Tourism, the Minister of Housing, the Minister of Works and Transport in relation to transportation, the Minister of Legal Affairs in relation to consumer affairs; the Minister of Trade and Industry in relation to enterprise development; and the Minister of Labour, Small and Micro Enterprise Development in relation to labour and cooperatives matters. All this is being done by one secretary.

Mr. Speaker, another example is the Chief Secretary. The Chief Secretary is also the Secretary for Education, youth and sport, public administration, state lands and information. It also happens in other areas. Therefore, it means that at times it becomes particularly difficult and onerous for some secretaries to effectively carry out their duties.

Mr. Speaker, in addition to areas of responsibility of the Assembly listed in the Fifth Schedule of the Tobago House of Assembly Act which has 33 specific functions or responsibilities such as finance, agriculture, health, education, tourism and community development, et cetera, if one goes to the Seventh Schedule, there are services to be performed or to be delivered in Tobago. If these services are to be performed or delivered in Tobago by other agencies, the THA

and, by definition, the Executive Council also has an oversight function and a monitoring role—

Mr. Speaker: Hon. Members, before we take the tea break, I have given permission to the hon. Prime Minister to make a statement. [*Desk thumping*]

SOCA WARRIORS
(CONGRTULATIONS)

The Prime Minister and Minister of Finance (Hon. Patrick Manning): Mr. Speaker, thank you very much. The Soca Warriors returned to Trinidad and Tobago last night after what to most members of the national community was a sterling performance in Germany. I am sure that hon. Members, on both sides of the House, would like me on their behalf to extend very sincere congratulations to the team and to let them know that they have done well; they have done their country very proud; and Trinidad and Tobago is proud of them.

The Government proposes to honour the Soca Warriors tomorrow afternoon at a celebration at the Hasely Crawford Stadium beginning at 4 o'clock. Because of the short notice that the Government had on the return of the Soca Warriors, it may not be possible that the invitations which have already gone out would reach all hon. Members in time and, therefore, I wanted to take this opportunity in extending an invitation to you, Mr. Speaker, and through you, to all Members of this honourable House and, indeed, to all Members of the other place to join with us tomorrow afternoon at the Hasely Crawford Stadium at which time we would appropriately honour the Soca Warriors of whom we are indeed very proud.

Thank you very much. [*Desk thumping*]

Mr. Speaker: Hon. Members, the sitting of the House is suspended for tea and we would resume at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

TOBAGO HOUSE OF ASSEMBLY (AMDT.) BILL

Hon. S. Callender: Mr. Speaker, thank you very much. When we took the tea break, I was making the point with respect to the functions and responsibilities under the Fifth Schedule. If you go to the Seventh Schedule, there are services to be performed or delivered in Tobago. If the services are to be performed or delivered in Tobago by other agencies, the THA and, by definition, the Executive Council has an oversight role. It has a monetary responsibility and sometimes a supervisory responsibility.

The Chief Secretary and the Executive Council are of the view that there are some matters even in the Sixth Schedule, for which the Assembly has no responsibility. The irony is that while the Assembly is not responsible for these functions, they are accountable to the people of Tobago. One such area is the area of crime which falls under the Ministry of National Security. When there is an increase in crime and criminal activities in Tobago, Tobagonians have a tendency of calling on the Assembly to give answers.

Mr. Speaker, the other area falls under the Ministry of Legal Affairs as it relates to land problems, RPO and registration of companies. Whenever there are problems in Tobago on these matters, the Assembly is called upon to account.

The Government sees the need to increase the size of the Executive Council by increasing the number of secretaries from five to seven, so that management of the resources and the delivery of services to the people of Tobago could be done more effectively.

Mr. Speaker, with these few words, I beg to move. [*Desk thumping*]

Question proposed.

Mr. Chandresh Sharma (*Fyzabad)***:** Mr. Speaker, thank you very much. Mr. Speaker, since the Member for St. Augustine is not here—the spokesperson for local government matters—[*Interruption*]

Mr. Speaker: Order, please!

Mr. C. Sharma: Mr. Speaker, you would recall that on the last day, I did announce to this House that the Member for St. Augustine is the spokesperson for local government issues, and in his absence I am just assisting. Let me thank the Member for Tobago West for a very precise contribution; very relevant. Certainly, we on this side would lend support to the measures put forward, but I think it is only fair that I take two minutes and do some reflection.

The Member for Tobago West has laid the case very strongly for the requirement to move from five secretaries to seven secretaries. We have argued that local government practitioners, across the board in Trinidad, need to be treated in a fair and similar manner. The Member for Tobago West made the point that their duties are increasing. He identified the Seventh Schedule and indicated that in some instances they had up to 33 functions to perform, and here in Trinidad our local government practitioners are left in the rain. For instance, local government practitioners here do not get assistance for their motor vehicles and

they have to move around, and that is similar to what obtains in Tobago. There is no provision for pension for them and there is no medical assistance.

I would have thought that the Member for Diego Martin Central, and Leader of Government Business, would have caused an announcement to be made where consideration would be given to that matter. It would be very unfair for us on this side of the House to simply say that we support the Bill without highlighting the need for it. [*Interruption*] They must be treated similarly. What does a member in Tobago get? He has access to pension, health care and his needs are met quite differently. That is in the execution of his duty. When you look at what the members in Trinidad have to do, it is almost similar. I do not want to rehash the number of duties they have to perform.

In addition, the Member also made the point that the intention of moving from five to seven secretaries is to obtain a more effective management which is required. He also indicated the demands of the THA.

Recently, I read in the newspaper that the business community in Tobago—I heard the Member for Tobago East saying similar—is concerned about crime.

Mrs. Job-Davis: Why are you calling my name?

Mr. C. Sharma: I cannot talk without calling your name. The point was made about the crime situation in Tobago and the role of the Tobago House of Assembly. When we come to give support to move the number of secretaries from five to seven, it does not assist—as the Member for Tobago West indicated—the crime situation because they need the resources.

The manpower requirement in Tobago is for 300 police officers. I understand that there are only 200 and something police officers, and a number of them are doing desk jobs. In addition, there are officers who are on vacation leave and so forth. So, when we come to lend support, we have to look at this matter in a holistic way. Yes, this is going to create a more effective management, but you cannot have more effective management if they are not given the tools and the resources. While we are arguing to move the number of secretaries from five to seven, we must also argue if they are getting the resources. The Minister did not indicate how this is going to lend to more effective management. We are suggesting on this side that the Tobago House of Assembly must be given the resources. In arguing for the THA to obtain the resources, we must also argue for what happens in Trinidad.

On the last day, since it is at the top of my head, I demonstrated that with the Tunapuna/Piarco Regional Corporation, out of $101 million only $14 million is

available for goods and services to treat with 65,000 homes, and that corporation is responsible for 275,000 citizens. That works out to eight cents per day. When you look at the national budget for local government that is less than 4 per cent, and local government has a very critical role to play. The Member for Tobago West argued today that their duties are increasing, but the budget is not reflective. You cannot hope to have local government deliver on its requirements.

Under Act 21 of 1990 and the White Paper that is now being circulated on local government their roles are increasing. The requirement to deliver more services to the citizens keeps increasing daily, but the budget is not reflective of that.

In closing the debate, the Minister may want to inform this House how increasing the number of secretaries from five to seven is really going to add value. Certainly, you would not have all the answers today, but we must appear to be as one on this matter. We all agree that local government plays a very important role. If we are looking at the THA as the model for Trinidad and Tobago, then we must demonstrate that we are giving them what is required. If we cannot treat with 40,000 or 50,000 persons in Tobago, it would be so much more difficult here with 1.2 million people.

The Minister also made the point that the Chief Secretary is responsible for education, among other things. Mr. Speaker, presently, Form III students are writing the examination that they are required to write. As I understand it, the papers are reaching at different times. In Tobago, I understand that the examination was supposed to start at 8.30 a.m. and the papers did not get there until 10.00 a.m. I also understand that schools in the deep south like Cedros, which is in the constituency of Point Fortin, are getting the examination at 10.30 a.m. So, when the child in Port of Spain is writing the examination at 8.30 a.m, they are writing it at 10.30 a.m. Could you imagine the situation that is causing and the inconvenience? I raise this point simply to make a further point that we are not treating with the local government bodies, agencies and the support staff in any meaningful way.

In fact, oftentimes, many of us are led to think and believe that the PNM does not understand the role of local government.

Hon. Member: That is not true. [*Crosstalk*]

Mr. C. Sharma: The PNM's history has shown that they seem to have a concerted effort to destroy local government. I know that is not true. [*Interruption*]

Mr. Valley: Mr. Speaker, I wonder whether I could advise the hon. Member that there is a draft White Paper on local government reform that is out. He has an opportunity to make his comments. If he believes that local government ought to get anything, there is where he should make his comments and they would be considered.

First of all, I think we all would agree that the Tobago House of Assembly is at a higher level than even the cities and boroughs. That is the highest form of local government in Trinidad and Tobago. That is it. You cannot compare what obtains at the THA with what obtains in the municipal corporations in Princes Town or Siparia.

Mr. C. Sharma: Mr. Speaker, since the Member for Diego Martin Central and I have the same minds, I think it is a good time to conclude my contribution.

Thank you very much. [*Laughter*] [*Desk thumping*]

The Minister of State in the Ministry of Community Development, Culture and Gender Affairs (Hon. Eudine Job-Davis): Mr. Speaker, thank you. I am just going to take two minutes. I really was not going to speak in this debate since the Member for Tobago West would have done an excellent job indicating why the THA needs to increase the number of secretaries, but the hon. Member for Fyzabad, as usual, just goes off-key comparing the THA with local government and that is my concern. I would refer the Member to the Tobago House of Assembly Act, No. 40 of 1996. He should read it. The Tobago House of Assembly cannot be compared with the local government bodies.

As a matter of fact, the THA would be miles above that in terms of managing the affairs of Tobago; in terms of the amount of moneys that are coming into the Assembly which need to be managed; and in terms of the requirements for Tobago. All of that would have been attested to by the Member for Tobago West. I just want the Member for Fyzabad to understand that. When the local government bill comes along, he should deal with the issue of local government then, but do not get up and compare our THA Bill with local government.

Further, Tobago is going to prepare itself to even move further than the THA. We are not talking secession, but we are talking about further management of its affairs. We are going to be coming back to this House to further amend this Act, so that the THA would operate as it should; not only in the area of Executive devolution, but also that of legislative devolution. Member for Fyzabad, be warned. The next time we bring our Bill to the Parliament talk on the Bill.

Furthermore, I want to tell the Member that he cannot run for my seat in Tobago. I have worked hard for it, so do not even think about it. Recently, I have found that the Member for Tabaquite and the Member for Fyzabad have been talking so much about things in Tobago. Please, be warned, you are not going to get any seats in Tobago and leave Tobago business alone. The two Members of Parliament for Tobago are able and capable of handling what is happening, in addition to the THA. [*Desk thumping*] You have Fyzabad to deal with and the Member has Tabaquite to deal with, and before you know it they would be gone by the next election.

Mr. Speaker, thank you very much for giving me the opportunity to just clarify for the Member for Fyzabad that local government and the Tobago House of Assembly are miles apart.

Thank you very much. [*Desk thumping*]

The Minister of State in the Office of the Prime Minister (Hon. Stanford Callender): With those comments, I just want to inform the Member for Fyzabad that I was a member of local government during the period 1977 to 1980. That was the last period of local government in Tobago. There was a debate that led up to the establishment of the Tobago House of Assembly Act, No. 37 of 1980, which changed the status of the people of Tobago.

In addition to that, I just want to put on record and to inform the Member for Fyzabad that the Tobago House of Assembly has a pension plan for its members. They are covered by that.

Mr. Speaker, with those few words, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the House.

House resumed.

Bill reported, without amendment, read the third time and passed.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move that this House do now adjourn to Friday, June 30, 2006 at 1.30 p.m. and to inform the House that on that day Private Members' Business would be taken and, therefore, I would ask the Chief Whip to inform the House of what business he plans to transact on that day.

Dr. Rafeeq: Mr. Speaker, we would be continuing debate on the Motion by the Member for Tabaquite which deals with the aluminium smelters.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5.20 p.m.